



Families and Friends for Drug Law Reform (ACT) Inc.

committed to preventing tragedy that arises from illicit drug use

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**CONSULTATION ON THE EXPOSURE DRAFT OF A
PRIVATE MEMBER'S BILL
BEFORE THE LEGISLATIVE ASSEMBLY OF THE
AUSTRALIAN CAPITAL TERRITORY**

**SUBMISSION OF
FAMILIES AND FRIENDS FOR DRUG LAW
REFORM
TO MR MICHAEL PETTERSSON CONCERNING
THE EXPOSURE DRAFT OF
THE
*DRUGS OF DEPENDENCE (PERSONAL CANNABIS
USE) AMENDMENT BILL 2018***

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RECOMMENDATIONS

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**Submission of
Families and Friends for Drug Law Reform
to Mr Michael Pettersson
concerning the exposure draft of the
Drugs of Dependence (Personal Cannabis Use) Amendment Bill
2018**

Introduction

1. Families and Friends for Drug Law Reform welcomes this [Bill](#) as a measured but significant step towards the objective of ameliorating the rigours of the criminal law for Canberrans apprehended with small quantities of cannabis by removing criminal sanctions on its personal use. We recognise that cannabis is associated with some harm but these are insignificant compared to the harms brought by the threat of the criminal law and application of it to cannabis users.
2. We accordingly congratulate you, Mr Pettersson, for taking the initiative to move a private member's Bill which will at the very least open up for discussion the vitally important reform to remove the application of the criminal law to people and in circumstances to which it should never have been applied. We welcome the opportunity to make a few observations on the exposure draft.

About Families and Friends for Drug Law Reform

3. Families and Friends for Drug Law Reform was formed 23 years ago following a public meeting in April 1995 of a group of people in the Australian Capital Territory who had a child, relative or friend who had died from a drug overdose. Its membership now extends across Australia. The grief that all shared turned to frustration and anger that those lives should have been lost: all would be alive today if drug use and addiction had been treated as a social and medical problem and not a law and order one. The criminal law and how it was enforced contributed to the death of the child, sibling or friend of many of our members.
4. The drug that was implicated in those deaths was heroin, not cannabis, but those fatalities illustrate the nefarious unintended consequences of drug policy whereby the very people intended to be protected by it end up as its victims. Those who died were frightened away from treatment or deterred from accessing it out of fear of prosecution or heavy-handed police interrogation with the aim of identification of the supplier of the drug, the consumption of which produced their death. What is more, it must be emphasised that overdosing is far from being the only cause of death attributable to drug policy.
5. In its [Charter](#), Families and Friends for Drug Law Reform is committed to promote the “removal of criminal sanctions for personal use of currently illegal drugs.” In our view we regard your bill as consistent with that objective. We only wish it applied to all illicit drugs.

Link between suicide and drug policy

6. It is important to recognise that drug-related mortality extends far beyond accidental overdose deaths. Risk factors for suicide by drug users are intensified by their stigmatisation as criminals. In 2017, the [Bureau of Statistics observed](#) that:

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“In addition to the 1,808 drug induced deaths in 2016, there were an additional 1,387 deaths where drugs were identified as a contributory cause. The majority of drug related deaths (72.6%, or 1,005) were from external causes (excluding drug overdoses). . . . Suicides of mechanism other than drug overdose were the most likely external cause of death to have a drug found to be a contributory factor. Both addiction to substances and acute intoxication were recorded as being contributory factors to suicides. Research has shown that people with substance abuse issues share many risk factors to people at risk of self harm. These risks include both social factors such as socioeconomic status and health factors such as a greater likelihood to suffer a mood disorder. This highlights the importance of understanding drug use history in people at risk of self harm.”

