

s22(1)(a)(ii)

From: s22(1)(a)(ii)
Sent: Tuesday, 17 September 2019 10:18 AM
To: Drugs Policy Section
Subject: FW: Home Affairs Portfolio Daily Briefing 17 September 2019 [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hello all,

According to the below article, the ACT Personal Cannabis Use Bill will return to the Legislative Assembly for a vote on 25 September (next Wednesday).

<http://online.isentialink.com/dailytelegraph.com.au/2019/09/16/0e091c2c-03e4-4906-a892-daddece49d23.html>

LN – we should include points on this for our Estimates Breifing.

Cheers,

s22(1)(a)(ii)

s22(1)(a)(ii)

Acting Director | Drugs Policy Section
Law Enforcement Policy Branch | National Security and Law Enforcement Policy Division
 Policy Group
 Department of Home Affairs
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From: Isentia Daily Briefings <DailyBriefings@isentia.com>
Sent: Tuesday, 17 September 2019 5:52 AM
Subject: Home Affairs Portfolio Daily Briefing 17 September 2019

The Home Affairs Portfolio Briefing is a selection of daily coverage on key issues. This document can be accessed via the Home Affairs and ABF intranet. For enquiries relating to this product please email media@homeaffairs.gov.au



Home Affairs Portfolio Briefing

Tuesday, 17 September 2019

Prepared by Isentia for the Home Affairs Portfolio

Click on the below hyperlinks to access the relevant subject matter:

Pages 2-10 removed

s22(1)(a)(ii)

Irrelevant to request

Positive roadside drug tests double, police data reveals

[Daily Telegraph Australia, Online, 17/09/19, Kate Christian](#)

The number of drivers testing positive to roadside drug tests in the ACT has doubled in the last three years, according to police data obtained exclusively by The Canberra Star. The Star has also obtained figures which reveal the cost of carrying out a roadside drug test is \$282 — double the cost of a roadside breath test — reigniting debate over plans to legalise cannabis in the capital.

Page 12 removed

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Irrelevant to request

s22(1)(a)(ii)

From: s22(1)(a)(ii)
Sent: Tuesday, 17 September 2019 11:14 AM
To: s22(1)(a)(ii)
Subject: FW: ACT Cannabis Bill Canberra Times article [DLM=Sensitive:Legal]
Attachments: DRAFT ADVC - ACT proposal to legalise personal cannabis use.docx

Sensitive:Legal

FYI from TRIM

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Sensitive:Legal

s42

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Subject: ACT Cannabis Bill Canberra Times article [SEC=UNCLASSIFIED]

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Hi §22(1)(a)(ii) and §22(1)(a)(ii)

I'm guessing you saw this but just in case...

§22(1)(a)(ii)

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Subject: FW: ACT Cannabis Bill [SEC=PROTECTED, DLM=Sensitive:Legal]
Attachments: Drugs of Dependence Bill 2018.pdf; FINAL ADVC - ACT proposal to legalise personal cannabis use.PDF; FW: ACT Cannabis Legalisation - Jeremy Hanson, CSC, MLA - Shadow Attorney-General [SEC=UNCLASSIFIED]

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Sent: Thursday, 17 January 2019 10:43 AM
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Subject: FW: ACT Cannabis Bill [SEC=PROTECTED, DLM=Sensitive:Legal]

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FYI

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Cc: DLO <dlo@homeaffairs.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@homeaffairs.gov.au>; Hamish HANSFORD

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Subject: ACT Cannabis Bill {SEC=PROTECTED, DLM=Sensitive:Legal}

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Hi §22(1)(a)(ii)

As we discussed earlier this week, a private member's Bill has been introduced into the ACT Legislative Assembly that would decriminalise the personal use of cannabis, allow for the possession of 50 grams of cannabis and the cultivation of four cannabis plants (the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 (ACT) (**attached**)). The Bill is yet to be debated, but media reporting suggests it will be supported by the governing Labor Party and the one Greens member of the Assembly. If this reporting is accurate, the Bill is likely to pass.

The relevant Commonwealth agencies (the Department, AFP, AGD, Infrastructure, PM&C and Health) are all aware of the Bill.

§42

We will keep you updated as to developments but please let me know if you would like us to prepare a submission on potential policy options for the Minister's consideration.

Kind regards

§22(1)(a)(ii)

Acting Assistant Secretary
 Law Enforcement Policy Branch
 National Security and Law Enforcement Policy Division
 Department of Home Affairs

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2018

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Michael Pettersson)

Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018

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J2018-123

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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2018

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Michael Pettersson)

Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018

A Bill for

An Act to amend the *Drugs of Dependence Act 1989*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

J2018-123

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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Section 1

1 Name of Act

This Act is the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2018*.

2 Commencement

This Act commences on 1 July 2019.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

This Act amends the *Drugs of Dependence Act 1989*.

Note This Act also amends other legislation (see sch 1).

**4 Offences against Act—application of Criminal Code etc
Section 4, note 1**

substitute

Note 1 Criminal Code

The [Criminal Code](#), ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- s 162 (Cultivation of 1 to 4 cannabis plants)
- s 171 (Possessing prohibited substances)
- s 171AA (Possessing cannabis)
- s 171AB (Smoking cannabis in public place or near child).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

5 Section 162*substitute***162 Cultivation of 1 to 4 cannabis plants**

(1) A person commits an offence if the person—

(a) is under 18 years old; and

(b) cultivates 1 to 4 cannabis plants.

Maximum penalty: 1 penalty unit.

(2) In this section:

artificially cultivate means—

(a) hydroponically cultivate; or

(b) cultivate with the application of an artificial source of light or heat.

cultivates has the meaning given in the [Criminal Code](#), section 615 but does not include artificially cultivate.**6 Section 171***substitute***171 Possessing prohibited substances**

(1) A person commits an offence if the person possesses a prohibited substance.

Maximum penalty: 50 penalty units, imprisonment for 2 years or both.

(2) Subsection (1) does not apply if the person is authorised under the [Medicines, Poisons and Therapeutic Goods Act 2008](#), or another territory law, to possess the prohibited substance.

Section 7

- 1 (3) In this section:
2 *prohibited substance* does not include cannabis.

3 **171AA Possessing cannabis**

- 4 (1) A person commits an offence if the person—
5 (a) is under 18 years old; and
6 (b) possesses 50g or less of cannabis.
7 Maximum penalty: 1 penalty unit.
- 8 (2) A person commits an offence if the person possesses more than 50g
9 of cannabis.
10 Maximum penalty: 50 penalty units, imprisonment for 2 years or
11 both.
- 12 (3) Subsections (1) and (2) do not apply if the person is authorised under
13 the *Medicines, Poisons and Therapeutic Goods Act 2008*, or another
14 territory law, to possess the prohibited substance.

15 **7 Offence notices**
16 **Section 171A (7), definition of *simple cannabis offence***

17 *substitute*

18 *simple cannabis offence* means—

- 19 (a) an offence against section 162 (Cultivation of 1 to 4 cannabis
20 plants); or
21 *Note* Section 162 does not include artificial cultivation of cannabis
22 plants.
- 23 (b) an offence against section 171AA (1) of a person under 18 years
24 old possessing 50g or less of cannabis.

8 New section 171AB*before section 171B, insert***171AB Smoking cannabis in public place or near child**

- (1) A person commits an offence if the person smokes cannabis in a public place.

Maximum penalty: 30 penalty units.

- (2) A person commits an offence if—

- (a) the person smokes cannabis; and
(b) a child is within 20m of the person.

Maximum penalty: 30 penalty units.

- (3) In this section:

personal vaporiser—see the *Tobacco and Other Smoking Products Act 1927*, section 3B.

public place—see the *Smoke-Free Public Places Act 2003*, dictionary.

smoke cannabis means—

- (a) to directly puff smoke, or vapour, from cannabis, or a product that contains cannabis, whether or not a device for the inhalation of smoke, or vapour, is used; or
(b) to hold or to have control over—
(i) cannabis, or a product that contains cannabis, while it is ignited; or

Section 9

- 1 (ii) a personal vaporiser that contains cannabis and that is
2 activated.

3 **Examples—devices—par (a)**

- 4 • a personal vaporiser
5 • a pipe (including a hookah, water pipe or bong)
6 • a cigarette holder

7 **9 Dictionary, note 2**

8 *insert*

- 9 • territory law

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Criminal Code 2002

[1.1] Sections 605 and 614, note

substitute

Note For additional offences relating to possessing controlled drugs, see the [Drugs of Dependence Act 1989](#), ss 169, 171 and 171AA and the [Medicines, Poisons and Therapeutic Goods Act 2008](#), s 36.

[1.2] Section 618 (2)

substitute

(2) A person commits an offence if the person—

(a) cultivates (artificially or otherwise) 5 or more cannabis plants;
or

(b) artificially cultivates 1 to 4 cannabis plants.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

Note Non-artificial cultivation of 1 to 4 cannabis plants by a person under 18 years old is a summary offence under the [Drugs of Dependence Act 1989](#), s 162.

[1.3] New section 636A (3) (ba)

insert

(ba) that [Act](#), section 171AA; or

Schedule 1 Consequential amendments
Part 1.2 Medicines, Poisons and Therapeutic Goods Act 2008

Amendment [1.4]

Part 1.2 Medicines, Poisons and Therapeutic Goods Act 2008

[1.4] New section 9A

in chapter 2, insert

9A Application of Act to certain cannabis use not prohibited under Drugs of Dependence Act 1989

(1) The following provisions of this Act do not apply to an adult to the extent that the substance is 50g or less of defined cannabis:

- (a) section 26 (2) (Supplying declared substances);
- (b) section 33 (Manufacturing regulated substances);
- (c) section 35 (1) (Obtaining certain declared substances);
- (d) section 36 (Possessing certain declared substances);
- (e) section 37 (2) (Administering certain declared substances).

(2) In this section:

defined cannabis—

- (a) means cannabis as defined in the *Drugs of Dependence Act 1989*; but
- (b) does not include a substance or medicine that is able to be prescribed under this Act.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 28 November 2018.

2 Notification

Notified under the [Legislation Act](#) on 2018.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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From: s22(1)(a)(ii)@ag.gov.au>
Sent: Wednesday, 5 December 2018 6:56 PM
To: s22(1)(a)(ii)
Subject: FW: ACT Cannabis Legalisation - Jeremy Hanson, CSC, MLA - Shadow Attorney-General [SEC=UNCLASSIFIED]
Attachments: BILLES.docx; PettersonBill.docx

UNCLASSIFIED – MC18-016184

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From: HANSON [<mailto:HANSON@parliament.act.gov.au>]
Sent: Wednesday, 5 December 2018 4:16 PM
To: Attorney Correspondence
Subject: ACT Cannabis Legalisation - Jeremy Hanson, CSC, MLA - Shadow Attorney-General

Dear Attorney,

I attach a copy of a Bill introduced to the Legislative Assembly of the ACT on 29 November 2018.

The Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018, purports to legalise cannabis cultivation and use for personal purposes.

While we be seeking our own advice and input on the merits of the policy, formal advice on the interaction with Commonwealth laws would greatly assist the Legislative Assembly of the ACT in deliberating the ramifications of this Bill.

I particularly note the Commonwealth Poison Standard list and the Commonwealth Criminal Code.

On possible interaction, the Explanatory Statement to the Bill offers the following assessment:

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

Any advice you may be able to supply on the operation of Commonwealth laws on the proposed Bill would be a very valuable contribution.

I look forward to any response you may be able to provide. I am also available for personal briefings on this matter.

Yours sincerely,

Jeremy

Jeremy Hanson, CSC, MLA

Member for Murrumbidgee

| Shadow Attorney General | Shadow Minister for Veterans' Affairs

| ACT Legislative Assembly | P: 02 §22(1)(a)(ii) | F: 02 §22(1)(a)(ii)



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2018

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

DRUGS OF DEPENDENCE (PERSONAL CANNABIS USE) AMENDMENT BILL 2018

EXPLANATORY STATEMENT

Presented by
Michael Pettersson MLA
Member for Yerrabi

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DRUGS OF DEPENDENCE (PERSONAL CANNABIS USE) AMENDMENT BILL 2018**OUTLINE**

This explanatory statement relates to the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 (“the Bill”) as presented in exposure draft format to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly. The statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

Purpose of the Bill

The Drugs of Dependence (Personal Cannabis Use) Bill Amendment 2018 provides amendments to reform the *Drugs of Dependence Act 1989* in relation to personal possession of cannabis and consequential amendments to the *Criminal Code (ACT) 2002*.

The Bill will amend criminal laws to allow for the personal use and carry of cannabis up to a limit of 50g. The Bill will also allow individuals to cultivate up to four cannabis plants (excluding artificial cultivation). This change will bring cannabis laws more in line with modern community standards and reflect global trends. The Bill will reduce the burden on our criminal justice system and bring us a step closer to a cannabis market.

The Bill will retain penalties for possession above 50g at current levels, cultivation of more than four plants will remain illegal, artificial cultivation will remain illegal, sale will remain illegal and sale and supply to minors will especially remain illegal.

Background

In 1971 Australia signed the Single Convention on Narcotic Drugs of 1961 which extended importation controls over drugs like cannabis. Since then Australia has been a party to further international treaties on drugs and Section 300 of the *Criminal Code (Cth) 1995* creates offences relating to drug trafficking and gives effect to the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. States however retain power of laws regarding possession.

In 1992, the ACT decriminalized cannabis possession under 25g through the Simple Cannabis Offence Notice (SCON) scheme. This scheme, according to the 2013 ACT Health Department report *Evaluation of the Australian Capital Territory Drug Diversion Programs*, aimed to;

1. To minimise harms associated with unnecessary involvement in the criminal justice system (CJS)
2. To strength partnerships (between law enforcement, courts, health and other stakeholders)
3. To educate police and courts regarding what are the appropriate responses to Alcohol and Other Drugs (AOD) issues
4. To fulfil the community expectation of community protection and the punishment of offenders
5. To educate young people and families
6. To deter encounters with the CJS
7. To reduce AOD use

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8. To reduce cost to the CJS and reduce social cost of AOD

9. To reduce AOD-related crime

The limit was subsequently increased to 50g to reflect the fact that almost universally individuals purchased cannabis at quantities above the 25g limit and therefore were ineligible to be diverted from the CJS.

Recent international developments have seen 9 US states and the District of Colombia legalise cannabis not just for personal use but legalising the industry. Canada has also legalized the sale and possession of cannabis and is in the process of setting up their market. New Zealand has also pledged a referendum on the issue before 2020.

Community attitudes on cannabis are shifting and unbiased research has shown it is not a particularly harmful substance. According to the Australian Institute for Health and Welfare in their report, Impact of Alcohol and Illicit Drug Use on the Burden of Disease and Injury in Australia, alcohol represents 4.6% of the total burden of diseases and injuries in Australia, tobacco 9% and cannabis only 0.1%.

Despite causing 46 times less harm than alcohol, cannabis remains illegal. And despite the decades long campaign waged against drug use, cannabis remains the most popular drug in Australia according to the Australian Criminal Intelligence Commission in their report Organised Crime in Australia 2017. The National Drug Household Strategy Household Survey 2016 found that 35% of Australians have used cannabis and 10% have used it in the last year. But the substantial profits of cannabis go to organised crime and away from health and education.

