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# Editorial

## DR AMANDA DAVIES

Editor, Assistant Professor Policing and Security at the Rabdan Academy, Abu Dhabi



***This edition is dedicated to recent events relating to the Legislative Assembly of the Australian Capital Territory (ACT) passing the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018.***

Welcome to the fourth and final edition of the Australian Institute of Policing Journal for 2019. The past 12 months has been very interesting for police and law enforcement professionals, specifically in relation to the changing legal landscape. As can be seen from this edition, this trend is likely to continue in 2020.

This edition is dedicated to recent events relating to the Legislative Assembly of the Australian Capital Territory (ACT) passing the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018.

In this edition we have the legislators, politicians, judiciary, law enforcement, media, civil liberty advocacies and interested parties trying to navigate through the conundrum between the drug harm minimisation strategy of 'personal cannabis use' versus the continuing 'war on drugs' strategy.

The ACT Legislation, that has an implementation date of 31 January 2020, it is argued, conflicts with federal legislation placing Australian Federal Police (AFP) and other federal law enforcement officers in the same dilemma that exists in the United States of America.

This publication is dedicated to placing the concerns raised, political commentaries and AFP response into a helpful order to enable a level of clarity around what is reported to have occurred to date and the associated rationale for decisions.

A brief professional view of the general circumstances which led to the political and drug policy reform in Australia is provided in the *Foreword* as a helpful starting point.

The Debate in the Legislative Assembly of the Australian Capital Territory provides the arguments and evidence 'for' and 'against' the Bill which subsequently passed, as amended. From a law enforcement perspective, three key concerns have been raised:

1. What will be the impact of the (Personal Cannabis use) legislation on criminal justice resources in the Australian Capital Territory, in relation to general crime, organised crime, impaired driving, traffic fatalities;
2. What will be the impact on health department resources in the Australian Capital Territory, in relation to hospitalisations, ER, mental health, short and long term health effects on youth; and
3. How will the ACT legislation interact with Federal Government legislation.

The media releases, media interviews of various senior ACT and Federal politicians, the ACT Chief Police Officer, Law Societies and Medical Associations demonstrate the immensity and volatility of the situation.

Whilst not available at this point, it is anticipated a wealth of scholarly articles debating the key issues of this public policy decision by the Legislative Assembly of the Australian Capital

Territory will emerge in the near future.

At this preliminary stage, information in the public domain in consideration of this conundrum falls into two categories:

1. The Drugs of Dependence (Personal Cannabis Use) Act (ACT) and legal argument as to its validity and future interaction with Federal Government drug legislation; and
2. Public commentary, positive and negative towards personal cannabis use for persons 18 years and over.

In 2012, Colorado and Washington became the first United States of America jurisdictions to legalize cannabis for recreational use.

The October 2018 Report on the 'Impacts of Marijuana Legalisation in Colorado' published by the Colorado Division of Criminal Justice is enlightening. Many of the issues raised in public commentary relating to the ACT (Personal Cannabis Use) legislation are considered and analysed in this report. This report compiles and analyses data on marijuana-related topics including crime, impaired driving, hospitalisations, and ER visits, usage rates, effects on youth, and more.

Whilst we follow this evolving situation, and the conundrum for police enforcing two conflicting laws, it is hoped all remain vigilant not to lose sight of the continual commitment by our police officers in executing their lawful obligations and duties by enforcing the Rule of Law in this country.



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# Foreword:

## Cops cannabis conundrum

As we wish all members and readers a Merry Christmas and Happy New Year, we thought a light hearted cover for the AiPOL journal was fitting as Australian Police, particularly the Australian Federal Police (AFP) tackle the conundrum of the recent passing by the Legislative Assembly of the Australian Capital Territory of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2019 .

Australian Federal Police (AFP) and the Australian Border Force (ABF) Officers will now find themselves in a similar position to the Federal Bureau of Investigations (FBI) and the Drug Enforcement Administration (DEA) in the USA. Commonwealth legislation now conflicting with Australian Capital Territory (ACT) legislation with AFP officers having a legal obligation to enforce both Commonwealth and ACT legislation.

Many States in the US have legalised cannabis for medicinal and personal use, whilst the US federal legislation remains in conflict, placing FBI and DEA officers in a difficult conundrum. Australian police, particularly our federal law enforcement agencies now join their US colleagues in dealing with the Cannabis conundrum.

We trust that the following information provides some historical and contemporary background to the Cannabis legislation and policy reform in Australia.

In 1913 Australia signed the International Hague Convention on Narcotics, and extended importation controls over drugs other than opium. 1921 saw the first international drug treaty (The Opium Convention), and in 1925 the Geneva Convention on Opium and Other Drugs saw restrictions imposed on the manufacture, importation, sale, distribution, exportation and use of cannabis, opium, cocaine, morphine and heroin for medical and scientific purposes only.<sup>1</sup>

In 1926 the Commonwealth Government banned the importation of cannabis; in 1928 Victoria passed the Poisons Act and became the first state to control cannabis, followed by South Australia (1934), NSW (1935), Queensland (1937), Western Australia

(1950) and Tasmania (1959). In 1940 the Commonwealth extended import restrictions on Indian hemp, including preparations containing hemp.<sup>2</sup>

In 1961 Australia signed the International Single Convention on Narcotic Drugs. This convention supports an obligation to make cannabis available as a medicine.

Professor Robin Room, Director of the Centre for Alcohol Policy Research, Turning Point Alcohol & Drug Centre and Professor of Population Health & Chair of Social Research in Alcohol at University of Melbourne, published an Op Ed on the Conversation Australia news website that proposed a regulated cannabis market as one way to reduce problem drinking in Australia. Room stated: "It's time to rebalance laws, not only to cut down how much we are drinking, but also to reconsider whether young experimenters, and those around them, might be better off if the experiments were with another drug, such as cannabis".<sup>3</sup>

### Proposed decriminalisation (1970s)

The 1978 NSW Joint Parliamentary Committee Upon Drugs supported the decriminalisation of cannabis; under the proposal, personal use of cannabis would no longer be an offence and users would be given bonds and probation. Trafficking in cannabis would carry severe penalties.<sup>4</sup>

However, the 1979 Australian Royal Commission of Inquiry into Drugs recommended against decriminalisation, concluding that such a step would contravene the UN Single Convention on Narcotic Drugs and lead to calls for the decriminalisation of other drugs. The recommendation was that the consideration of decriminalisation be delayed for another 10 years.<sup>5</sup>

In 1985, against a backdrop of growing awareness at community and government levels of illicit drug use at a national level, the National Campaign Against Drug Abuse (NCADA) was established.<sup>6</sup>

Since 1985, the national drug policy in Australia has been based on the principle

of criminalisation and harm minimisation; the National Campaign against Drug Abuse has since become the National Drug Strategy. The National Cannabis Strategy 2006–2009 was endorsed in 2006.<sup>7</sup>

Australia has largely avoided a punitive drug policy, developing instead harm-minimisation strategies and a treatment framework embedded in a law-enforcement regime. Import and export of cannabis is illegal, and federal penalties apply. Offences can lead to sentences of up to life imprisonment for cases involving import or export of commercial quantities (100 kg and above for cannabis, 50 kg and above for cannabis resin and 2 kg and above for cannabinoids).<sup>8</sup> Offences for quantities below a commercial quantity have lesser penalties attached. Federal offences also target the commercial cultivation of cannabis, domestic trafficking and possession. However, most cannabis offences committed are dealt with under state and territory legislation.<sup>9</sup>

According to the Ministerial Council on Drug Strategy, the National Drug Strategy and its substance-specific strategies were written for the general population of Australia. The Aboriginal and Torres Strait Islander Peoples Complementary Action Plan 2003–2006 was developed as a supplement to the national action plans so that these plans could be applied to Australia's indigenous communities.<sup>10</sup>

At a national level, there is no overriding law that deals with cannabis-related offences; instead, each state and territory enacts its own legislation. According to Copeland and others,<sup>11</sup> while some jurisdictions enforce criminal penalties for possession, use and supply, others enact civil penalties for minor cannabis offences. Conviction for a criminal offence will attract a criminal record and can be punishable by gaol time and harsh fines. Civil penalties, however, do not result in a criminal record and are generally handled by lesser fines, mandatory treatment and diversion programmes.

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*continued on page 6*



In fact, all Australian states and territories have implemented systems where non-violent, minor and early cannabis offenders are diverted from the legal system.<sup>12</sup>

Although violent offenders and dealers are excluded, cannabis-cautioning schemes have been implemented in several states. Offenders are issued a caution notice rather than facing criminal proceedings; cautioning systems include an educational component on the harm of cannabis. Some also contain mandatory counselling or more substantial treatment for repeat offenders.

In the Australian Capital Territory, possession of up to 50 grams of dry material, 150 grams of wet material, and cultivation of 2 plants per individual up to 4 plants per household was legalised after a bill passed on the 25th September 2019, with the new law to come into effect on the 31st of January 2020.<sup>13</sup>

In South Australia possession of small quantities of cannabis is decriminalised, attracting a fine similar to that for a parking ticket. However, penalties for growing cannabis have become harsher since the advent of widespread large-scale cultivation. There is much confusion on the subject, with many believing that possession of a small amount of cannabis is legal.<sup>14</sup>

In Western Australia, as of August 2011: a person found in possession of 10g or less of cannabis receives a Cannabis Intervention Requirement notice to attend a mandatory one on one counselling session. Quantities larger than this attract a penalty of A\$2000 or two years in jail, or both. A person found in possession of more than 100g of cannabis is deemed to have that quantity for supply and could face a penalty of A\$20,000 or two years in jail. It is also illegal for cannabis smoking implements to be displayed in shops or sold, with fines up to A\$10,000 for sales to adults and jail for up to two years or a fine of up to A\$24,000 for selling to minors.<sup>15</sup> Opposing political sides have accused the government of changing the laws to appear tough on drugs in response to an increased public fear of clandestine drug labs following a number of them exploding in suburban areas, such as the Lilac Pass Incident.

In New South Wales, Queensland, Victoria and Tasmania possession and use of cannabis is a criminal offence;

however, it is unlikely that anyone caught with a small amount will be convicted.<sup>16</sup>

Diversion programs in these states aim to divert offenders into education, assessment and treatment programs. In New South Wales, if one is caught with up to 15g of cannabis, at police discretion up to two cautions can be issued.<sup>17</sup> In Tasmania up to three cautions can be issued for possession of up to 50g of cannabis, with a hierarchy of intervention and referrals for treatment with each caution.<sup>18</sup>

Similarly, in Victoria, up to 50g of cannabis will attract a caution and the opportunity to attend an education program Victoria Cannabis Cautioning Program; only two cautions will be issued. In Queensland, possession of cannabis or any schedule 1 or 2 drug specified in the Drugs Misuse Regulation 1987 carries a maximum prison sentence of 15 years; however, jail terms for minor possession is very rare. Possession of smoking paraphernalia is also a criminal offence in Queensland. However, under the Police Powers and Responsibilities Act 2000 a person who admits to carrying under 50g (and is not committing any other offence) must be offered a drug diversion program.

Adults in the Northern Territory found in possession of up to 50g of marijuana, one gram of hash oil, 10g of hash or cannabis seed, or two non-hydroponic plants can be fined A\$200 with 28 days to expiate rather than face a criminal charge.

With the rapid expansion in hydroponic cannabis cultivation, the Australian Drug Misuse and Trafficking Act (1985) was amended in 2006; the amount of cannabis grown indoors under hydroponic conditions that qualifies as a "commercial quantity" or as a "large quantity" was reduced.<sup>19</sup> In South Australia, it is now up to 2 years jail and up to a \$2000 fine, despite public backlash.

In the Northern Territory and in the Australian Capital Territory, possession of less than 100 grams can result in fines from \$100 to \$200. In South Australia, fines can also be issued for the possession of a used bong or for possession of other used cannabis-smoking implements.<sup>20</sup>

### **Medicinal use**

The use and cultivation of cannabis is illegal in Australia without authorisation, justification or excuse under law. Medical necessity is also a legitimate defence for some people in Australia for e.g.

Clinical trials of cannabis for medicinal purposes have been suggested by multiple governments. Currently, the only state to start medical trials is NSW, having started the first of three trials in January 2015. This first trial is focused on treating severe epilepsy in children.<sup>21</sup> Support for a change in legislation permitting the use of marijuana for medical purposes remained relatively unchanged between 2004 and 2007. Two-thirds (68.6%) of respondents in the 2007 NDSHS survey supported "a change in legislation permitting the use of marijuana for medical purposes" and almost three-quarters (73.6%) supported "a clinical trial for people to use marijuana to treat medical conditions". Females were slightly more likely than males to support either of these measures.

A media report on 16 May 2013 stated that a New South Wales (NSW) parliamentary committee has recommended the use of medically-prescribed cannabis for terminally ill patients and has supported the legalisation of cannabis-based pharmaceuticals on such grounds. As part of the recommendation, the committee has called upon the cooperation of the federal Australian government for a scheme that would allow patients to possess up to 15 grams of cannabis. Also, both the patients and their carers would be required to obtain a certificate from a specialist, registration with the Department of Health and a photo Identification card.<sup>22</sup>

The committee's report, which included Liberal, National, Labor, Greens and Shooters party members, was unanimous, but the document acknowledged that NSW had limited powers, as federal laws and bodies such as the Therapeutic Goods Administration governed the regulation of drugs. Also, the committee did not recommend the use of cannabis for chronic pain or for the decriminalisation of marijuana cultivation for personal use.<sup>23</sup>

Ellomo Medical Cannabis P/L and Mullaway's Medical Cannabis P/L[58] are two Australian medicinal cannabis companies, and the former was responsible for a submission to the 2013 NSW parliamentary enquiry into the use of cannabis for medical purposes.<sup>24</sup>

In February 2014, TasmanHealth Cannabinoids Pty Ltd proposed trials of cultivation and processing of medicinal cannabis in Tasmania in conjunction with the University of Tasmania. this was approved in principal by the then Labor

***AiPOL does not condone or encourage the recreational use of cannabis or other illicit drugs. This is a message that we will continue to share with our members and readers in the context of enforcing the relevant laws.***

Health Minister Michelle O'Bryne, but subsequently rejected by the incoming Liberal Health Minister Michael Ferguson. The company then was granted a licence by the Norfolk Island Government to produce medical cannabis, but that licence was overturned by the island's Administrator, Gary Hargrave.<sup>25</sup>

On 17 October 2015, the Federal Government announced that it would legalise the growing of cannabis for medicinal and scientific purposes.<sup>26</sup>

On 24 February 2016, the Australian parliament made amendments to the Narcotic Drugs Act that legalised the growing of cannabis for medicinal and scientific purposes.<sup>27</sup> Subsequently, the usage of medicinal cannabis was legalised at the federal level on 1 November 2016.

Victoria became the first state to legalise medicinal cannabis on 12 April 2016, with prescriptions also available in New South Wales and Western Australia the same year.<sup>28</sup> Queensland and

Tasmania followed in 2017, whilst South Australia and the Northern Territory are yet to legalise medical marijuana.<sup>29</sup>

On 17 February 2017, The Office of Drug Control in the Federal Department of Health issued the very first Cannabis Research licence under the medicinal cannabis provisions of the Narcotic Drugs Act 1967.<sup>30</sup> There has been changes over time in public perception of cannabis use in Australia. Data from the 2016 NDSHS showed:

- There was a significant decrease in the proportion of Australians reporting cannabis as their first drug they thought of when asked about a drug problem. 15% in 2016 compared to 23% in 2013.
- Only 2.6% thought that cannabis caused the most concern to the general community, a statistically significant decrease from 3.8% in 2013.
- Personal approval of cannabis use by an adult increased significantly from 9.8% in 2013 to 14.5% in 2016. (AIHW 2017).<sup>31</sup>

There have also been some associated changes in public perception about cannabis related policies. For example, the majority of Australians aged 14 years and over do not support the possession of cannabis being a criminal offence. (74% in 2016 compared with 66% in 2010). Other increases in the proportion of people aged 14 years or over that supported:

- the use of marijuana to treat medical conditions (from 74% in 2010 to 87% in 2016)
- a change in legislation permitting the use of marijuana for medical purposes (from 69% in 2013 to 85% in 2016)
- the legalisation of cannabis (from 25% in 2010 to 35% in 2016 (AIHW 2017))

AiPOL does not condone or encourage the recreational use of cannabis or other illicit drugs. This is a message that we will continue to share with our members and readers in the context of enforcing the relevant laws. However, if there is to be drug law reform, it should be based on medical and other expert advice and most importantly result in clear and unambiguous legislation at federal, state and territory levels so that neither the public or the policing and law enforcement professionals are placed in a conundrum in interpreting the laws upon which they rely.

Once again, Merry Christmas and Happy New Year to our AiPOL members and broad readership and we thank you for your continuing support.

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# Australian Capital Territory votes to legalise cannabis for personal use

**Territory becomes first jurisdiction in Australia to legalise possession of up to 50 grams of marijuana and two plants.**

Possessing and growing cannabis for personal use will become legal in Australia's capital.

The laws, which don't come into effect until 31 January, were passed in the ACT Legislative Assembly on Wednesday afternoon.

They will allow Canberrans over 18 to possess 50 grams of cannabis and grow two plants.

The ACT attorney-general, Gordon Ramsay, told the assembly it was time to treat drug addiction like a health issue rather than an issue of "right and wrong", which is why the laws would be accompanied by more drug and alcohol services and the introduction of specific drug courts.

He acknowledged possessing and growing cannabis would remain a federal offence, and the risk of prosecution was "not entirely removed", but "in practice" the laws would not apply.

The ACT shadow attorney-general, Jeremy Hanson, told the assembly on Wednesday the Liberal opposition would not be supporting the bill as it was badly drafted and would lead to a number of "perverse outcomes".

He said it would encourage more people to use cannabis – which medical professionals say would lead to increased rates of psychosis – and more people would be charged with drug-driving.

And the fact it conflicted with commonwealth law would be confusing for police.

