



Mr Michael Pettersson MLA
Member for Yerrabi
Legislative Assembly for the ACT
By email: pettersson@parliament.act.gov.au

**Submission on the exposure draft of the
*Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018***

Dear Mr Pettersson,

1. Introduction

Thank you for your work in developing this important legislative proposal to legalise key consumer-level cannabis offences in the ACT, and for engaging in a public consultation process on the exposure draft of the Bill that aims to implement this policy.

The Alcohol Tobacco and Other Drug Association ACT (ATODA) is the peak body representing the alcohol, tobacco and other drug (ATOD) sector in the ACT. ATODA seeks to promote health in the ACT through the prevention and reduction of the harms associated with ATOD use.

ATODA works collaboratively to provide expertise and leadership in the areas of social policy, sector and workforce development, research, coordination, partnerships, communication, information and resources.

2. Expression of support

ATODA is encouraged that Members of the ACT Legislative Assembly like yourself are engaged in drug law reform.

ATODA supports the intent behind the proposed reforms, in particular to ensure that Canberrans, especially young adult Canberrans, do not become involved in the criminal justice system in ways that can have adverse consequences throughout life, for behaviour that the community believes should not have such severe sanctions.

ATODA also supports the intended objective of the proposed reforms being to legalise behaviour that currently constitutes minor consumer-level cannabis offences in the ACT with the aim of eliminating the adverse consequences that flow therefrom.

Your proposals closely accord with the views of a significant proportion of the ACT population, and with the views of almost all the well-informed people who work in the ATOD sector in Australia. As you know, at present Canberra and Australia are seeing a significant, mainstream driven, groundswell for drug law reform to decriminalise or legalise the current consumer-level drug offences. ATODA welcomes non-prohibitionist approaches to drugs.

You will be aware, for example, that ATODA, in collaboration with the School of Sociology at The Australian National University and Uniting have this year been presenting the Canberra Drug Policy Series of lectures and discussion presented by global leaders in the drug policy and law reform effort. Your proposals are a welcome component of this groundswell of calls for more rational, evidence-informed, cost-effective, non-prohibitionist policies relating to drugs.

A key area of ATODA's policies on drug law reform focus on Canberra becoming a community where people who use drugs are no longer criminalised for doing so.

ATODA calls for the repeal of the criminal offences covering the self-administration of all drugs, the possession of consumer-level quantities of all drugs, and the cultivation of a small number of cannabis plants.

ATODA supports the exposure draft's retention of drug diversion provisions for young people (Simple Cannabis Offence Notices).

3. Suggested amendments and additions

Repeal artificial distinctions between methods of cannabis cultivation

ATODA is keen to see the repeal of the artificial distinction made between the cultivation of cannabis by hydroponic means, on the one hand, and the more 'natural' cultivation of the bush form of cannabis, on the other. This is because almost all the cannabis consumed in the ACT is cultivated hydroponically. **This means the law, as proposed, would not apply to most cannabis users.**

We are not aware of a logical or practical reason for retaining an offence of 'artificial cultivation' of cannabis, whilst legalising other forms of cultivation.

Enabling not-for-profit alternatives to black market supply

The majority of people who use cannabis do not grow their own cannabis. This means that, as currently drafted, most cannabis users would be required to continue to access the black market for their supply of cannabis for personal use.

Internationally, Cannabis Social Clubs are associations of adult cannabis users, often registered in the relevant national registries, which seek to establish a closed system of cannabis supply for the personal use of their members – based on cooperative and non-profit principles. As such, Cannabis Social Clubs can be understood as an alternative (and 'middle ground') model for the supply of cannabis. We encourage consideration of how not-for-profit supply approaches alternative to the black market could be enabled through amendments to the current draft.

We note that Australian and international cannabis research experts are convening today at the National Drug Research Institute Annual Symposium in Melbourne - such as Professor Tom Decorte, Ghent University, Belgium, who is a global research leader in cannabis including Cannabis Social Clubs. We are happy to facilitate a conversation between you and him this week if you'd like.

Consistency with existing smokefree legislation

ATODA supports the prohibition of smoking cannabis in public places or near children but suggests that, instead of specifying 'public place', the prohibition applies to smoking cannabis in all locations where it is illegal to smoke tobacco products. This would include motor vehicles, etc.

*Embed evaluation **within** the Bill*

ATODA suggests that the next version of the Bill include a provision for stringent evaluation. This is because the proposal is, in an Australia context, an innovative public policy reform. Careful evaluation of its program theory, implementation and outcomes would produce information that would inform similar initiatives in other Australian jurisdictions, and elsewhere; and identify achievements and opportunities for improvements in the ACT drug policy. Mandating the evaluation in the legislation would constitute sound public policy.

We note that this month's Scientific Conference of the Australasian Professional Society for Alcohol and Other Drugs (APSAD) included the importance of legislating evaluation within drug law reform initiatives.

Removal of the self-administration offence

Despite the draft Bill having in its title the words 'personal cannabis use', the exposure draft appears to overlook the existing ACT offence of cannabis use, i.e. the prohibition of the self-administration of cannabis. See the ACT *Medicines, Poisons and Therapeutic Goods Act 2008*, s. 37 and s. 25. Cannabis is a 'prohibited substance' for the purposes of this Act.

ATODA strongly suggests that the self-administration offence needs to be repealed, as well as the possession and cultivation offences that are the focus of the exposure draft. Over the years, various high-level policy reviews have recommended the repeal of the self-administration offence, on public health grounds. We urge you to consider including this initiative within the Bill.