7. Families and Friends for Drug Law Reform explored drug policy related suicide in a 2016 submission to the Standing Committee on Health, Ageing, Community and Social Services. That committee had been charged on 11 February 2016 by the Legislative Assembly to report on Youth Suicide and Self Harm in the ACT. The Assembly was moved to establish the enquiry by the alarming level of suicide and self harm revealed in the “last recorded data from ‘Causes of Death’ in 2013 [issued by the Australian Bureau of Statistics]:

- a third of young people aged 15-25 who died in the ACT in 2013 died as a result of suicide;
- in 2013, suicide was the leading cause of death of children between 5 and 17 years of age;
- intentional self-harm is one of the top ten leading causes of death in males;
- 37 persons died due to suicide in the ACT in 2013, which is a 54% increase on the previous year;
- there was a 13% increase of persons aged 15-19 dying from suicide in Australia in 2013 compared to 2012;
- between 2011 and 2013, there were more deaths by suicide in the ACT than there were in transport accidents;
- intentional self-harm is the leading cause of death among Australian children and young people aged 15-24 years;
- as at November 2014, one child under 18 years of age takes their own life every week, and 18 227 children and young people were hospitalised in Australia for intentional self-harm over the last five years;
 - (i) between 50 and 60 children every week are admitted to hospital for self-harming incidents in Australia; and
 - (j) there has been a 650% increase in deaths from self-harm, when comparing 12 and 13 year olds with 14 and 15 year olds from 2007 to 2012.”

Our submission urged the Committee to “carefully consider the effect of criminalisation of drugs on the marginalisation of drug takers and how changes to drug policy would have a direct bearing on the astronomically high suicide rate of drug users.”

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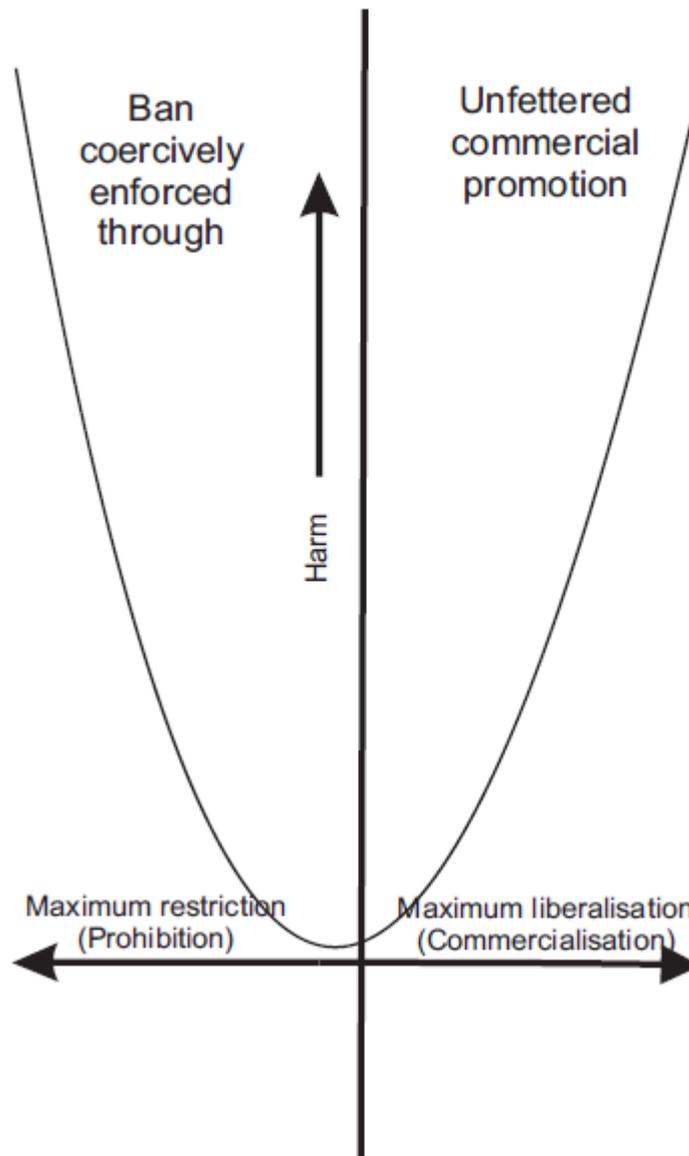
8. In transmitting its submission to the committee, Families and Friends wrote that “we would very much appreciate the opportunity of appearing before the committee in relation to [the submission]”. One of our members whose intelligent, beautiful daughter, Neri, who took her own life in her boyfriend’s car with carbon monoxide, was prepared to give evidence. As it turned out the committee tabled in the Assembly its report. [The report](#) neither made any mention of Neri nor paid any attention to the issues of substance raised in our submission.

