



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**STANDING COMMITTEE ON HEALTH, AGEING  
AND COMMUNITY SERVICES**

(Reference: [Inquiry into Drugs of Dependence \(Personal Cannabis Use\)  
Amendment Bill 2018](#))

**Members:**

**MS B CODY (Chair)  
MRS V DUNNE (Deputy Chair)  
MSC LE COUTEUR**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**TUESDAY, 26 MARCH 2019**

**Secretary to the committee:  
Mrs J Moa (Ph: 620 50136)**

**By authority of the Legislative Assembly for the Australian Capital Territory**

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

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## **Privilege statement**

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*Amended 20 May 2013*

**The committee met at 10.03 am.**

**PETTERSSON, MR MICHAEL**, MLA, Member for Yerrabi

**THE CHAIR:** Good morning everyone. I declare open this first public hearing of the Standing Committee on Health, Ageing and Community Services inquiry into the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018. I acknowledge that we meet on the lands of the Ngunnawal people. I pay my respects to elders past, present and emerging and their continuing contribution of their culture to this city and this region.

Today the committee will be hearing from five witnesses: Mr Michael Pettersson, MLA; Family and Friends of Drug Law Reform; the National Drug Research Institute; Mr Michael Moore, AM; and the Australian Federal Police Association. On behalf of the committee I thank all witnesses for making time to appear today. I remind said witnesses that the proceedings are being recorded by Hansard for transcription purposes and are being webstreamed and broadcast live.

We will now move to the first witness of the hearing, Mr Michael Pettersson, MLA. Do you have a brief opening statement?

**Mr Pettersson:** I do.

**THE CHAIR:** I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement before you on the table. Can you confirm for the record that you understand the privilege implications of the statement?

**Mr Pettersson:** Yes, I have read the statement.

**THE CHAIR:** Thank you.

**Mr Pettersson:** Good morning, members of the committee. It is a great pleasure to be with you this morning to discuss the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018. The bill in its current form will allow for the legal possession of up to 50 grams of cannabis and also for the cultivation of up to four cannabis plants grown naturally. I am, however, aware of proposed amendments, many of which I support.

Legalising cannabis is not a radical idea. Recent government research has found that 54 per cent of Canberrans support legalising cannabis for personal use and only 27 per cent of Canberrans are opposed to the change. This is not entirely unexpected as the 2016 national drug survey found that 35 per cent of Australians have used cannabis and 10 per cent have used it in the last year. Put simply, this drug is not hard to find, which is why I think it is time we changed our laws.

By any measure the current prohibition model is ineffective and harmful. It does not stop use, it hinders medical treatment, it criminalises large sections of the community and also provides a vast income for organised criminal gangs. Put simply, our current

model is outdated and wrong. It is based on punitive ideas of justice that treat drug use as a moral failing and not as a health problem. I believe personal cannabis use should be free of fines and arrest.

I thank the committee for the opportunity to appear today and I look forward to answering any questions.

**THE CHAIR:** Thank you. Mr Pettersson, can you inform the committee of global developments in legalising cannabis?

**Mr Pettersson:** Thank you, I can. Right around the world we are seeing cannabis laws change. Most notably, discourse focuses around the United States of America where 10 states have now legalised cannabis use, and they are as diverse as Alaska, California, Colorado, Maine, Massachusetts, Nevada, Oregon, Vermont, Washington and Michigan.

But it is not just states in America that have legalised cannabis; it is also countries like Canada, South Africa, Uruguay, and Spain, and even our friends in New Zealand will be holding a national vote on it in coming years.

The reason it is so important to talk about the different jurisdictions and countries that have legalised cannabis is that they all have very different systems of legalisation. For example, Vermont, from which my bill draws heavily, has legalised the possession and use of cannabis but it has not created a commercial market. Most people when they think about cannabis legalisation think about Colorado where they have not only legalised but have regulated and taxed the substance. Those taxes draw in about a billion dollars' worth of revenue every year.

