



Australian Capital Territory

# Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019

A2019-34

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Australian Capital Territory

# Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019

A2019-34

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

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

**1 Name of Act**

This Act is the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019*.

**2 Commencement**

- (1) This Act commences on a day fixed by the Minister by written notice.

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

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

- (2) However, the Minister must not fix a commencement day that is before the notification day of the guidance material required to be published under section 171BA.
- (3) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to this Act.

**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 or 2 cannabis plants)
- s 171 (Possessing prohibited substances)
- s 171AA (Possessing cannabis)
- s 171AAA (Cultivation of more than 4 cannabis plants at premises)
- s 171AAB (Cannabis plant cultivation—other offences)
- s 171AAC (Storage of 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 Cultivation of 1 or 2 cannabis plants New section 162 (1A)

*insert*

- (1A) This section does not apply if the person—
- (a) is 18 years old or older; and
  - (b) cultivates the plants in the ACT.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (1A) (see [Criminal Code](#), s 58).

**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.

- (3) In this section:

*prohibited substance* does not include cannabis.

**171AA Possessing cannabis**

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

- (a) 50g or less of dried cannabis; or
- (b) 150g or less of cannabis that has been harvested and—
  - (i) is not dried cannabis; or
  - (ii) is a mixture of dried cannabis and cannabis that is not dried cannabis.

Maximum penalty: 1 penalty unit.

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

- (a) more than 50g of dried cannabis; or
- (b) more than 150g of cannabis that has been harvested and—
  - (i) is not dried cannabis; or

- (ii) is a mixture of dried cannabis and cannabis that is not dried cannabis.

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

- (3) Subsection (1) does not apply if the person—
  - (a) is 18 years old or older; and
  - (b) possesses the cannabis in the ACT.
- (4) Subsections (1) and (2) do not apply if the person is authorised under the *Medicines, Poisons and Therapeutic Goods Act 2008*, or another territory law, to possess the cannabis.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (3) and s (4) (see *Criminal Code*, s 58).

- (5) In this section:

*dried cannabis* means cannabis that has been subjected to a drying process.

### **171AAA Cultivation of more than 4 cannabis plants at premises**

- (1) A person commits an offence if—
  - (a) the person cultivates a cannabis plant at premises; and
  - (b) more than 4 cannabis plants are being cultivated at the premises.

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

- (2) Strict liability applies to subsection (1) (b).
- (3) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant—
  - (a) lived at the premises when cultivating the cannabis; and

- (b) was not aware, and could not reasonably have been expected to be aware, that more than 4 cannabis plants were being cultivated at the premises.

*Note* The defendant has a legal burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 59).

### **171AAB Cannabis plant cultivation—other offences**

- (1) A person commits an offence if—
  - (a) the person cultivates a cannabis plant; and
  - (b) the cannabis plant is cultivated at a place other than where the person lives.

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

- (2) A person commits an offence if—
  - (a) the person cultivates a cannabis plant; and
  - (b) the cannabis plant is cultivated in an area lawfully accessible to a member of the public.

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

### **171AAC Storage of cannabis**

- (1) A person commits an offence if the person—
  - (a) possesses harvested cannabis; and
  - (b) does not store the cannabis out of reach of children.

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



- (2) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant took all reasonable steps to ensure that a child could not access the cannabis.

*Note* The defendant has a legal burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 59).

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

*substitute*

*simple cannabis offence* means—

- (a) an offence against section 162 (Cultivation of 1 or 2 cannabis plants); or

*Note* Section 162 does not include artificial cultivation of cannabis plants.

- (b) an offence against section 171AA (1).

**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 exposed to smoke or vapour from the cannabis the person is smoking.

Maximum penalty: 30 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that the defendant—
- (a) took all reasonable steps to ensure that the child was not exposed to the smoke or vapour; or
  - (b) believed on reasonable grounds that the child was 18 years old or older.

*Note* The defendant has a legal burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 59).

- (4) 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
  - (ii) a personal vaporiser that contains cannabis and that is activated.

**Examples—devices—par (a)**

- a personal vaporiser
- a pipe (including a hookah, water pipe or bong)
- a cigarette holder

**9 New section 171BA**

*in part 10, insert*

**171BA Guidance material**

- (1) The Minister must prepare and publish guidance material to inform the community about the legal and health implications of the amendments of this part made by the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019*.
- (2) The guidance material is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

**10 New section 205A**

*insert*

**205A Review of certain amendments related to cannabis**

- (1) The Minister must review the operation of the amendments of this Act made by the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019* as soon as practicable after the end of their 3rd year of operation.
- (2) The Minister must present a report of the review to the Legislative Assembly within 6 months after the day the review is started.
- (3) This section expires 5 years after the day it commences.

**11 Dictionary, note 2**

*insert*

- 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*, pt 10 and the *Medicines, Poisons and Therapeutic Goods Act 2008*, s 36.

#### [1.2] New section 636A (3) (ba)

*insert*

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

### Part 1.2 Medicines, Poisons and Therapeutic Goods Act 2008

#### [1.3] 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 defined provisions of this Act do not apply to an adult to the extent that the substance is an amount of cannabis that the adult is not prohibited from cultivating or possessing under the *Drugs of Dependence Act 1989*.

(2) In this section:

*defined provisions of this Act* means the following:

- (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).

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## Endnotes

**1 Presentation speech**

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

**2 Notification**

Notified under the [Legislation Act](#) on 10 October 2019.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2019, which originated in the Legislative Assembly as the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 and was passed by the Assembly on 25 September 2019.

Clerk of the Legislative Assembly

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