9. On 16 June Ms Joy Birch, the committee’s Labor Party chair, wrote expressing the regret of the committee that it was “unable to facilitate a hearing for [us] to appear and to give evidence.” The reasons conveyed by Ms Birch are curious: the committee, she wrote, declined to hear us “due to the nature of that submission and a limited time available to the committee for preparing the report into the enquiry.” The report and this response invites the conclusion that the committee did not want to consider the association between drug policy and suicide that our submission raised.

Devising a drug policy that produces minimum harm

10. The [Charter](#) of Families and Friends for Drug Law Reform has us committed to the promotion of “cautious and well-researched steps toward changing laws so that they cause less harm.” This is graphically expressed in the following parabola which recognises that least harm will lie somewhere between maximum restriction epitomised by criminal prohibition and maximum liberalisation represented by unfettered commercialisation.

**DRUG POLICY
FINDING THE SWEET SPOT OF MINIMUM HARM**



11. Action taken to reduce the harm of a very dangerous drug like tobacco has proceeded successfully by imposing restrictions on what had been unfettered commercialisation which saw the product enticingly advertised. Whether current regulations have established a “sweet spot” for that product is subject to debate. If, on the basis of further information, more could be done to reduce the harm then it should be open to adjust the degree of regulation. The present Bill proceeds from the opposite direction of outright prohibition enforceable under the criminal law. This status gifts the distribution of cannabis to organised crime which pays no regard for the well-being of the punters to whom it is flogged. Conceivably cannabis might be taxed but one must be careful to ensure that it is set at a level that does not provide an incentive for organised crime as it has done in a big way with chop chop tobacco.

What the personal cannabis use Bill does.

12. The bill’s ground breaking change would be to remove ACT criminal sanctions altogether on people possessing up to 50 g of cannabis or who cultivate up to 4

cannabis plants. This implies that possession or cultivation does not constitute an offence (cls. 162 and 171AA). In common law, conduct that is not specified to be an offence is permitted.

13. The quantities of drugs that, henceforth, are eligible for processing under the expiation notice system of simple cannabis offence notices or SCONs are broadened. Under the existing law the SCON on the spot fine system was limited to possession of up to only 25g and being caught growing cannabis plants limited to just two (s. 171A(7)). The bill would thus:

- legalise the possession and cultivation of cannabis; and
- expand the SCON system by doubling the existing upper limits eligible for consideration by that process of decriminalisation.

14. The SCON expiation notice system had been introduced by the *Drugs of Dependence (Amendment) Act 1992* (no. 52 of 1992) (possession of up to 25g & cultivation of not more than 5 cannabis plants). The *Criminal Code (Serious Drug Offences) Amendment Act 2004* reduced the number of plants to 2 and excluded artificially grown ones.

Where the bill falls short

Retention of an offence for those under 18

15. In terms of what it does not do, the bill retains an offence for those under 18 to possess or cultivate any amount of cannabis or any number of cannabis plants. Cls. 162 & 171A thus make underage users and growers subject to the SCON expiation notice process for conduct that is legal for adults. Families and Friends for Drug Law Reform believes that this is a misguided effort to promote the well-being of under age Canberrans. Below, we explain why.

The application of the SCON procedure continues to be subject to police discretion

16. Whether the SCON procedure will be applied remains at the discretion of the police and more particularly the constable on the beat. In the words of s. 171A(1): “If a police officer reasonably believes that a person has committed a simple cannabis offence, he or she may serve an offence notice on that person.” This creates an unconscionable anomaly. An adult Canberran caught with the same quantity of cannabis or plants will face no legal consequences whereas an underage Canberran might be given an on the spot fine or even prosecuted in the Children’s Court for an offence that would not exist when he or she turned 18.

The criminal law continues to be the gatekeeper and ultimate enforcer of the law on young people

17. The criminal law remains the ultimate guarantor and enforcer of the SCON system in the event that the person handed an on the spot fine does not expiate it. In the past this has led to criticism of the SCON system and pressure to wind it back to nothing. In 2000 the Select Committee on health and community care [inquiring into cannabis use in the ACT](#) had before it evidence that:

“Since the introduction of the SCON scheme in the ACT there have been 1275 SCONs issued to July 30 1999. Of this number, only 667 had been paid (47% went unpaid).”