The other example of cannabis legalisation worth mentioning is Spain. They do not have a retail model like in Colorado and they do not have an individual possession model like I am proposing here; they have collectives of cannabis growers so those who might not have a green thumb can still grow cannabis, even in a system without retailers.

It is really important that we think about what other jurisdictions have done and consider what is most suitable for the ACT as we look to change our cannabis laws.

**THE CHAIR:** In the other jurisdictions you have mentioned has it been identified as a gateway drug?

**Mr Pettersson:** No, and the gateway drug theory is often and easily debunked. Drug addiction is a complex combination of both internal and external factors. To put it down to one substance causing an individual to go down a dark path is not fair to the individual. If we had to pinpoint a particular point of the process that causes the most harm to an individual, that would be the interaction with drug dealers. Drug dealers have a commercial imperative to push harder and more addictive substances on their clients. Which is why in my private member's bill there is a mechanism to enable individuals to grow their own legal supply. That means that people do not need to interact with drug dealers anymore, which hopefully will reduce income for organised criminal gangs.

**MRS DUNNE:** On that last point, Mr Pettersson, where does a private grower obtain plants to grow? The seeds or the seedlings or whichever way you want to do it, where do they come from?

**Mr Pettersson:** That is a very good question. It would be the same way that cannabis users are currently getting their cannabis: through the black market. I understand that that is not the ideal solution. Ideally we would create a legal and regulated sort of supply of cannabis but I do not believe we can do that based on federal law. That is why I have not included it in my private member's bill.

**MRS DUNNE:** You have said the motivation for this is to limit people's contact with the black market, but this process does not limit people's contact with the black market because you will still have to have an irregular supply of seeds or seedlings or whatever. You have to acquire that from someone.

**Mr Pettersson:** I definitely understand the question. Right now cannabis users interact with drug dealers to get their cannabis or they grow their own illegal supply. There are individuals that will never want to grow cannabis and they will continue to buy cannabis through the black market. However, this creates a pathway for individuals who do not wish to continue in the long run interacting with drug dealers to remove themselves from that cycle.

**MRS DUNNE:** How do they remove themselves from that cycle?

**Mr Pettersson:** They would be purchasing cannabis in the way they do now.

**MRS DUNNE:** Sorry, you said you want people to be removed from the cycle. If they need to go to the black market to buy the seeds or seedlings how are they removed from that process?

**Mr Pettersson:** In the long run they are removed from that cycle. To get started in growing cannabis there is no legal mechanism we can create in the ACT to supply someone with a legal supply of seedlings or seeds; people will need to continue to interact with the black market to get started.

I wish I could come up with a legal mechanism to supply cannabis but there is no such way with federal drug trafficking laws being what they are. That is why under this proposal, once they have got their initial supply of cannabis as they do now through the black market, individuals will be able to remove themselves from that cycle with a self-sustaining supply of cannabis.

**THE CHAIR:** I will ask a supplementary on that line of questioning. Currently, it is decriminalised if you grow some plants; that is correct?

**Mr Pettersson:** Yes, under the current system, which is often described as decriminalisation. Decriminalisation does not mean what most people think it means; it is still illegal to possess cannabis. What decriminalisation means is that we have created a possible civil penalty if you meet certain criteria. At the moment people can possess 50 grams of cannabis and two plants and be potentially eligible to receive a

fine, but not everyone does receive that fine. Potentially, some people do.

**MRS DUNNE:** Could I follow up on that last point?

**THE CHAIR:** We might be doing a bit of follow up here and there.

**MRS DUNNE:** What you are saying is that one of the circumstances from your perspective is where people have two plants, 50 grams et cetera, they do not incur a fine. There is a simple cannabis infringement notice.

**Mr Pettersson:** There are several different criteria and they are outlined in ACT Policing's submission.

**MRS DUNNE:** From your perspective, is the number of people who receive a simple cannabis infringement notice a large number compared to a large proportion of the people who would come before the police with a small amount of cannabis or are you maintaining that the police do not issue cannabis notices but charge people?