The Bill will ease the burden on law enforcement who spend over \$1.1 billion every year on drug law enforcement in Australia according to the UNSW based Drug Policy Modelling Program in their 2013 report Government Drug Policy Expenditure in Australia 2009/10. And according to the Australian Criminal Intelligence Commission's 2016-17 Illicit Drug Data Report over 50% of drug related arrests in Australia (154 650 total) were cannabis related and 91% of those were consumer arrests i.e. small amounts.

Cannabis is sometimes touted as a 'gateway drug' and that it will encourage people to try harder substances. A comprehensive review of scientific studies on this topic by the American National Academies of Sciences, Engineering, and Medicine titled The Current Health Effects of Cannabis and Cannabinoids states that 'Additional studies are needed to determine whether cannabis use is an independent risk factor for, or causally contributes to, the initiation or use of and dependence on other drugs of abuse later in life'.

Interaction with Federal Law

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

Human Rights Considerations

The Bill engages rights in criminal proceedings (s 22 of the Human Rights Act) because it preserves the Simple Cannabis Offence Notice Scheme and the right to equality before the law (s 8 of the Human Rights Act) because it remakes the simple cannabis offence to apply to people under the age of 18.

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The purpose of the Simple Cannabis Offence Notice and the 2013 amendments to the scheme (which increased the amount of cannabis it applied to from 25g to 50g) were to improve access to diversionary programs, and to keep people away from the criminal justice system in cases where they possess small amounts of cannabis. The scheme itself reflects a focus on addressing drug use from a health and harm minimisation perspective. There are no human rights limited by the decriminalisation introduced by this Bill, as it will reduce interaction with the criminal justice system.

This Bill does maintain the simple cannabis offence notice for people under the age of 18. The purpose of maintaining this prohibition is to protect the interests of children and young people. This change is consistent with prohibitions of the possession of tobacco, alcohol and other drugs by people under the age of 18. The health consequences and vulnerability of children and young people as compared to adults justifies the preservation of the prohibition on cannabis possession for people under the age of 18. The Bill preserves the Simple Cannabis Offence Notice for amounts of 50g or below or cultivation of not more than four cannabis plants, which provides a diversionary pathway for people under 18 as an alternative to prosecution.

Additional protections for children in the bill include new section 171BA which, consistent with the *Smoke-Free Public Places Act 2003* creates a new offence of smoking near children or in public places. These offences are a justifiable limitation on individual liberty to protect against health impacts on members of the public who choose not to smoke and children.

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DRUGS OF DEPENDENCE (PERSONAL CANNABIS USE) AMENDMENT BILL 2018**DETAIL****Clause 1 – Section**

This clause names the Act as the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2018*.

Clause 2 - Commencement

This clause provides that the Act commences on July 1 2019.

Clause 3 - Legislation Amended

This clause identifies the legislation amended by the Act.

This Act amends the following legislation: The *Drugs of Dependence Act 1989* and the *Criminal Code (ACT) 2002*.

Clause 4 – Section 4, note 1

This section notes the application of Chapter 2 of the *Criminal Code (ACT) 2002* to the new offences proposed by the Bill.

Clause 5 – Section 162

This clause substitutes for Section 162 of the *Drugs of Dependence Act 1989* and will remove offences for an individual 18 years or older to cultivate up to four cannabis plants (excluding artificial cultivation). This doubles the current plant limit from 2 to 4 but remains in line or below jurisdictions in the United States who have legalised cannabis. Individuals will need to practice ‘progressive harvesting’ to remain under at 50g or less, as individual plants can yield more than 50g of cannabis.

Subsection (1) will see an individual under 18 years who cultivates up to four plants have a maximum penalty of one penalty unit. This offence can be dealt with under the existing diversionary program known as the Simple Cannabis Offence outlined in Section 171A.

Clause 6 – Sections 171 and 171AA

This clause substitutes for Section 171 of the *Drugs of Dependence Act 1989* and in subsection (3) removes cannabis as a ‘prohibited substance’. It will remove cannabis possession of not more than 50g by an adult as an offence and therefore legalise it.

Section 171AA is a new proposed section that establishes an offence under subsection (1) for an individual under the age of 18 for possession of not more than 50g for one penalty unit and to be dealt with under the SCON scheme. The proposed new section retains offences for possession more than 50g for all individuals.

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Clause 7 – Section 171A (7)

This clause will substitute for Section 171A and define what constitutes a Simple Cannabis Offence. Individuals under 18 who cultivate up to 4 plants (excluding artificial cultivation) and or are caught in possession of not more than 50g are eligible to receive a Simple Cannabis Offence Notice, which is a diversionary education program and a small fine.

Clause 8 – Section 171AB

This proposed new section will insert Section 171AB into the *Drugs of Dependence Act 1989*. Subsection (1) will make it an offence to smoke cannabis in a public place. Subsection (2) will make it an offence to smoke within 20m of a child. It also contains a definition of ‘smoke cannabis which has been drafted to capture a wide range of conduct that might be considered smoking in the modern context including vaping or having control over or holding an ignited product or activated personal vaporiser’.

Schedule 1.1 – Consequential Amendments to Criminal Code 2002 (ACT)**Clause 1.1 – Sections 605 and 614, note**

This proposed new section will note that for additional offences relating to possessing controlled drugs see the *Drugs of Dependence Act 1989*, ss169, 171 and 171AA and the *Medicines, Poisons and Therapeutic Goods Act 2008*, s 36.

Clause 1.2 – Section 618 (2)

This section will be substituted for Section 618 (2). Subsection (a) will make it an offence to cultivate (artificially or otherwise) 5 or more cannabis plants while subsection (b) will make it an offence to artificially cultivate 1 to 4 cannabis plants. The Maximum Penalty will be 200 penalty units, imprisonment for two years or both.

Clause 1.3 – New section 636A (3) (ba)

The proposed new section updates a cross reference to ensure that the new offences in Section 171AA are available as an alternative verdict to sentences against Section 603.

Schedule 1.2 - Consequential Amendments to Medicines, Poisons and Therapeutic Goods Act 2008**Clause 1.4 – New section 9A**

The proposed section will exempt the application of sections of the Act from applying to an adult with 50g or less of defined cannabis.

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2018

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Michael Pettersson)

Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018

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J2018-123

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Amendment Bill 2018

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2018

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Michael Pettersson)

Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018

A Bill for

An Act to amend the *Drugs of Dependence Act 1989*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

J2018-123

Unauthorised version prepared by ACT Parliamentary Counsel's Office

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Section 1

1 Name of Act

This Act is the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2018*.

2 Commencement

This Act commences on 1 July 2019.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

This Act amends the [Drugs of Dependence Act 1989](#).

Note This Act also amends other legislation (see sch 1).

**4 Offences against Act—application of Criminal Code etc
Section 4, note 1**

substitute

Note 1 Criminal Code

The [Criminal Code](#), ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- s 162 (Cultivation of 1 to 4 cannabis plants)
- s 171 (Possessing prohibited substances)
- s 171AA (Possessing cannabis)
- s 171AB (Smoking cannabis in public place or near child).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

5 Section 162*substitute***162 Cultivation of 1 to 4 cannabis plants**

(1) A person commits an offence if the person—

(a) is under 18 years old; and

(b) cultivates 1 to 4 cannabis plants.

Maximum penalty: 1 penalty unit.

(2) In this section:

artificially cultivate means—

(a) hydroponically cultivate; or

(b) cultivate with the application of an artificial source of light or heat.

cultivates has the meaning given in the [Criminal Code](#), section 615 but does not include artificially cultivate.**6 Section 171***substitute***171 Possessing prohibited substances**

(1) A person commits an offence if the person possesses a prohibited substance.

Maximum penalty: 50 penalty units, imprisonment for 2 years or both.

(2) Subsection (1) does not apply if the person is authorised under the [Medicines, Poisons and Therapeutic Goods Act 2008](#), or another territory law, to possess the prohibited substance.

Section 7

- 1 (3) In this section:
2 *prohibited substance* does not include cannabis.

3 **171AA Possessing cannabis**

- 4 (1) A person commits an offence if the person—
5 (a) is under 18 years old; and
6 (b) possesses 50g or less of cannabis.
7 Maximum penalty: 1 penalty unit.
8 (2) A person commits an offence if the person possesses more than 50g
9 of cannabis.
10 Maximum penalty: 50 penalty units, imprisonment for 2 years or
11 both.
12 (3) Subsections (1) and (2) do not apply if the person is authorised under
13 the *Medicines, Poisons and Therapeutic Goods Act 2008*, or another
14 territory law, to possess the prohibited substance.

15 **7 Offence notices**
16 **Section 171A (7), definition of *simple cannabis offence***

17 *substitute*

18 *simple cannabis offence* means—

- 19 (a) an offence against section 162 (Cultivation of 1 to 4 cannabis
20 plants); or
21 *Note* Section 162 does not include artificial cultivation of cannabis
22 plants.
23 (b) an offence against section 171AA (1) of a person under 18 years
24 old possessing 50g or less of cannabis.

8 New section 171AB*before section 171B, insert***171AB Smoking cannabis in public place or near child**

- (1) A person commits an offence if the person smokes cannabis in a public place.

Maximum penalty: 30 penalty units.

- (2) A person commits an offence if—

- (a) the person smokes cannabis; and
 (b) a child is within 20m of the person.

Maximum penalty: 30 penalty units.

- (3) In this section:

personal vapouriser—see the *Tobacco and Other Smoking Products Act 1927*, section 3B.

public place—see the *Smoke-Free Public Places Act 2003*, dictionary.

smoke cannabis means—

- (a) to directly puff smoke, or vapour, from cannabis, or a product that contains cannabis, whether or not a device for the inhalation of smoke, or vapour, is used; or
 (b) to hold or to have control over—
 (i) cannabis, or a product that contains cannabis, while it is ignited; or

Section 9

- 1 (ii) a personal vaporiser that contains cannabis and that is
2 activated.

3 **Examples—devices—par (a)**

- 4 • a personal vaporiser
5 • a pipe (including a hookah, water pipe or bong)
6 • a cigarette holder

7 **9 Dictionary, note 2**

8 *insert*

- 9 • territory law

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Criminal Code 2002

[1.1] Sections 605 and 614, note

substitute

Note For additional offences relating to possessing controlled drugs, see the [Drugs of Dependence Act 1989](#), ss 169, 171 and 171AA and the [Medicines, Poisons and Therapeutic Goods Act 2008](#), s 36.

[1.2] Section 618 (2)

substitute

(2) A person commits an offence if the person—

(a) cultivates (artificially or otherwise) 5 or more cannabis plants;
or

(b) artificially cultivates 1 to 4 cannabis plants.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

Note Non-artificial cultivation of 1 to 4 cannabis plants by a person under 18 years old is a summary offence under the [Drugs of Dependence Act 1989](#), s 162.

[1.3] New section 636A (3) (ba)

insert

(ba) that [Act](#), section 171AA; or

Schedule 1 Consequential amendments
Part 1.2 Medicines, Poisons and Therapeutic Goods Act 2008

Amendment [1.4]

Part 1.2 Medicines, Poisons and Therapeutic Goods Act 2008

[1.4] New section 9A

in chapter 2, insert

9A Application of Act to certain cannabis use not prohibited under Drugs of Dependence Act 1989

(1) The following provisions of this Act do not apply to an adult to the extent that the substance is 50g or less of defined cannabis:

- (a) section 26 (2) (Supplying declared substances);
- (b) section 33 (Manufacturing regulated substances);
- (c) section 35 (1) (Obtaining certain declared substances);
- (d) section 36 (Possessing certain declared substances);
- (e) section 37 (2) (Administering certain declared substances).

(2) In this section:

defined cannabis—

- (a) means cannabis as defined in the *Drugs of Dependence Act 1989*; but
- (b) does not include a substance or medicine that is able to be prescribed under this Act.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 28 November 2018.

2 Notification

Notified under the [Legislation Act](#) on 2018.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

© Australian Capital Territory 2018

s22(1)(a)(ii)

From: s22(1)(a)(ii)
Sent: Thursday, 19 September 2019 10:01 AM
To: s22(1)(a)(ii)
Subject: ACT Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018
 [DLM=Sensitive:Legal]

Sensitive:Legal

Hi s22(1)(a)(ii)

Later today Ciara will be meeting with the MO to discuss current work across the Division. We had previously provided high-level points on our current work, but wanted to also send through the below points on the ACT Cannabis Bill that is likely to be debated/voted on next week:

ACT Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018

- The Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 (ACT) was introduced into the ACT Legislative Assembly on 28 November 2018.
 - This Bill will amend the Drugs of Dependence Act 1989 (ACT) to allow for the personal use and carry of cannabis up to a limit of 50 grams and will allow individuals to grow up to four cannabis plants, excluding artificial crop growing.
- The Bill is expected to be debated in the week commencing 23 September 2019, with amendments likely to be introduced by the ACT Government. We do not currently have visibility of what these amendments may cover.
- If passed, possession of any quantity of cannabis will still remain a criminal offence under Commonwealth law.
 - The policy intent of the Bill is to legalise personal use of cannabis in the ACT, but it would still remain illegal under Commonwealth law – it is untested as to how ACT Policing would address this conflict in practice.
- As the possession of cannabis would remain a criminal offence, we do not propose to take any steps to engage with the Bill or modify Commonwealth law.
 - We will instead monitor the debate of the Bill and, if passed, its practical operation.
- We would welcome advice from the MO if they would like us to take a different approach at this stage.

Cheers,

s22(1)(a)(ii)

s22(1)(a)(ii)

Assistant Director | Drugs Policy Section
Law Enforcement Policy Branch | National Security and Law Enforcement Policy Division
 Policy Group
 Department of Home Affairs
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E: s22(1)(a)(ii) homeaffairs.gov.au

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s22(1)(a)(ii)

From: s22(1)(a)(ii)
Sent: Thursday, 19 September 2019 11:09 AM
To: Ciara SPENCER
Cc: s22(1)(a)(ii), s22(1)(a)(ii), s22(1)(a)(ii)
Subject: ACT Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018
 [DLM=Sensitive:Legal]

Sensitive:Legal

Hi Ciara,

As flagged on Tuesday, below are some general points for the meeting with the MO this afternoon on the ACT Cannabis Bill, which is likely to be debated and voted on next week. We understand that the Chief Minister has flagged amendments but no confirmation yet on what they will entail directly (although we do have a general idea – happy to expand if you'd like).

I am going to contact AGD to flag the below 'watch and wait' approach and make sure they don't have any conflicting views or any additional information. I'll let you know ASAP if anything in the below changes.

ACT Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018

- The Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 (ACT) was introduced into the ACT Legislative Assembly on 28 November 2018.
 - This Bill will amend the Drugs of Dependence Act 1989 (ACT) to allow for the personal use and carry of cannabis up to a limit of 50 grams and will allow individuals to grow up to four cannabis plants, excluding artificial crop growing.
- The Bill is expected to be debated in the week commencing 23 September 2019, with amendments likely to be introduced by the ACT Government. We do not currently have visibility of what these amendments may cover.
- If passed, possession of any quantity of cannabis will still remain a criminal offence under Commonwealth law.
 - The policy intent of the Bill is to legalise personal use of cannabis in the ACT, but it would still remain illegal under Commonwealth law – it is untested as to how ACT Policing would address this conflict in practice.
- As the possession of cannabis would remain a criminal offence, we do not propose to take any steps to engage with the Bill or modify Commonwealth law.
 - We will instead monitor the debate of the Bill and, if passed, its practical operation.
- We would welcome advice from the MO if they would like us to take a different approach at this stage.

Very happy to discuss further!

