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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**ACT GOVERNMENT RESPONSE TO THE SELECT COMMITTEE REPORT
ON THE INQUIRY INTO DRUGS OF DEPENDENCE (PERSONAL USE)
AMENDMENT BILL 2021**

**Presented by:
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Introduction

The ACT Government is committed to fostering positive wellbeing outcomes for all Canberrans now and into the future. As a progressive government, we acknowledge there is always potential for improvement, and we welcome the constructive approach taken in the Select Committee's Inquiry into the *Drugs of Dependence (Personal Use) Amendment Bill 2021* (the Committee).

The Government acknowledges the hard work of the Committee in preparing its reports, and the wealth of information provided in submissions. We would like to thank everyone who gave evidence, particularly those who shared their personal, lived experiences and those who provided submissions. We appreciate the time and effort that went into this work. This information is valued and is being used to inform the planning and commissioning of ACT Government-funded alcohol and other drug services.

An overarching strength of the Government's harm minimisation approach to drug policy is its framing of drug use as a health issue rather than a criminal justice issue. As a key guiding principle of its policy approach to alcohol and drugs under the *National Drug Strategy 2017-2026*, the Government is committed to reducing the harms from drug use, as well as reducing supply through policing and regulation, and reducing demand through treatment and prevention. Decriminalisation reduces the negative impact of involvement with the criminal justice system for people who commit minor personal possession drug offences and can lighten demands on courts and the correctional system.

The Government supports further steps to decriminalise personal drug possession in the ACT while retaining penalties against possession of larger quantities and drug trafficking. The ACT Government has a nation-leading record in drug decriminalisation, and in recognising personal illicit drug use as a matter for health services instead of prosecution. The Government has developed amendments to the *Drugs of Dependence (Personal Use) Amendment Bill 2021* (the Private Member's Bill) to ensure that the legislation will best fit with the existing ACT drug diversion system and other elements of ACT law. The Government supports the introduction of a Simple Drug Offence Notice as a discretionary option for police and agrees with the Select Committee that alternatives should be offered for those with limited ability to pay a fine. The Government amendments to the Bill include changes to the Personal Possession Limits proposed in the Private Member's Bill to ensure they are practical for police and equate to broadly consistent numbers of doses across different drug types.

The Government is currently developing the next iteration of the *ACT Drug Strategy Action Plan*. The next Action Plan is being developed in collaboration with stakeholders including the ACT alcohol and other drug treatment and support service sector and will be informed by local data and priorities. The Select Committee's recommendations regarding governance arrangements are under consideration as part of the next Action Plan.

The Government has made new investments of close to \$20 million in drug and alcohol treatment and harm reduction during the current Action Plan. In June 2020 the ACT Government also signed an agreement with the Australian Government for additional

funding under the Community Health and Hospitals Program, including \$4.3 million to improve access to community-based alcohol and other drug residential rehabilitation beds and to address critical points of need, including infrastructure repairs and improvements.

In the 2021-22 Budget the Government announced \$4.87 million to increase the capacity of the ACT treatment system and explore new service models to better meet the needs of priority groups, with further capital investment to follow. This investment comprises:

- \$803,000 to commence design work to deliver a new alcohol and other drug and mental health treatment precinct, including design work for a new, community-led Aboriginal and Torres Strait Islander residential alcohol and other drug rehabilitation facility, which is progressing in partnership with Winnunga Nimmityjah, and for the redevelopment of the Ted Noffs Foundation and Catholic Care facilities in Watson;
- \$260,000 for a six-month pilot of a fixed site pill testing service – the first of its type in Australia;
- \$400,000 for detailed planning for a potential ACT supervised drug consumption facility;
- \$2.825 million to continue to provide comprehensive treatment for people referred from the new ACT Drug and Alcohol Sentencing List; and
- \$582,000 to increase distribution of sterile injecting equipment to people who inject drugs to prevent the spread of blood borne viruses.