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18. An [evaluation undertaken in 2014](#) by the Drug Policy Modelling Programs outlined the procedure police have adopted to chase up unpaid fines. It is worrying that the police support for the scheme was tepid if not antagonistic:

Of perhaps greater concern is that the roundtables and stakeholder interviews revealed low support within police for the scheme,¹⁷ due to the perception it creates extra work. Indeed, our discussions revealed that SCONS are now seen as a last resort for some Sergeants and that they actively discourage their use by their teams. This is a real concern if the scheme is to be maintained.

19. That same committee observed that: "It is important that a policy does not allow excessive discretion in its application that may result in unequal treatment for various people found to have infringed the policy." Accordingly it is recommended that "... the provisions in the legislation which allow police to charge a person with a criminal offence for simple cannabis offences be removed." (Recommendation 9)

20. To give effect to that proposition, Families and Friends for Drug Law Reform, therefore, recommends that:

Recommendation 1: If the SCON procedure is to be retained for underage cannabis users or growers, the Bill should be amended to remove the police discretion in s. 171A(1) of the current **Error! Reference source not found.** in relation to underage people.

21. Families and Friends for Drug Law Reform also urges that a slightly more ambitious approach be taken to the Bill eliminating the residual but substantial criminal overshadowing of under age Canberrans. It is unjust and inconsistent with the approach to drug policy enunciated by the Attorney General, Mr Gordon Ramsay, at our 23rd annual remembrance ceremony on 29 October. There he stated to a gathering of grieving families and friends that:

"the government's approach will be seeking how it is that we can bring a health-based approach and support people in that rather than a criminal justice approach."

22. We wholeheartedly embrace those sentiments, merely adding that the social harms correlated with drug use be considered in company with the harms to the health of drug users. Drug policy is implicated in virtually all of Australia's most costly, intractable social problems. In submissions over the years we have drawn attention of the ACT Assembly, the Commonwealth Parliament and other governments to links between drug policy and harms as various as [child protection](#), [mental health](#), [suicide](#) and [delinquency](#) and articles we have written on [poverty](#) and [school dropout](#). Such social harms are the subject of the newly released *We All Pay the Price* report of Australia21 launched at the Assembly on 2 November. The report was the result of a high level national Roundtable at Parliament House in Melbourne on 21 March 2018. Its full title is: [We All Pay the Price: Our drug laws are tearing apart Australia's social fabric, as well as harming drug users and their families.](#)

Establishment of an administrative tribunal to which apprehended underage drug users may be referred

23. Families and Friends accepts that there should be consequences for the consumption of potentially dangerous substances but firmly maintains these should not have anything to do with the criminal law and its deliberately stressful

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procedures. From that point of view we suggest that consideration be given to the substitution for the SCON system with its on the spot fines, with referral to a specially established administrative tribunal answerable to the Department of Health and consisting of service providers, health workers and competent officials. Such a facility has the potential to transform the often dysfunctional relationship between teenagers and the police from one of antagonism driven by the threat of punishment. Instead there would be the possibility of referral to engagement with assistance. The threat of punishment tends to consolidate dysfunctional peer groups whereas engagement has more chance of loosening unhelpful associations. In that way there would be a positive return on the vast effort spent in futilely chasing cannabis users along the lines that Portugal is experiencing with their Commissions of Dissuasion that an audience at the Academy of Science Shine dome heard about on Friday 16 November from Dr Nuno Capaz from the Lisbon Commission. Portugal, of course, guides users of any illicit drug through this system. The anomalous and unfair situation created by the Bill of underage cannabis users subject to an on the spot fine for what is legal for their elders provides an excellent opportunity to try out the adaptability to this country of the much praised Portuguese approach.

24. In the course of a conversation with Carrie Fowlie, Executive Officer of ATODA, and Dr Caitlin Hughes of the Drug Policy Modelling Program at the University of New South Wales, Dr Capaz had this to say of the reaction of police in Portugal to the rather different system there.