Cheers,

s22(1)(a)(ii)

s22(1)(a)(ii)

Assistant Director | Drugs Policy Section

Law Enforcement Policy Branch | National Security and Law Enforcement Policy Division

Policy Group

Department of Home Affairs

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s22(1)(a)(ii)

From: s22(1)(a)(ii)
Sent: Thursday, 19 September 2019 11:26 AM
To: s22(1)(a)(ii)
Subject: ACT Personal Cannabis Use Bill - Proposed meeting with AFP legal / policy [DLM=Sensitive:Legal]
Attachments: ACT Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 [DLM=Sensitive:Legal]

Sensitive:Legal

Hi s22(1)(a)(ii)

In light of the ACT Legislative Assembly's consideration of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018, we will likely be called upon to brief our senior executive and/or Minister on the practical and legal implications for ACT Policing if the Bill is passed.

I'm aware that the AFP have already outlined their concerns in their submission to the inquiry into the Bill. Notably, the AFP raised the concern that the removal of civil penalties would de facto criminalise possession for personal use due to law enforcement's obligation to uphold Commonwealth possession offences. However, I am concerned that Commonwealth possession offences will prove unfeasible in practice, due to significant differences with ACT's current law. For example, the purity requirement will significantly increase the resource burden on investigators, and the CDPP may not be equipped to deal with an influx of new cases given that Commonwealth law does not contain provisions for diversion. These issues will also likely tie up other resources usually dedicated to other policing work.

Noting the attached talking points s22(1)(a)(ii) has draft for Ciara to discuss with the Minister on this issue, I think we should proactively reach out to the AFP legal and policy areas to discuss their concerns and understanding of what would practically occur if the Bill is passed. This will enable us to better inform our executive and potentially support the AFP to develop a response, should the practical limitations of enforcing Commonwealth possession offences prove difficult.

If you agree, I'm happy to reach out to s22(1)(a)(ii) (AFP Policy) to arrange a meeting to discuss the matter.

Kind regards

s22(1)(a)(ii)

Drugs Policy Section
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s22(1)(a)(ii)

From: s22(1)(a)(ii) <s22(1)(a)(ii)@ag.gov.au>
Sent: Friday, 20 September 2019 1:27 PM
To: s22(1)(a)(ii) s22(1)(a)(ii)
Cc: s22(1)(a)(ii)
Subject: RE: Letter from ACT JACS [DLM=For-Official-Use-Only]

For Official Use Only

Hi s22(1)(a)(ii)

Given timing, we've had to discuss urgently with the ACT JACS this morning and just now – I'm happy to give you a more detailed readout over the phone, but the short version is we need to draft a letter in response pretty urgently. We can send you a draft when we have one (very sorry, it'll be a quick turnaround).

s22(1)(a)(ii)

From: s22(1)(a)(ii) [mailto:s22(1)(a)(ii)@homeaffairs.gov.au]
Sent: Friday, 20 September 2019 12:17 PM
To: s22(1)(a)(ii) <s22(1)(a)(ii)@ag.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@homeaffairs.gov.au>
Cc: s22(1)(a)(ii) <s22(1)(a)(ii)@ag.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@homeaffairs.gov.au>
Subject: RE: Letter from ACT JACS [DLM=For-Official-Use-Only]

For-Official-Use-Only

Hi s22(1)(a)(ii)

Thanks for sending the letter through.

If it's possible, grateful if we could send an attendee to a meeting between AGD and ACT JACS. s47C
 but it'd be useful to be involved in working level discussions to inform the development a possible response.

Happy to discuss.

s22(1)(a)(ii)

s22(1)(a)(ii)

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s22(1)(a)(ii)

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From: s22(1)(a)(ii) <s22(1)(a)(ii)@ag.gov.au>
Sent: Thursday, 19 September 2019 11:24 AM
To: s22(1)(a)(ii) <s22(1)(a)(ii)@homeaffairs.gov.au>
Cc: s22(1)(a)(ii) <s22(1)(a)(ii)@homeaffairs.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@ag.gov.au>
Subject: Letter from ACT JACS [DLM=For-Official-Use-Only]

For Official Use Only

Hi s22(1)(a)(ii)

As discussed, see attached letter from the ACT JACS – we're considering and proposing to discuss with ACT JACS.

s22(1)(a)(ii)

s22(1)(a)(ii)

Director | Criminal Law Section
 Security and Criminal Justice Branch | 3-5 National Circuit Barton ACT 2600
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s22(1)(a)(ii)

From: s22(1)(a)(ii)
Sent: Monday, 23 September 2019 9:11 AM
To: s22(1)(a)(ii)
Subject: Research into cannabis health effects - Department of Health - 'The health and psychological consequences of cannabis use' - 1994 [DLM=For-Official-Use-Only]

For-Official-Use-Only

Hi team

Given the current bill in the ACT Legislative Assembly to legalise cannabis, we thought it may be useful to garner a more informed understanding of the health effects associated with cannabis use.

[This publication](#) by the Department of Health discusses the health and psychological consequences of cannabis use. However, the publication is from 1994 and has since been rescinded, though remains accessible for historical and research purposes. I am unsure why the publication has been rescinded and I will continue to do further research to determine whether the analysis remains up to date or accurate.

Despite the publication date, the report contains a thorough analysis of the health effects of cannabis use. I have include a summary below of the adverse effects based on available evidence, as well as probable effects that require further research. However, I highly recommend that you take the time to read the whole report as the detail is important and the analysis is nuanced. Of note, the report states:

'There is less support for the hypothesis that cannabis use can cause either an acute or a chronic functional psychosis which persists beyond the period of intoxication. Such a possibility is difficult to study because of the rarity of such psychoses, and the near impossibility of distinguishing them from schizophrenia and manic depressive psychoses occurring in individuals who also abuse cannabis.'

Overall appraisal of the health and psychological risks of cannabis use

The following is a summary of the major adverse health and psychological effects of acute and chronic cannabis use, classified by the degree of confidence about the relationship between cannabis use and the adverse effect.

Acute effects

The major acute adverse psychological and health effects of cannabis intoxication are:

- anxiety, dysphoria, panic and paranoia, especially in naive users;
- cognitive impairment, especially of attention and memory;
- psychomotor impairment, and possibly an increased risk of accident if an intoxicated person attempts to drive a motor vehicle;
- an increased risk of experiencing psychotic symptoms among those who are vulnerable because of personal or family history of psychosis; and
- an increased risk of low birth weight babies if cannabis is used during pregnancy.

Chronic effects

The major health and psychological effects of chronic heavy cannabis use, especially daily use, over many years, remain uncertain. On the available evidence, the major probable adverse effects appear to be:

- respiratory diseases associated with smoking as the method of administration, such as chronic bronchitis and the occurrence of histopathological changes that may be precursors to the development of malignancy;
- development of a cannabis dependence syndrome, characterised by an inability to abstain from or to control cannabis use; and
- subtle forms of cognitive impairment, most particularly of attention and memory, which persist while the user remains chronically intoxicated, and may or may not be reversible after prolonged abstinence from cannabis.

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The following are the major possible adverse effects of chronic, heavy cannabis use which remain to be confirmed by further research:

- an increased risk of developing cancers of the aerodigestive tract, i.e. oral cavity, pharynx, and oesophagus;
- an increased risk of leukemia among offspring exposed in utero;
- a decline in occupational performance marked by underachievement in adults in occupations requiring high level cognitive skills, and impaired educational attainment in adolescents; and
- birth defects occurring among children of women who used cannabis during their pregnancies.

Kind regards

§22(1)(a)(ii)

Drugs Policy Section

Law Enforcement Policy Branch | National Security and Law Enforcement Policy Division

Policy Group

Department of Home Affairs

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s22(1)(a)(ii)

From: s22(1)(a)(ii) <s22(1)(a)(ii)@ag.gov.au>
Sent: Monday, 23 September 2019 1:46 PM
To: Ciara SPENCER; s22(1)(a)(ii)
Cc: Brayshaw, Elizabeth; s22(1)(a)(ii)
Subject: Letter to ACT - Cannabis laws [DLM=For-Official-Use-Only]
Attachments: Ltr 30 Aug 19 from ACT Justice and Community Safety seeking views of leg....pdf;
 230919 - AGD reply to JACS ACT - signed.pdf

For Official Use Only

Hi Ciara, s22(1)(a)(ii)

Further to discussions I had with s22(1)(a)(ii) late last week, Sarah Chidgey has just now responded to the letter from the ACT JACS regarding whether proposed amendments to its decriminalisation legislation would enliven relevant Commonwealth offences. I attach the signed letter (which made only minor changes to the version you saw in draft form).

The advice we have is the ACT may debate the Bill on Wednesday. I should also flag – the AGO got a media inquiry last week seeking comment on the ACT laws. The AGO advised this is a matter for the ACT but where Commonwealth laws apply they remain enforceable.

Happy to discuss.

s22(1)(a)(ii)

s22(1)(a)(ii)

Director | Criminal Law Section

Security and Criminal Justice Branch | 3-5 National Circuit Barton ACT 2600

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ACT
Government

Justice and Community Safety

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

Dear Mr Moraitis

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

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

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

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

The ACT Government's view is that the Bill is a logical next step of the Simple Cannabis Offence Notice (SCON) scheme that has been in operation since 1992. The SCONs scheme is intended to continue for individuals under 18 years old.

The ACT Government's amendments are also intended to resolve potential incompatibilities with Commonwealth laws, including the *Criminal Code Act 1995*. This would be achieved by retaining offences in the *Drugs of Dependence Act 1989* (ACT) for possession and cultivation of cannabis over prescribed limits with the inclusion of an exception such that those offences do not apply to anyone over 18 years of age. This is intended to operate as an excuse to an offence under s 308.1 of the Commonwealth Criminal Code (see s 313.1 of the Commonwealth Criminal Code).

I would appreciate your views on the issue of consistency with Commonwealth legislation, and whether the Bill with amendments to be proposed would operate as an excuse under

AGD SECRETARY - RECEIVED	
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<input type="checkbox"/> Priority B	<input type="checkbox"/> Reply by Dep.Sec
<input type="checkbox"/> Priority C	<input type="checkbox"/> Reply by Div.Head
<input type="checkbox"/> Information	<input type="checkbox"/> Brief Required
<input checked="" type="checkbox"/> App. Action	<input type="checkbox"/> Action Area
<input type="checkbox"/> NFA	
<input type="checkbox"/> Refer to	

- 2 SEP 2019

s22(1)(a)(iii)

Init: [redacted]

Date: 2/9

(Security & Crim Justice Branch)

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s 313.1 of the Commonwealth Criminal Code. I have also written to the Commonwealth Director of Public Prosecutions seeking her views on this matter.

Officers in ACT Government with responsibility for this matter are s22(1)(a)(ii) in the Chief Minister, Treasury and Economic Development Directorate available at s22(1)(a)(ii) @act.gov.au or s22(1)(a)(ii) and s22(1)(a)(ii) in the Justice and Community Safety Directorate available at s22(1)(a)(ii) @act.gov.au or s22(1)(a)(ii)

Yours sincerely

s22(1)(a)(ii)

Richard Glenn
A/g Director-General
Justice and Community Safety Directorate

30 August 2019

Encl.

2018

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Michael Pettersson)

Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018

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J2018-123

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2018

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Michael Pettersson)

Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018

A Bill for

An Act to amend the *Drugs of Dependence Act 1989*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

J2018-123

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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Section 1

1 **1 Name of Act**

2 This Act is the *Drugs of Dependence (Personal Cannabis Use)*
 3 *Amendment Act 2018*.

4 **2 Commencement**

5 This Act commences on 1 July 2019.

6 *Note* The naming and commencement provisions automatically commence on
 7 the notification day (see Legislation Act, s 75 (1)).

8 **3 Legislation amended**

9 This Act amends the *Drugs of Dependence Act 1989*.

10 *Note* This Act also amends other legislation (see sch 1).

11 **4 Offences against Act—application of Criminal Code etc**
 12 **Section 4, note 1**

13 *substitute*

14 *Note 1 Criminal Code*

15 The Criminal Code, ch 2 applies to the following offences against this
 16 Act (see Code, pt 2.1):

- 17 • s 162 (Cultivation of 1 to 4 cannabis plants)
- 18 • s 171 (Possessing prohibited substances)
- 19 • s 171AA (Possessing cannabis)
- 20 • s 171AB (Smoking cannabis in public place or near child).

21 The chapter sets out the general principles of criminal responsibility
 22 (including burdens of proof and general defences), and defines terms used
 23 for offences to which the Code applies (eg *conduct*, *intention*,
 24 *recklessness* and *strict liability*).

Section 5

1 **5 Section 162**2 *substitute*3 **162 Cultivation of 1 to 4 cannabis plants**

4 (1) A person commits an offence if the person—

5 (a) is under 18 years old; and

6 (b) cultivates 1 to 4 cannabis plants.

7 Maximum penalty: 1 penalty unit.

8 (2) In this section:

9 *artificially cultivate* means—

10 (a) hydroponically cultivate; or

11 (b) cultivate with the application of an artificial source of light or
12 heat.13 *cultivates* has the meaning given in the Criminal Code, section 615
14 but does not include artificially cultivate.15 **6 Section 171**16 *substitute*17 **171 Possessing prohibited substances**18 (1) A person commits an offence if the person possesses a prohibited
19 substance.20 Maximum penalty: 50 penalty units, imprisonment for 2 years or
21 both.22 (2) Subsection (1) does not apply if the person is authorised under the
23 *Medicines, Poisons and Therapeutic Goods Act 2008*, or another
24 territory law, to possess the prohibited substance.

Section 7

- 1 (3) In this section:
 2 *prohibited substance* does not include cannabis.
- 3 **171AA Possessing cannabis**
- 4 (1) A person commits an offence if the person—
 5 (a) is under 18 years old; and
 6 (b) possesses 50g or less of cannabis.
 7 Maximum penalty: 1 penalty unit.
- 8 (2) A person commits an offence if the person possesses more than 50g
 9 of cannabis.
 10 Maximum penalty: 50 penalty units, imprisonment for 2 years or
 11 both.
- 12 (3) Subsections (1) and (2) do not apply if the person is authorised under
 13 the *Medicines, Poisons and Therapeutic Goods Act 2008*, or another
 14 territory law, to possess the prohibited substance.
- 15 **7 Offence notices**
 16 **Section 171A (7), definition of *simple cannabis offence***
 17 *substitute*
 18 *simple cannabis offence* means—
 19 (a) an offence against section 162 (Cultivation of 1 to 4 cannabis
 20 plants); or
 21 *Note* Section 162 does not include artificial cultivation of cannabis
 22 plants.
 23 (b) an offence against section 171AA (1) of a person under 18 years
 24 old possessing 50g or less of cannabis.

8 New section 171AB

before section 171B, insert

171AB Smoking cannabis in public place or near child

- (1) A person commits an offence if the person smokes cannabis in a public place.

Maximum penalty: 30 penalty units.

- (2) A person commits an offence if—

- (a) the person smokes cannabis; and
(b) a child is within 20m of the person.

Maximum penalty: 30 penalty units.

- (3) In this section:

personal vaporiser—see the *Tobacco and Other Smoking Products Act 1927*, section 3B.

public place—see the *Smoke-Free Public Places Act 2003*, dictionary.

smoke cannabis means—

- (a) to directly puff smoke, or vapour, from cannabis, or a product that contains cannabis, whether or not a device for the inhalation of smoke, or vapour, is used; or
(b) to hold or to have control over—
(i) cannabis, or a product that contains cannabis, while it is ignited; or

Section 9

- 1 (ii) a personal vaporiser that contains cannabis and that is
2 activated.