In previous Budgets and funding initiatives during the lifetime of the *ACT Drug Strategy Action Plan 2018-2021* the Government has invested new funding of nearly \$15 million to ensure a broad range of services are available and accessible to Canberrans when they need them and to reduce drug related harms. This investment includes:

- \$3.014 million to establish a new northside opioid treatment clinic;
- \$2.93 million to expand early intervention and diversion programs for people in contact with, or at risk of contact with, the criminal justice system;
- \$910,000 to support delivery of the Directions Health Services Mobile Primary Care Outreach Clinic, which provides integrated primary at five locations to those who include people experiencing homelessness or housing insecurity, people with AOD dependencies, and people with complex needs and chronic conditions, including mental health conditions;
- \$1.226 million to increase the availability of the opioid overdose reversal drug naloxone to community members;
- \$1.075 million over four years to expand alcohol and other drug services in the Alexander Maconochie Centre;
- \$2.114 million to adopt the national Real-Time Prescription Monitoring system platform to help prevent harms and preventable deaths associated with the use of high-risk medicines; and

- More than \$1.5 million in additional funding to respond to the COVID-19 pandemic, including ensuring that people have been able to access opioid treatment medications, even when in isolation.

The ACT Health Directorate is currently undertaking a collaborative commissioning process, which includes extensive consultation with drug treatment services, to ensure alcohol, tobacco and other drug services can best meet the needs of the ACT community into the future.

The Government is committed to improving the health and wellbeing of Canberrans through providing better health-based approaches to drug use and accessible evidence-based services. The specific recommendations for treatment services made in the inquiry report will be considered in detail as part of this process to best provide high-quality health services in the right place at the right time for all Canberrans.

RESPONSE TO RECOMMENDATIONS

Recommendation 1

The Assembly should pass the Drugs of Dependence (Personal Use) Amendment Bill 2021.

Agreed

The Government supports the intent of the Bill and will propose amendments to ensure that it best meets its stated objectives, and that possible unintended consequences are minimised. These proposed amendments include:

- changes to place the existing (unlegislated) Illicit Drug Diversion Program on an equal legislative footing to the proposed Simple Drug Offence Notice;
- changing the name of the “Personal Possession Limit” proposed in the Private Member’s Bill to “small quantity” to better describe its purpose;
- making the “small quantity” amounts more consistent across different drugs and more reflective of evidence of consumption patterns;
- adjusting the list of drugs eligible for reduced penalties;
- establishing the list of drugs eligible for reduced penalties in regulation, rather than in legislation, so that it can be more easily amended to take account of changing trends in future;
- reducing the maximum prison sentence for personal possession offences for all illicit drugs; and
- providing for review of the changes after three years of operation.

Recommendation 2

The ACT Government should commission an independent evaluation of the provisions enacted by the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019* and the enacted *Drugs of Dependence (Personal Use) Amendment Bill 2021*.

Agree in Principle

The Government has previously made a commitment to review the operation of the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019* three years after it came into effect (being February 2023).

The Government amendments to the Bill provide that the operation of the enacted *Drugs of Dependence (Personal Use) Amendment Bill 2021* must be reviewed after three years. This will ensure that the legislation is fit for purpose and has not had unintended consequences. In addition, the Government regularly monitors, and will continue to monitor, data on drug use trends and emerging patterns of harms.

Recommendation 3

The ACT Government should amend the Bill to include a ‘catch-all’ clause (potentially acknowledging the Therapeutic Goods Association scheduled prohibited drugs) to include emerging drug trends.

Agree in Principle

The Bill includes amendments that relate to 11 drugs. The proposed Government amendments will propose small quantity amounts for 10 of these drugs (removing only methadone, which is regulated as a pharmaceutical drug).

The *Criminal Code Regulation 2005* lists trafficable quantities for 75 controlled drugs, 185 prohibited substances, and 24 controlled plants. The Regulation also includes “catch-all” clauses for related drugs. The Government amendments propose reduced maximum penalties for offences relating to all the drugs in this list. ACT police officers already have discretion to divert people away from the criminal justice system to assessment, education and potential treatment under the existing Illicit Drug Diversion program for the full list contained in the Regulation and related drugs.

The scientific evidence for the effects of many infrequently used drugs is incomplete. There are potential risks in defining “small quantities” for the more than 270 additional substances not contained in the Private Member’s Bill, and their derivatives. The list contained in the Bill essentially describes the best studied substances, for which ACT information on consumption patterns is also available.