"This puts not only individuals at a greater level of risk but our police will be out there on the beat working in this unclear legal framework," Hanson said.

A review of the laws will be conducted within three years.

Residents of the bush capital wouldn't be able to light up immediately, with the



**The ACT is expected to pass a bill legalising cannabis for personal use.**

ACT's health minister needing to sign off on when the law would come into effect.

Labor backbencher Michael Pettersson, who introduced the private members bill, said a defence exists for cannabis use under commonwealth law if the use is excused or justified by state or territory law.

"Commonwealth law has been written with the express understanding that there are differences," Pettersson said.

"I don't think it's particularly likely the commonwealth government will try to fight this."

The federal attorney-general, Christian Porter, said the bill was a matter for the ACT, but where commonwealth laws applied they remained enforceable.

A spokeswoman for ACT chief minister Andrew Barr said the government had consulted with ACT Policing and the Commonwealth Department of Public Prosecutions.

A spokesman for federal health minister Greg Hunt said any problems with commonwealth law were a matter for the attorney-general, but the federal government did not support legalising cannabis for recreational use.

Amendments made to the original bill require cannabis to be kept out of reach of children, and bar adults from using it near children or growing it in community gardens.

It's not the first time laws introduced by the territory have clashed with federal laws.

In 2013, the capital legalised same-sex marriage only to have the federal government revoke the law after it took a challenge to the High court.

Before that, in 1995, the Northern Territory legalised voluntary euthanasia only to have the federal government later legislate to stop the nation's territories from specifically introducing assisted dying.



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

**PRESENTED BY ANDREW BARR MLA CHIEF MINISTER**

---

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.

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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>

## Proposed Government amendments

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

### 1. Personal plant limits

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

### 2. Household plant limits

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

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

### 3. Restrictions on where cannabis can be grown

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

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

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

### 4. Storage

Government amendments will require cannabis to be kept out of reach of children when not in an individual's possession in order to restrict access by children and young people or other

vulnerable individuals. The Government amendments will require a person in possession of cannabis to take reasonable steps to store the cannabis out of reach of children. Examples will be provided in the supplementary explanatory statement for the Government amendments, reflecting current approaches to storing dangerous chemicals or prescription drugs.

### 5. Distinction between fresh and dried cannabis

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

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

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

### 6. Smoking near children

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

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

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

### 7. Interaction with Commonwealth Government legislation

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

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

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

### Other matters

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

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

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



# Recommendations

Recommendation	Notes
<b>RECOMMENDATION 1</b> 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.	<b>Agreed</b> – the Government supports the Bill and will move amendments as outlined in this response to the Committee's recommendations.
<b>RECOMMENDATION 2</b> 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.	<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.
<b>RECOMMENDATION 3</b> 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.	<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.
<b>RECOMMENDATION 4</b> 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.	<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.
<b>RECOMMENDATION 5</b> 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.	<b>Noted</b> – the Government is of the view that definitions in the Government's amendments address this matter.
<b>RECOMMENDATION 6</b> 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.	<b>Not agreed</b> – the Government supports maintaining a clear distinction between allowable amounts for commercial and trafficable amounts under Commonwealth legislation.
<b>RECOMMENDATION 7</b> 4.88 The Committee recommends that Section 171AB(1) of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 be amended to adopt similar smoking offences as presented in the <i>Smoke-Free Public Places Act 2003</i> , as well as <i>Smoking in Cars with Children (Prohibition) Act 2011</i> for smoking cannabis in public places.	<b>Noted</b> – the Government believes the proposed amendments provide stronger and more workable protections for children and other members of the public.
<b>RECOMMENDATION 8</b> 4.89 The Committee recommends that Section 171AB(2) of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 be amended to adopt similar smoking offences as presented in the <i>Smoke-Free Public Places Act 2003</i> , as well as <i>Smoking in Cars with Children (Prohibition) Act 2011</i> for smoking cannabis near a child.	<b>Noted</b> – the Government believes the proposed amendments provide stronger and more workable protections for children and other members of the public.
<b>RECOMMENDATION 9</b> 4.105 The Committee recommends that the ACT Government collaborate with ACT Policing to adopt a cannabis drug driving test that determines impairment.	<b>Noted</b> – In line with other Australian jurisdictions, the ACT has a zero-tolerance approach to drug driving. To date, no major international or technological developments have been able to categorically establish a direct causal link between specific levels of drugs and impairment, which can be consistently applied across the population. The ACT Government will continue to monitor developments elsewhere in this area and will continue to collaborate with ACT Policing.

Recommendation	Notes
<p><b>RECOMMENDATION 10</b></p> <p>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.</p>	<p><b>Noted</b> – the Government will address this issue through our proposed amendments to the Bill.</p>
<p><b>RECOMMENDATION 11</b></p> <p>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.</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>RECOMMENDATION 12</b></p> <p>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.</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>RECOMMENDATION 13</b></p> <p>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.</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>4.166 The Committee recommends that the ACT Government develop a public health campaign about cannabis to be delivered on an on-going basis.</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>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.</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>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:</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><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>



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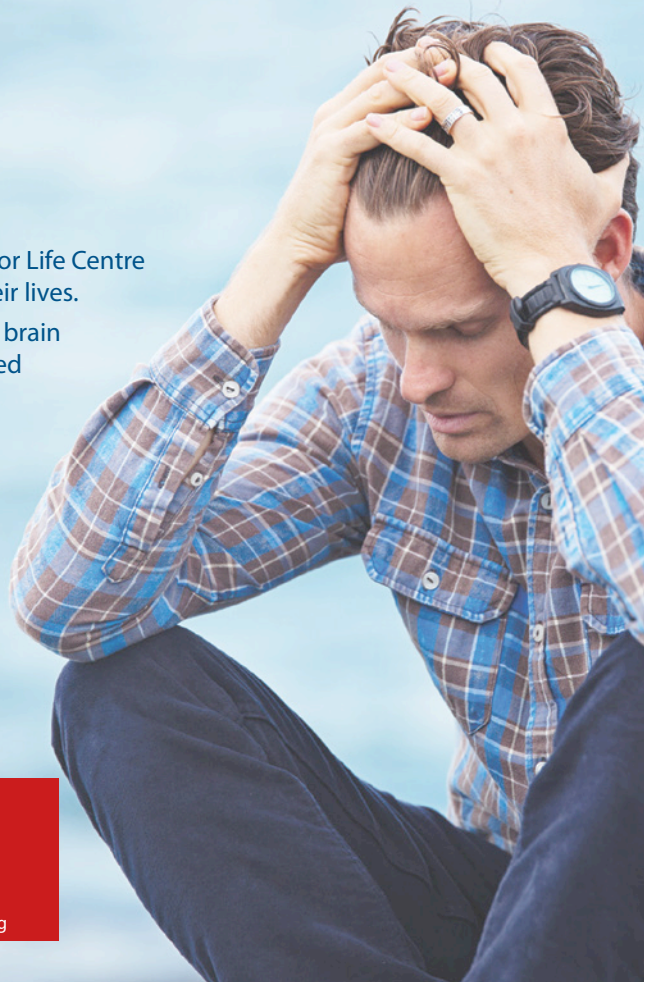
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# PERSONAL CANNABIS USE – EXTRACT FROM HANSARD DEBATE 25 & 26 SEPTEMBER 2019 ACT LEGISLATIVE ASSEMBLY

## Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 Debate resumed from 28 November 2018, on motion by Mr Pettersson: That this bill be agreed to in principle.

**Mr Ramsay** (Ginninderra—Attorney-General, Minister for the Arts, Creative Industries and Cultural Events, Minister for Building Quality Improvement, Minister for Business and Regulatory Services and Minister for Seniors and Veterans) (10.03): The ACT government's guiding principle in relation to drug use is one of harm minimisation. As set out in the ACT drug strategy action plan 2018-2021, the ACT government is committed to investing in evidence-based and practice-informed harm minimisation responses to alcohol, to tobacco and to other drugs, and to leading the country in innovative policy approaches. The government's support of this private member's bill, with appropriate amendments that we will be considering later this morning, is an example of this government's willingness to approach drug law reform which aims to minimise harm in our community in progressive and innovative ways.

The government has been clear that it does not condone or encourage the recreational use of cannabis. However, outright prohibition has clearly proven not to work as an effective strategy for dealing with drug use in our community.

The 2017 Australian Criminal Intelligence Commission report on organised crime in Australia identified cannabis as the most commonly used illicit drug in Australia. The report noted that almost all cannabis consumed in Australia is cultivated domestically. The Australian Institute of Health and Welfare's national drug strategy household survey 2016 found that 35 per cent of Australians aged 14 or older had used cannabis in their lifetime and that, in 2016, 8.4 per cent of people aged 14 or older living in the ACT had used cannabis in the past 12 months.

It is clear that what has been done in the past has not worked and that new and more creative approaches must be taken. The focus must be on strategies to prevent and manage the harm

caused by illicit drugs in our community and which recognise that drug use is a health issue. In considering harm minimisation initiatives, the government continues to work closely with ACT Policing and recognises that reforms in this area require a collaborative whole-of-government approach.

The ACT has a long history of taking progressive steps and trying new methods 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, such as those being considered today. The parameters of the government amendments to the bill are largely consistent with the existing scheme of decriminalisation of personal use of small amounts of cannabis.

One public concern is whether further decriminalising cannabis will lead to more people using the drug. The national drug strategy household survey 2016 indicated that 82.1 per cent of people would not use cannabis even if it was legal. In addition, illicit drug use amongst young people has been declining for some time, with the Australian secondary schools alcohol and drug survey showing 17.4 per cent of ACT school students aged 12 to 17 reporting using illicit drugs in 2017, which is down significantly from 37.5 per cent in 1996.

The government aims to provide an appropriate scheme for those individuals who are already using cannabis and who may continue to do so, acknowledging that outright prohibition can bring people into contact with the justice system unnecessarily and prevent people from seeking help when they need it.

One of the most complex questions to resolve has been the interaction between what is proposed in this bill and the commonwealth Criminal Code, which

makes it an offence to possess cannabis. Where, however, there is state or territory law that deals with the same conduct, the commonwealth law allows police and the courts to apply the law of that state or territory in deciding how to deal with the offender. That is how the ACT and other jurisdictions have already been able to decriminalise personal cannabis possession. It is also the basis of our current simple cannabis offence notice scheme.

Through engagement with the commonwealth, the AFP and legal advisers, it has become clear that removing an offence for cannabis possession from the ACT law entirely would simply mean that the prohibitions on possession of cannabis in the commonwealth Criminal Code would then apply as the primary law here. This would potentially place Canberrans at risk of being arrested and prosecuted under commonwealth law.

To deal with this, the government's proposed amendments will instead see the ACT maintain an offence in our law for cannabis possession but provide an exception for people who are aged 18 or over, possess amounts of cannabis consistent with the bill and do so in the ACT.

This means that although it will be an offence to possess cannabis in the ACT, in practice, the offence would not apply to an adult who possesses a small amount of cannabis in the ACT. This approach maintains an ACT-specific legal framework for dealing with cannabis possession; therefore it provides an alternative to the commonwealth law being applied by default.

This does not entirely remove the risk of people being arrested under commonwealth law, and we are being up-front with the community about that. The ACT's legislation attempts to provide

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*continued on page 16*



a clear and specific legal defence to an adult who possesses small amounts of cannabis in the ACT but who is prosecuted under the commonwealth law. Unfortunately, it cannot stop someone being arrested and charged if the commonwealth officials were minded to do so or prosecuted if the Commonwealth Director of Public Prosecutions thought it was appropriate to do so. The use of the defence provided by ACT law would be a matter for the courts to consider.

There are many steps that the commonwealth must take between arresting someone and successfully prosecuting them in court. Here in the ACT the government hopes sincerely that the time and resources of our Federal Police, prosecutors and courts will not be wasted pursuing individual cannabis users who are acting in accordance with ACT law.

Given the complex interactions with the commonwealth law, the government has committed to a review of these reforms within three years of them taking effect. In supporting the bill in principle, the government has been clear in its commitment to ensure that the measures do not erode the existing restrictions on the possession of cannabis by young people and that any changes adequately ensure that young people are not exposed to cannabis or cannabis smoke.

The bill as supported by the government also maintains a distinction between artificial and non-artificial cultivation, as artificial cultivation can manipulate the strength of the THC of the cannabis plant and the yield of a cannabis plant by, for example, generating multiple growth cycles per year from the one plant.

Most importantly, these reforms treat addiction as a health issue, not a criminal justice issue, and may prevent individuals from unnecessarily coming into contact with the criminal justice system. The ACT government is committed to a justice system that is restorative and rehabilitative. When it comes to people who face our courts primarily as a result of addiction, it is important to focus on the evidence that we have about their behaviour. The evidence is overwhelming that treating addiction as an issue of right and wrong is not only ineffective but also is not in accordance with what we know about the biology and psychology of drug use.

By treating cannabis addiction as a health issue, we can address these dependencies and in turn we can build more resilient people, families and communities. That is why this government has also made the establishment of the drug and alcohol court one of its top priorities. It is an example of therapeutic justice, which prioritises the treatment of the causes of crime and the prevention of recidivism.

This bill, as it will be amended in the later discussion, reflects a progressive and innovative approach to tackling drug reform. With these appropriate government amendments, it represents a step forward towards the goal of minimising the harm of drugs in the community. I commend the bill to the Assembly.

**Mr Hanson** (Murrumbidgee) (10.13), by leave: Thank you, members. I appreciate the opportunity to speak again. Obviously quite a bit has happened from when we last spoke about the bill in this place to where we are now. Our position has not changed, but there is certainly more evidence and information before us and obviously we have the amendments that had been mooted but that we had not seen. When this bill was first presented and debated, we opposed it at that point. We then referred it to the standing committee on health, which has conducted an inquiry. That inquiry reported, its report was presented in this place and there has been a government response to it.

Thank goodness it did go to inquiry, because there is no doubt that that process fleshed out many of the problems that exist with this legislation from a health perspective, from a legal perspective and from the perspective of drug driving. Many of those issues remain unresolved. I would recommend members watch or read Mrs Dunne's speech on the tabling of the committee report. I think it was very good. It encapsulated many of the problems that were identified, through that inquiry process, with this piece of legislation—that it is a very problematic piece of legislation.

We opposed it then and we oppose it now on a number of grounds. First are the health grounds, particularly mental illness. I think it is clear that this legislation will lead to increased cannabis consumption, particularly amongst younger people. The evidence presented by the AMA and a range of other experts makes it

very clear that increased consumption of cannabis leads to increased psychosis—a fivefold increase in the risk of psychosis. So we do not support it, just as the AMA—I will go to what they had to say later—do not support this legislation because of the health impacts.

Drug driving remains a problem as well. The Chief Police Officer was on ABC Radio 666 this morning talking about that issue. It remains unresolved. Despite the endeavour by this government, the claim that it will take people out of the criminal justice system, I think what we are actually going to see is the perverse outcome of more people being charged with drug driving offences as a result of this legislation. The number of people engaging with the justice system as a result will increase.

Obviously there is then the conflict with federal law. Some of the major implications there remain. The Attorney-General, in his speech, made it very clear that individuals can still be charged under commonwealth law. Again, this not only puts individuals at a greater level of risk; our police out there on the beat are still working in this unclear legal framework. Any piece of legislation that we debate here and that we pass that remains ambiguous and unclear, both to the community and to the people we charge with enforcing those laws, has to be seen as bad legislation.

We opposed it on those grounds and we continue to oppose it because it is badly drafted legislation that creates a whole bunch of perverse outcomes. Our position has not changed. It is bad policy. It is bad legislation, the way the government is trying to do this with a whole bunch of workarounds and unresolved issues, particularly in relation to drug driving.

There are government amendments. We will be supporting those because they go some way to limiting the harm of this bill, but they certainly do not resolve much of the harm that will be created through this legislation. I will have more to say about that during the debate.

Let me turn specifically to each of the areas I have referred to—firstly, the health grounds. I quote from the AMA's submission in respect of this legislation:

The AMA does not condone the trafficking or recreational use of cannabis. The AMA believes that there should be vigorous law enforcement and strong criminal penalties for the trafficking of cannabis.

Importantly, the AMA states:

The personal recreational use of cannabis should also be prohibited.

The current laws, as they work, are effective. There is no great crowd of people being locked away for cannabis use. Based on the advice that we have received, the only people really engaged with the criminal justice system are people who have not paid their SCON, their simple cannabis offence notice. We are changing these laws today to resolve a problem that by and large does not exist. In doing so, we are creating a whole range of other problems for the police and for the community.

The AFPA and others in the legal profession have called out the inconsistencies and conflicts in these laws. Let me quote from a *Canberra Times* report this week on this legislation:



... the devil has always been in the detail.

And, even as the bill looks set to pass within days, there are still many questions that remain unanswered ... it's still not clear how the bill will interact with existing drug-driving laws.

That has not been resolved. There is also the fact that the premise of this bill, allowing people to possess a drug—cannabis—in small amounts still assumes the existence of a black market in the first place. That still remains illegal. Where does an individual obtain seeds to grow the plants in the first place? How can they be sure of their provenance? That is not resolved; it is still illegal.

The bill also fails to address the very real health risks associated with the heavy use of cannabis and the way police interact with regular users and the health system. The CPO made it very clear today: this is not going to alleviate a whole lot of work for his members. It is not going to make any change. In fact, it is just going to make it more complex for them on the ground. As the *Canberra Times* editorial makes very clear, the evidence is clear about mental health.

I was disappointed—was I surprised?—to again hear the Minister for Mental Health say, “Oh, there is lots of evidence out there. We are going to ignore the AMA and the Australian Institute of Health and Welfare.” Let me be very clear: the compelling evidence out there is that this is bad for

your mental health. The people who claim otherwise are in the anti-vaxxer camp. That is where you live; that is where you belong. If you think that there is not an impact—

**Ms Stephen-Smith:** Ha!

**Mr Hanson:** Minister Stephen-Smith laughs. If you think that there is not a mental health impact arising from the use of cannabis, you are wrong. It is very clear that there is. People who deny that and say, “Oh, look, the evidence is ambiguous; the evidence is not clear,” are in that anti-vaxxer camp. Let me be very clear. There is a significant mental health impact. If you have used cannabis,

the risks are there. I am going to believe the AMA. I am going to believe the experts, even if some of those opposite choose not to.