3 **Examples—devices—par (a)**

- 4 • a personal vaporiser
5 • a pipe (including a hookah, water pipe or bong)
6 • a cigarette holder

7 **9 Dictionary, note 2**

8 *insert*

- 9 • territory law

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Criminal Code 2002

[1.1] Sections 605 and 614, note

substitute

Note For additional offences relating to possessing controlled drugs, see the *Drugs of Dependence Act 1989*, ss 169, 171 and 171AA and the *Medicines, Poisons and Therapeutic Goods Act 2008*, s 36.

[1.2] Section 618 (2)

substitute

(2) A person commits an offence if the person—

(a) cultivates (artificially or otherwise) 5 or more cannabis plants;
or

(b) artificially cultivates 1 to 4 cannabis plants.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

Note Non-artificial cultivation of 1 to 4 cannabis plants by a person under 18 years old is a summary offence under the *Drugs of Dependence Act 1989*, s 162.

[1.3] New section 636A (3) (ba)

insert

(ba) that Act, section 171AA; or

Schedule 1 Consequential amendments
 Part 1.2 Medicines, Poisons and Therapeutic Goods Act 2008
 Amendment [1.4]

Part 1.2 Medicines, Poisons and Therapeutic Goods Act 2008

[1.4] New section 9A

in chapter 2, insert

9A Application of Act to certain cannabis use not prohibited under Drugs of Dependence Act 1989

- (1) The following provisions of this Act do not apply to an adult to the extent that the substance is 50g or less of defined cannabis:
 - (a) section 26 (2) (Supplying declared substances);
 - (b) section 33 (Manufacturing regulated substances);
 - (c) section 35 (1) (Obtaining certain declared substances);
 - (d) section 36 (Possessing certain declared substances);
 - (e) section 37 (2) (Administering certain declared substances).
- (2) In this section:

defined cannabis—

 - (a) means cannabis as defined in the *Drugs of Dependence Act 1989*; but
 - (b) does not include a substance or medicine that is able to be prescribed under this Act.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 28 November 2018.

2 Notification

Notified under the Legislation Act on 2018.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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Andrew Barr MLA

Chief Minister

Treasurer

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

Ms Bec Cody MLA

Chair

Standing Committee on Health, Ageing and Community Services

Legislative Assembly for the ACT

GPO Box 1020

CANBERRA ACT 2601

Dear Ms ^{Bec}Cody

Thank you for your letter of 27 February 2019 inviting the Government to provide an outline of intended amendments to the *Drugs of Dependence (Personal Cannabis) Amendment Bill 2018* that has been referred to the Standing Committee on Health, Ageing and Community Services for inquiry. The following information is provided for the information of the Committee.

The ACT Government's drug policy

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

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

The ACT has a long history of taking progressive steps and trying new ideas to minimise the harm of drugs in our community. This includes being one of the first jurisdictions in Australia to decriminalise the personal possession of small amounts of cannabis. The Government intends to continue taking well considered steps to improve our drug laws, including supporting this Bill subject to appropriate amendments which are detailed later in this submission.

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

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actchiefminister



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Matters to be considered

As is to be expected with an issue as complex as this, the Government has identified a number of issues requiring further consideration before the Bill can be passed.

Even after the passage of this Bill, possessing and growing cannabis will carry a degree of risk arising from interaction between Territory and Commonwealth law. We believe the ACT is able and entitled to make our own laws on this matter. However, we would be the first jurisdiction in Australia to legislate in this way, and the interaction with existing Commonwealth law remains untested.

There is also uncertainty as to how a Commonwealth Government may react to the ACT passing this Bill and we cannot guarantee a Commonwealth Government would not intervene to prevent reforms – as has occurred in the past.

There are also a range of health implications to be considered. It is clear that some people experience adverse mental health effects from using cannabis, and that its use can become problematic over time. However, it must be noted that these health risks already exist for anyone who uses cannabis under current legislation.

Implementation of this Bill may be able to assist in addressing some of these health risks. For example, the stigma and risk of punishment associated with illegal drug use may mean that prohibition is preventing people from seeking medical or other types of help when it is needed. Legalising the personal use of small amounts of cannabis will create opportunities to better reach people who are already using the drug and connect them with the services or supports they need. The implications for justice outcomes are similarly complex. Currently, possessing small amounts of cannabis for personal use can bring people into contact with the justice system, with lasting and serious consequences. Moving from the decriminalisation to legalisation of small amounts of personal cannabis could avoid help individuals avoid these negative outcomes.

The Government also has a responsibility to focus our justice resource where they're needed the most: on disrupting serious and organized crime, protecting our community from individuals or groups who might wish to do us harm, helping women and children dealing with domestic and family violence. Legalisation means the ACT's police and court resources can be better focused in these areas where they are most needed.

There are also broader public safety effects to be considered. Under the current regime, the one-in-twelve Canberrans that use cannabis have no legal channel to obtain it. As a result, otherwise law-abiding individuals are required to interact with criminals in a way that exposes them to risks and may also increase the risk of further offending in our community.

By legalising the option for individuals to cultivate a small number of plants for their own use, there may be opportunities to reduce the market for illegal drugs – a market that would otherwise provide revenue to serious or organised criminals.

Proposed Government Amendments

In light of these and other issues, the Government intends to move a number of amendments to the Private Members Bill. We have instructed the Parliamentary Counsel's Office to draft Government amendments which would give effect to the following safeguards and improvements:

1. Personal plant limits

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

2. Household plant limits

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

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

3. Restrictions on where cannabis can be grown

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

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

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

4. Secure storage

Government amendments will require cannabis to be kept securely when not in an individual's possession in order to restrict access by children and young people or other vulnerable individuals.

5. Distinguish between fresh and dried cannabis

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

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

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

6. Smoking near children

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

To make this element more practical, the Government will move amendments to prohibit the smoking of cannabis near children through an offence involving a mental element rather than a distance based rule. That is, an individual will be deemed to have committed an offence if they *knowingly or intentionally* use cannabis in a way that exposes a person less than 18 years old to this.

Other matters

The Government acknowledges that legalisation of cannabis for personal use has not been tried in Australia before. Notwithstanding the above amendments, there remains a degree of uncertainty and risk associated with the proposed new approach. However, the ACT Government believes it is important to continue exploring new measures to reduce the harm from drugs in our community.

We will seek to collect relevant data to effectively evaluate the outcomes of legalisation, with a formal evaluation being conducted not more than two years after the date of the Bill's implementation. This will help inform decisions about any necessary further reform or amendments to the legislative framework created through this Bill.

Thank you again for your invitation to make a submission to this inquiry. We understand that these are reforms the Canberra community wants to see made, but also ones that must also be properly and carefully considered. The Government is now undertaking that work and will provide a detailed set of drafted amendments reflecting the points above to the Committee when these are available.

Yours sincerely



Andrew Barr MLA
Chief Minister

18 MAR 2019



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

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

Dear Mr Glenn

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

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

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

Yours sincerely

s22(1)(a)(ii)



Sarah Chidgey
23 September 2019

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§22(1)(a)(ii)

From: §22(1)(a)(ii)
Sent: Monday, 23 September 2019 2:21 PM
To: §22(1)(a)(ii)
Subject: FW: ACT Cannabis Bill - §42 {SEC=PROTECTED}

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§22(1)(a)(ii)

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§22(1)(a)(ii)

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AFP position.

§22(1)(a)(ii)

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Subject: RE: ACT Cannabis Bill - §42 [SEC=PROTECTED]

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Thanks §22(1)(a)(ii)

We're not in a rush either. We'll let you know what – if anything – MHAO comes back with.

§22(1)(a)(ii)

§22(1)(a)(ii)

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Cc: §22(1)(a)(ii) ; §22(1)(a)(ii) ; §22(1)(a)(ii) ; §22(1)(a)(ii) ; §22(1)(a)(ii)
Subject: RE: ACT Cannabis Bill - §42 [SEC=PROTECTED]

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Thanks §22(1)(a)(ii) – ultimately happy to defer to you on timing of the meeting to form a Cth view.

The reason I suggested the broader meeting is that Infrastructure has a fairly central stake in the question raised about overriding the ACT Bill (involving them was my primary concern, PM&C just got in as well indicating a strong interest in being involved). We're all across the key issues in terms of the interaction of laws but I must admit I am not clear on desired next steps (and we certainly haven't sought a steer from the AGO, but they may ask for advice – your office might have a stronger view). But no massive rush from our end so happy to await further guidance.

§22(1)(a)(ii)

From: §22(1)(a)(ii) [[mailto:§22\(1\)\(a\)\(ii\)@HOMEAFFAIRS.GOV.AU](mailto:§22(1)(a)(ii)@HOMEAFFAIRS.GOV.AU)]
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Subject: RE: ACT Cannabis Bill - §42 [DLM=Sensitive:Legal] [SEC=PROTECTED]

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Hi §22(1)(a)(ii)

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Thanks for the chat just then. As we discussed, we're putting together an email to send to the Office today which will include a brief overview of the proposed law, ^{s42} the option of using the territories power. It will be high level and we'll run it by you. ^{s22(1)(a)(ii)} gave me a bit of a run-down on the phone yesterday about the practical implications of the bill from a policing perspective. If you'd like to include a paragraph on that please do, but we'll leave it to your judgment as to whether it's necessary and/or desirable at this point.

^{s22(1)(a)(ii)} – just tried to call you about the potential meeting between relevant agencies (AGD, AFP, Home Affairs, PM&C, Infrastructure and potentially ACIC). ^{s22(1)(a)(ii)} and I discussed this and think we can probably hold off until we hear a bit more from AGO and/or MHAO. Between ^{s22(1)(a)(ii)} email (attached) and our conversations with the AFP I think everyone who needs to know about it is across the key issues for the moment. Please let me know if you would prefer to get everyone in a room together: we are happy to organise.

Thanks

^{s22(1)(a)(ii)}

^{s22(1)(a)(ii)}

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Subject: RE: ACT Cannabis Bill - ^{s42} [DLM=Sensitive:Legal] [SEC=PROTECTED, DLM=Sensitive:Legal]

PROTECTED, Sensitive:Legal

Morning all

Our Snr Exec are very keen for us to engage closely (and quickly) on this one.

Unsure if any consideration has yet been given to overriding ACT Bill (if it becomes an Act) i.e., not on the basis of inconsistency but the broader "Territories power" of the Cth under the Constitution.

Kind regards,

^{s22(1)(a)(ii)}

^{s22(1)(a)(ii)}

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Sent: Wednesday, 9 January 2019 2:31 PM
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Cc: s22(1)(a)(ii); s22(1)(a)(ii); s22(1)(a)(ii); s22(1)(a)(ii); s22(1)(a)(ii); s22(1)(a)(ii)
Subject: RE: ACT Cannabis Bill - s42 [DLM=Sensitive:Legal] [SEC=PROTECTED, DLM=Sensitive:Legal]

~~PROTECTED, Sensitive:Legal~~

Copy and Thanks.

As I understand AFP Media has sent some talking points up to the MHAO for consideration of a Cwth position on the ACT Cannabis Bill, as well as general talking points on pill testing in the ACT as it relates to harm minimisation. I have asked AFP media to keep our team informed if the MO returns a position.

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Subject: FW: ACT Cannabis Bill - s42 [DLM=Sensitive:Legal]

~~Sensitive:Legal~~

Hi s22(1)(a)(ii)

Thanks for the chat just then. s42 We'll likely be in touch soon regarding a meeting: the AFP's views on the interaction (or lack of) between the two laws would be most useful.

Oh, and thanks for going back to s22(1)(a)(ii) for me. As I said, I did leave a voicemail for her but I'd prefer to deal with your team.

Thanks

s22(1)(a)(ii)

s22(1)(a)(ii)
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Sent: Tuesday, 8 January 2019 11:15 AM
To: §22(1)(a)(ii) <§22(1)(a)(ii)@pmc.gov.au>; §22(1)(a)(ii) <§22(1)(a)(ii)@infrastructure.gov.au>; §22(1)(a)(ii) <§22(1)(a)(ii)@HOMEAFFAIRS.GOV.AU>; §22(1)(a)(ii) <§22(1)(a)(ii)@HOMEAFFAIRS.GOV.AU>; §22(1)(a)(ii) <§22(1)(a)(ii)@health.gov.au>; §22(1)(a)(ii) <§22(1)(a)(ii)@health.gov.au>
Cc: §22(1)(a)(ii) <§22(1)(a)(ii)@ag.gov.au>; §22(1)(a)(ii) <§22(1)(a)(ii)@ag.gov.au>; §22(1)(a)(ii) <§22(1)(a)(ii)@ag.gov.au>
Subject: ACT Cannabis Bill - §42 [DLM=Sensitive:Legal]

§42

Kind regards

§22(1)(a)(ii)

§22(1)(a)(ii)

Legal Officer | Criminal Law Section
 Integrity and Security Division
 Attorney-General's Department | 3-5 National Circuit | Barton ACT 2600
 (02) §22(1)(a)(ii) | §22(1)(a)(ii) <§22(1)(a)(ii)@ag.gov.au>

§22(1)(a)(ii)

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s22(1)(a)(ii)

From: s22(1)(a)(ii)
Sent: Monday, 23 September 2019 2:21 PM
To: s22(1)(a)(ii)
Subject: FW: ACT Cannabis Bill - Cwth position Criminal Code defence [DLM=Sensitive:Legal]
Attachments: Drugs of Dependence Bill 2018.pdf; Drugs of Dependence ES.PDF; FINAL ADVC - ACT proposal to legalise personal cannabis use.pdf

Sensitive:Legal

s22(1)(a)(ii)

Director | Drugs Policy Section
 Law Enforcement Policy Branch | National Security and Law Enforcement Policy Division
 Policy Group
 Department of Home Affairs
 P: +61 2 s22(1)(a)(ii)
 E: s22(1)(a)(ii) [homeaffairs.gov.au](mailto:s22(1)(a)(ii)@homeaffairs.gov.au)

s22(1)(a)(ii)

Sensitive:Legal

From: s22(1)(a)(ii) <s22(1)(a)(ii)@homeaffairs.gov.au>
Sent: Thursday, 19 September 2019 4:45 PM
To: s22(1)(a)(ii) <s22(1)(a)(ii)@homeaffairs.gov.au>
Subject: FW: ACT Cannabis Bill - Cwth position Criminal Code defence [DLM=Sensitive:Legal]

Sensitive:Legal

Cth position.

s22(1)(a)(ii)

Director | Drugs Policy Section
 Law Enforcement Policy Branch | National Security and Law Enforcement Policy Division
 Policy Group
 Department of Home Affairs
 P: +61 2 s22(1)(a)(ii)
 E: s22(1)(a)(ii) [homeaffairs.gov.au](mailto:s22(1)(a)(ii)@homeaffairs.gov.au)

s22(1)(a)(ii)

Sensitive:Legal

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To: s22(1)(a)(ii) <s22(1)(a)(ii)@HOMEAFFAIRS.GOV.AU>
Cc: s22(1)(a)(ii) <s22(1)(a)(ii)@ag.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@ag.gov.au>;
s22(1)(a)(ii) <s22(1)(a)(ii)@HOMEAFFAIRS.GOV.AU>; s22(1)(a)(ii) <s22(1)(a)(ii)@ag.gov.au>
Subject: ACT Cannabis Bill - Cwth position Criminal Code defence [DLM=Sensitive:Legal]

Sensitive: Legal

Hi s22(1)(a)(ii)

s42

Please feel free to contact me should you wish to discuss.