“For the police officers the job is basically the same as it was before. If they catch someone on the street in possession of an illicit substance then the substance is apprehended and they notify them to the commission . . . It is as simple as that. In terms of what they were expecting, the police were not happy in the beginning because what was happening in Portugal before 2001 was that the criminal law was not actually enforced. People were not being sent to court just for the possession of an illicit substance. They might be caught by a police officer but there was no point in sending a 17 or 18 year old kid to court. It was as simple as that. So basically police used drug users as a source of information about drug dealers. At the beginning they thought that they were going to lose that source but they didn't because it's still illegal. The substance is still apprehended.

“Now the police are much happier with this system. Because it is an administrative offence, normally people are much more willing to provide information about drug dealers than they were. Before if it was a criminal offence, you were arrested and went to the police station. They will write down your statement, you will sign it. In the end it will show up in court to show that someone sold a substance to you. So with lawyers involved it would be much harder to get that information. So what happens now is that the police get that information informally on the street. So it was a change. People tend to be not very comfortable with big changes. Police forces are normally very well structured hierarchically so they are even more afraid of changing. They weren't very happy in the beginning but now they are happy; they are fine.”

Recommendation 2: Provision be made in the Bill for underage people apprehended with the smallest quantity of cannabis or cannabis plants to be referred to a civil administrative tribunal for assessment and referral rather than be prosecuted or processed under the SCON system.

Continued imposition of severely punitive penalties on good Samaritans providing cannabis to those seeking relief.

25. As the [draft explanatory statement](#) explains: “This Bill does not affect the prosecution or enforcement of Commonwealth and Territory laws relating to the sale or trafficking of cannabis . . . “ The Bill thus continues to expose to very high penalties those who provide cannabis for a medical purpose.” This puts people who can benefit from access to cannabis in an unconscionable position that was mentioned in a recent [report of the Senate Legal and Constitutional Affairs Committee](#):

“2.16 A number of submitters spoke very favourably about the benefits of cannabis for managing medical conditions, including for chronic pain, cancer, and other conditions. However, in support of the bill, some of these submitters told the committee that it was difficult for individuals to access medicinal cannabis legally, which meant that many of them turned to the unregulated illicit market to self-medicate.

“2.17 A submitter whose name was withheld told the committee that he and his wife successfully used cannabis to manage their conditions, and observed:¹⁶

The TGA's [Special Access Scheme] is a complete and utter joke and I can't stress enough how useless and uncompassionate the system is. With now only 1000 people getting access to medicinal cannabis since the scheme started, with estimated hundreds of thousands of Australians trying to get on the scheme is outrageous and should be overturned immediately. It causes the black market to flourish and would be even cheaper still then to get a legal prescription. If [you're] desperate, like us, it's a no brainer. The TGA does more harm [than] good on this issue.¹⁷

“2.18 This was confirmed by Professor Webster AO, who suggested that current health services supporting chronic pain conditions were 'inadequate', and so many turned to non-medicinal cannabis to manage chronic conditions.¹⁸”

26. Under section 165 of the Drugs of Dependency Act, a person who sells or supplies a drug of dependence or a prohibited substance may be punished by “500 penalty units, imprisonment for 5 years or both.” Under s. 133 of the [Legislation Act](#) a penalty unit is currently \$150 for an individual and \$750” thus exposing a good Samaritan to a hefty fine of \$75,000.

Artificially cultivated cannabis not eligible for SCON procedure

27. There is no leniency for artificially cultivated cannabis; the adults who grow their own indoors remain subject to the full rigour of the pre-existing law and underage cultivators are not eligible to be processed under the expiation notice system. This is a big barrier to Canberra residents who seek access to a supply throughout the year of cannabis to meet their health needs and those of their family. Families and Friends for Drug Law Reform understands that it is impossible to grow cannabis outside in the frosty ACT winter. Now, it might be objected that those who require cannabis for health purposes should be able to access it through medical channels. All we can say, though, is that for some this has not been possible. It is worth recalling in this context the insightful actions of the still very relevant 1996

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Pennington report to the Victorian government. Indeed the bill implements Pennington's recommendation 7.1 making the use and possession of a small quantity of marijuana . . . no longer . . . an offence."¹ Pennington saw cannabis best supplied as a cottage occupation rather than as a commercial transaction. He thus recommended that "cultivation of up to 5 cannabis plants per household for personal use should no longer be an offence." He went on to recommend that be defined to exclude everything other than private residences."²

Recommendation 3: That the Bill be amended to embrace artificially cultivated cannabis so long as it is cultivated in the private residence of the cultivator.

