

2019

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

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

SUPPLEMENTARY EXPLANATORY STATEMENT

**Presented by
Shane Rattenbury MLA**

SHANE RATTENBURY AMENDMENTS TO THE DRUGS OF DEPENDENCE (PERSONAL CANNABIS USE) AMENDMENT BILL

2018

Introduction

This explanatory statement relates to the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 – Amendments* as presented 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 amendments and has not been endorsed by the Assembly.

The statement must to be read in conjunction with the amendments. It is not, and is not meant to be, a comprehensive description of the amendments. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Background

A Private Members Bill has been brought to the Assembly to reform the *Drugs of Dependence Act 1989* in relation to personal possession of cannabis, enabling adults to possess small quantities of cannabis and cultivate up to four cannabis plants in the ACT without criminal sanction. The Bill also provides consequential amendments to the *Criminal Code (ACT) 2002* to support this objective.

At its meeting on Wednesday, 20 February 2019, the Assembly passed the following resolution:

"That the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 be referred to the Standing Committee on Health, Ageing and Community Services (the Committee) for inquiry and report by 6 June 2019."

The Committee received 36 written submissions and heard evidence over four public hearings and tabled a final report and dissenting report in June 2018. The Report made 16 recommendations which supported the intent of the Bill, whilst also seeking to provide direction on improvements.

The Committee report highlighted the need for strong public information (recommendations 13 and 14) and acknowledged the complex and untested intersection between ACT and Commonwealth legislation.

On 19 September 2019, the Government respond to the committee report and agreed to four recommendations, has noted eight recommendations and has not agreed with four recommendations. The Government also outlined a range of further amendments.

The purpose of Mr Rattenbury's amendments are to improve the awareness of these changes for individuals who wish to possess or cultivate cannabis in the ACT, increase oversight of the impact of these changes, improve processes for medical cannabis users, and to embed the principles of harm minimisation into the *Drugs of Dependence Act 1989*.

Overview of the Amendments

The Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 – Amendments will improve the operation of laws related to cannabis use by:

- Delaying commencement until the Minister responsible makes public guidance material on the legal and health implications;
- embedding the principles of harm minimisation into the Bill to inform the interpretation and overall policy approach to the issue of drug use;
- removing obstacles to cultivation for personal use for individuals who are using cannabis for defined medicinal purposes;
- creating a Cannabis advisory council;
- requiring the Minister review the operations of the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 after three years; and
- removing the distinction between different types of cultivation.

Human Rights

The amendments may have potential human rights implications. Where an individual's human rights are affected in any capacity, the limitations are reasonable with further justification provided below.

A broad summary of the human rights impacted on by the Bill can be found in the Bill's explanatory statement. The key concepts and nature of affected human rights are discussed in the Bill's explanatory statement and supporting materials, therefore this commentary is focused on a comparison of any potential limitations and impact of Mr Rattenbury's amendments only.

The amendments may engage the following rights under the *Human Rights Act 2004* (HR Act):

- Section 8 - Recognition and equality before the law; and
- Section 9 – Right to life.

Quantity limit for cannabis possession for medicinal cannabis users

The proposed amendments allow individuals who are using cannabis for the treatment of a relevant medical diagnosis to possess a larger quantity of cannabis product. These amendments support the right to life as it relates to the delivery of medical treatment to patients.

The proposed amendment provides greater access to treatment for those patients with a condition approved for medicinal cannabis prescription under the ACT Controlled Medicines Prescribing Standards. This would enable patients to grow and produce their own medicinal product an increased amount of cannabis, providing treatment to people who have difficulty accessing it through the ACT Medicinal Cannabis Scheme.

This proposed amendment also engages the right to recognition and equality before the law. It potentially limits this right by drawing a distinction between those people who are possessing cannabis for medicinal purposes and those whose possession is for a recreational or non-medicinal purpose. The amendment is a justifiable limitation on the right to equality before the law as it recognises the interests of medicinal cannabis users as a group in the community who warrant a special measure to relieve suffering and meet their medical needs. There is no less restrictive means to achieve this purpose.

Artificial cultivation

The amendments that seek to remove the differing penalties under the *Criminal Code 2002* also positively engages the right to recognition and equality before the law. The amendments seek to recognise that it is the substance and quantity of that substance that is the primary focus of the *Drugs of Dependence Act 1989*, not the method of cultivation.

CLAUSE NOTES

Amendment 1 – Clause 2

This amendment stipulates that the Bill will come into operation on a day fixed by the responsible Minister by written notice, however this day cannot be a day that before the public notification of guidance material regarding the legal and health implications of personal cannabis use, possession and cultivation.

Amendment 2 – Proposed new Clause 4A

This amendment provides a set of objects for the *Drugs of Dependence Act 1989* which embed the principles of harm minimisation and support the interpretation of the Act in line with a public health approach to the personal use of drugs of dependence. This accords with the Australian Government long term commitment to the policy framework of ‘Harm Minimisation’ and is further established in both the National and ACT Government Drug Strategy.

Amendment 3 – Clause 5

This amendment omits the distinction between ‘artificial cultivation’ and ‘cultivation’ under the Act. This would enable cannabis to be cultivated hydroponically, using artificial light or using more natural outdoor cultivation methods. The amendment retains the limitation on the number of plants that can be cultivated by an individual.

Amendment 4 – Proposed new Clause 6

This amendment provides a higher cannabis possession limit for an individual with a recognised diagnosis for which medicinal cannabis can provide treatment. An individual with a recognised diagnosis or their carer acting on their behalf could possess up to 150 grams of cannabis, compared with the standard possession limit of 50g proposed in the Bill.

A relevant diagnosis is defined in the amendment as those conditions for which medicinal cannabis can be approved under the ACT Controlled Medicines Prescribing Standards.

Amendment 5 – Proposed new clause 8A

This amendment provides that the Minister cannot commence the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019* until written material designed to inform the community about the legal and health risks and possible implications of the of the Amendment Act are notified to the Legislative Assembly and published.

Amendment 6 - Proposed new Clause 8B

This amendment establishes a cannabis advisory council to advise the relevant Minister on issues arising from the legalisation of personal cannabis use in the ACT and other related matters. The Council is proposed to provide expertise to Government on new issues that are likely to emerge as changes to cannabis laws come into effect.

The Council is proposed to be made up of 5-7 members chosen based on their expertise across drug and alcohol issues, law enforcement and mental health. The membership must also include someone with lived experience of the use of a drug of dependence.

Amendment 7 – Proposed new Clause 8C

This amendment requires the Minister to 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. This review will therefore also include a review of the operations of the Cannabis Advisory Council outlined in amendment 6.

Amendment 8 – Schedule 1, Part 1.1

This amendment seeks to remove further references to the distinction between ‘artificial cultivation’ and ‘cultivation’ under the Criminal Code 2002.