4. Potential implementation problems with the current draft

The Commonwealth Poisons Standard

A potential challenge to the exposure draft is the fact that the Commonwealth *Poisons Standard*, which automatically applies in the ACT, lists cannabis as a Schedule 9 Prohibited Substance. The current draft does not seem to engage this fact. Although ATODA does not have formal legal advice on the matter, we understand that the Poisons Schedule means that cannabis would remain a

prohibited drug in the ACT, regardless of the type of legislative provision that you are seeking.

The Commonwealth Criminal Code

The exposure draft also appears to be inconsistent with the Commonwealth *Criminal Code* s. 308.1. That sub-section provides that possessing controlled drugs (and cannabis is a controlled drug under the Commonwealth *Criminal Code*) is a criminal offence punishable by imprisonment, a fine, or both. Our understanding is that the *Australian Capital Territory (Self-Government) Act 1988* prohibits the ACT from legislating in a way that amends Commonwealth legislation. Furthermore, ATODA understands that, when ACT legislation is inconsistent with Commonwealth legislation, in this case the Commonwealth *Criminal Code* and the *Poisons Standard*, the latter prevails.

International treaty obligations

The current exposure draft appears to be inconsistent with Australia's international treaty obligations under both the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol, and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. Both require Australia to treat the possession of cannabis as an offence. ATODA assumes that this is the basis of the Commonwealth offence of cannabis possession and find it difficult to see how the ACT could legislate to invalidate these treaty obligations. That said, ATODA is conscious that many other countries have legislated in a manner inconsistent with the conventions, legalising consumer-level cannabis offences - for example Canada's national legal framework for cannabis came into effect in October 2018. The International Narcotics Control Board has consistently argued that such legislative initiatives are inconsistent with the nations' treaty obligations.

While these impediments may exist, we encourage them to be challenged so that ACT, Commonwealth and international drug laws are fit-for-purpose and have a stronger emphasis on public health.

5. Alternative ways forward, if required

We reiterate our support for your initiatives and hope that the impediments that we have referred to above can be overcome, and that the ACT can give national leadership by legalising the three categories of consumer-level cannabis offences, namely self-administration, possession of consumer-level quantities and cultivating a consumer-level quantity of cannabis.

ATODA draws attention to the fact that the treaty obligations, and advice provided to the Commonwealth in earlier years make it perfectly legal for jurisdictions to not impose penal penalties for the consumer-level cannabis offences. This is the basis upon which the ACT and some other Australian jurisdictions have decriminalised some minor drug offences, e.g. through the introduction of Simple Cannabis Offence Notice in the ACT, and our police and court drug diversion initiatives. The possession offences remain, but the sanctions applied are significantly reduced.

ACT Attorney-General could issue a directive

If the approach taken in the exposure draft is found to be invalid in law, or is not acceptable to the ACT Legislative Assembly, it will be useful to reflect on the intended objectives of the amendments and to identify other ways of achieving those objectives.

One approach is for the ACT Attorney-General to issue a directive to ACT Policing and/or the ACT Director of Public Prosecutions that it is inexpedient to prosecute people for consumer-level drug offences generally, or consumer-level cannabis offences only.

ATODA understands (but has not seen documentary evidence) that this approach has been used in the past in the ACT, for example when the ACT Attorney-General directed that commercial sex workers not be prosecuted, back in the days when commercial sex work was a criminal offence in the ACT. Another example was in 2012 when the Commonwealth Attorney-General issued a directive to the Commonwealth DPP not to charge low-level people smugglers with offences that entailed harsh mandatory penalties of imprisonment.

Ceasing to prosecute people for consumer-level cannabis offences would be very much in step with community sentiment, and represent an evidence-informed, cost-effective and rational approach to drug policy.

Establishment of an independent expert committee on drug policy and law reform

On Friday 22 November 2018, Dr Nuno Capaz, Vice President of the Dissuasion Commission, Lisboa, Portugal spoke at The Canberra Drug Policy Series.¹

Amongst many things, the audience learnt that Portuguese drug law reform to cease criminalising people who use drugs was based on recommendations made by a committee of experts tasked with identifying how best to reform drug policies, and resulted in the drug law reform approach taken by Portuguese legislators.

There may be merit in considering such an approach in the ACT, as: Australia is fortunate to have some of the best drug policy researchers in the world; there are essential intersections and interrelationships between drug law reform with drug treatment, in particular diversion programs; and there are important opportunities to enhance the ACT's current diversion programs and practices.

ATODA has strong networks in Canberra's specialist ATOD sector and the criminal justice sector, as well as nationally and internationally, and stands ready to assist you with this initiative, offering our expertise in the area.

Thank you again for your drug law reform initiatives. We would be happy to discuss with you the contents of this submission, and related matters, if you would find that helpful.

¹ A recording of The Canberra Drug Policy Series event with Dr Capaz is available here: <https://www.facebook.com/TCDPS/>

Please do not hesitate to contact ATODA if you have any queries or require further information in support of this submission.

Yours sincerely

A handwritten signature in black ink that reads "Carrie Fowlie". The signature is written in a cursive, flowing style.

Carrie Fowlie
Chief Executive Officer
Alcohol Tobacco and Other Drug Association ACT (ATODA)
Email: carrie@atoda.org.au

22 November 2018