



Australian Capital Territory

Drugs of Dependence (Personal Use) Amendment Act 2022

A2022-20

Contents

	Page
Part 1	Preliminary
1	Name of Act 2
2	Commencement 2
3	Legislation amended 2
Part 2	Drugs of Dependence Act 1989
4	Offences against Act—application of Criminal Code etc Section 4, note 1, new dot points 3
5	Sections 169 and 171 3

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Contents

		Page
6	Possessing cannabis Section 171AA (1) and (2)	5
7	Section 171AA (5)	5
8	New section 171AAD	5
9	Section 171A	7
10	New section 171BB	10
11	New section 205B	10
12	Dictionary, new definition of <i>small quantity</i>	11
Part 3	Drugs of Dependence Regulation 2009	
13	New section 3A	12
14	New section 6	12



Australian Capital Territory

Drugs of Dependence (Personal Use) Amendment Act 2022

A2022-20

An Act to amend the *Drugs of Dependence Act 1989* and the *Drugs of Dependence Regulation 2009*

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

Part 1 Preliminary

1 Name of Act

This Act is the *Drugs of Dependence (Personal Use) Amendment Act 2022*.

2 Commencement

This Act commences 12 months after its notification day.

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* and the *Drugs of Dependence Regulation 2009*.

Part 2 Drugs of Dependence Act 1989

4 Offences against Act—application of Criminal Code etc Section 4, note 1, new dot points

insert

- s 169 (Possessing drugs of dependence)
- s 171AAD (Possessing multiple small quantities of different kinds of relevant substances)

5 Sections 169 and 171

substitute

169 Possessing drugs of dependence

- (1) A person commits an offence if—
- (a) the person possesses a drug of dependence; and
 - (b) the quantity of the drug is not more than a small quantity for the drug.

Maximum penalty: 1 penalty unit.

- (2) A person commits an offence if—
- (a) the person possesses a drug of dependence; and
 - (b) either—
 - (i) the quantity of the drug is more than a small quantity for the drug; or
 - (ii) no small quantity is prescribed for the drug.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) This section does not apply if the person is authorised under the *Medicines, Poisons and Therapeutic Goods Act 2008*, or another territory law, to possess the drug of dependence.

171 Possessing prohibited substances

- (1) A person commits an offence if—
- (a) the person possesses a prohibited substance; and
 - (b) the quantity of the substance is not more than a small quantity for the substance.

Maximum penalty: 1 penalty unit.

- (2) A person commits an offence if—
- (a) the person possesses a prohibited substance; and
 - (b) either—
 - (i) the quantity of the substance is more than a small quantity for the substance; or
 - (ii) no small quantity is prescribed for the substance.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) This section 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.

- (4) In this section:
prohibited substance does not include cannabis.

**6 Possessing cannabis
Section 171AA (1) and (2)**

substitute

- (1) A person commits an offence if the person possesses not more than a small quantity of cannabis.

Maximum penalty: 1 penalty unit.

- (2) A person commits an offence if the person possesses more than a small quantity of cannabis.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

7 Section 171AA (5)

omit

8 New section 171AAD

insert

171AAD Possessing multiple small quantities of different kinds of relevant substances

- (1) A person commits an offence if—
- (a) the person possesses 3 or more different kinds of relevant substance; and
 - (b) the quantity of each substance is not more than the small quantity for the substance; and

- (c) the total of the small quantity fractions for each substance is more than 2.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Note Other offences under the [Criminal Code](#), ch 6 (Serious drug offences) may apply in relation to a person in possession of 2 or more kinds of controlled drugs, controlled precursors and controlled plants.

- (2) In this section:

relevant substance—

- (a) for a person who is 18 years old or older means any of the following—
- (i) a drug of dependence for which a small quantity is prescribed;
 - (ii) a prohibited substance for which a small quantity is prescribed;
- (b) for a person who is under 18 years old means any of the following—
- (i) a drug of dependence for which a small quantity is prescribed;
 - (ii) a prohibited substance for which a small quantity is prescribed;
 - (iii) cannabis for which a small quantity is prescribed.

small quantity fraction, for a relevant substance a person possesses, means—

$$\frac{\text{the actual quantity of the relevant substance}}{\text{the small quantity for the relevant substance}}$$

9 Section 171A*substitute***171A Offence notices**

- (1) If a police officer believes on reasonable grounds that a person has committed a simple drug offence, the police officer may serve an offence notice on the person.
- (2) If an offence notice is served on a child and the police officer serving the notice believes on reasonable grounds that the child is living with a person with parental responsibility for the child, the police officer must serve a copy of the notice on the person with parental responsibility.
- (3) An offence notice must—
 - (a) specify the nature of the alleged simple drug offence to which the notice relates; and
 - (b) specify the date and time when, and place where, the simple drug offence is alleged to have been committed; and
 - (c) state that no further action will be taken in relation to the alleged simple drug offence if the alleged offender—
 - (i) pays the prescribed penalty for the alleged offence within 60 days after the date of service of the notice; or
 - (ii) satisfies the attendance requirements of an approved drug diversion program within 60 days after the date of service of the notice; and
 - (d) specify details of the following:
 - (i) for payment of the penalty—the amount of the penalty, how the penalty may be paid and the place where payment may be made;

- (ii) for attendance at a drug diversion program—where and how to satisfy the attendance requirements of the program; and
 - (e) for a notice alleging a simple drug offence involving cannabis state that—
 - (i) unless a court orders otherwise, the government analyst may, under section 193C (Destruction of cannabis without court order), destroy seized cannabis without a court order; and
 - (ii) the alleged offender may apply to the Magistrates Court, under section 193D (Order for preservation of cannabis), for an order for the preservation of cannabis to which the alleged simple drug offence relates; and
 - (f) contain any other particulars prescribed by regulation.
- (4) If the alleged offender pays the penalty in accordance with subsection (3) (d) (i), or satisfies the attendance requirements in accordance with subsection (3) (d) (ii)—
- (a) any liability of the person in relation to the alleged simple drug offence is discharged; and
 - (b) no further proceeding may be taken in relation to the alleged simple drug offence; and
 - (c) the person must not be regarded as having been convicted of the alleged simple drug offence.
- (5) Except as provided in subsection (4), this section does not affect the institution or prosecution of a proceeding for a simple drug offence.

