



Briefing Paper: The ACT's new personal cannabis use, possession and cultivation legislation

23 January 2020

Introduction¹

On 25 September 2019 the Legislative Assembly for the ACT enacted the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019* (ACT) (the Act). The amended legislation partially legalises the use, possession and cultivation of small amounts of cannabis for personal use by those aged 18 years and over, while maintaining the current legislative provisions for those under 18 years of age.

The changes are due to come into effect on 31 January 2020, subject to the ACT Government having published guidance material prior to that date that aims 'to inform the community about the legal and health implications of the amendments...'².

While it may seem that the legal status of cannabis in the ACT will soon be more complex than it was previously, the potential complexities associated with it are not unlike the complexities associated with the current legal status of other substances, such as alcohol and tobacco. For example, it is illegal for people under the age of 18 years to purchase alcoholic beverages; it is legal for people aged 18 years and over to purchase alcoholic beverages but illegal for people aged 18 and over to consume alcohol in certain public places; etc.

Background to the new personal cannabis use legislation

Over 8 million people in Australia are estimated to have used cannabis, and around 2.6 million Australians are estimated to have used cannabis recently³. This means around 35,000 people in Canberra are estimated to have used cannabis recently⁴.

Arguments for legalising cannabis include reducing harms associated with having a criminal record, and reducing the burden on the criminal justice system⁵. In the ACT in the year to 30 June 2017, there were 390 arrests for cannabis offences. Of these, almost 90% were the arrests of people classified as cannabis consumers, rather than cannabis providers⁶.

¹ **Important:** The information provided in this briefing note is not legal advice. While it has been prepared by ATODA with advice from drug policy experts, if you are not sure what the new legislation says, and/or how it may apply to you or to people you know, it is important that you seek legal advice from a qualified legal practitioner.

² The Act, sections 2 & 9.

³ Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2016: detailed findings*, Drug Statistics series no. 31, cat. no. PHE 214, Canberra: AIHW, 2017.

⁴ Recent use means use of cannabis in the year prior to being surveyed.

⁵ Caulkins, JP, Kilmer, B & Kleiman, MAR 2016, *Marijuana legalization: what everyone needs to know*, 2nd rev. edn, Oxford University Press, New York.

⁶ Australian Criminal Intelligence Commission 2019, *Illicit drug data report 2017-18*, ACIC, Canberra, <https://www.acic.gov.au/publications/reports/illicit-drug-data-report-2017-18>.

The current cannabis decriminalisation scheme

The ACT has a long history of taking progressive steps and trying new methods to minimise the harms associated with drugs in our community.

While South Australia was the first Australian state to remove criminal punishments for minor cannabis offences in 1986, it was followed by the ACT in 1992, when the ACT Government introduced the Simple Cannabis Offence Notice, or SCON, scheme⁷.

The SCON scheme currently partially decriminalises some minor, consumer-level, cannabis offences⁸.

People of any age, apprehended by police for possessing up to 50 grams of dried cannabis, or one or two cannabis plants - excluding all hydroponically or otherwise artificially cultivated cannabis plants - where it is deemed by police to be for personal use only, can be either charged with the offence and brought before the court, or issued with a Simple Cannabis Offence Notice (SCON penalty notice).

If the person pays the penalty of \$100 within 60 days no criminal record is recorded. From the time of commencement of the new cannabis legalisation provisions, intended to be 31 January 2020, SCONs will only apply to people under 18 years of age.

However, even though the ACT has had SCONs in place for many years, recent data suggests that less than a quarter of cannabis consumers in the ACT, who were arrested for minor, consumer-level, cannabis offences, were issued with a SCON – the remaining 76% had to appear before a court to answer the charge⁹.

Canberra public opinion on cannabis legalisation

The majority of the ACT community supports the legalisation of consumer-level cannabis offences.

The most recent evidence for this comes from an October 2018 survey, commissioned by the ACT Government and conducted by Orima Research¹⁰.

One of the survey questions was 'To what extent would you support or oppose the personal use of cannabis being made legal?' Of the 591 people who answered the question, 54% supported the personal use of cannabis being made legal.