While supportive in principle of the catch-all approach, due to the risks of applying a formulaic approach to define small quantity amounts, and the fact that diversion to health-based treatments for a broader range of drugs already exists, the Government prefers a staged approach to potential inclusion of additional drugs based on evidence of use, police possession apprehensions in the ACT, and increased monitoring of emerging drug trends. The Government amendments define the list of drugs eligible for a Simple Drug

Offence Notice in regulation rather than legislation, so that it can be more easily amended to respond to emerging data and trends.

Recommendation 4

The ACT Government should review the drug possession limits in the Bill to ensure they reflect the evidence on patterns of consumption for personal use.

Agreed

The patterns of consumption have been considered alongside other factors, including potential personal drug sharing, and drug dealing. The evidence provided by annual interviews with regular drug users on their consumption patterns reported by the National Drug and Alcohol Research Centre Drug Trends reports has been carefully considered in developing amendments to define small quantity amounts.

Recommendation 5

The ACT Government should provide alternative options to a fine such as attending an information session on drug harm reduction, a peer support service or alcohol and other drug treatment, or, in specific situations, to completely waive the fine.

Agreed

The ACT has an existing illicit drug diversion program which provides diversions to education and assessment for drug possession offences at the discretion of ACT police officers. The Government is working with ACT Policing on flexible options for discharging fines if a person experiences difficulties in paying. The proposed Government amendments include an option to discharge a simple drug offence notice via the illicit drug diversion program.

Recommendation 6

The ACT Government should, through ACT Policing, enact a policy to provide information about treatment services available with a Simple Offence Notice.

Agreed

The Government agrees that service information should be provided with a Simple Drug Offence Notice. The exact form that this takes will be determined in collaboration with ACT Policing. It is expected that the Simple Drug Offence Notice will include standard information about treatment options.

Recommendation 7

The ACT Government should significantly increase its investment in alcohol and other drug services.

Agreed

The Government has invested nearly \$20 million in new funding for drug treatment and harm reduction services through the 2019-20, 2020-21 and 2021-22 Budgets, supporting implementation of the *ACT Drug Strategy Action Plan 2018-2021*. This includes:

- expanding the capacity of Canberra Health Services' drug diversion service;
- expanding drug treatment capacity at the Alexander Maconochie Centre;
- increasing funding for distribution of the opioid overdose reversal drug naloxone and sterile injecting equipment to reduce harms from drug use;
- increasing funding to the alcohol and other drug treatment and support service sector to provide treatment services to the ACT Drug and Alcohol Court;
- joint funding of a mobile clinic operated by Directions Health Services to provide alcohol and drug, mental health and primary care services to disadvantaged community groups; and
- establishing a northside Opioid Maintenance Treatment Clinic.

The Government has also committed to constructing a new Aboriginal and Torres Strait Islander residential rehabilitation facility, and to redeveloping the ACT youth alcohol and other drug residential rehabilitation facility in Watson. The ACT will also pilot a fixed-site pill testing service, and funding was committed in the 2021-22 Budget for further consideration of a medically supervised injecting facility.

The ACT Government also secured \$4.3 million in grant funding from the Australian Government to improve the infrastructure of ACT alcohol and other drug services.

ACT Health Directorate is undertaking a process of commissioning of alcohol and other drug treatment services within the existing funding envelope, in collaboration with the alcohol and other drug sector. Any potential additional funding for these services would be subject to future Budget considerations.

Funding for drug treatment in the ACT is also provided by the Australian Government through channels such as Capital Health Network, the Pharmaceutical Benefits Scheme and the Medicare Benefits Schedule.

Recommendation 8

The ACT Government should continue its commitment to establish and fund an Aboriginal Community Controlled residential rehabilitation facility and increase the number of First Nations alcohol and other drugs Peer Support Workers.

Agreed

The Government is undertaking collaborative planning work with Winnunga Nimmityjah Aboriginal Community Health Services for construction of an Aboriginal community-controlled alcohol and other drug residential rehabilitation facility in Watson. Consideration will also be given to the best ways of increasing the number of Aboriginal and Torres Strait Islander alcohol and other drug workers, including peer support workers.

Recommendation 9

The ACT Government should invest in housing options for people who use alcohol and other drugs and are at-risk or experiencing homelessness.

