

2018

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Michael Pettersson)

Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Offences against Act—application of Criminal Code etc Section 4, note 1	2
5 Section 162	3
6 Section 171	3
7 Offence notices Section 171A (7), definition of <i>simple cannabis offence</i>	4
8 New section 171AB	5

Contents

	Page
9 Dictionary, note 2	6
Schedule 1	Consequential amendments
Part 1.1	Criminal Code 2002
Part 1.2	Medicines, Poisons and Therapeutic Goods Act 2008

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Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018

A Bill for

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

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

1 **1 Name of Act**

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

4 **2 Commencement**

5 This Act commences on 1 July 2019.

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

8 **3 Legislation amended**

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

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

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

13 *substitute*

14 *Note 1 Criminal Code*

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

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

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

1 **5 Section 162**

2 *substitute*

3 **162 Cultivation of 1 to 4 cannabis plants**

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

5 (a) is under 18 years old; and

6 (b) cultivates 1 to 4 cannabis plants.

7 Maximum penalty: 1 penalty unit.

8 (2) In this section:

9 *artificially cultivate* means—

10 (a) hydroponically cultivate; or

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

13 *cultivates* has the meaning given in the [Criminal Code](#), section 615
14 but does not include artificially cultivate.

15 **6 Section 171**

16 *substitute*

17 **171 Possessing prohibited substances**

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

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

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

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

3 **171AA Possessing cannabis**

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

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

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

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

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

3 **Examples—devices—par (a)**

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

7 **9 Dictionary, note 2**

8 *insert*

- 9 • territory law

1 **Schedule 1** **Consequential amendments**

2 (see s 3)

3 **Part 1.1** **Criminal Code 2002**

4 **[1.1] Sections 605 and 614, note**

5 *substitute*

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

9 **[1.2] Section 618 (2)**

10 *substitute*

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

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

14 (b) artificially cultivates 1 to 4 cannabis plants.

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

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

20 **[1.3] New section 636A (3) (ba)**

21 *insert*

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

1 **Part 1.2 Medicines, Poisons and**
2 **Therapeutic Goods Act 2008**

3 **[1.4] New section 9A**

4 *in chapter 2, insert*

5 **9A Application of Act to certain cannabis use not prohibited**
6 **under Drugs of Dependence Act 1989**

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

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

14 (2) In this section:

15 *defined cannabis*—

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

Endnotes

1 Presentation speech

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

2 Notification

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

3 Republications of amended laws

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

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