When we remove the 'neither support nor oppose' responses, 68% supported the personal use of cannabis being made legal, and just 32% 'oppose' or 'strongly oppose' the initiative.

⁷ Hughes, C, *The Australian (illicit) drug policy timeline: 1985-2016*, Drug Policy Modelling Program, last updated 15 December 2016, retrieved from: <http://dpmp.unsw.edu.au/resource/drug-policy-timeline>, 2016

⁸ Access Canberra 'Simple Cannabis Offence Notices overview', viewed 16 July 2019, https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1939/~simple-cannabis-offence-notices

⁹ Australian Criminal Intelligence Commission 2019.

¹⁰ Orima Research & ACT Government 2018, *Community Views Survey, Cycle 3 (part D), November 2018*, ACT Government, Canberra, [CMTEDDFOI 2018-0354](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1939/~simple-cannabis-offence-notices).

The new legislative provisions: partial legalisation of cannabis use, possession and cultivation in the ACT

Once the legislative amendments commence (currently scheduled for 31 January 2020), the following provisions will apply:

- It will be legal for a person aged 18 years or older and in the ACT to possess up to and including 50 grams of dried cannabis, or up to 150 grams of harvested cannabis that is not dried or that is a mixture of dried and not dried plant material.
- It will be legal to cultivate up to two cannabis plants per person, and up to four cannabis plants in total at a particular premises where the person/people who are cultivating the cannabis live, and to which the public does not have lawful access.
- The harvested cannabis must be stored out of the reach of children.
- While it will be legal to consume cannabis, it will be an offence for the person to smoke cannabis in a public place, and/or to expose a child to cannabis smoke or vapour.
- It will continue to be an offence to drive under the influence of cannabis, and to drive with any detectable level of cannabis in the body identified through oral fluid (saliva) or blood testing.
- It will continue to be a criminal offence to supply cannabis to another person.
- It remains an offence for a person under 18 years of age to consume cannabis, to possess or cultivate any quantity of the drug, and/or to supply cannabis to another person.

Obtaining access to, and supplying, cannabis

It is important that the Canberra community, and visitors to the Australian Capital Territory, understand that the new provisions deal entirely with cannabis consumption, and the possession and cultivation of consumer-level quantities of cannabis, without having any provisions concerning the availability and supply of the drug. Specifically, it does **not** provide for a legal, regulated supply of cannabis as occurs in other countries such as Uruguay, some states of the USA, Canada and Spain, and is being envisaged in other nations.

It remains a criminal offence to possess or cultivate more than the prescribed amounts of cannabis, and to supply the drug to another person.

Guidance material to help in interpreting the new cannabis legislation, and evaluation

The ACT Government has recognised that the community needs to be provided with understandable, accurate information on the partial legalisation of cannabis within the Australian Capital Territory. In fact, the Act requires the Minister to 'prepare and publish guidance material to inform the community about the legal and health implications of the amendments', and the guidance material must be published before the amendments come into effect.

Furthermore, the Minister is required, by the Act, to review the operation of the new provisions 'as soon as practicable after the end of their 3rd year of operation', and to present a report of the review to the Legislative Assembly of the Australian Capital Territory.

Commonwealth offences

The new ACT legislation is drafted in such a manner that cannabis consumption, possession and cultivation remain as offences (a legal requirement flowing from Australia being a signatory to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988), but that those offences do not apply to a person in the ACT who is 18 years of age and older.

As noted above, a person aged under 18 years who cultivates, possesses, consumes or supplies cannabis will still be committing an offence, and faces arrest and prosecution before the courts, or could be eligible for diversion, including being issued with a SCON penalty notice.

A range of offences relating to cannabis continue to exist under Commonwealth law.

These include a personal possession offence with no link to importation of, nor trafficking in, the drug. Specifically, section 308.1 of the *Criminal Code Act 1995* (Commonwealth) creates the offence of possessing 'controlled drugs'¹¹, with a penalty upon conviction of imprisonment for two years and/or a fine of up to 400 penalty units (\$84,000 at the time of writing).