Kind regards

s22(1)(a)(ii)

s22(1)(a)(ii)

Legal Officer | Criminal Law Section
Integrity and Security Division
Attorney-General's Department | 3-5 National Circuit | Barton ACT 2600
(02) s22(1)(a)(ii) | s22(1)(a)(ii)@ag.gov.au

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s22(1)(a)(ii)

From: s22(1)(a)(ii)
Sent: Monday, 23 September 2019 5:27 PM
To: s22(1)(a)(ii) Ciara SPENCER
Cc: Brayshaw, Elizabeth; s22(1)(a)(ii) s22(1)(a)(ii)
Subject: RE: Letter to ACT - Cannabis laws [DLM=For-Official-Use-Only]

For-Official-Use-Only

Hi s22(1)(a)(ii)

Thanks for keeping us in the loop. We will get a read from the MHAO on possible responses and update you accordingly.

If you hear confirmation of debate timing, please let us know. Also, if you receive the amendments to the Bill, we'd be grateful for a copy. I assume you'll seek further AGS advice on the amended Bill?

We've given an update to PMC and AFP on the current developments and we will loop you in if anything substantive arises.

Happy to discuss.

s22(1)(a)(ii)

s22(1)(a)(ii)

Director | Drugs Policy Section
 Law Enforcement Policy Branch | National Security and Law Enforcement Policy Division
 Policy Group
 Department of Home Affairs
 P: +61 2 s22(1)(a)(ii)
 E: s22(1)(a)(ii) [homeaffairs.gov.au](mailto:s22(1)(a)(ii)@homeaffairs.gov.au)

s22(1)(a)(ii)


For-Official-Use-Only

From: s22(1)(a)(ii) <s22(1)(a)(ii)@ag.gov.au>
Sent: Monday, 23 September 2019 1:46 PM
To: Ciara SPENCER <s22(1)(a)(ii)@homeaffairs.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@homeaffairs.gov.au>
Cc: Brayshaw, Elizabeth <s22(1)(a)(ii)@ag.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@ag.gov.au>
Subject: Letter to ACT - Cannabis laws [DLM=For-Official-Use-Only]

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Sent: Monday, 23 September 2019 9:36 PM
To: s22(1)(a)(ii) Ciara SPENCER
Cc: Brayshaw, Elizabeth; s22(1)(a)(ii) s22(1)(a)(ii)
Subject: RE: Letter to ACT - Cannabis laws [DLM=For-Official-Use-Only]

For Official Use Only

Thanks s22(1)(a)(ii).

We haven't seen the terms of any amendments s42

I was probably unnecessarily cautious around timing in my earlier email – the indication we had was there was a fair likelihood Wednesday would be the day, but we'll see.

s22(1)(a)(ii)

From: s22(1)(a)(ii) [mailto:s22(1)(a)(ii)@homeaffairs.gov.au]
Sent: Monday, 23 September 2019 5:27 PM
To: s22(1)(a)(ii) <s22(1)(a)(ii)@ag.gov.au>; Ciara SPENCER <s22(1)(a)(ii)@homeaffairs.gov.au>
Cc: Brayshaw, Elizabeth <s22(1)(a)(ii)@ag.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@ag.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@homeaffairs.gov.au>
Subject: RE: Letter to ACT - Cannabis laws [DLM=For-Official-Use-Only]

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Sent: Monday, 23 September 2019 1:46 PM

To: Ciara SPENCER <s22(1)(a)(ii)@homeaffairs.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@homeaffairs.gov.au>

Cc: Brayshaw, Elizabeth <s22(1)(a)(ii)@ag.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@ag.gov.au>

Subject: Letter to ACT - Cannabis laws [DLM=For-Official-Use-Only]

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Hey s22(1)(a)(ii)

s22(1)(a)(ii)

s22(1)(a)(ii)

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With thanks

s22(1)(a)(ii)

Executive Assistant to Ciara Spencer

Law Enforcement Policy Branch/National Security and Law Enforcement Policy

Department of Home Affairs

P: 02 s22(1)(a)(ii)

M: s22(1)(a)(ii)

E: s22(1)(a)(ii)

homeaffairs.gov.au

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s22(1)(a)(ii)

From: Ciara SPENCER
Sent: Tuesday, 24 September 2019 3:19 PM
To: s22(1)(a)(ii)
Cc: DLO; s22(1)(a)(ii); Marc ABLONG; s22(1)(a)(ii); Hamish HANSFORD; s22(1)(a)(ii)
Subject: HPRM: ACT Cannabis Bill [SEC=PROTECTED, DLM=Sensitive:Legal]
Attachments: Ltr 30 Aug 19 from ACT Justice and Community Safety seeking views of leg....pdf

PROTECTED, Sensitive:Legal

Hi s22(1)(a)(ii)

Please see below advice to Senior Advisor Phil Brezzo regarding the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018* (ACT). Recent advice indicates that the Bill may be debated in the ACT Legislative Assembly as soon as this Wednesday, 25 September 2019, and amendments will likely be introduced that could significantly alter the operation of the Bill.

We will continue to keep you updated as the Bill progresses, but please let us know if you would like us to prepare a submission on potential policy options for the Minister's consideration.

Background

Late last year, a private members Bill was introduced into the ACT Legislative Assembly that would decriminalise the personal use of cannabis, allow for the possession of 50 grams of cannabis and the cultivation of four cannabis plants (the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018* (ACT)).

As introduced, the Bill would technically legalise the personal use, possession and cultivation of cannabis in the ACT, however the possession of any amount of cannabis would remain a Commonwealth criminal offence. In effect, it would still remain as an criminal offence and it would be an operational matter for ACT policing and the AFP to decide how this discrepancy would be managed.

Amendments to the Bill

The [ACT Chief Minister has flagged a variety of amendments](#) that the ACT Government will introduce to the Bill. The Director-General of ACT Justice and Community Safety has also written to the Attorney-General's Department (letter attached) outlining the intention to introduce amendments to ensure that the Bill excuses a person in the ACT over 18 years of age from the possession offence in the Commonwealth Criminal Code (see s 313.1 of the Criminal Code).

Noting that we have not seen the text of the proposed amendments, s42 if the amendments are able to operate as an excuse to the relevant offence then it is **highly likely that personal possession and cultivation of cannabis would effectively be legalised in the ACT** (and Commonwealth law would not rise to effect).

Next Steps

We have engaged at the officer level with the AFP (and ACT Policing), AGD and PM&C to ensure we are across any updates as they arise, and will continue to monitor the Bill as it progresses.

Happy to discuss

Ciara

Ciara Spencer

Assistant Secretary
Law Enforcement Policy | National Security and Law Enforcement Policy
Policy Group
Department of Home Affairs
P: 02 s22(1)(a)(ii) M: s22(1)(a)(ii)
E: s22(1)(a)(ii) [homeaffairs.gov.au](mailto:s22(1)(a)(ii)@homeaffairs.gov.au)

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From: s22(1)(a)(ii) <s22(1)(a)(ii)@HOMEAFFAIRS.GOV.AU>
Sent: Friday, 11 January 2019 5:35 PM
To: Phil BREZZO <s22(1)(a)(ii)@HOMEAFFAIRS.GOV.AU>
Cc: DLO <dlo@homeaffairs.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@homeaffairs.gov.au>; Hamish HANSFORD <s22(1)(a)(ii)@HOMEAFFAIRS.GOV.AU>; David WILDEN <s22(1)(a)(ii)@HOMEAFFAIRS.GOV.AU>; s22(1)(a)(ii) <s22(1)(a)(ii)@HOMEAFFAIRS.GOV.AU>; s22(1)(a)(ii) <s22(1)(a)(ii)@HOMEAFFAIRS.GOV.AU>; s22(1)(a)(ii) <s22(1)(a)(ii)@HOMEAFFAIRS.GOV.AU>; s22(1)(a)(ii) <s22(1)(a)(ii)@HOMEAFFAIRS.GOV.AU>
Subject: ACT Cannabis Bill [SEC=PROTECTED, DLM=Sensitive:Legal]

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From: s22(1)(a)(ii) <s22(1)(a)(ii)@afp.gov.au>
Sent: Wednesday, 25 September 2019 5:15 PM
To: s22(1)(a)(ii)
Cc: Budget-Policy-Priorities
Subject: ACT Cannabis Bill [DLM=For-Official-Use-Only]

For-Official-Use-Only

Hi s22(1)(a)(ii)

Apologies, s22(1)(a)(ii) passed on your emails and asked me to touch base in regards to the ACT Cannabis Bill, but I have been slammed and only just now getting around to it.

By now you would have likely heard that the Bill passed the ACT Assembly. All of the ACT Government Amendments were supported, except for the commencement date, which was amended to reflect the Green's proposed change (the Bill can't commence until guidance has been formally published).

I reached out to my ACT Policing counterparts in regards to the Bill and the key positioning put forward by ACTP prior to the Bill passing, including through their committee process.

Essentially, ACTP deferred to Government on decisions of policy, but noted the reservations from a policing perspective, including the interaction of the Bill with Commonwealth law, and the flow on consequences for ACTP officers.

While the next steps for the Cth are a matter not for the AFP, I'd be more than happy to chat about the key issues. It would be good to be kept abreast of the thinking and understand what/if anything will occur.

I'll try to give you a call in the morning to discuss.

Apologies again for the delay in engaging with you on this one.

Kind regards,

s22(1)(a)(ii)

s22(1)(a)(ii)

COORDINATOR
 BUDGET AND POLICY PRIORITIES &
 LONG TERM SUSTAINABLE FUNDING MODEL PROJECT
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From: s22(1)(a)(ii) <s22(1)(a)(ii)> pmc.gov.au>
Sent: Wednesday, 25 September 2019 5:56 PM
To: s22(1)(a)(ii)
Cc: Border Security Policy; s22(1)(a)(ii)
Subject: RE: Letter to ACT - Cannabis laws [DLM=For-Official-Use-Only]

Follow Up Flag: Follow up
Flag Status: Completed

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Hi all,

I see the ACT legislation went through. What was the verdict on whether the amendments affected Commonwealth offences?

Please give us a call if we can help in any way.

Cheers,

s22(1)(a)(ii)

From: s22(1)(a)(ii) <s22(1)(a)(ii)> homeaffairs.gov.au>
Sent: Monday, 23 September 2019 2:43 PM
To: s22(1)(a)(ii) <s22(1)(a)(ii)> pmc.gov.au>
Cc: s22(1)(a)(ii) <s22(1)(a)(ii)> pmc.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)> homeaffairs.gov.au>
Subject: FW: Letter to ACT - Cannabis laws [DLM=For-Official-Use-Only]

For-Official-Use-Only

Hi s22(1)(a)(ii)

As discussed. We will let you know of further developments.

Kind regards,

s22(1)(a)(ii)

s22(1)(a)(ii)

Director | Drugs Policy Section
 Law Enforcement Policy Branch | National Security and Law Enforcement Policy Division
 Policy Group
 Department of Home Affairs
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Sent: Monday, 23 September 2019 1:46 PM

To: Ciara SPENCER <s22(1)(a)(ii)@homeaffairs.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@homeaffairs.gov.au>

Cc: Brayshaw, Elizabeth <s22(1)(a)(ii)@ag.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@ag.gov.au>

Subject: Letter to ACT - Cannabis laws [DLM=For-Official-Use-Only]

s22(1)(a)(ii) - duplicate email

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s22(1)(a)(ii)

From: s22(1)(a)(ii)
Sent: Thursday, 26 September 2019 9:00 AM
To: s22(1)(a)(ii) s22(1)(a)(ii)
Subject: Conversation with s22(1)(a)(ii)

s22(1)(a)(ii) 8:43 AM:

Did you see that the CDPP has overturned their advice to the ACT Government on the Cannabis Bill

s22(1)(a)(ii) 8:44 AM:

nope - where's that?

s22(1)(a)(ii) 8:44 AM:

<https://readnow.isentia.com/Temp/124898-35544960/1177159955.pdf>

They sent them a new letter yesterday

s22(1)(a)(ii) 8:44 AM:

oh haha that was the next tab in my morning media

s22(1)(a)(ii) 8:46 AM:

I'm glad we decided not to reach out to the CDPP in the end haha

The confusion prompted Mr Barr to ask "what changed?" "Has there been any communication between federal ministers and the [Attorney-General's] department to what should be an independent director of public prosecutions?" he said.

s22(1)(a)(ii) 8:46 AM:

Yeah true

I wasn't aware that would be an issue

s22(1)(a)(ii) 8:47 AM:

Not that it would have been in the wrong, but you can imagine it could have been construed badly

s22(1)(a)(ii) 8:47 AM:

True

s22(1)(a)(ii) 8:47 AM:

yeah there would have been nothing technically wrong with it, but media/ACT Gov could contrue it as putting pressure on them

s22(1)(a)(ii) 8:47 AM:

Mm yeah youre right

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§22(1)(a)(ii)

From: §22(1)(a)(ii)
Sent: Thursday, 26 September 2019 11:09 AM
To: §22(1)(a)(ii)
Cc: Drugs Policy
Subject: HPRM: FW: ACT Cannabis Bill [SEC=UNCLASSIFIED]
Attachments: Submission-28-ACT-Policing.pdf

UNCLASSIFIED

For your visibility. I've attached the ACT policing submission for your information, which outlines the practical concerns they have with the Bill.