Let me report from a *USA Today* report that shows the real evidence from Colorado. Colorado is a state in the US that has legalised cannabis. The report stated that a new study showed that hospital visits related to cannabis drastically increased after Colorado legalised recreational marijuana. University of Colorado School of Medicine researchers reviewed the health records of 9,973 patients at UCHHealth University of Colorado Hospital from 2012 to 2016. They found a more than threefold increase in cannabis-associated emergency department visits.

According to a study published in the peer-reviewed journal *Annals of Internal Medicine*, some patients reported eating edibles but the majority of cases were related to inhaled marijuana, according to the study funded by the Colorado Department of Public Health and Environment, with symptoms including uncontrollable vomiting, acute psychosis, intoxication and heart problems.

I can refer to numerous studies. That is one of the more recent that talks about the impacts on mental health of cannabis use and where the legalisation of cannabis has led to increased health problems within a community. That is why the AMA's opposition to this legislation is so important for us to note. Let us listen to the evidence. As the Greens often lecture us, let us listen to the evidence.

We will be facing competing amendments today. There is no doubt that there are some good amendments and some bad amendments being put forward. We will go through those in detail. But let me clarify, before we go to the detail stage, where we are at on this. Following the committee inquiry, the government has recognised that there are a range of significant issues with this legislation. They include the ability for a grow house to exist, the number of plants per individual and a range of technical legal issues that arise out of this legislation. They have put forward amendments that we are either ambivalent about or that by and large we support, because I think what they do is make bad legislation better. It still remains

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*continued on page 18*



bad legislation, but it is not as bad as was first presented in this place.

The Greens have a range of amendments as well. I indicate that we will be supporting a couple of them in relation to reviews and the provision of information that I think are sensible. The remainder of their amendments, by and large, would increase the scope of the legalisation of marijuana, the hydroponics and so on. These are things that we would not support, and therefore we will not be supporting those amendments.

Be very clear about the process today: we will be opposing this legislation, for the reasons that I have outlined. Nothing has changed since we had the debate in this place some months ago. Opposition has, if anything, become stronger, given the evidence presented at the committee inquiry. We will support a number of amendments—those amendments that we think limit the damage that is going to be done by this legislation.

But, at the end of the day, we do not support this legislation because it is going to do more harm than good. I do not know whether there is a noble intent behind this. I am not sure quite what the intent is; there seem to be a range of views from those opposite. But be very clear that, regardless of what the intent is, what is going to happen today will create more harm than good. For those reasons, the Canberra Liberals will not be supporting this legislation.

**Ms Le Couteur** (Murrumbidgee) (10.26), by leave: I would like to talk about some of the issues with this bill. I was a member of the HACS committee, and certainly that was a very interesting occasion. As members may remember, I am an ageing hippy and, of course, I am totally in favour of the legalisation of cannabis. My ideal legislation would be to just take it out of that list of dangerous drugs and treat cannabis like other plant matter. That does not necessarily mean it is good for you, of course, Mr Hanson. Tobacco is not one of the better pieces of plant matter. I do not think this current treating of cannabis as a dangerous drug is useful for anybody.

In my innocence, when this bill first came to the Assembly I thought the Pettersson bill would in fact legalise the possession and cultivation of small quantities of cannabis. However, as a member of the health, ageing and

community services committee I was part of the inquiry and it quickly became apparent that this was not, in fact, the case. It quickly became apparent that the commonwealth laws on the subject made it challenging for the ACT to do more than what the ACT has already done.

The ACT has, as Mr Hanson and many people have pointed out, successfully decriminalised possession of small quantities of cannabis with a system called SCONs or simple cannabis offence notices. The bill would remove SCONs for people over 18, and thus if it is not effective legislation then the situation for over-18s in the ACT could be that, in the worst case scenario, they are more likely to receive criminal charges than currently, as, under the commonwealth legislation, all possession of any amount of cannabis is a criminal offence.



The Australian Federal Police told the committee:

Inconsistencies between the bill and the code create ambiguity and uncertainty as to the legal framework within which community police officers of ACT Policing must operate. This situation currently does not exist as the ACT and the commonwealth both make it an offence to possess cannabis. Simple cannabis offences in the ACT allow for flexibility in determining what is the most appropriate offence to be considered, and how that offence should most appropriately be cleared.

The removal of the ACT offences would remove access to the existing diversion framework for simple cannabis

offences and result in commonwealth criminal offences becoming the pre-eminent offence by default for simple cannabis offences.

Clearly, if that is the result of the Pettersson bill, I do not wish to support that. However, with the proposed government amendments to the bill it is possible—and, I sincerely hope, likely—that the bill can reduce the likelihood of legal consequences for anyone over 18 in the ACT who is caught with small quantities of cannabis.

The government's response to the HACS committee report says:

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.

This amendment we will shortly be debating.

The other thing that happened was that I listened to the Chief Police Officer on 666 this morning. He gave a mixed message but one which could be interpreted reasonably positively in so far as, while

he pointed out that individual constables are masters of their own conscience and have to interpret the law on an individual basis, he felt that the police would do their utmost to do what it was clear the government and the community want to have happen. I sincerely hope that that will be the outcome in practice. If, as the government says, “effectively legal for individuals” can be achieved then this clearly is a step forward for drug law reform.

I have spoken to drug law reform advocates and the view is that, given the intransigence of the commonwealth government, the only current option for drug law reform is for another jurisdiction to see if they can work out a way of circumventing commonwealth laws. Given the ACT’s subordinate relationship to the commonwealth due to the constitution, I would not have thought we were the ideal jurisdiction. But given that no-one else is doing it, it seems the ACT will need to pioneer this, as we have in other things.

As an aside, I think the most useful thing that the ALP could do at this point in time for drug law reform is persuade their federal colleagues to embark on drug law reform, because the federal government has had the laws that it has had for a very long time, including times when the ALP was in government. I call on the ALP to talk to their federal colleagues to try to get the aims of harm minimisation taken seriously as part of our commonwealth legislation and out of the criminal justice system. This is not where it should be. But there is legal uncertainty about how the proposed ACT law would work with the commonwealth law even after the ALP’s amendments have been moved and, I assume, passed.

I think it is important that ACT residents are protected. The HACS committee, of course, dealt with this issue. First, we saw effective education as essential. Recommendation 15 states:

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.

The government agreed and said it intends to deliver a public information campaign, 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. I understand that my colleague Shane Rattenbury will today present amendments which will go even further and make the commencement of the bill contingent on the government developing and making public, through a notifiable instrument, guidance material explaining the legal and health implications of cultivating, growing and possessing cannabis under the new provisions.

Secondly, the HACS committee talked about the issue of a legal response. Recommendation 11 stated:

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.

The government’s response was that it noted the recommendation and “will consider appropriate steps to ensure the intent of the bill is delivered on as it is implemented”.

In voting positively for this bill I am relying on the government’s responses to these recommendations and the proposed amendments that will be moved by both the ALP and my colleague Mr Rattenbury today. First, they will hopefully ensure that people of Canberra actually understand what the legal situation is. On that subject, I think it is very irresponsible and misleading of the media to report that this bill will legalise cannabis. It will not. The commonwealth law stands. There are many things—in fact, most things—to do with cannabis which will not be in any way affected by this bill. Supply, getting the seeds if you are going to cultivate—I could go on at some length but this bill, if passed, will not legalise cannabis in the ACT. I think it is irresponsible for it to be reported or said that it will.

Because of the fact that it will not and cannot legalise cannabis, I am not going to be pushing today for the various extensions that were recommended in the HACS report. All these would be absolutely wonderful if we could, in fact, achieve the main aim, which is taking cannabis out of the criminal justice system and treating it purely as a health issue, like we do with tobacco. All the proposed extensions in the HACS report move the situation further away from the

simple cannabis notice and into areas where, I think, the commonwealth is much more likely to prosecute.

If the commonwealth prosecutes—and I sincerely hope that it does not and it comes to the conclusion that there are much more important things to do with limited commonwealth police resources and limited court resources—then I am relying on the ACT government to take appropriate steps to ensure that the intent of the bill is delivered on as it is implemented. The last thing I want to see is some innocent person thinking that cannabis has been legalised because that is what he or she heard in the media and finding themselves prosecuted and, in the worst case, in jail.

In voting for this bill I am asking for the media—and I note that there are some here today—please to report it accurately as what I think it is, which is a further step in decriminalisation, rather than actual legalisation; for the ACT government to provide accurate information to the people of Canberra; and for the ACT government to take appropriate steps to ensure the intent of the bill is delivered on as it is implemented if anybody is in fact prosecuted under things which have been dealt with in this bill.

With some concern, I will vote for the bill. I really wish that I did not have this concern. I would like to see cannabis legalised. Unfortunately, due to the commonwealth provisions which we have talked about, this bill cannot do this. But I have been persuaded by people that, if the intent of the bill is in fact realised—and hopefully the legal minds of the ACT government have ensured that the amendments have been well drafted and the intent can be realised—then it will be a step forward in the direction of legalisation of cannabis at some stage in the future. Hopefully, it will be, at some early stage in the future in Australia. On that basis I will support this bill.

**Ms Stephen-Smith** (Kurrajong—Minister for Aboriginal and Torres Strait Islander Affairs, Minister for Children, Youth and Families, Minister for Disability, Minister for Employment and Workplace Safety, Minister for Health, Minister for Urban Renewal) (10:38): I rise to speak in support of the Drugs of Dependence (Personal Cannabis Use) Amendment

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Bill. I thank Mr Pettersson for bringing forward this bill, and the members of the health, ageing and community services Assembly committee for their work in inquiring into the bill. I acknowledge that the Assembly inquiry process and consideration and debate of this bill has resulted in a number of sensible amendments being brought forward which grapple with the complex legal and practical implications presented by the bill while preserving Mr Pettersson's intent.

Put simply, the effect of the bill is to remove penalties for the use and possession of small amounts of cannabis by individuals over 18 years. This is completely in line with the ACT government's harm minimisation objectives and represents a sensible next step in our approach to dealing with cannabis use. The ACT government has a proud history of taking progressive steps and supporting a harm minimisation approach to drug use, including the establishment of the simple cannabis offence notice scheme that currently exists.

Our harm minimisation approach is clearly articulated in the ACT drug strategy action plan 2018-21, which aligns with the national drug strategy and outlines this government's commitment to evidence-based and practice-informed responses to drug use that minimise harm in our community. The minimisation of harm is an important element of the Australian national drug policy approach, which encompasses the three pillars of supply reduction, demand reduction and harm reduction.

In respect of harm reduction, the ACT drug strategy action plan explains:

Reducing the adverse health, social and economic consequences of the use of drugs, for the user, their families and the wider community. Harm reduction strategies encourage safer behaviours, reduce preventable risk factors and can contribute to a reduction in health inequalities among specific population groups. Harm reduction acknowledges that despite law enforcement efforts drug use still occurs, and can potentially occur more safely.

Contrary to Mr Hanson's advice to the chamber, a 2018 report from the European Monitoring Centre for Drugs and Drug Addiction concluded that there was no clear relationship between

changes in cannabis possession penalties in EU countries and use rates by young people. The ACT government itself has long been a progressive government, with personal cannabis use first decriminalised in the ACT in 1989—30 years ago—with the introduction of the simple cannabis offence notice, or SCON.

Cannabis consumption has continued a downward trend since that time, entirely contrary to Mr Hanson's scaremongering about the potential impact of this bill. In 1998, 20 per cent of ACT residents aged 14 and older reported using cannabis in the past 12 months. But in 2016 this had fallen to eight per cent reporting past 12-month use. In spite of what those opposite have continued to say, the government's policy regarding the harms caused by alcohol, tobacco and other drugs is clearly articulated and is essentially a harm minimisation approach.

The government have been clear that we do not condone nor encourage the recreational use of cannabis. We acknowledge that cannabis use can have negative consequences on a person's health, particularly their mental health. No-one on this side of the chamber has claimed otherwise, and for Mr Hanson to claim it is not the case is completely and utterly untrue. He is misrepresenting the positions being put by people on this side of the chamber.

However, we also acknowledge, as jurisdictions across the globe have acknowledged, that prohibition does not work as an effective strategy for dealing with drug use in our community. This argument was reflected in the HACS inquiry submission from the Australian Medical Association ACT Branch, the AMA Mr Hanson is so keen to quote. Their submission states:

... that cannabis use should be seen primarily as a health issue and not primarily as a matter for law enforcement. The most appropriate response to cannabis use should give priority to policies, programs and regulatory approaches that reduce the harms potentially associated with its use, particularly the health-related harms.

This is precisely what this bill seeks to achieve. Removing recreational cannabis use by adults from the justice system allows problematic cannabis use to be treated as a health issue. Whilst drug experts rate cannabis as a drug that causes lower levels of harm

to health than alcohol, tobacco, opioids and amphetamines overall, we know that heavier and more regular use of cannabis in particular is associated with harms to health. That is why, if the bill is passed, the government will increase public information on the negative effects of cannabis use.

It is clear that some people experience adverse mental health effects from using cannabis and that its use can be problematic. Again, no-one on this side of the chamber is arguing anything different in relation to that matter. However, these health risks already exist for anyone who uses cannabis under current legislative settings. Combined with a concerted public awareness-raising campaign, the changes proposed in this bill will assist in enabling individuals and the community to address some of these health risks.

As the Alcohol, Tobacco, and Other Drugs Association ACT, ATODA, put it in their submission to the HACS inquiry:

There is no reason to believe that legalising minor cannabis offences will lead to increased incidence of health-related harms ... On the other hand, it will lead to benefits in removing a large number of young people from the risk of contact with the criminal justice system.

The ACT's drug strategy action plan recognises that a criminal record for drug use and possession may increase stigma and disadvantage, and it sets out the government's commitment to increasing diversions from the criminal justice system. It is anticipated that shifting recreational cannabis use from being a criminal justice issue to one of health and wellbeing will reduce the stigma associated with cannabis use and remove the risk of punishment associated with illegal drug use. Evidence suggests that this will mean cannabis users will be more willing to seek out and access the necessary supports and services.

The ACT government is committed to ensuring that the right supports and services are available for those who choose to seek help. The ACT government invests more than \$20 million each year in alcohol and other drug treatment and associated support services. Canberra Health Services offers information, advice, referral, intake assessment and support 24 hours a day. This service is available to all residents



of the ACT who think they or a family member or friend needs help with an alcohol or drug problem. The 24-hour helpline is staffed by caring, committed and professional workers who are there to provide assistance and support to people affected directly or indirectly by drug or alcohol use.

All of this aligns with the ACT government's commitment, set out in the drug strategy action plan, to investing in evidence-based and practice-informed harm minimisation responses to alcohol, tobacco and other drugs and to leading the country in innovative policy approaches. This bill, with the sensible amendments that are being put forward, is exactly in line with the harm minimisation approach the ACT government has adopted, and I am proud to stand here and support it today.

**Mr Pettersson** (Yerrabi) (10.46), in reply: Thank you to all members who have contributed to this debate. I first introduced this bill nearly one year ago. Throughout this process there has been overwhelming community support for these reforms. I would like to thank all Canberrans who have participated in this process. They have told their stories, they have made submissions and they have lobbied members of this place. The bill presented today has been through the committee process. This has involved submissions from and consultation with various stakeholders and members of the community. There are amendments coming, and I believe this bill will be in its best form by the conclusion of today.

How exactly does this bill work? Put simply, it will legalise the possession and cultivation of small amounts of cannabis. There have been some amendments proposed to the bill since it was first introduced, to improve clarity and remove certain ambiguities. I will speak very briefly to the totality of the amendments raised so as to avoid rising numerous times throughout the detail stage.

These amendments include capping the number of plants that could be grown at a residence to four, as opposed to only having a cap on a per person basis. The number of plants an individual can grow has been reduced to two. Growing these plants in public spaces or in community gardens will not be allowed. Plants will have to be grown

on a part of the property that cannot be accessed by the public; for example, a backyard. The plants will only be able to be cultivated by a person who is a legal resident of the property.

The amendments also clarify that the permitted 50 grams of cannabis refers to dry product, not freshly harvested plants. It would be an offence to knowingly consume cannabis in a way that would expose a person under the age of 18. This will ensure that minors are not being exposed to cannabis but will not criminalise accidental exposure. These changes have been made to ensure that this bill fits more consistently within commonwealth laws. Whilst this law is the first of its kind in Australia, I am confident that it works within federal law.

Legislating on drugs is not exclusively the role of the commonwealth. The commonwealth Criminal Code is not intended to operate to the exclusion of state and territory laws, except in relation to the exportation and importation of drugs. The commonwealth code further states that a person is not criminally responsible for an offence if subordinate legislation is expressly to the contrary effect. This operates as a complete defence. We are confident that the commonwealth code therefore permits inconsistent state and territory laws pertaining to cannabis. This is echoed by the current federal government, who have stated that this issue is a matter for the states. It is therefore within the purview of this place to legislate to legalise cannabis, and it is time for us to do so.

Madam Speaker, let me reiterate why this is such an important reform. It is a sensible, evidence-based approach to drug policy. This bill is about harm reduction, reducing ordinary people's interaction with the criminal justice system. It is by now well established that the war on drugs is failed policy. Across the world, it has destroyed countless lives and decimated whole communities. It is based on flawed science and misinformation. It has not stopped drug use. It has not reduced drug use. As former Victoria Police Commissioner Ken Lay has stated, you can't "arrest your way out of" this problem." It is time we moved away from this harmful and punitive system. Let us lead Australia once again and follow other jurisdictions across the world who have made the step to legalise the personal use of cannabis.

Cannabis is the most commonly used illicit drug in Australia. Over one-third of Australians have used cannabis in their lifetime, and one in 10 people have used it in the last year. A huge portion of our population is therefore criminalised. Legalisation of cannabis for personal use is supported by 54 per cent of Canberrans, with only 27 per cent of Canberrans opposed to this change. Our community supports this progressive reform.