Agree in Principle

The Government continues to be supportive of providing appropriate housing solutions and recent initiatives are focused on a Housing First approach, including the Axial Housing Program. Many people experiencing homelessness have multiple and complex needs. This means they are likely to require more than one episode of support. The Government remains committed to ensuring the homelessness services sector, AOD treatment services and mental health services work together in a holistic manner.

Recommendation 10

The ACT Government should commission a feasibility study into the establishment of a combined mental health and alcohol and other drug residential facility.

Noted

The Minister for Mental Health recently reported to the Legislative Assembly on this matter, in response to a Legislative Assembly Resolution of 3 December 2021.

The Government agrees that improving services for people with co-occurring mental health and drug and alcohol disorders is a key issue for providing the right services, in the right place at the right time. Significant work is already underway to improve coordination and collaboration between mental health and AOD services. For example, in the 2020-21 Budget, the Government provided \$180,000 for preliminary work in relation to establishing a multidisciplinary service to support young people who have mental health needs co-occurring with trauma, disability and/or drug and alcohol abuse, and an intensive trauma service for adolescents built on the Melaleuca Place model to support the recovery of 13-17-year-olds who have experienced trauma. A six-month scoping study was undertaken in 2021, recommending a comprehensive, integrated approach for improving life outcomes for adolescents and their families. This work informed the ACT and Commonwealth Government's Mental Health and Suicide Prevention Bilateral Agreement, which includes a

co-funded commitment of over \$8 million over four years for the development of the new integrated Youth at Risk program.

The ACT Health Directorate is currently conducting a process of commissioning of alcohol and other drug services. This involves working collaboratively with sector partners, and people with lived experience, to plan, design and deliver the best health and support services for Canberrans. Service models to better respond to co-occurring mental health and alcohol and drug disorders will be scoped as part of the commissioning process. While residential services are an important part of the mix of services in a treatment system, the commissioning process will consider the system as a whole. Residential treatment is not appropriate for many individuals and it may be determined through the commissioning process that other options are equally effective and more cost-effective.

Responses to alcohol, tobacco and other drugs also need to address prevention, treatment and harm reduction. Harm reduction services, such as overdose response training are particularly important to reduce harms associated with drug use for individuals not ready to stop using drugs or engage in treatment.

Recommendation 11

The ACT Government should refresh the Drug and Alcohol Services Planning tool.

Agreed

In mid-2021 Capital Health Network commissioned the Alcohol, Tobacco and Other Drug Association ACT (ATODA) to update the Drug and Alcohol Service Planning tool specifically for ACT use, in collaboration with the University of New South Wales. This work is now completed.

The developers of the tool did not intend it to be used as a standalone model, but as one piece of information among others to be used in planning treatment services. The ACT Health Directorate will consider the estimates of demand and resources generated by the planning tool, alongside service and other data and information gathered from current service planning and collaborative re-commissioning processes

Recommendation 12

The ACT Government should fund the alcohol and other drug sector to provide counselling support to children of their clients.

Agree in Principle

The Government supports in principle increased support for the children of alcohol and other drug treatment clients. However, it is not clear that the alcohol and drug treatment sector is best placed to provide this service. This issue will be considered as part of commissioning work for alcohol and other drug services.

Recommendation 13

The ACT Government should review current ACT drug education programs and implement an evidence-informed school drug education program, appropriately funded, for ACT school students and their teachers.

Agree in Principle

ACT schools implement the Australian Curriculum. The ACT Government, through the Education Directorate, provides a range of resources to support delivery of alcohol and drug education and the delivery of the Australian Curriculum in ACT public schools. The Australian Curriculum is currently being revised, with the updated version due for publication in 2022. When the revised Australian Curriculum is released, the ACT Government will further consider these resources and how best to support any curriculum variation in the relevant learning areas.

The ACT Government continues to strengthen the professional learning offerings that are available to allied health services staff in ACT public schools. The School Youth Health Nurses support ACT school communities to adopt a whole school approach to address health and social issues that face young people and their families. The goal is to help young people have a safe and healthy transition into adulthood.

Recommendation 14

The ACT Government should review current alcohol and other drugs training for frontline health and emergency services workers and community services providers to ensure best-practice harm reduction practice.