§22(1)(a)(ii)

§22(1)(a)(ii)

Director | Drugs Policy Section
 Law Enforcement Policy Branch | National Security and Law Enforcement Policy Division
 Policy Group
 Department of Home Affairs
 P: +61 2 §22(1)(a)(ii)
 E: §22(1)(a)(ii) [homeaffairs.gov.au](mailto:§22(1)(a)(ii)@homeaffairs.gov.au)

§22(1)(a)(ii)

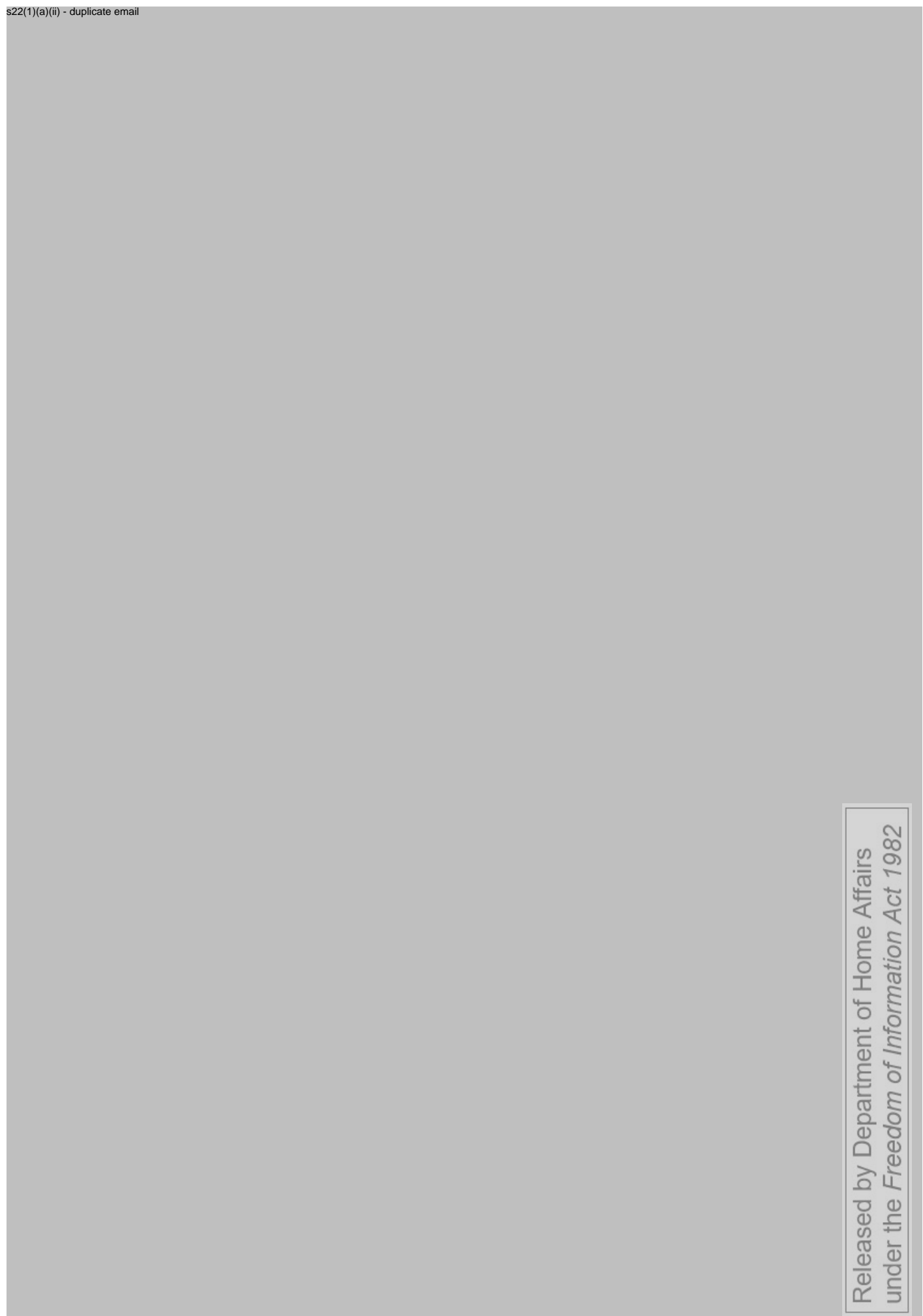
UNCLASSIFIED

From: §22(1)(a)(ii) <§22(1)(a)(ii)@afp.gov.au>
Sent: Wednesday, 25 September 2019 5:15 PM
To: §22(1)(a)(ii) <§22(1)(a)(ii)@homeaffairs.gov.au>
Cc: Budget-Policy-Priorities <Budget-Policy-Priorities@afp.gov.au>
Subject: ACT Cannabis Bill [DLM=For-Official-Use-Only]

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LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON HEALTH, AGEING AND COMMUNITY SERVICES
Ms Bec Cody MLA (Chair), Mrs Vicki Dunne MLA (Deputy Chair)
Ms Caroline Le Couteur MLA

Submission Cover Sheet

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

Submission Number: 28

Date Authorised for Publication: 21.03.2019

For Official Use Only



AFP

AUSTRALIAN FEDERAL POLICE



Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018

March, 2019

Submission by ACT Policing

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Executive Summary

ACT Policing appreciates the opportunity to provide a submission to the Standing Committee on Health, Ageing and Community Services (the Committee) in response to the Inquiry into the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2019 (the Bill). ACT Policing is committed to initiatives that improve community safety and support the ongoing ACT Government commitment to the principles of harm minimisation and treatment of substance abuse as health led wherever possible. ACT Policing remains committed to tackling organised crime and bringing to justice the sellers, marketers, commercial growers and distributors of illegal drugs.

ACT Policing has a number of practical concerns with the Bill in its current form. The key concerns relate to the apparent effect of removing provisions in ACT law to deal with simple cannabis offences whilst Commonwealth legislation continues to make it a criminal offence to possess or cultivate cannabis. This effect will:

- i. create ambiguity for police dealing with cannabis possession and cultivation. On the face of it, regardless of the passing of the Bill, possession of cannabis would remain illegal in the ACT by effect of Commonwealth law. This would create a tension for ACT Policing members between their obligation to implement ACT Government policy intent and to have regard for the Commonwealth criminal law;
- ii. remove access to existing options for diversion away from the criminal justice system for simple cannabis offences. This framework is well established and built on the principles of harm minimisation and would be instead substituted by an offence with a penalty of up to two years imprisonment. This point is important should it be the case that the Commonwealth criminal offence becomes the main offence in the absence of an ACT alternative; and
- iii. result in a greater risk to police of allegations by the community of breaches of the AFP Code of Conduct, failure to appropriately deal with illegal drugs and failure to adequately investigate breaches of Australian criminal law;

Other impacts of the proposed legislation will likely also include:

- iv. providing a greater incentive for serious and organised crime involvement in the cultivation of cannabis in the ACT through exploitation of 'crop sitters' to remove the growing cycle risk from illegal commercial cannabis production existing in other jurisdictions;
- v. not positively address the risk of road trauma in our community as a result of impaired driving – one of the 'fatal five' factors known to disproportionately contribute to serious motor vehicle collisions on our roads; and
- vi. resourcing implications for ACT Policing should there be increased criminal activity or reports of such, which cannot be accurately forecast without knowing the final form of the legislation.

ACT Policing will continue to support the Government in implementing its public health and safety policies, including collaborative consultation with ACT Government partners and key stakeholders to identify solutions to the issues identified herein.

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Commonwealth Legislation

ACT Policing has consulted with both Territory and Commonwealth Government partners and holds the view that the Bill would not negate existing offences within the *Criminal Code 1995* (Cth) (the Code). Cannabis would continue to be a controlled drug in accordance with Commonwealth law and possession or cultivation of any amount will remain illegal in the ACT.

It remains unclear and open to judicial interpretation as to whether or not defences to existing offences in the Code would be available to persons should they be charged with possession or cultivation of "personal use quantities" of cannabis in the ACT.

The relevant offences in the Code incur a penalty of up to two years imprisonment with no established criminal diversion options.

Practical Implications for Police

Obligation to Uphold and Enforce Australian Law

All Australian police officers, be they federal, state or territory, are empowered to enforce Commonwealth criminal law. Individual Constables of police are each accountable for their own decisions regarding the exercise of their powers on becoming aware of the presence of controlled drugs or the occurrence of an offence.

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 existence of ACT simple cannabis offences aligns with the Commonwealth law while also providing a practical framework to manage this form of offending outside of the criminal justice system in accordance with the principles of harm minimisation.

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 preeminent offence by default for simple cannabis offences. .

This would create a tension between ACT Policing members' responsibility to implement ACT Government policy intent and to have regard for the relevant criminal law in effect at the time. If the Bill is passed, that will be Commonwealth law.

Whilst the current ACT Policing approach is and will remain focused towards supply chain and organised crime, this tension cannot be effectively addressed through an internal policy direction not to enforce this or any particular provision of the criminal law, either ACT or Commonwealth. Such a direction would likely be seen to impinge on the independent Office of Constable and the discretion open to each police constable for which they are individually accountable.

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Seizure and Handling of Cannabis

Regardless of whether or not prosecution is pursued, a further tension exists in the decision to seize the cannabis to prevent the continuation of the Commonwealth offence or to allow continued possession in line with the ACT policy position which intends to allow legal possession of certain amounts and types of cannabis. A failure to seize controlled drugs could leave individual police officers exposed to potential allegations that they breached the AFP Code of Conduct, allegations of impropriety or failure to act and carry out their duties.

Clearing Cannabis Offences

For the information of the Committee, members of ACT Policing currently deal with simple cannabis offences through the following methods, listed in order of preference and depending on the consumer's eligibility for diversion or referral to the criminal justice system. Wherever possible, ACT Policing divert simple cannabis offenders away from the criminal justice system and toward treatment where appropriate:

- i. **Illicit Drug Diversion Referral** – a harm minimisation measure designed to divert illicit drug consumers away from the criminal justice system and into education or assessment and treatment.

487 cannabis offences were cleared by diversion to an illicit drug diversion education, assessment and treatment program over the past five financial years. It is unclear if the passage of the Bill in its current form would remove any obligation for a simple cannabis offender to participate in a drug diversion education, assessment and treatment program should a Commonwealth charge be progressed.

- ii. **Simple Cannabis Offence Notice (SCON)** – an infringement notice with an associated financial penalty (one penalty unit) that diverts simple cannabis offenders away from the criminal justice system.

441 cannabis offences were cleared by SCONs over the past five financial years. Passage of the Bill in its current form will remove this option for the diversion of simple cannabis offenders away from the criminal justice system.

- iii. **Formal Criminal Caution** – clearance of an offence by way of formal police warning where:
 - a. an offender has not previously been charged with an offence,
 - b. a warning is appropriate given the circumstances of the offending, and
 - c. the offender has appropriate support processes or mechanisms in place, which are appropriate to address the criminal conduct.

40 formal criminal cautions for cannabis offences have been issued over the past five financial years.

- iv. **Criminal charge by summons or arrest** – criminal charge of an offender by way of summons to the ACT Magistrates Court or arrest and charge at the ACT Watch House or ACT Magistrates Court.

375 cannabis offences were cleared by arrest and 337 cannabis offences were cleared by summons over the past five financial years however these offences are inclusive of trafficking cannabis, cultivation for the purpose of sale or supply and supplying cannabis to a child.

Over the same period, 209 individual arrests have been made which resulted in a simple cannabis offence charge being laid against the offender. Of those 209 arrests,

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only 10 resulted in a simple cannabis offence charge alone. The remaining 199 arrests involved offences including assault, dangerous driving, breach of judicial orders and trafficking in controlled drugs where the offender was also found to be in possession of a small amount of cannabis.

These diversion options exist in legislation and link directly to an offence under ACT law. Without this direct legislative link, it is unclear if these diversions will be able to be applied to the Commonwealth offence.

The Committee should note that ACT Policing will continue to deploy discretionary investigative and disruptive resources with a focus on those selling, supplying and profiting from illicit drug trafficking and supply.

Organised Crime

The commercial cultivation of cannabis in the ACT is a recognised crime problem. Cannabis cultivation is a major funding mechanism for a number of organised crime groups, including Outlaw Motorcycle Groups (OMCGs). These groups rely on multiple small-scale growers to grow on their behalf (crop-sit). To grow cannabis in any other jurisdiction the crop-sitters carry a significant risk of detection for the entire growth cycle. The proposed allowance of legitimate growth of cannabis in the ACT would potentially remove this risk, making the ACT more attractive to organised crime groups as a place to grow cannabis for both internal and external markets.

Cannabis is a significant funding mechanism for organised crime. The Australian Criminal Intelligence Commission (ACIC) Drug Data report from 2016-2017 indicated the price of cannabis per ounce ranged between \$200 and \$450.

CASE STUDY – In July 2018, police attended a residential address for the purposes of executing a search warrant. Police located approximately 270 cannabis plants at various stages of maturity. Police identified an offender to be within the premises. Police apprehended him and he was charged with cultivating a commercial quantity of a controlled plant.

During the search police also located a drying room containing freshly harvested cannabis buds. Police believe the cannabis product found within the drying room was being prepared for sale. The combined weight of the drying cannabis product was found to be 171 kilograms.

According to ACIC data the maximum wholesale street value of the cannabis seized from the residence would be \$2,714,328.

It has been identified in this investigation that money obtained from the growing and sale of cannabis is financing the importation and sale of heroin and methamphetamine.

This investigation is ongoing.

Cash flow derived from large multi-scale operations is likely to be re-invested into the capability of organised crime to make profits from other drug types. The market for cannabis is of strategic importance to organised criminal groups and they strive to streamline strategies to keep market prices steady but lucrative.

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Amendments proposed to allow hydroponic growth of cannabis increases the ability of criminal groups to cultivate cannabis with higher yields and resulting profits.

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CASE STUDY – Cannabis plants can be individually trained to produce large quantities of cannabis head. During a search of a residential premise, Police located a large and sophisticated hydroponic cultivation set-up for 2 mature cannabis plants in plastic pots. The branches of the plants were suspended by wires to support their weight, and **filled the space available in a single garage space.** This example demonstrates how two cannabis plants can be manipulated to increase the yield and size of the plants.



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The Bill may increase public interaction with organised crime should offenders from other jurisdictions move to capitalise on opportunities to cultivate in the ACT due to the lower risk of detection and potential profitability.

There have been instances where, due to false information, innocent Canberra constituents have been the victims of violent burglary (home invasion) where the offender's intent was to steal drugs or collect drug debts.

Studies on the impact on crime and justice in Vermont, USA, were conducted when the state legalised cannabis. These studies found that there were significantly higher volumes of cannabis users in the areas surrounding Vermont and as such, there was the potential for Vermont to contribute significantly to illicit export of cannabis to other states¹.

Road Trauma

ACT Policing understands that the Bill does not propose to change the law relating to driving under the influence of cannabis and consequently no increase in road trauma should be expected. However, in the United States of America, a Colorado Rocky Mountain High Intensity Drug Trafficking Area Report found that after cannabis was legalised, fatal crashes where the operator had cannabis in their system doubled despite total fatal crashes decreasing over the same period. This issue will need to be monitored if the Bill is passed and may increase pressure on existing police resources.

Resourcing impact for ACT Policing

The Bill is not likely to decrease the resourcing impost for police. ACT Policing has historically been supportive of diverting people for possession of small quantities of cannabis, through SCONs and drug diversion schemes. The priority for ACT Policing has, and will continue to be, disrupting the sale and supply of illicit substances and the activities of organised crime.

There may be increased resource impacts on police following the introduction of the Bill, should any of the following occur:

- i. increased activity by organised crime groups;
- ii. increased incidents of trespass, thefts and violent (home invasion) and non-violent burglary associated with the theft of cannabis plants;
- iii. increased complaints from concerned citizens;
- iv. potential offences linked to the trading of seed and plants;
- v. Policing taking on any role related to compliance enforcement with any regulations associated with the passing of the Bill; and

¹ RAND Corporation, Considering Marijuana Legalisation, 2015
https://www.rand.org/pubs/research_reports/RR864.html

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- vi. potential increase in offences due to cultivation and harvesting of excessive yields.

The quantum of impost the aforementioned issues will create for police cannot be reliably forecast, however the current ACT Policing resourcing profile would be inadequate to enforce the Bill's effects appropriately.

Regulatory Framework

Should the difference between the ACT and the Commonwealth positions be resolved, there are three key areas where a regulatory framework would make the law more effective.

Number and size of plants

Based on the potential yield of a cannabis plant, one plant is sufficient for personal use. ACT Policing also recommends that restrictions apply to each residential premise as well as to the individual. More than two plants will allow potentially commercial quantities of cannabis to be grown in each household under the cover of personal use, providing legitimate cover for organised crime grow houses. This is particularly relevant as the *Criminal Code Regulations 2002 (Cth)* quantifies cannabis possession by number of plants or weight. Should the possession amount to a trafficable quantity it may be punishable under the Code by imprisonment of up to 10 years.

Establishing a weight limit would remain consistent with the Commonwealth, but presents enforcement challenges as a plant cannot be weighed without it first being seized.

Supply

The Bill remains silent on how potential growers access seeds or cuttings in order to cultivate their plants. Currently, under the *Criminal Code 2002 (ACT)* it is an offence to traffic a controlled drug, including cannabis and its seeds. Without specific provisions in the Bill regarding seeds or the provision of cuttings for cultivation, this will cause significant enforcement issues for ACT Policing.

The potential to amend the current SCON provisions of the Act to treat the trade of cannabis seeds and cuttings is problematic from a policing perspective. In order for a SCON to be applicable, the trade and trafficking of cannabis would need to be classified as a simple offence.