Recommendation 4: Cl. 177AA(1) of the Bill should be amended to permit the supply on non-commercial terms of cannabis to meet the health needs of the person supplied.

The gateway drug hypothesis

28. Families and Friends do not wish to downplay the worrying significance of the [high level of cannabis use by Australian schoolchildren](#). Having said that, the direct harms associated with cannabis are less than those resulting from the consumption of alcohol and tobacco. Effective measures should be put in place to dissuade young people from trying any addictive substance.

29. One can say with confidence, though, that the illicit status of cannabis does little if anything to dissuade young people from trying it.

30. It is frequently said that cannabis is a gateway drug to other more dangerous ones. This idea is commonly bandied around by those who defend criminal prohibition. Cannabis often does come before use of harder drugs like methamphetamine and heroin but so does alcohol and tobacco. The link is not pharmacological but sociological and psychological:

31. Peers who flog cannabis to their mates will typically have access to a smorgasbord of other illicit drugs and peer pressure from one drug using mate to another.

32. Indeed as the household survey has revealed, peer pressure was a factor that influenced first use of 54.5% of those who have ever used an illicit drug (NDS 2004 table 6.2, p. 37).

33. Curiosity and risk-taking are important factors that influence first use of any illicit drug. The influence that these prevalent, normally commendable and adolescent, characteristics place at high risk a high percentage of young Australians.

34. The Howard government in a pamphlet drew these influences to the attention of the nation in warning parents not to be complacent about the likelihood of their children dabbling in illicit drugs. The influences challenge the common assumption that young people use drugs only if they are having problems at home or at school. At the top of the list was "Availability and acceptability of the drug" which points to peer group pressure as much as existing drug use in the family. Otherwise the factors listed in the pamphlet were common psychological characteristics:

¹ Victoria, Premier's Drug Advisory Council Report, *Drugs and Our Community: Report of the Premier's Drug Advisory Council (Pennington Report)* (Premier's Drug Advisory Council, Melbourne, March 1996) rec. 7.1, p. 129.

² *Ibid*, rec. 7.2, p.129.

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- Curiosity and experimentation.
- Wanting to be accepted by peer groups.
- Rebellion.
- Depression.
- As a way to relax to cope with stress, boredom or pain.
- To experience a high or a rush” (Abetz 2001).

35. The 2013 household survey reported that of people aged 14 or older, the most common reason that an illicit substance was first used was curiosity (66%), followed by wanting to do something exciting (19.2%) and wanting to enhance an experience (13.3%) (NDS 2013 Online Table 5.27)

How to respond to youth drug use

36. According to the [latest household survey](#), that of 2016, at least 6.9 million Australians (or 30% of the population) have used cannabis at least once in their life (NDS 2016 p. 61). For the vast majority of those the experience was something from which they moved on leaving no untoward impact. The situation would have been altogether different if they had become caught up in the criminal justice system. A dynamic of mutually reinforcing factors would very likely torpedo their life chances:

association with a criminal, dysfunctional peer group that may have motivated them to make a quick buck on the side by dealing to their mates and engaging in property and other offences;

exclusion from school thus depriving them of the capacity to fully participate in the economy and society

experience in the juvenile justice system enhancing the likelihood that they will graduate to an adult prison.

Cost savings

37. The explanatory statement mentions a 2013 evaluation by the Department of Health of the ACT Diversion Programs that mentioned that an aim of the program had been to ‘reduce cost to the [criminal justice system] CJS and reduce social cost of [Alcohol and other drugs] AOD’. We have not made an analysis of the financial and economic impacts of the bill but, on the basis of Victorian and Commonwealth Parliamentary budget office estimates, we would expect the changes to have substantial impact on the ACT budget position.

38. At the beginning of this very month the [Victorian budget office](#), in response to a request by the Reason Party leader, Fiona Patten, to consider the cost implications of a proposal to decriminalise illicit drugs and legalise and regulate cannabis projected that savings in Victoria of \$60 million would come from a reduction in policing and prosecution, and another \$144 million will come from a rise in revenue.