Agree in Principle

The Government agrees that all members of the Canberra community should have access to high-quality and non-discriminatory healthcare, and that measures to reduced stigma about drug and alcohol use and health problems arising from this use are important to achieving this outcome.

The Government notes that additional training may be welcomed by frontline workers. However, many frontline workers, such as paramedics and emergency department clinicians, are highly experienced in working with people with AOD use issues and receive significant ongoing training. The Government also notes that a new iteration of the National Alcohol and Other Drug Workforce Development Strategy is currently being drafted, which will provide guidance on national priorities for workforce training in the coming years.

Recommendation 15

The ACT Government should work collaboratively with the sector and industry experts in a co-design process to expand capacity, address infrastructure constraints and develop new models of care. Specialised models for consideration include:

- intersection of mental health and alcohol and other drugs services (no wrong door approach);

- specialised methamphetamine services;
- southside peer-based model of care (Canberra Alliance for Harm Minimisation & Advocacy);
- women's day detox/rehab program;
- family member support services;
- an alcohol and other drugs Police, Ambulance and Clinical Emergency Response service;
- the We CAN program through Alcohol Tobacco and Other Drug Association to target smoking amongst injecting drug users;
- continue to support the distribution of naloxone and training in its administration to people likely to witness an overdose (cf Canberra Alliance for Harm Minimisation & Advocacy program);
- trials and research on medicinal drug use (such as ketamine, psilocybin and MDMA) for treatment of mental health and PTSD issues; and
- trials and research on a Hydromorphone Assisted Treatment program.

Agree in Principle

The Government notes the specific suggestions made by the Select Committee.

The ACT Health Directorate is currently undertaking a process of planning and commissioning of ACT alcohol and other drug services, which involves consultation with experts and the specialist service sector. Services will be prioritised through this process in line with available funding. All Government procurements are subject to probity requirements, including competitive procurement processes in most cases.

In relation to naloxone, the ACT has been a nation leader, with the Canberra Alliance for Harm Minimisation and Advocacy program commencing in 2012, providing overdose recognition training and the life-saving reversal agents to those most at risk of experiencing or witnessing an opioid overdose. The ACT Government committed further ongoing funding to increasing naloxone availability in the community, providing \$1.226 million over four years, and ongoing funding through the 2019-20 Budget. Additionally, the Australian Government recently announced the roll out of a national take-home naloxone program following a successful pilot program. The ACT was not included in the pilot phase of the project but will benefit from full roll out of the national program.

Recommendation 16

The ACT Government should revise the ACT Drug Strategy Action Plan. Part of that revision should include:

- development of a whole-of-government action plan/s;
- an expert advisory committee that includes alcohol and other drugs experts and people with lived experience;

- engagement with the Commonwealth Government to ensure consistency of ACT and Commonwealth Law; and
- a provision for a steering group to oversee the implementation of the Amendment Bill.

Agree in Principle

The Government is currently developing the next iteration of the Drug Strategy Action Plan for 2022 and beyond, in collaboration with relevant stakeholders. The previous Action Plan expired at the end of 2021. The development process for the next iteration of the Action Plan includes consideration of the recommendations of the Select Committee Inquiry, and the establishment of appropriate governance arrangements. Both the content of the Action Plan and the proposed governance arrangements may be subject to change as this process progresses.

The ACT Government will engage with the Australian Government regarding the Bill, and a steering group will be established to oversee implementation of the Bill.

Recommendation 17

The ACT Government should provide training to ACT Police on the cultural transition to a decriminalisation model, as well as the practical implications of the implementation of the legislation.

Agreed

Personal drug possession offences are already eligible for diversion in the ACT under the Illicit Drug Diversion, Simple Cannabis Offence Notice and Youth Alcohol Diversion programs. The ACT has the second highest rate of diversion for drug offences in Australia after South Australia.

A Memorandum of Understanding exists between ACT Health Directorate and ACT Policing through which ACT Health Directorate funds training of police officers in the principles of drug diversion and the implementation of the Illicit Drug Diversion Program. This MOU expires in 2022 and will be adapted in line with changes introduced by legislative amendments to the *Drugs of Dependence Act 1989*.

The Government supports an extended implementation period for the Bill, to ensure a high-quality implementation process, including appropriate training for police officers and development of effective engagement and communication materials for impacted communities. This is also supported by ACT Policing.