Currently, federal law enforcement spends over a billion dollars a year on drug law enforcement. Over 50 per cent of arrests in Australia are cannabis related, and 91 per cent of those were consumer arrests—in other words, small amounts purely for personal use. This is a waste of resources. Police time and criminal justice resources would be better spent catching real criminals.

In the ACT, on average, almost one Canberran a day is arrested for cannabis and over 50 per cent of all drug-related arrests are for cannabis consumers. Further, a third of simple cannabis offences went through the criminal justice system and were not diverted. That means that one in three people caught in possession of cannabis are arrested, charged before the court or receive a summons. This is despite the decriminalisation position that we have already implemented in the ACT. It is clear that this system is still ensuring that people are being caught up in the criminal justice system.

Submissions received during referral to the committee, and letters and personal anecdotes that I have received, all too often touched on people's experience of being caught with cannabis. For the most vulnerable members of our society, being caught with a small amount of cannabis could have an enormous consequence. This is something that we have the power to change. We should not be criminalising such a large portion of our community. It chokes up our justice system, leading to longer wait times for more serious issues. Our legal system should not be tied up with such minor issues as possession of small amounts of cannabis.

As a restorative justice city, we should focus on harm minimisation and reducing the excessive criminalisation of certain offences. Once individuals interact with the criminal justice system it can snowball into more serious offences and penalties, a cycle which can be hard to break.



During this debate we have heard scaremongering tactics about health concerns associated with cannabis. Like all drugs—legal and illegal—cannabis can have an effect on a user's health. But in comparison to legal drugs such as alcohol, tobacco or prescription medication, the health concerns are massively overblown.

Alcohol and tobacco combined kill over 20,000 Australians every year. Alcohol represents 4.6 per cent of the total burden of diseases and injuries in Australia, tobacco nine per cent and cannabis 0.1 per cent. The misuse of prescription drugs such as codeine and other opioids causes more deaths than all illicit drugs combined. These legal drugs cause far more health problems than cannabis does, yet I can easily purchase these drugs and would not receive a fine or possible criminal record for simply

As has been made clear during this debate, this bill does not mean that Canberra will experience anarchy. Driving under the influence of cannabis and other drugs remains illegal, as does supplying cannabis to minors, selling cannabis or consuming cannabis in a public place. The opposition and conservatives have tried to peddle scare tactics, saying that crazed cannabis-affected drivers will be behind the wheel everywhere. This is exaggerated. Drug driving will still be an offence. This bill will simply stop the unnecessary criminalisation of adults who use or possess a small amount of cannabis in private.

Some members of the community may wish that this bill went further; for example, by establishing a market for the sale of small amounts of cannabis. This would not be possible under



having them in my possession. Rightly, we treat addiction to these drugs as a health problem, not a criminal one. It is time to do the same thing with cannabis.

Those who do experience cannabis addiction must receive treatment, not criminalisation. It is very clear that addiction should be treated as a disease, not a criminal act or a moral failing. Criminalisation just makes it harder for these people to seek help, as they are worried about not only the stigma of addiction but the possible legal consequences as well. This has never made anyone get better. Legalisation will make it easier for these people to get help without punishing the majority of recreational users.

the current federal law and has never been the purpose of this bill. This bill is simply about legalising cannabis for personal use.

Madam Speaker, we should continue to lead the country in the implementation of progressive social policy. The criminalisation of cannabis does more harm than good. As a restorative justice city, we have moved away from punitive ideas of justice. We should not be criminalising one-third of our population. The majority of Canberrans support legalisation. Let us get with the program and get it done.

Question put:  
That this bill be agreed to  
The Assembly voted—

Ayes 10  
in principle.

Mr Barr

Ms J Burch Ms Cheyne Mr Gupta

Ms Le Couteur Ms Orr

Mr Pettersson

Mr Rattenbury

Mr Steel

Ms Stephen-Smith

Mr Coe

Mr Hanson Mrs Jones Mrs Kikkert Ms

Lawder Mr Milligan

Noes 7

Mr Wall

Question resolved in the affirmative. Bill agreed to in principle.

Detail stage

Clause 1 agreed to.

**Mr Rattenbury** (Kurrajong) (11.00):

I seek leave to move amendments to this bill which have not been considered or reported on by the scrutiny committee and to table a supplementary explanatory statement to the amendments.

Leave granted. Clause 2.

**Mr Rattenbury:** I table a supplementary explanation to the amendments. I move amendment No 1 circulated in my name [see schedule 2 at page 3922]. The ACT Greens want to ensure that the community is fully aware of the potential physical and mental health implications of consuming cannabis and of the unlikely but possible complex legal issues relating to commonwealth legislation that this amendment act presents to people who cultivate, possess and use cannabis in the ACT.

This amendment stipulates that the amendments will come into operation on a day fixed by the responsible minister by written notice. However, this day cannot be a day that is before the public notification of guidance material regarding the legal and health implications of personal cannabis use, possession and cultivation. I do appreciate that this presents quite a novel approach to commencement of the amendments, but we believe this offers the government increased flexibility and the Assembly and the broader community increased transparency and clarity on the operation of the provisions.

*continued on page 24*

It is clear from the evidence that has come before the committee, from the nature of the public debate and from some of the questions that are still being asked in the media, for example, that there is some explaining to do. This also goes to points that Mr Hanson has raised about potential mental health impacts. I think the government has been very clear in that regard. I, as the Minister for Mental Health, and the health minister in her remarks this morning, have been very clear about that. I think there is room to tell this story to the community.

This need not delay the commencement in any significant form. I think this work can be done quite quickly. It also enables time for some of the other practical matters that will need to be worked through, so we believe that this is a practical way to trigger the commencement of this legislation.

**Mr Barr** (Kurrajong—Chief Minister, Treasurer, Minister for Social Inclusion and Equality, Minister for Tertiary Education, Minister for Tourism and Special Events and Minister for Trade, Industry and Investment) (11.03): The government is happy to support Mr Rattenbury's amendment. It is very consistent with the amendment I was scheduled to move in this part of the detail debate. It adds an element, which we are happy to support, to say that we are happy for the commencement to be on a day fixed by the Minister for Health by written notice. We recognise that that is a date early in 2020, and we propose 31 January, which would allow time to communicate with Canberrans on what the new legal framework is and make sure that people understand the continuing restrictions and risks when it comes to using cannabis. We agree with the Greens' amendment.

Whilst I am on my feet at the beginning of the detail stage, I will make some broader comments in relation to the amendments that I will be moving throughout the debate, and more broadly on the contributions to this process and indeed to the Assembly debate this morning.

I would state from the outset that the ACT government supports sensible drug law reform that reduces the harm of drugs in our community and allows the resources of the police, our courts

and other agencies to be focused where they are most needed. That has been the government's starting point for considering this private member's bill—to achieve further sensible drug law reform in the territory where possible.

Before I continue with my remarks on the detail, I wish to acknowledge the very thoughtful input and advice from the Standing Committee on Health, Ageing and Community Services inquiry into the private member's bill. I also thank the many individuals and organisations who gave their time to engage on the broader issues and the specific detail of the bill.

In addition to the government's engagement with the standing committee's inquiry, 36 other submissions were received from individuals or organisations, many of whom appeared in person to answer questions and to share their experiences and views. These included ACT Policing, the AFP Association, the ACT Law Society, Canberra Community Law, Winnunga Nimmityjah Aboriginal Health and Community Services, the Australian Medical Association, the National Drug Research Institute, and Families and Friends for Drug Law Reform, to name some of the participants.

This has been a great example of what is possible when diverse perspectives and expertise are brought together in a spirit of reform and goodwill. One thing that has been consistent throughout these discussions is that this is a complex issue, without any one right or wrong answer. But that alone is not a reason to do nothing.

There is a difference between supporting sensible drug reform and condoning drug use, and I want to make that very clear this morning. Drugs such as cannabis can 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.

That message has been delivered to young people and to the broader community for quite some time. Adults know drugs can be bad for them, yet decisions are made to take drugs regardless. The Minister for Health has observed that around eight per cent of Canberrans report having used cannabis in the last 12 months—less than was the case several decades ago. The prohibition approach to drug laws has not stopped, and will not stop,

the use of drugs in our community. In that context, governments have a responsibility to focus on minimising the harm that drugs can cause in our community.

Here in the ACT we have a long and proud history of taking progressive steps and trying new ideas to reduce harm. 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 that it is happening.

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

The impact on justice outcomes has also been a focus of the government's 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 to avoid these negative outcomes.

The government also has a responsibility to focus our justice resources where they are needed most: on disrupting serious and organised crime; protecting our community from individuals or groups who might wish to do us harm; and helping women and children to deal with domestic and family violence. Removing penalties for small-scale, personal cannabis users means more of the ACT police and court resources can be focused on these areas, where they are needed most.

The government will be supporting this bill, subject to the amendments I have proposed being supported by this chamber. The government proposes to amend the bill to set the number of cannabis plants that an adult can possess at two, down from the four proposed in the private member's bill. 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 that the legislation permits 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.

Related to this issue, I will move practical amendments to distinguish between “dry” cannabis—that is, cannabis that is ready to be smoked—and “fresh” cannabis—that is, cannabis from a plant that has not yet dried. Dry cannabis will still be subject to a limit of 50 grams, in line with the current simple cannabis offence notice scheme. A higher limit of 150 grams will apply to fresh cannabis, recognising that a given amount of cannabis, like any plant, weighs more before it dries out.

We also propose a new limit of a maximum of four cannabis plants per household, regardless of how many people live there. The private member’s bill does not currently include a limit on the number of plants that would be allowed in a single home. This potentially gives rise to situations where share houses or other properties with multiple residents could be used as larger scale “grow houses” by criminal groups.

The government believes it is 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 a clear distinction between individual users and criminals cultivating cannabis for profit.

I will move amendments to restrict where personal cannabis plants can be grown—something which is also not currently considered by the bill. The amendments will address two separate issues. First, cannabis plants will only be able to be cultivated on parts of a residential property not generally accessible by the public. This will prevent cannabis from being grown in areas such as front yards, verges or community gardens. This is intended to minimise access to cannabis plants by anyone other than the legal owner. This would also have the effect of preventing cannabis from being legally cultivated on commercial or community property.

Secondly, cannabis plants will only be able to be legally cultivated by a person usually residing at that property. This is intended to assist in making clear who owns the plants, again helping police to make a distinction between personal users and criminals cultivating commercial crops. Further amendments clarify that cannabis must be stored out of reach of children and that exposing a child to cannabis smoke will be an offence.

Finally, as we are specifically discussing now, we propose 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 to make sure that people understand the continuing restrictions and risks when it comes to using cannabis. (Second speaking period taken.) Assuming that the legislation passes in this sitting period, we propose that the new laws will take effect on 31 January 2020.

I would like to speak directly to any adult in this community who uses cannabis or is considering doing so once this bill comes into effect. If you need help with the physical or mental health effects of using cannabis, you can contact the Canberra Health Services alcohol and other drugs services by calling the 24-hour helpline, which is staffed by professional workers from the government’s alcohol and drug program.

If you do not want to talk to someone but you want to find out more information about alcohol and other drug services, this is available on the ACT Health website or the Alcohol Tobacco and Other Drug Association ACT services directory. I would add that anyone who has concerns about their substance use, cannabis or indeed any other, can talk to their GP or other healthcare provider.

It is also important that Canberrans are aware of what this bill will not change. If you possess amounts of cannabis beyond those authorised by this legislation, you can be charged and prosecuted. If you use cannabis in a public place, or in a way that exposes children, you can be charged and prosecuted. If you supply cannabis to other people in any form, whether for money or not, you can be charged and prosecuted. If you drive whilst 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 that you understand all of the ACT’s relevant laws so that you can do the right thing.

Canberrans are open-minded people. We are a community that embraces possibility, and we are 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 that we can progress it.

This is a complex social and legal area. We acknowledge that there may be a need for further amendments to this legislation in the future to deliver on the community’s expectations and to continue reducing drug harm. That is why we believe a review of these reforms within three years of them taking effect is appropriate.

Fundamentally, we support sensible, progressive drug law reform. We know that a significant majority of the Canberra community does, too. We are getting on with that through delivering the reforms in this bill. I commend this first amendment and my other amendments to the Assembly.

**Mr Hanson** (Murrumbidgee) (11.16):

Anyone who has been following this debate over the last few months will not miss the irony in the Chief Minister coming into this place and commending the committee inquiry and saying it is a great example of an inquiry when he voted against it. The Labor members in this place argued against a committee inquiry. They said it was a conspiracy that the Liberals were trying to delay this legislation. They said the committee inquiry was not required and they wanted to rush the legislation through. That was their position. Now their position is that it is the best thing since sliced bread: “Thank God we had a committee inquiry because that’s what led to all these sensible amendments.”

The ability for the Chief Minister and his colleagues to walk both sides of the street—to argue and vote against a committee inquiry, to describe it as a conspiracy theory—and then take all the good work done by that committee

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inquiry and put that as amendments saying, "Isn't it fantastic?" goes to the way this bill has been put together.

They say there are two things you should never see being made: sausages and legislation. This is probably one of the finer examples of the mess of cobbling legislation together that I have seen in my time in the Assembly. The amendment put forward by the Greens goes to that point. There is massive confusion, seemingly, in the Assembly but also out in the community about what all this means. Is cannabis being legalised or not? The Greens said it is not being legalised and it is a fear campaign and misguided media to say it is being legalised. Ms Le Couteur blamed the media for some miscommunication with the public by saying it has been legalised.

Mr Pettersson from the Labor Party then got up and said cannabis today is being legalised. You have the Greens in this place saying it is not being legalised; you have the Labor Party saying it is being legalised. No wonder there is confusion in the community about what on earth is happening in the Assembly today. But both the Labor Party and the Greens, as they are inclined to do, blame the media for this confusion when they are the ones at odd about what exactly is happening today.

The Greens amendment recognises the fact that there is confusion and ambiguity about what is being done in this place today and it requires time for this to be sorted out and for an information campaign and advice to be put together before this legislation is enacted. I agree with Mr Rattenbury—this is unusual; this is not the way it is normally done. That reflects the shemozzle and dog's breakfast of a bill that has been put before us. It has created all this confusion and the seemingly competing agendas between both members of this coalition government that seem to have a different view about what is being enacted.

It is quite clear that a lot of people in the community think cannabis is being legalised and it will be a free-for-all. As a result, as others have warned through the committee process, we are going to see an increase in the incidence of drug driving. The Chief Police Officer certainly talked about those issues this morning. Some people are

now going to think that cannabis use in any circumstance is legal. They are going to be out there and will now be engaged with the criminal justice system, whereas previously they would not have been.

We support the amendment—there is a similar one from the government that I think will now not be moved—because it recognises that this has been a confusing debacle. Even the government disagrees on what is happening today. There is a need for a public information campaign to try to establish for the community exactly the parameters for what they can do. Clearly, ambiguity will remain.

Amendment agreed to.

Clause 2, as amended, agreed to.

Clause 3 agreed to.

Clause 4.

As the Chief Minister said, they reduce the number of plants from four to two. We think that is a good change. As I have said previously, we do not think the bill is workable, but this goes some way to limiting some of the bad aspects of this legislation.

Amendments agreed to.

Clause 4, as amended, agreed to.

Proposed new clause 4A.

**Mr Rattenbury** (Kurrajong) (11.23):

I move amendment No 2 circulated in my name, which inserts a new clause 4A [see schedule 2 at page 3923]. This amendment provides a set of objects for the Drugs of Dependence Act 1989 which embed the principles of harm minimisation and support the interpretation of the act, in line with a



**Mr Barr** (Kurrajong—Chief Minister, Treasurer, Minister for Social Inclusion and Equality, Minister for Tertiary Education, Minister for Tourism and Special Events and Minister for Trade, Industry and Investment) (11.22), by leave: I move amendments Nos 2 and 3 circulated in my name together [see schedule 1 at page 3919] and table a supplementary explanatory statement to the government amendments. As I concluded in my extensive remarks at the beginning of the detail stage, amendments Nos 2 and 3 address the number of plants that can be cultivated.

**Mr Hanson** (Murrumbidgee) (11.22):

We will be supporting these amendments.

public health approach to the personal use of drugs of dependence. This accords with the Australian government's long-term commitment to the policy framework of harm minimisation and is further established in both the national and ACT government drug strategies.

Much has been said in this place recently of the need to treat personal drug use as a health issue rather than a criminal one. I urge both Labor and the Canberra Liberals to genuinely reflect on what this amendment would achieve before casting a vote either way.

Australia, under successive governments of both major parties over many years, has led the way on embedding the three pillars of harm

minimisation into commonwealth health policy, and every state and territory has likewise done the same. From the days of the first needle and syringe program to today, we have funded programs and developed plans, strategies and frameworks under this banner. We have a real opportunity today to put in writing, in specific and very appropriate legislation, something every governing political party ostensibly agrees with.

These objects offer a positive affirmation of the ACT government's intent and stated motivation in bringing these amendments to the Assembly and send a message that they are serious about progressing drug law reform using well-defined policy settings and obligations. As such, the amendment causes no real conflict with any interpretations of the act as, by default, they are the policy settings the government stands by through other strategies and documents.

These are very clear amendments. Importantly, they set out what we want to achieve in drug policy in the ACT. Having them in the act is the right place to have them. I commend this amendment to the Assembly.

**Mr Barr** (Kurrajong—Chief Minister, Treasurer, Minister for Social Inclusion and Equality, Minister for Tertiary Education, Minister for Tourism and Special Events and Minister for Trade, Industry and Investment) (11.25): The government will not be supporting this amendment. The Drugs of Dependence Act prohibits the sale, supply and possession of drugs of dependence and prohibited substances and for related purposes. Although the objects are consistent with drug policies and strategies, the act itself is somewhat broader and has links with other drugs and health legislation. Adding a new object to the act should not be done without careful consideration of how it might affect the operation of the act.