39. For its part, a [Commonwealth Parliamentary Budget Office costing](#) of Senator Lyonhjelms proposal to remove Commonwealth restrictions on cannabis projected net law enforcement savings of \$292 million between 2017 and the financial year 2019-2020. The office noted that this estimate “reflects the net impact of an increase in

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Goods and Services Tax (GST) revenue and a decrease in federal law enforcement expenses over this period”.

40. Some idea of the potential for reduction in social and crime costs can be gathered from the careful Swiss analysis of these benefits flowing from its program of heroin assisted treatment which demonstrated reductions in the region of 90% or more property related crime from those receiving that treatment and significant improvements in mental health and other social costs and bigger gains in employment, social integration and housing stability. Families and Friends for Drug Law Reform summarised these in a [paper seeking a Productivity Commission inquiry](#) into the savings that could be expected from better drug policies. Funds devoted to addressing the many chronic and severe social problems correlated with illicit drug use can reasonably be expected to have more effective impact when operating in the context of a health centred approach to drug policy. The recent Australia21 paper mentioned above on social harms of drug policy also bear upon these issues.

Interaction with Federal Law

41. In considering the proposed bill one should recognise that there is more at play regarding federal law than is outlined in the draft explanatory statement. While Families and Friends for Drug Law Reform considers that there is a way around existing Commonwealth law, it is as well to recognise that the Criminal Code Act 2005 purports to criminalise drug dealings down to the street level. This was effected by the Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Act 2005 that for the first time extended Commonwealth criminal law into areas dealt till then exclusively by state and territory law. In extending this to states it relied for constitutional authority on the external affairs power and the 1998 United Nations Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances. Thus, by s.306.1(1) of the Code:

“A person commits an offence if:

- (a) the person cultivates a plant for a commercial purpose; and
- (b) the plant is a controlled plant.

The maximum penalty prescribed is a gigantic “ Imprisonment for 10 years or 2,000 penalty units or both.” According to the Crimes Act a penalty unit is currently set at \$210 making for a maximum fine of \$420,000.

42. The Code effectively designates transactions at the retail level as serious drug crimes. By s. 308(1) the mere possession of a controlled drug is an offence under the code. A drug user who sells any amount of a drug no matter how small is said to “traffic” in it (s. 302.1). The term “sell” is broadly defined to include barter, exchange and agreement to sell (s. 300.2).

43. In 2005 Families and Friends for Drug Law Reform strongly objected to this extravagant extension of Commonwealth criminal authority and the grossly inflated designation of street level drug crimes as “Serious Drug Offences”. We pointed out that retail level transactions between users are very common. Indeed, the marketing power of the peer group combined with the addictive qualities of the commodity are the underpinnings of the strong illicit drug economy. At the same time, it is largely young people who are attracted to and participate in this retail market. These are the very people whom we should seek to help. The particular challenge for policy is to

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weaken these underpinnings of the drug economy without causing significant harm to these same people.

44. S. 300.4 specifies that the Criminal Code drug offences are “not intended to exclude or limit the concurrent operation of any law of a State or Territory.” The section adds that “Without limiting subsection (1), this Part is not intended to exclude or limit the concurrent operation of a law of a State or Territory that makes: (a) an act or omission that is an offence against a provision of this Part; or (b) a similar act or omission.” The Legislation provides several other savings for State and Territory law. The rule against double jeopardy in s. 4C(2) of the Crimes Act will operate so that someone punished under a State or Territory law may not be prosecuted under the proposed legislation for the same matter. The Code also allows as a defence conduct justified or excused (or reasonably thought to be justified or excused) under the law of a State or Territory (ss. 313.1 & 313.2). Finally, provision is made for people charged with possession of a drug under s. 308.1 to be dealt with under procedures of State or Territory law. A note explains that this “allows for drug users to be diverted from the criminal justice system to receive the same education, treatment and support that is available in relation to drug offences under State and Territory laws.” This is a saving for court diversion schemes.

45. As far as we understand it, the Commonwealth has never sought to apply its criminal code’s drug provisions to offences dealt with by state or territory law though conceivably could choose to use its legislation to intervene to countermand a policy direction it did not favour.

Bill Bush
President,
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