Registration

ACT Policing supports, in principle, cannabis growers registering in a manner similar to owners under the *Firearms Act 1996 (ACT)*. This is consistent with the way cannabis has been regulated in other jurisdictions. This will allow the Government to include licence obligations on growers, including requiring growers to agree to certain conditions. This can include allowing authorised government persons to enter registered premises in order to inspect and assess adherence to the law.

ACT Policing is not currently resourced to undertake a regulatory role in regards to the Bill and the appropriate entity responsible for the execution of this function will need to be considered.

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Conclusion

ACT Policing supports any initiative designed to improve the safety of the Canberra community; however asks the Committee to consider the issues raised as it considers the Bill.

ACT Policing are aware that amendments to the Bill are likely and would welcome the opportunity to provide constructive input and advice on those amendments.

Assistant Commissioner Ray Johnson APM
Chief Police Officer for the ACT

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s22(1)(a)(ii)

From: s22(1)(a)(ii)
Sent: Thursday, 26 September 2019 11:32 AM
To: s22(1)(a)(ii)
Cc: s22(1)(a)(ii)
Subject: RE: Cannabis [DLM=For-Official-Use-Only]
Attachments: ACT Cannabis Bill [SEC=PROTECTED, DLM=Sensitive:Legal]

For-Official-Use-Only

Hi s22(1)(a)(ii)

We sent the attached email to the MHAO and have not yet received a response. Will keep you updated.

In terms of the AFP and practical challenges, we've been told that ACT Policing deferred to Government on decisions of policy, but noted the reservations from a policing perspective, including the interaction of the Bill with Commonwealth law, and the flow on consequences for ACTP officers. I'm currently playing phone tag with the relevant area.

Happy to chat if that is easier. Look forward to receiving the Bill as passed.

Best,

s22(1)(a)(ii)

s22(1)(a)(ii)

Director | Drugs Policy Section
 Law Enforcement Policy Branch | National Security and Law Enforcement Policy Division
 Policy Group
 Department of Home Affairs
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s22(1)(a)(ii)

For-Official-Use-Only

From: s22(1)(a)(ii) <s22(1)(a)(ii)@homeaffairs.gov.au>
Sent: Thursday, 26 September 2019 8:56 AM
To: s22(1)(a)(ii) <s22(1)(a)(ii)@homeaffairs.gov.au>
Subject: Cannabis [DLM=For-Official-Use-Only]

For Official Use Only

Hi s22(1)(a)(ii)

I just wanted to check in to see if you have provided any points to your office about ACT Cannabis? Have there been any conversations with the AFP about practical challenges?

We're just trying to get a copy of the Bill as passed (not public yet) to determine whether the Commonwealth laws will continue to apply.

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s22(1)(a)(ii)

s22(1)(a)(ii)

Director | Criminal Law Section

Security and Criminal Justice Branch | 3-5 National Circuit Barton ACT 2600

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s22(1)(a)(ii)

From: s22(1)(a)(ii) <s22(1)(a)(ii)@health.gov.au>
Sent: Thursday, 26 September 2019 11:43 AM
To: s22(1)(a)(ii)
Subject: FW: AGD advice Cannabis [SEC=OFFICIAL:Sensitive]
Attachments: 190320 - OIL - Final Advice - Department~ Cannabis Legislation - consist....pdf; Signed corro 4410.pdf

Hi s22(1)(a)(ii),

As discussed.

s22(1)(a)(ii)

From: s22(1)(a)(ii) <s22(1)(a)(ii)@health.gov.au>
Sent: Monday, 23 September 2019 5:26 PM
To: s22(1)(a)(ii) <s22(1)(a)(ii)@health.gov.au>
Subject: RE: AGD advice [SEC=OFFICIAL]

Hi s22(1)(a)(ii)

So far so good! Copy of the AGD advice attached. I've also the response the Department provided to the Committee Chair following an invitation for the Minister to make a submission for the Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018.

Cheers,

s22(1)(a)(ii)

s22(1)(a)(ii)

Assistant Director
 Primary Health Care Sustainability Section

Indigenous Health Division | Health Systems Policy and Primary Care Group
 Primary Health, Data and Evidence Branch
 Australian Government Department of Health
 T: 02 s22(1)(a)(ii) | E: s22(1)(a)(ii)@health.gov.au
 Location: Sirius Building 7.S.233
 GPO Box 9848, Canberra ACT 2601, Australia

The Department of Health acknowledges the Traditional Custodians of Australia and their continued connection to land, sea and community. We pay our respects to all Elders past and present.

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Australian Government

Department of Health

Ref No: MC19-004410

Ms Bec Cody MLA
Committee Chair
The Standing Committee on Health, Ageing and Community Services
GPO Box 1020
CANBERRA ACT 2601

LACommitteeHACS@parliament.act.gov.au

Dear Ms Cody

Thank you for your correspondence of 5 March 2019 to the Minister for Health, the Hon Greg Hunt MP, regarding the invitation to make a submission for the Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018. The Minister has asked me to reply.

The Australian Government's policy on cannabis is consistent with the principles set out in the National Drug Strategy (the Strategy), which identifies cannabis as a priority substance and outlines a range of evidence-based approaches to minimise harm associated with cannabis use. The Strategy can be accessed by following the attached link <https://beta.health.gov.au/resources/publications/national-drug-strategy-2017-2026>.

There are three pieces of Commonwealth legislation (including delegated legislation) relevant to the operation of the Bill if it were to be enacted: the *Narcotic Drugs Act 1967*; the *Customs (Prohibited Imports) Regulations 1956*; and the *Therapeutic Goods Act 1989*.

A. *Narcotic Drugs Act 1967*

Under the United Nations Single Convention on Narcotic Drugs, 1961 as in force from time to time (the Single Convention), Australia has an obligation to carefully control, supervise and report on various stages of cultivation, production and manufacture.

The purpose of the Single Convention is to establish a framework to both prevent abuse and diversion of controlled narcotic drugs and to ensure the availability of such drugs for medical and scientific purposes. The *Narcotic Drugs Act 1967* (the ND Act) gives effect to certain of Australia's obligations under the Single Convention.

The ND Act implements the national medicinal cannabis licensing scheme that provides for the cultivation of cannabis plants and production of cannabis or cannabis resin for medicinal and scientific purposes. Medicinal cannabis product means a product which includes or is from any part of the cannabis plant and is for use for the purposes of curing, alleviating the symptoms of a disease ailment or injury. There are two cannabis licences: medicinal cannabis licence and cannabis research licence. The ND Act also regulates the manufacture of narcotic drugs such as medicinal cannabis products and licit narcotic drugs such as morphine.

Article 28 of the Single Convention provides that if a Party to the Single Convention permits the cultivation of the cannabis plant for the production of cannabis or cannabis resin, it must apply thereto the system of controls as provided in Article 23 respecting the control of the opium poppy. Australia, as a Party to the Single Convention, is also required to comply with other provisions of the Single Convention, such as Articles 3 and 4. If an activity occurs that is prohibited or not permitted under the Convention, but otherwise is lawful under a State, Territory or Commonwealth law, then Australia would be expected to address the matter that is subject to that particular law and control the activity in a manner consistent with Australia's obligations under the Single Convention.

B. Customs (Prohibited Imports) Regulations 1956

Importation of drugs listed under Schedule 4 of the *Customs (Prohibited Imports) Regulations 1956* (the PI Regulations) is prohibited unless the person importing the drug is the holder of a licence to import drugs and the holder of a permission to import the drug that are both granted under regulation 5.

Similar to the ND Act, regulation 5 of the PI Regulations gives effect to certain obligations under the Single Convention. Regulation 5 also gives effect to Australia's obligations under the *Convention on Psychotropic Substances 1971*.

Consistent with the requirements under Article 4 of the Single Convention to limit exclusively to medical and scientific purposes, the production, manufacture, export, import, distribution of, trade in and use and possession of drugs, regulation 5 limits the granting of licence and permission to import drugs for those purposes. The granting of a licence and permission would require that the importer meet those requirements.

Any importation of cannabis plants (including seeds), cannabis, or cannabis resin for personal use or medicinal use by a person from the ACT will need to comply with the requirements of regulation 5 of the PI Regulations. In addition, any imported cannabis authorised by a licence and permission under regulation 5 cannot be used for recreational purposes. Licences and permissions are subject to conditions relating to supply.

C. Therapeutic Goods Act 1989

The *Therapeutic Goods Act 1989* regulates the importation, exportation, manufacture and supply of medicinal cannabis only. It does not apply to the importation, exportation, manufacture and supply of cannabis that is not medicinal cannabis; and, by no means, the cultivation, possession and personal use of cannabis.

Yours sincerely

John Skerritt
Deputy Secretary
Health Products Regulation Group
March 2019

s22(1)(a)(ii)

From: Ciara SPENCER
Sent: Thursday, 26 September 2019 12:58 PM
To: Hamish HANSFORD; s22(1)(a)(ii)
Cc: s22(1)(a)(ii) Drugs Policy Section
Subject: FW: Just fyi - SBS report re ACT cannabis legislation [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi all,

Dutton has made some commentary on the ACT Cannabis legislation - <https://www.sbs.com.au/news/i-think-it-s-dangerous-dutton-says-federal-government-will-look-at-act-weed-laws>.

We are continuing to work with AGD and are awaiting a copy of the Act, but haven't had any response from the Office yet on their position.

Ciara

Ciara Spencer

Assistant Secretary
 Law Enforcement Policy | National Security and Law Enforcement Policy
 Policy Group

Department of Home Affairs

P: 02 s22(1)(a)(ii) M: s22(1)(a)(ii)

E: s22(1)(a)(ii) [homeaffairs.gov.au](mailto:s22(1)(a)(ii)@homeaffairs.gov.au)

UNCLASSIFIED

From: Brayshaw, Elizabeth <s22(1)(a)(ii)@ag.gov.au>
Sent: Thursday, 26 September 2019 12:46 PM
To: Ciara SPENCER <s22(1)(a)(ii)@homeaffairs.gov.au>
Subject: FW: Just fyi - SBS report re ACT cannabis legislation [SEC=UNCLASSIFIED]

<https://www.sbs.com.au/news/i-think-it-s-dangerous-dutton-says-federal-government-will-look-at-act-weed-laws>

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s22(1)(a)(ii)

From: s22(1)(a)(ii) <s22(1)(a)(ii)@ag.gov.au>
Sent: Thursday, 26 September 2019 1:44 PM
To: Ciara SPENCER; s22(1)(a)(ii) s22(1)(a)(ii)
Cc: Brayshaw, Elizabeth; s22(1)(a)(ii)
Subject: FW: Transcript - 6pr Mornings with Gareth Parker [SEC=UNCLASSIFIED]

FYI

From: s22(1)(a)(ii)@ag.gov.au [mailto:s22(1)(a)(ii)@ag.gov.au]
Sent: Thursday, 26 September 2019 1:36 PM
To: s22(1)(a)(ii) <s22(1)(a)(ii)@ag.gov.au>
Cc: Donnellan, Kevin <s22(1)(a)(ii)@ag.gov.au>
Subject: Transcript - 6pr Mornings with Gareth Parker [SEC=UNCLASSIFIED]



The Hon. Christian Porter MP
 Attorney-General
 Minister for Industrial Relations
 Leader of the House

TRANSCRIPT
6PR - Mornings with Gareth Parker
Thursday 26th September 2019

E&OE

ACT cannabis laws

GARETH PARKER: As he does most Thursdays, the Attorney-General, the Industrial Relations Minister, Christian Porter joins us. Christian, good morning.

CHRISTIAN PORTER: Yeah. Morning, Gareth. How are you?

GARETH PARKER: Yeah. Well. Thank you for your time. So, the ACT's move on cannabis is sort of the talk of the country. It's not the first time the ACT have struck out on their own on these things. We've seen them pass laws around voluntary assisted dying, which were overturned by the Commonwealth; on same-sex marriage, which were overturned by the Commonwealth. Do you intend to overturn these cannabis laws?

CHRISTIAN PORTER: Look, I'll have a look at them. I think the first point is that we actually can't find them on any website anywhere. I think they passed last night. We had some line of sight onto the original version of the bill. It was a private member's bill. It may have been amended by government members on the way through. But in its earliest form, like the way it was introduced, it simply withdrew, if you like, the laws that apply to amounts under 50 grams so there was no law that would apply. So therefore, you couldn't be charged under that law. But there are

still Commonwealth laws that apply in the ACT for those amounts as a possession offence. So, I'm not quite sure what final form the bill has taken. I'm going to have a good look at it...

GARETH PARKER: Right.

CHRISTIAN PORTER: ...in its final form.

GARETH PARKER: So you haven't actually got the - you haven't been able to assess the actual legislation itself?

CHRISTIAN PORTER: No. No. I mean, oddly enough, this just doesn't seem to be available. It seems to have passed last night. And look, for West Australian listeners, the ACT, by population, is a very small place. I mean, it's not much bigger than large councils like the City of Stirling in WA. So they do go out on the edge on a lot of these sort of social crusades. Drugs is one of them. I must say I think this is personally a very bad idea. But nevertheless, they have a Parliament. We'll have a look at their legislation and reserve our position. But the most important thing is that if you're in the ACT waking up today and you want to possess marijuana, be careful because there are Commonwealth laws that still apply.

GARETH PARKER: Would you expect- I mean, I presume it's up to the AFP to police those laws. Would you expect them to do so?

CHRISTIAN PORTER: Well, that's something that I will meet with them about and receive their views on. But my expectation would be that to the extent that a law of the Commonwealth is a valid law and applies, that it's enforced like any other law of the Commonwealth. So, that's something we'll be discussing with the AFP. But the expectation is that Commonwealth laws are enforced.

GARETH PARKER: I mentioned voluntary assisted dying and also same-sex marriage. I mean, there's pretty clear precedents here for Commonwealth governments acting when territory laws are in conflict.

CHRISTIAN PORTER: Yeah. I mean, there are precedents for it. I mean, they're three very different issues. But as I said, I'll have a look at the actual bill and see how it actually interacts with the Commonwealth law. But the first point and the most important point is that there is still Commonwealth law that applies to the ACT, where a person commits an offence if they possess a prohibited substance, which would include marijuana. So whether or not this law actually does what it seeks to do is an open question at the moment. Certainly, in its original form, the way it was introduced, it didn't seem to me that it, in any way...

GARETH PARKER: [Talks over] Well-

CHRISTIAN PORTER: ...overrode the Commonwealth law, in that you would still be breaking the law if you possess marijuana.

GARETH PARKER: What if the AFP turn a blind eye to it?

CHRISTIAN PORTER: Well, that won't be the expectation that we would have as a Government. But we'll talk to the AFP about that. But as I say, look, it's very early. I haven't even really seen a copy of the legislation yet and certainly there was no interaction with us before the law was passed, it just kind of happened.

GARETH PARKER: Okay. You said earlier you think it's a bad idea. Why?

CHRISTIAN PORTER: Well, I mean I think marijuana and its use and its levels of addiction which are very high has been shown to cause enormous social problems, enormous problems for the individuals who use it and become addicted to it. So the idea that you can use any amount of it safely or that it doesn't lead to addiction and long term serious health consequences- to me, it's not a drug that you want to make easier to access and cheaper to access. I mean it's something that we should put every effort and resource into ensuring that people don't use, not pass laws which encourage people to use it. I think it's crazy.