The ACT government's policy regarding the harm caused by alcohol, tobacco and other drugs is clearly articulated in the ACT drug strategy action plan 2018-21. That aligns with the national drug strategy and outlines a commitment to evidence-based and practice-informed responses to drug use that minimise harm in our community. Whilst I appreciate the intent of Mr Rattenbury's amendment, for the reasons I have outlined we will not be supporting its inclusion in this piece of legislation.

**Mr Hanson** (Murrumbidgee) (11.27):

We will not be supporting this amendment; it is an absurd amendment. It is a broadbrush statement that best belongs in a statement of objectives or a policy document rather than legislation. I go to the provision that states:

... to reflect an evidence-based approach to drug policy, which puts the health and safety of the ACT community ahead of all other policy objectives.

As we heard in question time yesterday, there is dispute about what the evidence actually says. Mr Rattenbury is less keen on what the AMA say and more keen on what other people say. In terms of the objective of putting the safety of the ACT community ahead of other policy objectives, I do not think what we are doing today does that. I do not think making cannabis more available for use does that. I do not think sending a message that might lead to more drug driving does that. I am glad the government is not supporting this—nor will we. It is a nonsense amendment and does not deserve support.

**Mr Rattenbury** (Kurrajong) (11.28):

To be clear, the clause we propose today is to insert an objects clause, which is common in legislation. Many pieces of legislation have an objects clause because they seek to clearly spell out the intent. My proposal states:

The objects of this Act include the following:

- (a) to minimise harm resulting from the use of drugs of dependence;
- (b) to promote a balanced approach across the three pillars of harm minimisation— demand reduction; and (ii) supply reduction; and (iii) harm reduction;
- (c) to reflect an evidence-based approach to drug policy, which puts the health and safety of the ACT community ahead of all other policy objectives.

That is exactly the approach we want to take under our Drugs of Dependence Act in the ACT. I am disappointed at the lack of support today. Mr Hanson has on a number of occasions sought to represent my previous comments, in question time yesterday and in this debate previously, in the least flattering light he can think of. Whilst that is his *modus operandi*, it fails to respect the fact that I am seeking to reflect the nuance and complexity in these discussions. It is not the black-and-

white view of the world Mr Hanson has sought to portray in his comments.

I have been very clear in my comments that cannabis use can present risks for people; there is no question about that. The question is: how do we deal with those risks and what approach do we take to it? That is the nuance we are trying to bring to this discussion.

Proposed new clause 4A negated.  
Clause 5.

**Mr Barr** (Kurrajong—Chief Minister, Treasurer, Minister for Social Inclusion and Equality, Minister for Tertiary Education, Minister for Tourism and Special Events and Minister for Trade, Industry and Investment) (11.30): I move amendment No 4 circulated in my name [see schedule 1 at page 3919]. This amendment retains offences in the Drugs of Dependence Act for possession and cultivation but includes an exception such that those offences do not apply to anyone over 18 years of age.

This reduces the potential for incompatibility with commonwealth laws, therefore reducing the likelihood of commonwealth legislation being drawn on for possession offences in the ACT. Despite an offence still existing in ACT law, the practical outcome is that the possession and cultivation of small amounts of cannabis for personal use will be effectively legal for individuals.

**Mr Hanson** (Murrumbidgee) (11.31):

In essence, this is the attempt to work around the conflict with federal legislation. I think there remains ambiguity, which is unfortunate. But I think it is clear that to remove any of the elements that would completely remove its illegality would more likely bring it into conflict. So perhaps this is a step to try to remove ambiguity, but the ambiguity remains. But, as it is a step in the right direction, we will support it.

Amendment agreed to.

**Mr Rattenbury** (Kurrajong) (11.33):

I move amendment No 3 circulated in my name [see schedule 2 at page 3923]. This amendment omits the distinction between artificial cultivation and cultivation under the act. The amendment seeks to recognise that it is the

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substance and quantity of that substance that is the primary focus of the Drugs of Dependence Act, not the method of cultivation. This will enable cannabis to be cultivated hydroponically or using artificial light, or using more natural outdoor cultivation methods.

We consider that it is something of a falsehood to restrict the further decriminalisation of cannabis to only one method of growing the plant, particularly in the ACT, with our extremes of weather from summer to winter. We also believe that this approach, which is ideologically neutral, will be of benefit to Canberrans who may live in flats, apartments or townhouses and who do not necessarily have the space to have a large-scale garden or access to open green space.

I would also hazard that this may potentially reduce the exposure some may have to the illegal market and criminal syndicates by virtue of not having to engage in what will still, in effect, be illegal trafficking of a prohibited substance under the government's amendments. It is important to reinforce that this amendment does not go towards the number of plants that can be cultivated by an individual, nor the amount they can possess. This is simply about how one is allowed to grow the cannabis.

If we are taking an approach that says, "You will be allowed to grow it," why do we care how people grow it? That is what this amendment seeks to change. It is nonsensical to say, "You can grow it in your garden, but you cannot grow it somewhere else—for example, in your garage." We have gone through the amendments that state that you need to do it out of public sight, but you are not allowed to grow it in your garage with a lamp on it. I think that is the result we are trying to produce here.

**Mr Barr** (Kurrajong—Chief Minister, Treasurer, Minister for Social Inclusion and Equality, Minister for Tertiary Education, Minister for Tourism and Special Events and Minister for Trade, Industry and Investment) (11.34): The government will not be supporting this amendment, nor the related amendment No 8 that Mr Rattenbury will move later. The amendment would have the effect of allowing artificial cultivation of cannabis, such as through hydroponic

cultivation or with the application of an artificial source of light or heat.

We acknowledge that the natural cultivation of cannabis may be difficult in our city's climate—difficult but not impossible. The government does not support artificial cultivation of cannabis. The principal reason here is that the police have ably demonstrated from their investigations that, through artificial cultivation, single plants that are artificially cultivated can fill a three-bedroom home—sometimes even larger.

We understand that this may inconvenience some people. It may mean that cultivation is not straightforward. However, we believe, on balance, that the risk is too great to allow artificial cultivation. The focus of our reforms, as I have stressed on numerous occasions, is on small, individual users, not large-scale or sophisticated production. 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. For those reasons, we will not be supporting this amendment.

**Mr Hanson** (Murrumbidgee) (11.36): The opposition will not be supporting the amendment. I agree with the government in this regard. The use of hydroponic methods to grow cannabis can lead to some extraordinarily oversized plants that clearly go beyond the scope of personal use. We do not want to see—although it has now been limited to four plants per house—a situation where, grown hydroponically, you could create a pretty sizeable crop, which is clearly not in anyone's best interest.

**Ms Le Couteur** (Murrumbidgee) (11.37): Just as a matter of factual information, it is possible to grow large plants hydroponically or non-hydroponically. That is not a distinguishing feature in terms of size.

Question put:  
That the amendment be agreed to.  
The Assembly voted—  
Ayes 2  
Ms Le Couteur Mr Rattenbury  
Question resolved in the negative.  
Mr Barr  
Ms J Burch Ms Cheyne Mr Coe  
Mr Gupta Mr Hanson Mrs Jones Mrs Kikkert

Noes 15

Ms Lawder Mr Milligan Ms Orr  
Mr Pettersson Mr Steel  
Ms Stephen-Smith Mr Wall  
Amendment negatived.  
Clause 5, as amended, agreed to.  
Debate (on motion by Ms Cheyne)  
adjourned to a later hour.  
Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018  
Debate resumed.  
Clause 6.

**Mr Barr** (Kurrajong—Chief Minister, Treasurer, Minister for Social Inclusion and Equality, Minister for Tertiary Education, Minister for Tourism and Special Events and Minister for Trade, Industry and Investment) (3.28): I move amendment No 5 circulated in my name [see schedule 1 at page 3919].

This amendment addresses two issues: compatibility with commonwealth law, and distinguishing between fresh and dry cannabis. Firstly, to improve compatibility with commonwealth law, this amendment retains offences for possession and cultivation, but with an exception for persons over 18 years of age. This will mean that the ACT still has a relevant offence in legislation, meaning that we have not vacated the space with regard to cannabis offences, thereby reducing the likelihood of the commonwealth Criminal Code being drawn on for possession offences in the territory. Despite an offence still existing in ACT law, the practical outcome is that the possession and cultivation of small amounts of cannabis for personal use will be effectively legal for adults.

Secondly, distinguishing between fresh and dry cannabis was considered necessary to achieve the intent of the bill with regard to allowing individuals to cultivate their own cannabis. Dried cannabis is defined as cannabis that has been subjected to a drying process and will be subject to a 50 gram limit, in line with the current simple cannabis offence notice settings. Cannabis that has been harvested but not yet dried will be subject to a limit of 150 grams.

There is a Greens amendment that seeks to allow a 150 gram limit for persons with certain medical conditions. The government is of the view that this conflates medicinal cannabis, which is produced, prescribed and used according to stringent guidelines, with homegrown cannabis. We believe that



this is a potentially dangerous confluence and that it is not a matter for this proposed act.

**Mr Hanson** (Murrumbidgee) (3.30): We will support the amendment, but there are some complexities and difficulties here. Firstly, in terms of the weighing issue, exactly what is dry and what is wet will potentially be the cause of some potential dispute down the track. How do you determine what has been freshly cropped and what has not? That remains to be seen.

The other part of this amendment is the attempted legal workaround. I think it is evident that this is creating ambiguity. It is a very difficult issue for police officers to enforce on the ground. Also, I think that it is creating confusion in the community. As we saw earlier in this place, the Greens are saying that we are not legalising cannabis; the Labor Party are saying that we are legalising cannabis. If the two parties supporting this bill cannot even agree on what is actually happening in this place today, and are coming up with convoluted legal workarounds to try to deconflict this with federal legislation, it risks putting cannabis users who think they are doing the right thing and police in a potentially compromising position. That said, there are few alternatives other than being in direct conflict with federal law, so this is perhaps the best worst option.

Amendment agreed to.

**Mr Rattenbury** (Kurrajong) (3.32): I move amendment No 4 circulated in my name [see schedule 2 at page 3923]. As the Chief Minister alluded to, this amendment provides a higher cannabis possession limit for an individual with a recognised diagnosis for which medicinal cannabis can provide treatment. An individual with a recognised diagnosis, or their carer acting on their behalf, under this proposal could possess up to 150 grams of cannabis compared with the standard possession limit of 50 grams proposed in the bill.

The ACT Greens have led the way in calling for the legal use of medicinal cannabis for nearly 20 years. Regardless of the hesitation of the commonwealth, and even some in this place today, to properly tackle the supply issues of the current scheme, we will always seek ways to improve access to cannabis by the sick and dying people that we know it can help.

The proposed amendment provides greater access to treatment for those patients with a condition approved for medicinal cannabis prescription under the ACT controlled medicines prescribing standards. This would enable patients to grow and produce their own medicinal product and allow them to have an increased amount of cannabis, providing treatment to people who have difficulty accessing it through the ACT medicinal cannabis scheme, and potentially reduce their exposure to both criminal elements and negative contact with police and the legal system.

We are cognisant that, if you have this prescription, you have a different need and a different expectation of supply from somebody who may choose to consume cannabis for recreational purposes. We think this is a demonstrably different circumstance. Having a continuity of supply is quite important to somebody who is using it on a prescribed basis.

I do not concur with the Chief Minister's analysis of this. We think these patients are not users as such, and they should be entitled to access what, to them, is effectively medicine.

We have been very clear in our amendment that a relevant diagnosis is defined in the amendment as those conditions for which medicinal cannabis can be approved under the ACT controlled medicines prescribing standards. This is not some way of putting in a get-around for people who simply want to have more; this is about recognising the genuine need that people have and being practical about their ability to access it reliably when they need it.

This is an important amendment, and one that I think would benefit and have an impact on a small group in our community.

**Mr Hanson** (Murrumbidgee) (3.35): Principally for the same reasons outlined by the Chief Minister, the opposition will not be supporting this amendment. We do not want to conflate the two issues. We have been supporters of medicinal cannabis. There are guidelines for that, and I do not think that we want to be conflating recreational cannabis, and the way it is grown, with medicinal cannabis.

Amendment negatived.

**Mr Barr** (Kurrajong—Chief Minister, Treasurer, Minister for Social Inclusion

and Equality, Minister for Tertiary Education, Minister for Tourism and Special Events and Minister for Trade, Industry and Investment) (3.36): I move amendment No 6 circulated in my name [see schedule 1 at page 3920]. This amendment places a limit on the number of plants per household. It is considered necessary to ensure that homes with numerous residents are not used as grow houses. The government is proposing a new limit of four plants per household. This is to be implemented as a strict liability offence for cultivating a cannabis plant at a premise where more than four plants are being cultivated.

This amendment will also introduce a defence to prosecution for an offence against proposed new section 171AAA if the defendant can prove that they lived at the premises while cultivating cannabis and could not have reasonably been expected to be aware that more than four plants were being cultivated at that premises.

**Mr Hanson** (Murrumbidgee) (3.37): We will support this amendment. One of the concerns that we have raised throughout this process was the ability in the original bill, or as it has been tabled without amendment, to have a grow house. I think that that was an invitation, a green card and a green light for organised crime. It is appropriate that that be amended to prevent what would otherwise be drug houses from being enabled. I do not know if it was Mr Pettersson's intent to allow for grow houses; certainly, it was the outcome.

Amendment agreed to.  
Clause 6, as amended, agreed to. Clause 7.

**Mr Barr** (Kurrajong—Chief Minister, Treasurer, Minister for Social Inclusion and Equality, Minister for Tertiary Education, Minister for Tourism and Special Events and Minister for Trade, Industry and Investment) (3.38), by leave: I move amendments Nos 7 and 8 circulated in my name together [see schedule 1 at page 3921].

These amendments will mean that a simple cannabis offence notice is available for individuals under 18 years of age who commit an offence under section 162 by cultivating one or two cannabis plants. The SCON would be

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available for individuals under 18 years of age who commit an offence under 171AA(1) by possessing 50 grams or less of dried cannabis, or, consistent with the rest of the legislation, 150 grams or less of cannabis that has been harvested and which is not dried or is a mixture of dried cannabis and cannabis that is not dried.

Amendments agreed to.

Clause 7, as amended, agreed to.

Clause 8.

**Mr Barr** (Kurrajong—Chief Minister, Treasurer, Minister for Social Inclusion and Equality, Minister for Tertiary Education, Minister for Tourism and Special Events and Minister for Trade, Industry and Investment) (3.39), by leave: I move amendments Nos 9 and 10 circulated in my name together [see schedule 1 at page 3921].

These amendments propose to prohibit smoking near children through an offence involving a mental element rather than based on a distance rule, a 20-metre distance rule; that is, simply knowingly or intentionally using cannabis in a way so that a person less than 18 years of age is exposed to it. The government proposes to do this through the introduction of an offence where a person smokes cannabis and a child is exposed to the smoke or vapour from the cannabis that the person is smoking.

The further amendment proposes to introduce a new section 171AB(2) which would provide a defence where the defendant can prove that they took all reasonable steps to ensure that the child was not exposed to smoke or vapour or believed on reasonable grounds that the child was in fact 18 years or older.

**Mr Hanson** (Murrumbidgee) (3.41): The reality is that this legislation will allow adults to grow and smoke cannabis at their residence. We do not support that. By enabling that, I think the risk of children being exposed both to cannabis plants and to the smoke, more importantly, are significantly increased, there is no question. This is yet another reason why we do not support this bill in principle.

The amendments being moved by Mr Barr go some way to try to address these issues, but of course they are

nearly impossible to police inside private homes. I do not think that we are expecting that police will be knocking down doors to see whether you are smoking in front of children. The reality is that it is unlikely, in my mind, to expect that people who are growing marijuana decide that they will go outside on a cold winter's night every single time when children may be present.

We are setting the conditions through this legislation where children will be more likely to be exposed to cannabis than they would otherwise be. That is one of the reasons why we do not support this legislation. That said, the amendments in part address that issue, and we will support them.

Amendments agreed to.

Clause 8, as amended, agreed to.

Proposed new clause 8A.

**Mr Rattenbury** (Kurrajong) (3.43):

I move amendment No 5 circulated in my name, which inserts a new clause 8A [see schedule 2 at page 3923]. This amendment is complementary to my previous amendment regarding commencement provisions and provides that the minister cannot commence the amendment act until written material designed to inform the community about the legal and health risks and possible implications of the amendment act are notified to the Legislative Assembly and published. This process allows the Assembly to review the material and provides the community with clarity as to the issues and timing of the commencement. It is really important to be clear with people about the rule changes.

**Mr Barr** (Kurrajong—Chief Minister, Treasurer, Minister for Social Inclusion and Equality, Minister for Tertiary Education, Minister for Tourism and Special Events and Minister for Trade, Industry and Investment) (3.44): We are happy to support this amendment. I undertake that the government will provide high-level guidance on these matters by notifiable instrument, noting that the preferred and more effective method of communicating with the public about these changes will, of course, occur through channels beyond just notifiable instruments, which can be updated more readily than the legislation register. This means that the bill would not take effect until there is a definitive

statement from the government on the legal and health risks that cannabis users may still be exposed to if they use cannabis.

**Mr Hanson** (Murrumbidgee) (3.44):

We will support this. It is necessary given the shemozzle and confusion. Perhaps in this material the two parties can work out whether you are legalising cannabis or not.

Proposed new clause 8A agreed to.

Proposed new clause 8B.

**Mr Rattenbury** (Kurrajong) (3.45):

I move amendment No 6 circulated in my name, which inserts a new clause 8B [see schedule 2 at page 3924].

This amendment establishes a cannabis advisory council to advise the relevant minister on issues arising from the legislation about personal cannabis use in the ACT and other related matters. The council is proposed to provide expertise to government on new issues that emerge as changes to cannabis laws come into effect.

We propose that the council be made up of five to seven members chosen based on their expertise across drug and alcohol issues, law enforcement and mental health. Membership must also include someone with lived experience of the use of a drug of dependence.