The head of ACT Policing has publicly referred to the apparent inconsistency between ACT and Commonwealth legislation in this area¹². They have argued that members of ACT Policing (despite working as contractors to the ACT Government) have power to charge people found in possession of cannabis in Canberra, under Commonwealth law, despite that behaviour being legalised under ACT law.

Guidance material from the ACT Government

As noted above, the ACT Government is required, by law, to 'prepare and publish guidance material to inform the community about the legal and health implications of the amendments', and the guidance material must be published before the partial legalisation amendments commence, with the commencement currently scheduled to occur on 31 January 2020.

The guidance material is available online at www.act.gov.au/cannabis and www.health.act.gov.au/cannabis.

Comments from ATODA

- This ACT cannabis law reform is an important step forward to end the criminalisation of people who use drugs.
- The partial legalisation of cannabis use, possession and cultivation in the ACT should reduce harms associated with people having a criminal record, reduce the burden on the criminal justice system, reduce stigma and promote help seeking.

¹¹ 'Controlled drugs' include cannabis (in any form, including flowering or fruiting tops, leaves, seeds or stalks, but not including cannabis resin or cannabis fibre).

¹² ACT Policing, Submission to the *Inquiry into the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, dated March 2019, retrieved from: https://www.parliament.act.gov.au/data/assets/pdf_file/0008/1360673/Submission-28-ACT-Policing.pdf, 2019

- Substance use disorders are the most highly stigmatised health condition in the world, leading to delayed help seeking and poorer health outcomes for many.
- The removal of criminal penalty for the many Canberrans who have or currently use cannabis is an important step in ensuring people feel able and safe to reach out for help if they need it.
- We hope that if cannabis use becomes less stigmatised over time, help-seeking behaviour will increase, causing more people to seek specialist alcohol and other drug support.
- The ACT's specialist alcohol and other drug service system is expert and experienced in supporting people who use cannabis to improve health and reduce drug related harms. Cannabis is the third most common drug of concern for people accessing AOD treatment in Canberra (after alcohol and amphetamines).
- Alcohol and other drug treatment and harm reduction works, and the community is encouraged to contact a service if they need information or help for themselves or a family member in relation to cannabis use. There are 36 programs in the ACT, see here for details: <https://directory.atoda.org.au/>
- Unfortunately, however, the ACT specialist alcohol and other drug service system is already under pressure as result of growing demand and chronic and historical underfunding, impacting on waiting periods for services. Despite the readiness of specialist alcohol and other drug services to support Canberrans experiencing issues with their cannabis use, an urgent funding injection is required to enable the service system to meet current and future demand.
- The guidance material that has been made available online by the ACT Government in advance of the legislation coming into effect is an important first step in communications.
- While the current guidance material may be sufficient for the general public, the complexity of the legislative changes and the context of existing misinformation about the legal status of cannabis in the Canberra community means that a multi-pronged, responsive and ongoing communication strategy with multiple target groups is needed.
- A key target group that needs technical and responsive legal and health information and education is the population who are at the centre of the legislative amendments - that is people who use cannabis.
- Another key target group is the alcohol, tobacco and other drug workforce who require technical *legal* information. Approximately 300 alcohol, tobacco and other drug workers are in contact with 600-700 service users daily in the ACT (1 in 6 of whom are seeking help for cannabis use). It is crucial that this workforce understands the changes to personal cannabis use legislation in the ACT to support accurate communication with people who use cannabis, their families and communities.
- ATODA looks forward to supporting the ACT Government in its efforts to ensure key target groups have access to fit-for-purpose information and education.
- The impacts of this cannabis law reform (both positive and negative) should be independently evaluated, with an evaluation framework and data collection from day one, as part of the three year legislated review. ATODA also looks forward to

participating in the evaluation and review of this initiative, including ensuring that people who use cannabis in the ACT are kept out of the criminal justice system.

About ATODA

ATODA is the peak body representing the alcohol, tobacco and other drug sector in the ACT. ATODA is an evidence informed organisation that seeks to promote health through the prevention and reduction of the harms associated with alcohol, tobacco and other drugs.

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.

For more information or comment please contact:

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