GARETH PARKER: That's not been the trend though, is it? In certainly, North America, you're seeing some American states start to go even much, much further than the ACT have gone. You're seeing it in Canada as well. Do you think that other Australian states will follow this path?

CHRISTIAN PORTER: Well look, you know places like California seem to me to be not quite the best examples about how we want to run policy in Australia. And I think this is a really dumb idea. I recall that it occurred, as a level of decriminalisation in WA where you were allowed to grow a certain number of plants and that was reversed.

GARETH PARKER: [Interrupts] Yeah, it was the Government that you were a part of that reversed it.

CHRISTIAN PORTER: Indeed. And I think that was the right thing to do. Look, this is a terribly dangerous drug, marijuana. It destroys individual lives. The documented, scientific evidence about the sustained use of it causing extreme mental health problems, including psychosis, is just beyond doubt. Why any jurisdiction would pass a law which effectively encourages more use of a drug like this is beyond me.

GARETH PARKER: Would you be better off treating it as a health issue though, rather than a criminal justice issue?

CHRISTIAN PORTER: Well the two things aren't mutually exclusive. But where you have the ability to make something unlawful, and historically, marijuana in all other jurisdictions, its possession, its cultivation has been unlawful. You do that because you recognise that the health effects of its use are terrible. So one doesn't mean that you don't do the other. I mean of course, it's a health issue. But I think the starting point is the clear message from any responsible society that this is not a drug that we accept that people should be using.

GARETH PARKER: Okay. I mean I'm sure you've seen the jokes doing the rounds already, about politicians in Canberra and, you know: we think they're on drugs anyway. Would you expect any MPs to take advantage of this ACT law when they descend on Canberra for sitting weeks?

CHRISTIAN PORTER: Well, I know *The Daily Telegraph* in Sydney had a massive picture of a joint above Commonwealth Parliament House, but it's not our law. I mean this is the law of the ACT Assembly. So look, I think that's a big stretch. I think what I'm concerned...

GARETH PARKER: [Talks over] Who'd be most likely? Who'd be most likely? Which MPs would be most likely?

CHRISTIAN PORTER: Mate that is a matter for individual MPs but I'm not aware of any use of the substance around Parliament House.

GARETH PARKER: [Interrupts] Not even the Greens?

CHRISTIAN PORTER: Well, I mean, who knows? But this is a serious issue for a place like the ACT. I mean do you want to have a jurisdiction in Australia that effectively encourages through the law the use of an extremely dangerous drug with capacity for long-term addiction and incredibly destructive health effects. Now, the answer that I had to that question when I was a State Attorney-General was: no, you shouldn't do that. My view is the same as a Commonwealth Attorney-General and we'll have a good look at the legislation.

GARETH PARKER: Okay, sounds as you're not really keen on it at all then.

CHRISTIAN PORTER: Not at all.

GARETH PARKER: Alright. Thank you for your time this morning.

CHRISTIAN PORTER: Okay. Cheers, mate.

GARETH PARKER: Attorney-General Christian Porter.

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s22(1)(a)(ii)

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Cc: s22(1)(a)(ii) s22(1)(a)(ii) Media Operations
Subject: RE: Request for transcript/audio: Minister Dutton interview with Alan Jones, 2GB - 26 September 2019 [SEC=UNCLASSIFIED]
Attachments: Transcript.docx

UNCLASSIFIED

Hi s22(1)(a)(ii)

Please see attached transcript.

Kind regards,

s22(1)(a)(ii)

Public Affairs Officer | Media Operations
 Media and Engagement Branch
 Corporate and Enabling Group
 Department of Home Affairs
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Subject: Request for transcript/audio: Minister Dutton interview with Alan Jones, 2GB - 26 September 2019 [SEC=UNCLASSIFIED]

UNCLASSIFIED

Good afternoon Media Ops

This afternoon Minister Dutton gave an interview with Alan Jones on 2GB regarding the ACT cannabis legalisation bill that was passed yesterday.

I would be grateful if you could please provide a copy of the transcript of this interview and/or a copy of the audio recording.

Kind regards

s22(1)(a)(ii)

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Drugs Policy Section
Law Enforcement Policy Branch | National Security and Law Enforcement Policy Division
Policy Group
Department of Home Affairs
P: 02 s22(1)(a)(ii)
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Transcript

Station: **2GB** Date: **26/09/2019**

Program: **MORNINGS** Time: **09:29 AM**

Compere: **JOHN STANLEY** Summary ID: **X00080455067**

Item: **INTERVIEW WITH PETER DUTTON, MINISTER FOR HOME AFFAIRS AND MEMBER FOR DICKSON. STANLEY RECALLS PM SCOTT MORRISON DISCUSSING CLIMATE CHANGE AND FOCUSING ON THE OCEANS AT THE UNITED NATIONS THIS MORNING IN NEW YORK.**

INTERVIEWEES: PETER DUTTON, MINISTER FOR HOME AFFAIRS AND MEMBER FOR DICKSON

Audience:	Male 16+ 76000	Female 16+ 66000	All people 142000
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JOHN STANLEY: Every Thursday on the program, Ray speaks with the Home Affairs Minister and Member for Dickson Peter Dutton, who joins us now from Brisbane. Minister, good morning.

PETER DUTTON: Good morning, John.

JOHN STANLEY: You've seen what the Prime Minister's had to say, United Nations this morning in New York. A fair bit discussing climate change, that Australia's doing its bit and focusing on the oceans. You would endorse that. Have you got anything to add?

PETER DUTTON: Well I certainly would endorse it. I think he's really nailed it in his speech in terms of what we're already doing as a responsible global citizen. But I think the point he makes about allowing kids to be kids and not using kids for leverage around your own argument or disposition. And also importantly, not scaring children.

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I know a few schools that I've been into recently where with year sixes, the conversation which normally, you know, you have with them talks about different elements of government and how laws are made. A lot of it now is solely concentrated on climate change discussion. And so I think our teachers have a special responsibility as well to make sure that kids are being taught a balanced argument. The world is not coming to an end. We have a responsibility; we're meeting that. But this Government's not going to close down our economy and have people's power prices triple as they would under what Labor's proposing with the zero emission targets, particularly at state level. And I'm very worried that some of it you'll see in places like Victoria, as we've seen in South Australia, you'll see load shedding or lights going out because of these State Government policies. And I think we need to be realistic about what we're doing and going overboard, closing down the economy is not in our national interest or anybody else's.

JOHN STANLEY:

When you talk to kids, you talk to families and I see these figures today from the IPCC and there's an extreme range of what they're saying. They're saying over the next 80 years; they're trying to work out what's going on. But if you have a look at the range of things they're saying, they're saying they're not that sure. But at the more moderate end of it all, which they're saying is very possible- as you say, there's a lot of optimism, isn't there?

PETER DUTTON:

Well and John, the other point too is you've got literally millions of people living without power in places like

India at the moment. And they want to lead the life that we do. They want to be lifted out of that poverty, they want to come into the middle class in emerging societies, in towns and cities across places like India and parts of China, Africa, et cetera. And they can only do that with the use of coal. So I know there's a lot of goodwill and good intent, I'm sure, by a lot of people in this debate. But the fact is that you can dig coal out of the ground elsewhere in the world, which will end up emitting more gas and being more detrimental to the environment than if you use a cleaner coal as we mine here in Australia and help those countries develop. And the economy in Australia goes into freefall without a proper transition or without proper support of our coal industry. And I thought the Labor Party and others have heard this message before the election, but clearly not.

JOHN STANLEY:

Just in relation to that- because our coal is cleaner. But people will say that we can export our coal to places like India but you keep hearing people say: well, when are we going to get with building more coal-fired power stations here. And I hear talkback radio through this morning, you heard it on Alan's program. So how would that happen? Where would that come from? Would it have to be the Government to do it?

PETER DUTTON:

Well, there are a couple of stages here. So obviously, you've got planning laws, which are predominantly with councils, or in this area mainly with the State Government. And this debate, not only in relation to proposals around Healy plants for example, but also the discussion at the moment around nuclear. And there's a Parliamentary committee looking at that

option, which has the answer in terms of price and low emissions. And that's what people are after and that's being looked at the moment. So there are different ways.

But the threshold question is whether or not it requires taxpayers' money to go into it. It would be like if we're going to restart the car industry; do we subsidise the jobs or is it viable without Government assistance? And my sense is speaking to some of the proponents of different deals, particularly here in Queensland, is that the capital is not the issue. They're not worried about the ability to raise the money. It's the off take arrangements. So that is if they're going to commit a billion dollars, they want to know that there's going to be a market for them in five, or 10, or 25 years' time because they need to amortise the cost of the project over those decades. So that's their difficulty. And they've got Labor state governments in particular, and the Federal Government- Federal Opposition talking about zero emissions or 45 per cent reductions. Well, that doesn't make these plans viable. So I don't think it's a lack of capital. I think there's a lot of money around that would invest into different energy sources. But I think the difficulty for them, as I understand, their argument is that they worry what the market will be in five or 10 years' time and therefore it doesn't make it viable for them to construct it in the short term.

JOHN STANLEY: [Talks over] Yeah, several elections down the road.

PETER DUTTON: [Talks over] That's right.

JOHN STANLEY:

So look, the other one is, and you're a Queenslander, you'd be aware of the dreadful situation in so many parts of Queensland with the drought. And people talking about trying to get more done. What's your view on that?

PETER DUTTON:

Well, I just think it's whether you live in the city or in the bush, there's a moral imperative to getting as much done on water storage retention, helping cities, helping towns and helping farmers. I think everybody agrees with that. We are incredibly frustrated, and you've heard the Prime Minister and the Deputy Prime Minister, Matt Canavan, talk about it before where we've got money on the table and you've got, especially in Queensland where we've got a number of dams proposed, where we just can't get the State Government to move. And they're more worried about Greens votes in inner city seats than they are about the livelihoods of farmers in rural communities. And I think now more so than ever, there's an absolute imperative- I mean the Victorian Government talking the other day about not wanting to build a dam because they don't think it'll rain as much under climate change. I mean it doesn't make any sense. And people elect these governments for some reason. But we've got money on the table. We have a number of projects that are ready to start. But in Queensland I mean you've got \$250 million that's just been splashed on bonuses for farmers- for public servants and no assistance for farmers. It's just - again, defies logic and I think that's why people in Queensland at the moment are quite angry at some of the decisions being made. But we need to get these water assets built. We need

to drought proof as best we can so that these farmers don't suffer again in the way that they are at the moment.

JOHN STANLEY:

Just on that, we've talked a bit about that this week, there's been quite a reaction to the bonuses for the public servants. It does look like a pretty naked vote grab doesn't it?

PETER DUTTON:

Oh it's nothing more, nothing less than that. And the Labor Party's decided by bolstering the numbers in the public service here in Queensland, they will bolster their chances at winning the next election because a lot of those people will live in and around the suburbs of Brisbane and by offering a bonus, they think they'll secure their vote. It's as crass as that unfortunately.

And Anastacia Palaszczuk might have the perception of being a nice person but this is just a- we are grinding to a halt in Queensland and I don't think people - maybe in the southern states - just realise how bad it is up here. They have no money for road projects; they have no money for dam projects; they've got an enormous debt, approaching \$100 billion and they increased the number of public servants. And we're sitting in gridlock morning and afternoon and I just don't see how it's sustainable. And Jackie Trad has had huge question marks placed over her and obviously, she's running the government because Anastacia Palaszczuk, I think, has just lost control of it.

So it's going to be an interesting 12 months in the run up to the election. But there's a lot that can happen that people are desperate to happen in Queensland and again, there's a really great desire to invest in Queensland in tourism, in the rural sector, et cetera. But people just won't do it if they think taxes are going to be jacked up or more public servants are going to be put on.

JOHN STANLEY:

Two more quick ones. Just in your area, of course, with Scott Morrison in the United States, I'm wondering - we've had people asking about the deal- the American- the deal with America in relation to asylum seekers. Where are we up to with that? How is that progressing?

PETER DUTTON:

It's progressing well. Although, we know that there are a number of people who have pulled out of the offer to go to the United States because they think they can come here under the Medivac laws, that has happened and it's very frustrating but we've had about 700 people, just shy of that- with [indistinct] number in front of me, but about 700 people who have gone to the US under the deal; the deal was for about 1200.

I think we're going to pull up short of that because there are- there's certainly- there's a number of people at the United States that said that they wouldn't take and these are people that we'll be forced to take here in our country because of the Medivac laws but we're working through all of those cases.

And importantly, in Manus, we've been able to get the number down basically to zero of those who are on Manus Island at the moment and we'll look at permanent outcomes for those people in PNG. So US deal is going well and I don't know that's being raised in Scott's visit to the US. I think that's well and truly progressing so ...

JOHN STANLEY: [Talks over] Yup. Yup.

PETER DUTTON: ... a really important trip though in terms of our discussion with the United States. Our most important ally when you look at what's happening in our region; it's important for the US to engage. So I think the PM's had a great trip.

JOHN STANLEY: Alright. So just finally, you spent a lot of time in Canberra, probably more than you'd like, but as a person who is a sometime resident of Canberra, the change to the laws where you'll be able to have 50 grams of marijuana. I can't imagine you lighting up a joint at night after a hard session in Parliament, but what do you make of that?

PETER DUTTON: Look, definitely not, John, and I'm opposed to this law. The Attorney-General Christian Porter is having a look at it at the moment because there's obviously a different arrangement with the territories than there is with the states.

But I really do think it's a bad move and if you look at the number of services being accessed by drug users at

the moment to try and rehabilitate or turn their lives around, you're talking a 50/50 share with people that are addicted to amphetamines as you are to people with cannabis and that addiction, in many cases, will lead to the use of a harder drug. It'll also in many cases, as we know lead to mental health issues and I just think it's unconscionable and I think all of the evidence now shows that prolonged use of cannabis does result in people suffering from greater mental health conditions than they otherwise would have.

And I think 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 of the rest of it. But I think it's dangerous and I think particularly given the THC content in much of the cannabis today - because it's grown in, factories essentially, not in a rural setting - is quite dangerous. And the doctors say that and I don't know why the ACT government wouldn't listen to that advice.

JOHN STANLEY:

Okay. And you've got this - you say Christian Porter looking at it because there is that situation with the federal law intersecting with what they're doing there. So we might hear more about that later in the day.

Alright. Thank you so much and Ray will be talking to you next week. Thank you.

PETER DUTTON:

Thanks.

JOHN STANLEY:

Peter Dutton there, the Minister for Home Affairs and Member for Dickson.

* * END * *

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s22(1)(a)(ii)

From: s22(1)(a)(ii)
Sent: Thursday, 26 September 2019 3:47 PM
To: s22(1)(a)(ii)
Cc: s22(1)(a)(ii); s22(1)(a)(ii)
Subject: RE: Letter to ACT - Cannabis laws [DLM=For-Official-Use-Only]

For-Official-Use-Only

Hi s22(1)(a)(ii)

We're yet to receive the amendments to the Bill, AGD is trying to obtain a copy.

Despite comments made by Minister Dutton this morning, we are awaiting direction as to how to progress.

Keep you updated of further developments.

Best,

s22(1)(a)(ii)

s22(1)(a)(ii)

Director I Drugs Policy Section
 Law Enforcement Policy Branch I National Security and Law Enforcement Policy Division
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s22(1)(a)(ii)

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To: s22(1)(a)(ii) <s22(1)(a)(ii)@homeaffairs.gov.au>
Cc: s22(1)(a)(ii) <s22(1)(a)(ii)@pmc.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@homeaffairs.gov.au>
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