The Assembly has seen similar bodies created under legislation over time, including in relation to medicinal cannabis. This is a really good opportunity to create a mechanism like this again. We are changing the law here; reservations about that have been expressed in this place. It is important that we continue to monitor this and make sure that there are not unforeseen consequences or that further amendments need to be made to ensure that the intent behind this legislation is delivered. This is about monitoring this important policy development and making sure that we have the best possible legislation we can.

The make-up of the proposed council ensures that a balanced and impartial view would be presented to both the minister and the Assembly and put the government in good stead to consider any technical amendments that may be required in the implementation phase of the new scheme. I urge members to support this amendment.

**Mr Barr** (Kurrajong—Chief Minister, Treasurer, Minister for Social Inclusion and Equality, Minister for Tertiary Education, Minister for Tourism and Special Events and Minister for Trade, Industry and Investment) (3.47): The government will not be supporting this amendment. We do not consider the creation of a new council to be warranted at this time given the scale of these reforms. Obviously establishing and maintaining such a body would involve resources. Particularly given the various other mechanisms for related advice to be provided to the minister or the government we think this goes beyond what is necessary at this time.

We believe some of the elements of the intent for establishing a lay advisory body or council can be incorporated into the review of the amendments and to



ensure the review takes into consideration the views and experiences of different stakeholders. This is not necessary at this time but some of the ideas that led to this being proposed have merit and can be part of the review that will come in three years.

**Mr Hanson** (Murrumbidgee) (3.48): We will not be supporting the amendment; we do not see the requirement for an advisory council. The fact that the Greens think that there is a need for it goes again to the confusion and disruption we are creating today. I agree with the government that if advice needs to be put to government it does not need to be done by a discrete advisory council.

Question put:  
That the amendment be agreed to.  
Ayes 2  
Ms Le Couteur Mr Rattenbury  
Proposed new clause 8B negatived.  
Proposed new clause 8C.  
Mr Barr  
Ms J Burch Ms Cheyne Mr Coe  
Mr Gupta Mr Hanson Mrs Jones Mrs Kikkert  
Noes 15  
Ms Lawder Mr Milligan Ms Orr  
Mr Pettersson Mr Steel  
Ms Stephen-Smith Mr Wall

**Mr Rattenbury** (Kurrajong) (3.54): I move amendment No 7 circulated in my name, which inserts a new clause 8C [see schedule 2 at page 3925]. This amendment requires the minister to review the operation of

Contrary to Mr Hanson's earlier remarks—which of course were about the politics and not about the content—this is about recognising the significant expertise in our community, the people who have been involved in the practical operation of these rules, who may well have insights and learnings after a couple of years of operation. It is well and truly worth having this sort of review in three years. It is standard to do this in legislation, and we think it adds value to this process.

**Mr Barr** (Kurrajong—Chief Minister, Treasurer, Minister for Social Inclusion and Equality, Minister for Tertiary Education, Minister for Tourism and Special Events and Minister for Trade, Industry and Investment) (3.55): The government is happy to support Mr Rattenbury's amendment, as I foreshadowed in my remarks to the previous amendment. There is merit in reviewing the situation after the time period contained within this amendment. As I indicated before, I note that some of the intent behind the advisory council and the voices and perspectives of stakeholders that would have come about had that amendment been supported need to be involved in the review process in three years. That is a sensible and practical way to proceed.

**Mr Hanson** (Murrumbidgee) (3.56): We support this amendment. Proposed new clause 8C agreed to.

Clause 9 agreed to.  
Schedule 1, part 1.1, amendment 1.1.

**Mr Barr** (Kurrajong—Chief Minister, Treasurer, Minister for Social Inclusion and Equality, Minister for Tertiary Education, Minister for Tourism and Special Events and Minister for Trade, Industry and Investment) (3.57): I move amendment No 11 circulated in my name [see schedule 1 at page 3922]. The government proposes to update the note at sections 605 and 614 of the Criminal Code 2002 to specify:

For an additional offence relating to possessing controlled drugs, see the Drugs of Dependence Act 1989, pt 10 and the Medicines, Poisons and Therapeutic Goods Act 2008, section 36.

*continued on page 32*



This is put forward for completeness. Amendment agreed to. Schedule 1, part 1.1, amendment 1.1, as amended, agreed to. Schedule 1, part 1.1, amendment 1.2.

**Mr Barr** (Kurrajong—Chief Minister, Treasurer, Minister for Social Inclusion and Equality, Minister for Tertiary Education, Minister for Tourism and Special Events and Minister for Trade, Industry and Investment) (3.58): I move amendment No 12 circulated in my name [see schedule 1 at page 3922]. The government proposes to omit the bill's amendment to subsection 618(2) of the Criminal Code. Section 618 of the Criminal Code 2002, which deals with cultivating controlled plants, would remain unchanged.

A person will commit an offence under subsection 618(2) of the Criminal Code 2002 if the person cultivates artificially or otherwise three or more cannabis plants or artificially cultivates one or two cannabis plants. Artificial cultivation is defined in this section to mean hydroponically cultivate or cultivate with the application of an artificial source of light or heat.

Amendment agreed to.

**Mr Rattenbury** (Kurrajong) (3.59): I will not move amendment No 8 circulated in my name, as my earlier amendment No 3, to which it relates, was not passed.

Schedule 1, part 1.1, amendment 1.2, as amended, agreed to. Schedule 1, part 1.1, amendment 1.3 agreed to. Schedule 1, part 1.2, amendment 1.4.

**Mr Barr** (Kurrajong—Chief Minister, Treasurer, Minister for Social Inclusion and Equality, Minister for Tertiary Education, Minister for Tourism and Special Events and Minister for Trade, Industry and Investment) (4.00): I move amendment No 13 circulated in my name [see schedule 1 at page 3922]. This amendment proposes to omit section 9A in the Medicines, Poisons and Therapeutic Goods Act 2008 and substitute it with a proposed new section 9A. The new section 9A provides at subsection 1 that the defined provisions of the Medicines, Poisons and Therapeutic Goods Act 2008 listed at

subsection 2 do not apply to an adult if the substance is an amount of cannabis that the adult is not prohibited from cultivating or possessing under the Drugs of Dependence Act 1989.

Amendment agreed to. Schedule 1, part 1.2, amendment 1.4, as amended, agreed to. Title.

**Mr Barr** (Kurrajong—Chief Minister, Treasurer, Minister for Social Inclusion and Equality, Minister for Tertiary Education, Minister for Tourism and Special Events and Minister for Trade, Industry and Investment) (4.01): As this will be the final opportunity to speak in this debate, I want to put on record my thanks, firstly, to Mr Pettersson for bringing forward this private member's motion and for undertaking days, weeks and months of detailed consultation with stakeholders and with the broader community, and for his willingness to champion an issue that many have not been willing to progress.

I wish to place on record my thanks to cabinet colleagues for their detailed consideration of each of the government amendments and the Greens amendments throughout this process. I again thank the committee for their work. I thank Mr Rattenbury and Ms Le Couteur in their roles as crossbench members for their contributions to this debate. I thank Mr Hanson and his office for their engagement on the issues. We do not necessarily agree on the matters of principle but we have been able to conduct this debate today in a way that I think does credit to the ACT Legislative Assembly. I commend Mr Hanson and his team for that frank engagement.

We will, of course, disagree on the outcomes and I am sure you will not be voting for the bill as amended, but I do thank you for that engagement through this process. When we do, perhaps rightly, hear criticism of other Australian parliaments for not taking on issues like this—we also at times hear criticism of this place for being too ambitious in our reform agenda—I think any assessment of the way this process has been handled and the quality of this debate provides a very positive reflection on the ACT Legislative Assembly. I thank members for their collective contribution to making this possible.

In closing, I also thank my office and officials right across the ACT public

service for their hard work and detailed involvement in getting to this stage today. I commend the amended bill to the Assembly.

**Mr Hanson** (Murrumbidgee) (4.04): I join with the Chief Minister in thanking all of those people who have been involved. We have agreed on a number of things today; we have disagreed on a number of things today. But we have been quite informed about the debate, in particular through the work done by the committee. I certainly commend the committee and those who submitted to that inquiry and presented to the committee members.

I think that through the process of the amendments today we have certainly improved the legislation that was presented. I have been critical of that. However, I am aware that sometimes it is difficult as a backbench member. I hope that the flaws in the legislation were not deliberately there to create grow houses, for example, but were simply omissions. We have rectified a number of those. I thank the Chief Minister for having done that.

Regardless, I am not happy with where we have ended up. I think that we end up with a situation where the government is signalling and in effect supporting and condoning increased consumption and use of cannabis. My concern with that is not some wowser concern. It really is not. My concern is the evidence that we have received about the links between increased cannabis consumption and mental illness. That is our concern on this side of the chamber. This is not ideological. This is not wowserism. That is a legitimate concern.

Secondly, it is the impact on drug driving. That is a concern that has been articulated by the Chief Police Officer and also by the Australian Federal Police Association. They are concerned that increased cannabis use, the view that this is now legal, will increase the number of people on our roads who are affected by cannabis or who have consumed cannabis, are no longer affected, but who may come up active on a test and receive a criminal penalty as a result, which surely is not a wish that any of us in this place would have.

Third is the conflict that remains with federal legislation. I note the workaround. It is convoluted; it is confusing; it is ambiguous; and it puts an enormous strain on our already stretched police

force to deal with a complex workaround legislative instrument such as this. I think that if you have a law that has to be structured in this way, it should be a warning that this is a bad law.

I would like to thank my own staff for the work they have done. Mr Ian Hagan has helped me navigate the warring amendments that we have dealt with today. I also thank the Chief Minister's office for the briefing we received from his staff with regard to those amendments. The Canberra Liberals will not be supporting this legislation as amended. It is a better bill than the one we started with today, but it remains a bad bill.

Title agreed to. Question put:

That this bill, as amended, be agreed to. The Assembly voted—

Mr Barr

Ms J Burch Ms Cheyne Mr Gupta

Ms Le Couteur Ms Orr

Ayes 10

Mr Pettersson

Mr Rattenbury

Mr Steel

Ms Stephen-Smith

Mr Coe

Mr Hanson Mrs Jones Mrs Kikkert

Ms Lawder Mr Milligan

Noes 7

Mr Wall

Question resolved in the affirmative.

Bill, as amended, agreed to.

Government—cannabis legislation

**Mr Hanson:** My question is to the minister for police. I refer to the front page of today's Daily Telegraph with the headline "The joint's gone mad". The article states:

... there are now fears among NSW Police that the new laws could fuel our state's spiralling drug crisis by making it easier for criminal gangs to transfer their massive pot crops up the Hume Hwy to Sydney.

Minister, what communication did you or your directorate have with New South Wales police about the implications of legalised cannabis in the ACT?

**Mr Gentleman:** I thank Mr Hanson for the question. I did not have any direct conversations with New South Wales police but certainly the Chief Police Officer did, and that helped inform his position in regard to the cannabis bill debated yesterday.

**Mr Hanson:** Minister, what steps is the government taking to prevent trafficking of cannabis from legal growing in Canberra to illegal markets in Sydney, as has been highlighted by New South Wales Police?

**Mr Gentleman:** We are investing in our police force to disrupt crime in the ACT. In each of the budget years, last year and this year, there have been larger resources, investments, put into ACT Policing to disrupt criminal activities, and it is working. ACT police have done a fantastic job of not only crime disruption but also of arresting and prosecuting people who do unlawful things in the ACT, including unlawfully growing marijuana.

**Mrs Jones:** Minister, what calculations have you made of the extra cost or extra resources needed to prevent the trafficking of cannabis from legal growing in Canberra to illegal markets in Sydney?

**Mr Gentleman:** We invest in our local police force and they calculate the resources they need to combat crime in the territory, unlike those opposite who voted against those resources in the last two budgets.

Policing—cannabis

**Mrs Jones:** My question is to the minister for police. I refer to the front page of today's Daily Telegraph with the headline "The joint's gone mad". The article states:

ACT chief police officer Ray Johnson previously warned the laws would make the territory "more attractive to organised crime groups as a place to grow cannabis for both internal and external markets" as well as removing the risk to "crop sitters" who grow weed for outlaw motorcycle gangs.

Minister, what particular resources have been made available to monitor and prevent crop-sitters for organised crime operating in the ACT under the new laws?

**Mr Gentleman:** I do not believe that that is what the CPO did say. In fact, trafficking still remains a crime.

**Mrs Jones:** Minister, what communication or advice have you received from Taskforce Nemesis about the implications of these laws?

**Mr Gentleman:** I not only have had communications with Taskforce Nemesis

on their ongoing work to combat crime in the ACT but I spent a morning with them at Winchester Police Centre going over the operations they have been conducting in the past 12 months. Thanks to the investment that this government has made in Taskforce Nemesis over a number of years there have been quite successful operations across the ACT disrupting crime, arresting criminals and charging them.

**Mr Hanson:** Minister, how do these laws or other pertinent laws prevent persons from being crop sitters for outlaw motorcycle gangs or other organised crime gangs?

**Mr Gentleman:** The particular debate yesterday was not about laws on criminal activity; it was about the health implications regarding the harm minimisation approach that this government has to drug use in our community. We do not condone the personal use of cannabis. We know that there are health risks to individuals that use that. Those amendments will reduce the harm for individuals who are already using cannabis, acknowledging that the outright prohibition can bring people into contact with—

**Mr Hanson:** Madam Speaker, a point of order on relevance.

**Madam Speaker:** Resume your seat, minister.

**Mr Hanson:** The question was very specific; it was about what laws are available, and what provisions under the laws passed yesterday would prevent crop sitters. It is not about harm minimisation; it is about the issue of crop sitters, as raised by the CPO.

**Madam Speaker:** I think the minister has made reference to the fact that illegal activity remains illegal activity, but—

**Mr Hanson:** It is not; that is the point. It's now legal, isn't it, Madam Speaker?

**Madam Speaker:** Mr Hanson, one more and you will be warned. I call the minister, in the time he has left.

**Mr Gentleman:** We did not change the Crimes Act yesterday at all, and trafficking remains unlawful.



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# Sharing a joint would still be illegal under new cannabis laws, ACT top cop says

**ANDREW BROWN,**

The Canberra Times

People sharing cannabis with a friend at a party would still be charged with drug supply, despite new cannabis possession laws legislated on Wednesday.

The ACT's chief police officer Ray Johnson said sharing the drug between people, even when no money is involved, would still constitute as an offence.

"If there's evidence that someone is providing cannabis to someone else, that's supply and that's an offence," he told ABC radio on Wednesday.

Under the new laws, put forward by Labor backbencher Michael Pettersson, adults are allowed to possess 50 grams of cannabis and grow two plants in their home.

The bill passed the ACT Assembly on Wednesday, after debate on several amendments.

Chief Police Officer Johnson said ACT police officers would support the government on the new laws.

"We'll work to make [the laws] as effective as it can be," he said.

"Police officers will have their views, and they'll execute the law of the day as best as they can."

The ACT's top cop said the supply of cannabis seeds would still be illegal, whether they were sold or given away.

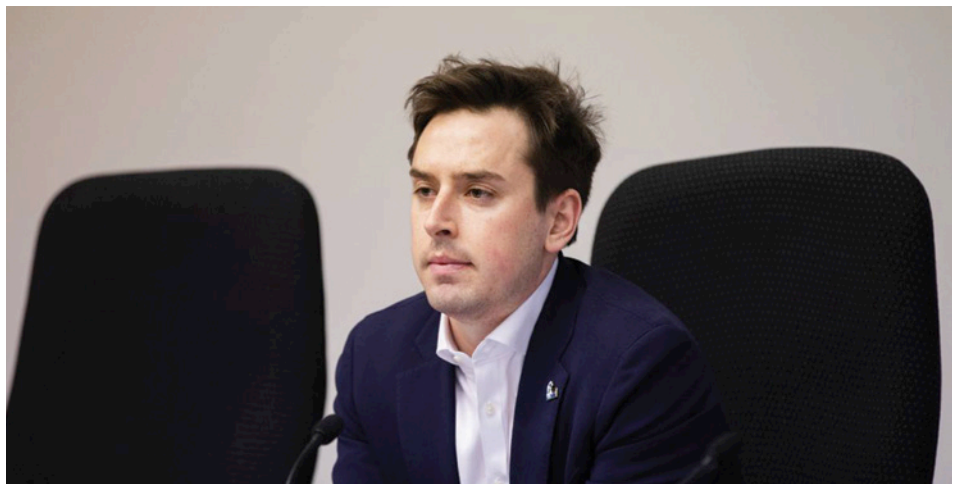
While possession of up to 50 grams of cannabis would be legalised, Chief Police Officer Johnson said drug-driving offences would remain the same.

Despite the laws, the ACT Law Society said earlier this week police officers would still be able to charge someone with cannabis possession under federal law.

Chief Police Officer Johnson said a decision on whether someone would be charged under ACT law or Commonwealth law would depend on individual circumstances, and said it would be a challenge for officers.



ACT chief police officer Ray Johnson. Picture: Elesa Kurtz



Labor backbencher Michael Pettersson, who is introducing the new cannabis laws. Picture: Jamila Toderas

"If [cannabis possession] continues to be an offence of Commonwealth law, whether or not a police officer chooses to charge an individual and whether cannabis is seized, we've got to work through the fineries," he said.

"Every day, police officers doing their duty do make decisions taking

into account the circumstances of the occasion."

The chief police officer said ACT police would still continue to target drug traffickers and drug sellers.

The new laws will likely not come into effect until January and will need to be signed off by the Health Minister.

# Cannabis reform raises conflict between State and Federal laws

**BY JARRYD BARTLE**

The Sydney Morning Herald

Last week, the ACT parliament passed significant reforms in regard to cannabis. Whilst the headlines called it “cannabis legalisation” the actual change was rather mild – a reform of territory offences allowing for the possession of 50 grams of cannabis as well as the cultivation of cannabis plants — two plants per person, with a cap at four plants per household.

The proposal, which will come into effect on January 31 next year, avoided political controversies associated with the large-scale cultivation, manufacture and sale of cannabis – preferring a “home-grown” approach to cannabis consumption. Whilst stoners in our nation’s capital rejoiced, questions have been raised about how this legal change will relate to Commonwealth laws that criminalise cannabis possession.