- (6) Any substance, equipment or object seized under any Act in connection with the alleged simple drug offence that would have been liable to forfeiture in the event of a conviction is forfeited to the Territory on—
- (a) payment of the penalty in accordance with subsection (3) (d) (i);
or
 - (b) satisfying the attendance requirements of the approved drug diversion program in accordance with subsection (3) (d) (ii).

- (7) In this section:

approved drug diversion program means a program approved under section 171BB.

attendance requirements, for an approved drug diversion program, means attending the first session of the program.

child means a person who is under 18 years old on the date of the alleged offence.

person with parental responsibility, for a child—means a person with parental responsibility for the child under the [Children and Young People Act 2008](#), division 1.3.2.

simple drug offence means an offence against any of the following:

- (a) section 162 (1);
- (b) section 169 (1);
- (c) section 171 (1);
- (d) section 171AA (1).

10 New section 171BB

in part 10, insert

171BB Drug diversion program

- (1) The Minister may approve a drug diversion program for the assessment and treatment of people who are found in possession of drugs of dependence or prohibited substances.
- (2) An approval is a notifiable instrument.

11 New section 205B

insert

205B Review of certain amendments related to personal use

- (1) The Minister must appoint a person with expertise in relation to people who use drugs or substances to which this Act applies (an *independent reviewer*) to review the operation of the amendments of this Act made by the *Drugs of Dependence (Personal Use) Amendment Act 2022*, as soon as practicable after the end of their 2nd year of operation.
- (2) The Minister must not appoint a person as the independent reviewer if the person is a public servant.
- (3) The person undertaking the review must consult with the members of any community the reviewer considers is affected, or likely to be affected, by the operation of the amendments.
- (4) The Minister must present a report of the review to the Legislative Assembly within 6 months after the day the review is started.
- (5) This section expires 4 years after the day it commences.

12 Dictionary, new definition of *small quantity*

insert

small quantity, for a drug of dependence or a prohibited substance, means a quantity of the drug or substance that is not more than the quantity prescribed by regulation.

Part 3 Drugs of Dependence Regulation 2009

13 New section 3A

insert

3A Offence notice penalty—Act, s 171A (3) (c) (i)

The prescribed penalty is \$100.

14 New section 6

insert

6 Small quantity—Act, dict, def *small quantity*

- (1) For the Act—
- (a) the small quantity mentioned in table 6.1, column 3 for a drug of dependence mentioned in column 2, whether in pure form or a mixture containing the drug, is prescribed; and
 - (b) the small quantity mentioned in table 6.2, column 3 for a prohibited substance mentioned in column 2, other than items 5 and 6, whether in pure form or a mixture containing the substance, is prescribed; and
 - (c) the small quantity mentioned in table 6.2, column 3 for a prohibited substance mentioned in column 2, items 5 and 6, in a pure form of the substance, is prescribed.

Table 6.1 Small quantity—drugs of dependence

column 1 item	column 2 drug of dependence	column 3 small quantity	column 4 discrete dosage unit (DDU)
1	amphetamine	1.5g	
2	cocaine	1.5g	
3	methylamphetamine	1.5g	

Table 6.2 Small quantity—prohibited substances

column 1 item	column 2 prohibited substance	column 3 small quantity	column 4 discrete dosage unit (DDU)
1	3,4-Methylenedioxymethylamphetamine (MDMA)	5 DDU or 1.5g	0.3g
2	cannabis (dried cannabis)	50g	
3	cannabis (harvested cannabis)	150g	
4	heroin	1g	
5	lysergic acid	5 DDU or 0.001g	0.0002g
6	lysergide (LSD, LSD-25)	5 DDU or 0.001g	0.0002g
7	psilocybine	1.5g	

(2) In this section:

discrete dosage unit (or *DDU*), for a drug of dependence or a prohibited substance, means the drug or substance in a form—

- (a) prepared, or apparently prepared, to be administered as a single dose; and

- (b) containing not more than—
- (i) for a drug of dependence—the quantity mentioned in table 6.1, column 4 for a drug mentioned in column 2, whether in pure form or a mixture containing the drug; and
 - (ii) for a prohibited substance—the quantity mentioned in table 6.2, column 4 for a substance mentioned in column 2, other than items 5 and 6, whether in pure form or a mixture containing the substance; and
 - (iii) for a prohibited substance—the quantity mentioned in table 6.2, column 4 for a substance mentioned in column 2, items 5 and 6, in a pure form of the substance.

Examples—par (a)

tablet, capsule

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

harvested cannabis means cannabis that has been harvested and—

- (a) is not dried cannabis; or
- (b) is a mixture of dried cannabis and cannabis that is not dried cannabis.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 11 February 2021.

2 Notification

Notified under the [Legislation Act](#) on 28 October 2022.

3 Republications of amended laws

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

I certify that the above is a true copy of the Drugs of Dependence (Personal Use) Amendment Bill 2022, which originated in the Legislative Assembly as the Drugs of Dependence (Personal Use) Amendment Bill 2021 and was passed by the Assembly on 20 October 2022.

Clerk of the Legislative Assembly

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