Federal Attorney-General Christian Porter has already warned that drug

possession remains an offence under Commonwealth law and that he expects federal police to enforce it. His comments were echoed by Home Affairs Minister Peter Dutton, who told 2GB radio: “I think it might be trendy for the ACT government to go down this path, and they’ll say they’re enlightened and progressive and all the rest of it ... But I think it’s dangerous ... Christian Porter is having a look at it at the moment.”

As every high school legal studies student knows, generally when a state or territory law conflicts with the Commonwealth – the Commonwealth prevails. But the legal issues here are a bit more complicated than they might first seem.

Australian criminal law has always had an overlap between federal crimes and state or territory offences. For example, if a vehicle was stolen from a military

base in Victoria the joy rider could be charged for theft under s131.1 of the Commonwealth Criminal Code 1995 (Cth) or under s74 of Victoria’s Crimes Act 1958 (Vic). Generally, this doesn’t pose much of an issue as it provides a choice of both charge and prosecutor.

Federal prosecutors are usually quite happy to let state or territory authorities handle matters under local laws. Indeed, diverse approaches to drug enforcement and prosecution across Australia are not uncommon. Research published in May this year by the National Drug and Alcohol Research Centre found significant differences in approaches to drugs across the nation.

For example, South Australia does not criminally charge 98 per cent of people that are detected for use or possession of drugs, whereas in Western Australia it’s only around 32 per cent.



However, ACT's cannabis law poses an interesting question: what should the Commonwealth do when cannabis cultivation and possession is a crime federally but is no longer a crime at a local level?

This was the situation in the United States until quite recently, with cannabis legalised in nine states but remaining a serious criminal offence federally. In the early days of US legalisation federal law enforcement would raid and arrest people in cannabis dispensaries even if local laws allowed for sales. Can Australian Federal Police take the same approach?

Technically, yes. There is nothing stopping the AFP from charging people under federal cannabis offences in the ACT even after the reforms come into effect. This is likely to cause some confusion for law enforcement in the ACT,

where members of the AFP are seconded to act as local law enforcement. It's unclear whether police will be instructed to proactively enforce federal cannabis laws or not.

But those charged may have an ace up their sleeve! Under s311.1 of the Commonwealth Criminal Code it is a defence to federal charges conducted in a state or territory if *"the conduct is justified or excused by or under a law of that State or Territory"*. Assuming this defence is available, which ACT Chief Minister Andrew Barr is pretty confident that it is, this would allow users to smoke up and rest easy.

Another potential spanner in the works is the power given under Section 122 of the Australian Constitution allowing the Federal Parliament to override laws of the territories. Whether the Federal Parliament will seek to do this is unclear.

What does all this mean for cannabis legalisation efforts across Australia? Well, the ACT law provides an interesting avenue — particularly for the States — to subvert federal cannabis prohibition.

New Zealand is set for a referendum on cannabis in 2020 and the Victorian Parliament is currently undertaking an Inquiry into Cannabis, showing that these debates aren't going away any time soon.

Although, one imagines most states will take a "wait and see" approach for the time being.

Whilst Canberrans can inhale and breathe a sigh of relief for now, it may take a while till we see through the smoky haze of federalism.

**Jarryd Bartle is a lawyer turned drug policy consultant and criminal law lecturer.**



# Canberra cannabis laws invalid, Attorney-General Christian Porter says

**BY KIRSTEN LAWSON**

The Canberra Times

The federal government will not intervene in Canberra's decision to legalise cannabis, insisting the ACT law has no effect and possession remains illegal.

The decision leaves cannabis users in Canberra in legal limbo. Things look set to stay that way unless the ACT government goes back to the drawing board on its legislation, or until someone fights a test case.

The ACT government was not clear on its next step, but implied the possibility of a court showdown.

"If Commonwealth agencies, either under the direction of their conservative ministers or by their own volition, prioritise the prosecution of Canberrans caught with a small amount of cannabis, then that is a matter for them and for the federal Attorney-General to defend," a spokesperson for the ACT government said.

"If more people are going to be incarcerated under these laws, then the conservative Liberals better have a plan for how they are going to build more prisons."

The ACT government legalised cannabis for adults in late September, and the law was to take effect at the end of January. It allows Canberrans to grow two plants per person, or four plants per household, and possess 50 grams in dry form. But federal law still makes it illegal to possess cannabis, punishable by a hefty jail term.

The ACT government thought it could circumvent the federal law because the federal law contains a defence for anyone charged with possessing cannabis if it conflicts with state law.

But Attorney-General Christian Porter said he now had legal advice that the defence did not apply.

"Their law has not done what they think it does, which is provide some kind



Attorney-General Christian Porter. Picture: Alex Ellinghausen

***The police enforce laws that are on the books and the Commonwealth law is on the books. The expectation is that police enforce the law.***

of defence or out for people who would be possessing cannabis in the ACT. It doesn't do that," Mr Porter said.

That meant the Commonwealth did not need to intervene to overturn the ACT laws, he said. He wrote to Mr Ramsay on Sunday with the news and told him he expected ACT police to "continue to enforce ACT and Commonwealth drug laws".

In fact, ACT Policing has operated for some years under the ACT law, which had already decriminalised cannabis use, apparently without invoking the federal criminal law.

Asked which law the police should enforce, Mr Porter said: "The police enforce laws that are on the books and the Commonwealth law is on the books. The expectation is that police

enforce the law. And the law is, as I have been advised and which advice I completely accept, it remains unlawful at Commonwealth law to possess cannabis in the ACT."

The ACT decision to legalise cannabis began with Labor backbencher Michael Pettersson, who opted for simply removing small amounts of cannabis use and cultivation from the criminal code. An ACT Assembly inquiry foresaw the problem that has now arisen, after hearing evidence from police and legal experts.

ACT police told the committee that if they had to enforce the harsher Commonwealth laws, users could face bigger fines and jail time - a more punitive regime than decriminalisation.

In June, the committee said the bill should be changed to include an express authorisation for the use or cultivation of cannabis to deal with the conflict with federal law. It also called for a new system of roadside drug testing because cannabis remains detectable well after its effects have worn off, and it called for "cannabis social clubs" and artificial cultivation to deal with other problems in the legislation - that it remains illegal to buy or give away seeds so there is no legal way to begin growing, and that Canberra's climate doesn't lend itself to growing.

But the inquiry's recommendations did not make it into the final ACT law, which took the simplest route - leaving existing cannabis laws in place but exempting adults from those laws if they stay under the two-plant limit.

That decision has created the conflict with federal law. The Commonwealth criminal code makes cannabis illegal but has a section (313.1) that allows conduct that is "justified or excused by a state or territory law".

Commonwealth Director of Public Prosecutions Sarah McNaughton wrote to the ACT on September 17 saying anyone charged under Commonwealth law could use that section as a defence, so her office wouldn't prosecute. But a week later she backtracked, citing unspecified "legal complexities", after her advice was questioned by the federal Attorney-General's Department.

Mr Porter said on Sunday section 313.1 could only be used as a defence if the ACT had created "a positive right" in law to use cannabis - which it had not.



**ACT Labor backbencher Michael Pettersson's law would allow Canberrans over 18 to possess 50 grams of cannabis and grow two plants. Picture: Jamila Toderas**

***The Coalition has been highly critical of the ACT's move, calling it crazy and dangerous. On Sunday, Mr Porter did not rule out intervening if the ACT Assembly decides to legislate to create a positive right to use cannabis.***

"The legal advice that I've got, which I agree with, which I've relayed by a letter today to the ACT Attorney-General, is that it is still an offence under Commonwealth law in Canberra to possess an amount of cannabis less than 50 grams. That's the state of the law," Mr Porter said, dismissing the ACT laws as "terrible laws for a variety of reasons".

"The ACT laws removed the criminal component at a territory level, but didn't establish anything that is a positive right to possess, which means there's no defence to the Commonwealth law."

The Coalition has been highly critical of the ACT's move, calling it crazy and dangerous. On Sunday, Mr Porter did not rule out intervening if the ACT Assembly decides to legislate to create a positive right to use cannabis.

"What they do from here is up to them, and we'd consider the situation into the future," he said.

In June, Mr Ramsay said he had the power to instruct the Solicitor-General to conduct a high-level intervention if someone was prosecuted, but that would be more about arguing the principles of law than stopping a prosecution. Such an intervention was "several steps down the track", he said then.

On Sunday, a spokesperson for the government said ACT police had been able to charge people for many years under Commonwealth law.

"The Commonwealth Attorney-General's new 'advice' must have vastly changed from the original advice provided from the Commonwealth Director of Public Prosecutions to the ACT that there is a reasonable defence under Commonwealth law for Canberrans caught with a small amount of cannabis," the spokesperson said, referring to the advice that Ms McNaughton gave and then withdrew.

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# Australians don't want the new ACT cannabis law overturned

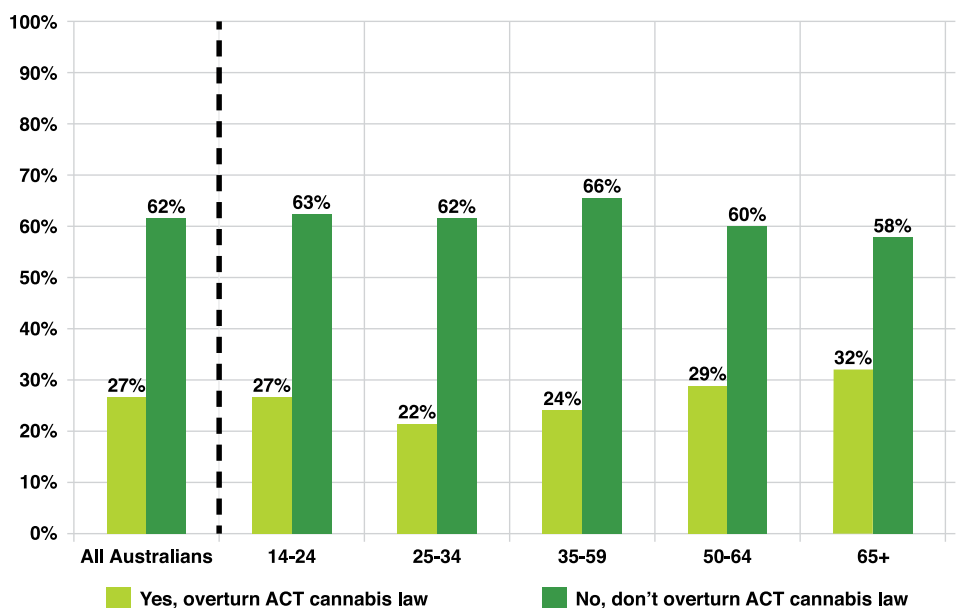
A special Roy Morgan online survey shows more than three-fifths of Australians (62%) don't want the Federal Government to overturn the new ACT law decriminalising cannabis for personal use, which is set to come into effect in 2020. This is well over double the percentage who says they do want the Federal Government to step in (27%), while 11% can't say either way.

Clear majorities of all age groups are against the Federal Government stepping in and overturning the law, led by 66% of 35-49 year olds and 63% of 14-24 year olds. The smallest majority is in the 65 and over age-group, but even here 58% do not want the law overturned.

These are the latest findings from a special Roy Morgan online survey conducted with a representative cross-section of 1,054 Australians aged 14+ in mid-October. People surveyed were asked: "Are you aware the ACT recently passed laws to legalise the possession, use and cultivation of small amounts of cannabis?" Respondents were then asked: "The new law in the ACT conflicts with Commonwealth laws prohibiting the possession of cannabis. Do you believe the Federal Government should step in and overturn the ACT's new law that legalises the possession, use and cultivation of small amounts of cannabis?"

"Despite new research from Roy Morgan revealing 49% of Australians oppose the legalisation of marijuana, compared to 42% in favour, a clear majority don't want the Federal Government to overturn the ACT's new cannabis laws" says Roy Morgan CEO Michele Levine. "As well as reflecting changing community attitudes to the drug, this result shows Australians are hesitant about Federal Government intervention in the affairs of other jurisdictions such as the ACT. There is precedent here which respondents may or may not be aware of. Although the Northern Territory legalised euthanasia

## Should the Federal Government step in and overturn the ACT's new cannabis law?



Source: Roy Morgan online survey, October 9-14, 2019, n=1,054. Base: Australians aged 14+.

in 1996, the newly elected Howard Government intervened to overturn the law the following year."

An overwhelming majority of 85% of Australians are aware of the new cannabis law passed by the ACT legislature, with only 15% not aware. There was little difference on views of Federal Government action to overturn the law between those aware of the new law and those not aware.

Among those aware of the new law, just over a quarter (26%) want the Federal

Government to step in and overturn it while 29% of those previously unaware want Federal Government intervention.

The Roy Morgan Single Source survey is derived from in-depth face-to-face interviews with over 50,000 Australians each year in their homes and collects detailed quantitative and qualitative data across a range of attitudes and demographics including profiling Australians who would like to see marijuana legalised and people who would prefer that marijuana remains illegal.

# Cannabis laws bound for the courtroom to work out whether ACT or Commonwealth is right

**BY ACT POLITICAL REPORTER TOM LOWREY**

ABC News

**Criminal behaviour is generally seen as fairly black and white: an act is either legal or illegal.**

But, when it comes to possessing cannabis, the situation in the ACT will be very hazy from early next year.

And it may take having a very unlucky Canberran arrested, charged and put before the court to clear the (green) air.

There are currently two very different views on the legal status of someone wanting to consume cannabis under the new laws.

The ACT Government thinks such a person would be on solid legal ground and could not be convicted.

Meanwhile the Federal Government warns a conviction remains very possible if the law is properly enforced.

So who is right? Can a cone put you in the clink?

It will likely fall to a magistrate or judge to make that call.

## **Can cannabis be legal and illegal ... at the same time?**

The ACT Government passed laws last month that essentially fully decriminalise cannabis under certain and very specific conditions.

When the legislation comes into effect on January 31, 2020, it will be legal, under ACT law, for adults in Canberra to grow, smoke and own small amounts of cannabis.

But the Commonwealth has laws of its own in this area, and those laws explicitly prohibit possessing any quantity of cannabis (with the exception of medicinal cannabis, which is a completely separate thing).

The ACT drafted its legislation with the Commonwealth laws in mind, and it is relying on a provision that allows anyone



**Conflicting briefs: Federal Attorney-General Christian Porter (left) and his ACT counterpart Gordon Ramsey. (ABC News)**

charged with a Commonwealth offence to “justify or excuse” the conduct because it is legal under state or territory laws.

Basically, the ACT cannabis laws exploit a very clear and deliberate loophole within the Commonwealth laws. Or so the ACT thinks.

Attorney-General Christian Porter made it clear on the weekend he firmly disagrees.

“My advice, and the advice that I’ve provided to the ACT Attorney-General, is that it is still against the law of the Commonwealth to possess cannabis in the ACT,” he told *Insiders* on Sunday.

He argued that because the ACT laws really just removed any penalties for possessing cannabis, rather than explicitly legalising it, that loophole did not apply.

And he expects ACT Policing, which is a branch of the Australian Federal Police, to enforce the Commonwealth law prohibiting cannabis.

## **Will you be arrested? Maybe. Convicted? Maybe**

Determining who is right or wrong on that one will possibly fall to the courts, and could require at least one unlucky person becoming a closely watched test case.

ACT police are entirely within their rights to arrest and charge someone in Canberra with cannabis possession, and hand the case to Commonwealth prosecutors to take before court.

A magistrate or judge would then decide how the law should be applied and set a precedent for others to follow.

Professor Desmond Manderson, from the Australian National University's law college, suggested this would be the most likely outcome.

"There will have to be a court case to work out the meaning of the provisions in the Commonwealth Crimes Act that recognise the freedom of state and territory governments to make their own drug laws," he said.

"And, really, the sooner the better."

The role of Commonwealth prosecutors is interesting, as the ACT's position is partly based on advice provided by the Commonwealth Director of Public Prosecutions to the ACT before the cannabis bill was passed.

The Commonwealth DPP advised that the legislation would likely be available as a defence to someone charged with a Commonwealth offence, and as such it might decide not to prosecute.

However, it rescinded that advice just a week after it provided it.

Professor Manderson believes the ACT is on reasonably solid ground and cannabis users will be protected by its laws.

In fact he said the Commonwealth loophole even went as far as to protect those who "reasonably believed" they were acting legally under separate state or territory laws.

"It seems to me, if the ACT Government believes, as it obviously does, that the territory law protects ACT consumers from federal prosecution, it would surprise me if that didn't provide the basis for a strong defence by users to Commonwealth prosecution," he said.

### Lawyers want more protection for those getting baked

The Law Society sees an obvious way around all of this, without putting an unlucky Canberran through the hardship of arrest and prosecution just to work out which law prevails.

It wants the ACT Government to come to an agreement with ACT Policing not to enforce the Commonwealth law.

The society's Michael Kukulies-Smith said the current situation left both cannabis users and police officers in an untenable position.

"The Law Society is concerned that the potential for police to still lay charges under the criminal code may lead to inconsistent outcomes for Canberrans based upon the attitudes and approaches taken by individual officers," he said.

According to Mr Kukulies-Smith, a formal agreement would resolve the problem.

Failing that, he said, it may come to a head in court.

However, the Canberra Liberals argued that was far too great a risk to place on ordinary cannabis users — if the laws were bungled, they should be scrapped.

Shadow ACT Attorney-General Jeremy Hanson said there was still time to put a stop to it all.

"They're going to be using ACT citizens essentially as crash test dummies for their incredibly flawed legislation," he said.

"When you've got advice from the federal Attorney-General that the law is invalid, then it is reckless to proceed."



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# The Federal Government should regulate State marijuana programs, former FDA Head advocates

**BY SEAN WILLIAMS**

The Motley Fool

**Scott Gottlieb's controversial proposal would be a mixed blessing for the U.S. cannabis industry.**

The next decade is expected to be huge for the marijuana industry. After logging \$10.9 billion in global legal sales in 2018, the State of the Cannabis Markets report from Arcview Market Research and BDS Analytics is calling for north of \$40 billion in worldwide revenue by 2024. Meanwhile, Wall Street is forecasting as much as \$200 billion in annual sales by 2030.

At the center of this growth is the United States. Most Wall Street and independent sales projections suggest that the U.S. will account for a third, to maybe even more than one-half, of worldwide legal weed sales.

But as you're always probably aware, the U.S. federal government has remained firm on its stance that cannabis is a Schedule I, and therefore wholly illegal, drug. This hasn't stopped 33 states from legalizing marijuana in some capacity (11 of which have also given the green light to adult-use recreational pot), but it's certainly put a ceiling on the potential of the U.S. weed industry, as well as created regulatory headaches galore.

## **Former FDA Commissioner Scott Gottlieb offers a controversial take on cannabis oversight**

What should be done to bridge this gap in opinion between the federal government and select states remains a point of contention. But it is a topic



that's drawing a lot of interest from Scott Gottlieb, the former head of the U.S. Food and Drug Administration (FDA). Gottlieb stepped down at the beginning of May after nearly two years on the job.

In an on-air interview with CNBC on Oct. 14 (link opens YouTube-hosted interview), and following an editorial in The Wall Street Journal on the recent vaping health scare, Gottlieb laid out his ideal vision for what should happen with cannabis in the United States. While Gottlieb is no fan of recreational marijuana (he thinks

it should remain illegal), and believes that vaping any liquids containing tetrahydrocannabinol (THC) should be banned, THC being the psychoactive cannabinoid that gets users high, he recently suggested that the U.S. federal government is the only entity capable of effectively regulating state-level marijuana programs.

During the interview, Gottlieb admits that attempting to pass federal cannabis legislation that doesn't involve some allowance for recreational use would be impossible, given just how



many states have approved adult-use marijuana sales. However, the former FDA chief also realizes that there's real opportunity for common ground to be found between the federal government and states that would allow the U.S. Drug Enforcement Agency (DEA) and FDA to come in and offer resources that would allow for proper oversight. Only with federal agencies involved does Gottlieb believe the black market can be driven out.

In Gottlieb's ideal scenario, the medical marijuana market would be treated stricter, with the DEA and FDA teaming up to control the concentrations of THC and/or cannabidiol (CBD) in products, as well as substantiating claims made medical pot companies make through clinical studies. (CBD is the nonpsychoactive cannabinoid best known for its perceived medical benefits.) These federal agencies would also be able to regulate what forms of consumption are allowable. For example, federal law could stamp out vape-based cannabis consumption, both medical and recreational. As a reminder, more than two dozen people have died in recent weeks from mysterious vape-related lung illnesses.

Likewise, the DEA and FDA would work together in the recreational pot market to control the potency of product, as well as oversee the manufacturing and testing process.

### Can Gottlieb's vision become a reality?

In other words, Gottlieb's proposal is that the federal government legalize cannabis at the federal level in order to provide a level of enforcement that's just not there are the state level right now. But is this suggestion even possible?

On one hand, we've certainly seen a shift in public opinion in favor of cannabis in recent years. Back in 1995, the year before California became the first state to legalize medical marijuana, only a quarter of Gallup survey takers favored legalizing the drug nationally. As of October 2018, support for national legalization hit an all-time high of 66%. There's brewing support among the public for federal change, as well as a lot of tax dollars that could be collecting from marijuana sales conducted at the state level.

On the other hand, there is no shortage of obstacles to legalization – even if it were a very strict proposal. For example, all cannabis-based riders and bills have been stopped short of a Senate vote by Senate Majority Leader Mitch McConnell (R-Ky.). Republicans also control the Senate and Oval Office, which is problematic considering that they have historically had a more adverse view of marijuana than Democrats or independents.

Furthermore, cannabis isn't a polarizing issue, as of yet. According to a survey from the independent Quinnipiac University, just one in eight respondents

wouldn't vote for a candidate if that candidate didn't share their view on marijuana. In other words, lawmakers aren't in danger of losing their elected seats if they oppose marijuana legalization efforts.

Gottlieb's vision could become a reality, but probably not in the near term. A change in the makeup of the Senate would almost certainly be required for real cannabis reform to take hold in the United States.

### Gottlieb's proposal would be a mixed blessing for pot stocks

As for marijuana stocks, Gottlieb's proposal offers a mixed blessing. It would be a positive in that more markets would be reached with a federal legalization bill. At the same time, production costs would probably rise because of added testing and oversight, and consumption options would probably decline.

For example, tobacco giant Altria Group (NYSE:MO) is betting big bucks on Canadian pot grower Cronos Group (NASDAQ:CRON). Following years of declining tobacco cigarette shipments in the U.S., Altria invested \$1.8 billion into Cronos in mid-March for a 45% non-diluted stake. While this investment in Cronos does give Altria exposure to the Canadian pot industry, the real purpose appears to be to create a vaping powerhouse. After all, Altria is a 35% stakeholder in Juul, the vaporizer company that currently dominates the U.S. vape market. With derivative marijuana products hitting dispensary shelves in Canada in about two months, Cronos will be looking to stake its claim up north, while potentially using its marijuana expertise to push into U.S. markets once weed is federally legalized.

Assuming Gottlieb's proposal finds an audience, cannabis-based vaping solutions wouldn't be an available option in the United States. This isn't to say that Cronos Group doesn't have other alternative consumption options at its disposal, so much as to demonstrate that Altria's grandiose plan would somewhat go up in smoke,

To be clear, what Gottlieb suggested on CNBC is nothing more than one of many ideas in the cauldron at the moment. But there's no denying that the pot is being stirred (pardon the pun), and both cannabis businesses and enthusiasts are counting on action from the federal government sooner than later.

# Colorado Division of Criminal Justice publishes report on Impacts of Marijuana Legalization in Colorado

(LAKEWOOD, Colo., Oct. 26, 2018) – The Colorado Division of Criminal Justice Office of Research and Statistics today released “Impacts on Marijuana Legalization in Colorado,” a report that compiles and analyzes data on marijuana-related topics including crime, impaired driving, hospitalizations and ER visits, usage rates, effects on youth, and more.

In 2013, the Colorado General Assembly passed SB 13-283 directing the Colorado Division of Criminal Justice (DCJ) within the Department of Public Safety to conduct a study of the impacts of Amendment 64, which legalized the retail sale and possession of recreational marijuana for adults over age 21.

“This is exactly the kind of data collection we need to inform our regulatory and law enforcement framework,” said Governor John Hickenlooper. “We now have that ever-critical baseline from which we can spot trends so Colorado’s leaders understand where our efforts are succeeding and identify areas where we need to focus additional research, resources or even new policy.”

The data in the report was collected and provided by various local, state and national sources, and thus some of the data has previously been released or reported on by other safety agencies. The “Impacts on Marijuana Legalization in Colorado” report is unique in that it seeks to present a comprehensive analysis of as many data points as possible in order to provide an accurate and unbiased resource to policy makers and the public.

“This report is compiled by professional researchers analyzing data from dozens of different resources. Hundreds of hours of research go into this publication, with a painstaking effort to present an unbiased and transparent report with credible data for all consumers,” said Stan Hilkey, Executive Director of the Department of Public Safety. “Integrity in the pursuit of being both comprehensive and honest about

where data gaps exist is important to our professional research staff. I believe this report will be a helpful tool to inform policy makers, parents, school staff, law enforcement, the marijuana industry and others to better understand the effects of legal marijuana in our communities.”

The full study can be found online at [https://cdpsdocs.state.co.us/ors/docs/reports/2018-SB13-283\\_Rpt.pdf](https://cdpsdocs.state.co.us/ors/docs/reports/2018-SB13-283_Rpt.pdf).

## DATA HIGHLIGHTS:

### CRIME

Data suggests that law enforcement and prosecutors are aggressively pursuing cases against black market activity. The quantity of cases filed for serious marijuana-related crimes has remained consistent with pre-legalization levels, however organized crime cases have generally increased since 2008.

- Felony marijuana court case filings (conspiracy, manufacturing, distribution, and possession with intent to sell) declined from 2008 to 2014, but increased from 2015 through 2017.
  - The most recent increase in filings might be in part because legislation changed the legal indoor plant count, providing law enforcement agencies with greater clarity and tools to increase their enforcement of black market activity.
  - Felony filings in 2017 (907) were still below 2008 filings (1,431).
  - Filings in organized-crime cases followed a similar pattern, with a dip in 2012 and 2013 followed by a significant increase since 2014.

- There were 31 organized crime case filings in 2012 and 119 in 2017.
- Filings for juveniles under 18 remain at the same level as pre-legalization.

### DUI & TRAFFIC FATALITIES

The impact of marijuana consumption on the safety of drivers is a major focus, as any fatality on our roadways is a concern. More data about the impairing effects of marijuana and more consistent testing of drivers for marijuana are needed to truly understand the scope of marijuana impairment and its relation to non-fatal crashes.

- The number of trained Drug Recognition Experts increased from 129 in 2012 to 214 in 2018, a 66% increase. Thousands of additional officers have been trained in Advanced Roadside Impairment Detection.
- Colorado State Patrol (CSP) DUI cases overall were down 15% from 2014 to 2017.
- The percentage of CSP citations with marijuana-only impairment has stayed steady, at around 7%. The percentage of CSP citations with any marijuana nexus rose from 12% in 2012 to 17% in 2016, then dropped to 15% in 2017.
- About 10% of people in treatment for a DUI self-reported marijuana as their primary drug of abuse, compared to 86% who report alcohol as their primary drug of abuse.
- The percent of drivers in fatal crashes who tested positive for Delta-9 THC at the 5ng/mL level decreased from 11.6% in 2016 to 7.5% in 2017.



- The number of fatalities where a driver tested positive for any cannabinoid (Delta 9 or any other metabolite) increased from 55 (11% of all fatalities) in 2013 to 139 (21% of all fatalities) in 2017.

## SEIZURES ON PUBLIC LANDS

Seizures on public lands are an indicator of the size of the black market in Colorado. Data reported by the National Forest Service, National Park Service, Bureau of Land Management and Drug Enforcement Agency (DEA) show that federal agencies have made significant seizures of marijuana on public lands and illegal indoor grows both prior to legalization and since 2012, with very large seizures in recent years.

- The Drug Enforcement Agency's cannabis eradication of outdoor and indoor grows did not show a trend from 2006 to 2017. For example, eradication of outdoor plants ranged from as many as 29,655 in 2009 to as few as 2,059 in 2017.
- Similar to trends seen with other law enforcement activity, seizures on public lands dipped significantly in 2013 and 2014 compared to 2009-2012. Seizures then rose continuously from 2015-2017.
- In 2017 alone, more than 80,000 plants were seized on public lands.

## DIVERSION OUT OF STATE

Diversion out of state is another indicator of the size of the black market, and is a must-track data point as we aim to work with our federal and state partners to diminish illegal activity related to marijuana.

- The number of seizures reported via the El Paso Intelligence Center increased from 2012 (286) to 2015 (768) but decreased in 2016 (673) and 2017 (608).
- Marijuana seizures by the US Postal Inspection Service have increased steadily since 2010, from 15 parcels seized containing 57 pounds of marijuana in 2010 to 1,009 parcels containing 2001 pounds in 2017.

## HOSPITALIZATIONS & ER VISITS

These are critical data points so we can track harmful exposure to children, inappropriate usage, and other drivers of marijuana-related hospitalizations. These and related data points prompted legislative and regulatory developments

between 2014 and 2016, including child-resistant packaging requirements, requirements for edibles to be marked with a universal symbol so they can be identified even outside their packaging, limitations on the total amount of active THC in an individual retail marijuana edible, and prohibitions on the manufacturing and sales of edibles in the shape of a human, animal, or fruit.

- Rates of hospitalization with possible marijuana exposures increased steadily from 2000 through 2015.
- Human marijuana exposures reported to the Rocky Mountain Poison and Drug Center increased significantly from pre-legalization to 2014, then flattened out from 2014-2017.

## SCHOOL DISCIPLINE & ACHIEVEMENT

New data points are helping us gain a better understanding of school discipline; overall the state is not seeing an impact of recreational marijuana use on high school graduation and drop-out rates.

- The total number of suspensions, expulsions, and law enforcement referrals for any reason has remained consistent post-legalization.
- Marijuana was the most common single reason for school expulsions (22%) and law enforcement referrals (24%) in the 2016-17 school year, the first full year where marijuana was reported separately as a reason for disciplinary action.
- Graduation rates are up and drop-out rates are down since 2012. The Graduation rate rose steadily from a 10-year low point of 72 percent in the 2009-2010 school year to 79 percent in the 2016-2017 school year. Over that same time period, the drop-out rate decreased from 3.1 percent to 2.3 percent.

## YOUTH USAGE & ATTITUDES (12-17 years)

Surveys show Colorado is not experiencing an increase in youth usage of marijuana. Preventing negative impacts on youth has been a focus of various state efforts, including public education campaigns that raise awareness about the health and legal consequences of teen marijuana use. The Marijuana Impacts report compiles and analyzes data previously released in the National Survey on Drug Use and Health (NSDUH) and the Healthy Kids Colorado Survey

(HKCS) to examine trends related to youth usage and impacts.

- The youth marijuana rate reported via NSDUH for the 2015/16 school year (9.1%) was the lowest it's been since 2007/08 (9.1%).
- According to HKCS, the proportion of high school students reporting using marijuana ever in their lifetime or reporting past 30-day use remained statistically unchanged from 2005 to 2017.
- According to HKCS, the proportion of students trying marijuana before age 13 went down from 9.2% in 2015 to 6.5% in 2017.
- Alcohol was the most common substance students reported using at any point in their lives (59%) followed by e-cigarettes (44%) and then marijuana (35%).

"Impacts on Marijuana Legalization in Colorado" is shared with state legislators and posted for the public to review online.

## ABOUT US

The Colorado Department of Public Safety (CDPS) brings together diverse agencies that share a common vision: making Colorado communities safer and more resilient. The Department includes the Colorado Bureau of Investigation (CBI), Colorado State Patrol, Division of Criminal Justice, Division of Fire Prevention and Control (DFPC), Division of Homeland Security and Emergency Management (DHSEM), Colorado School Safety Resource Center, and Colorado Integrated Criminal Justice Information System.

The Division of Criminal Justice (DCJ) consists of seven offices and units that work to improve the safety of the community, the quality of services to crime victims, and the effectiveness of services to offenders. DCJ provides assistance to state and local agencies in the criminal justice system by analyzing policy, conducting criminal justice research, managing programs and administering grants.

# Morrison government weighs options against ‘dangerous, trendy’ ACT cannabis laws

**BY MICHAEL KOZIOL**

The Sydney Morning Herald

The Morrison government is considering ways to ensure marijuana users in the ACT can still be charged under federal drug possession laws after the territory became the first Australian jurisdiction to legalise the personal use of cannabis.

A slew of federal ministers disparaged the ACT's move as “dangerous” and “trendy”, but stopped short of calling for the Commonwealth to override the ACT's new laws.

Home Affairs Minister Peter Dutton, a former policeman whose portfolio involves stopping drug imports, said he was “opposed” to the ACT laws because marijuana caused mental health conditions and could lead to the use of harder drugs.

“I really do think it's a bad move,” he told 2GB radio on Thursday. “It might be trendy for the ACT government to go down this path - and they'll say that they're enlightened and progressive and all the rest of it - but I think it's dangerous.”

The federal government has extra powers to regulate activity and override laws in the ACT because it is a territory, not a state. Possession of marijuana also remains an offence under federal laws.

In one of the most well-known examples of the Commonwealth overriding a territory, the Abbott government intervened to override the ACT legalising same-sex marriage in 2013. The Howard government took similar action in 1997 when it overturned the Northern Territory's voluntary euthanasia law.

Attorney-General Christian Porter said he was investigating his options before the laws took effect next year but was focusing on ensuring the Commonwealth could enforce its existing laws.

“These laws are obviously a matter for the ACT but of course we will consider



**Home Affairs Minister Peter Dutton said the ACT's new laws might be “trendy” but they were also “dangerous”.**

the issues that arise in light of the passage of the bill in the ACT Legislative Assembly yesterday, before the laws come into operation next year,” Mr Porter said in a statement.

“I will be considering what, if any action the Commonwealth government should take with respect to these new laws legalising personal use of cannabis, particularly focusing on what issues may arise to the enforcement of existing Commonwealth laws that criminalise the possession of prohibited drugs, including marijuana.”

The Attorney-General said it was a “terribly dangerous” drug and “why any jurisdiction would pass a law that effectively encourages more use is beyond me”, he told 6PR radio on Thursday.

Health Minister Greg Hunt said he was very concerned about the health impacts of the ACT's decision but “at this stage there are no plans to override”.

The Commonwealth Director of Public Prosecutions initially advised the ACT that its territory laws would likely be a defence for anyone charged with marijuana possession under federal laws. However, days later it rescinded that advice, saying the matter was legally complex and it would be inappropriate to provide a view.

The private member's bill to decriminalise possession and cultivation of cannabis was passed by the ACT Parliament on Wednesday, with the support of Labor and the Greens.

The laws allow residents over 18 to possess up to 50 grams of cannabis and grow two plants. It will apply in most of the ACT including the capital, Canberra, but not in the south coast territory and popular holiday destination of Jervis Bay.

ACT Attorney-General Gordon Ramsay admitted growers remained at risk of prosecution under Commonwealth laws but suggested those laws would not apply “in practice”.



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The Australian Tasmanian Chinese Han Transmission Buddhism Holy Tantra Gu Fan Mi Jin-Gang-Dhyana Buddhism was invited to participate in the Sino-Cambodian Friendship Summit at Phnom Penh, the capital of Cambodia. The goal of the Summit is to help local Buddhist centres and provide basic education facilities and charity for Cambodian children.

The summit was held at the Wat Botum, the Temple of Lotus Blossom. Five Cambodian dancers performed traditional flower dances as a blessing.

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