**Mr Pettersson:** What I would say is that cannabis use is very common within our society. One-third of us will use it in our lifetime. Within Canberra, 8.4 per cent of Canberrans will use it in any given year. Then if you compare that to the number of people who receive SCONs or who are arrested for cannabis use, it is actually quite a small number. Most people who use cannabis do not interact with law enforcement. However, there is a small number in our community who do interact with law enforcement. Those interactions with law enforcement can have very negative repercussions in their life.

**MRS DUNNE:** My question, I suppose Mr Pettersson, is this: what proportion of the people who have an interaction with law enforcement are people who get a simple cannabis infringement notice and what proportion would have some sort of charge laid against them?

**Mr Pettersson:** Those numbers are laid out in ACT Policing's submission. But what I would say is that one person being arrested for possession, one person being charged, and one person receiving a fine for small amounts of cannabis is one too many. This is not a substance that I believe should be illegal in small amounts for personal use.

**MS LE COUTEUR:** Mr Pettersson, basically, you seem to have set up a system of peasant cultivation, which I think is probably very admirable. However, history shows us that most people actually are not interested in growing their own, be it dope or anything else. I cannot see that your system is going to be able to help those people who are not in a position to grow or desiring to grow their own. Is there any possibility that there is some way that non-commercial transactions could take place? Other places have cannabis social clubs. I am sure you are aware of those.

**Mr Pettersson:** I am. I genuinely believe that a legalised, regulated, commercial market that is taxed is the best model. However, that is unavailable to us.

**MS LE COUTEUR:** Appreciably.

**Mr Pettersson:** I could see scope, potentially, for cannabis social clubs under the current federal framework. I am unsure of that, however, and I have not proposed it.

**MS LE COUTEUR:** Your legislation is four plants, I thought? Mrs Dunne was saying two plants. You have talked about two plants, but I thought the legislation was for four.

**Mr Pettersson:** No, what I have said to Ms Cody is that the current amount is 50 grams and two plants. My proposal in a fully legalised model for personal possession would be four plants—

**MS LE COUTEUR:** That is what I thought, yes.

**Mr Pettersson:** and 50 grams. However, there are amendments that have been proposed which would potentially put the individual plant limit at two and put a household limit of four.

**MS LE COUTEUR:** Looking at this, you do not seem to specify anything about the plants. Clearly, plants come in male and female varieties. If you are not going to be interacting every year with someone else in the black market to get seeds, presumably you are going to need male and female fertilising seeds. Effectively, in the two-plant model, you are talking about one productive plant. Would that be a correct interpretation of what you are doing?

**Mr Pettersson:** Potentially, what I would point you to is that the household—

**MRS DUNNE:** I just learned something I did not know before.

**THE CHAIR:** I did not know, either. That is why I was listening intently.

**MS LE COUTEUR:** Google “cannabis male-female”. There are male and female and the female—

**Mr Pettersson:** Maybe do not do that on the work wi-fi.

**MRS DUNNE:** I have gone this far in my life without Googling that. I do not think I will today.

**Mr Pettersson:** What I would say is that the crux of your question is based on an individual limit of two plants. I suspect that most people will not face this limitation with a household limit of four plants. They could deal with that situation.

**MS LE COUTEUR:** The other point, of course, is that some plants grow very big. Certainly, they weigh a lot more than 50 grams. A plant at wet stage with roots is only 50 grams. It is not a lot. It is a very small plant. How do you deal with the legal allowance of a plant, which would appear to include roots and be wet at the point at which—when does it stop being a plant which can be of any size and start being a 50-gram thing, which is not that large?

**Mr Pettersson:** I am aware of amendments coming forward that would create a wet

limit as well as a dry limit. At that point, you would have different categorisation. You would have the plant itself, which is not weighed. You would have the wet limit, which are cuttings that have been prepared. Then you would also have the dry limit. I guess that you would have three different categories that would be used to get your total.

**MS LE COUTEUR:** If the plant had just been removed from the soil but had not been prepared, that seems like a fourth state. There are going to be stems and things that are not usable.

**Mr Pettersson:** It is an interesting question. I am not sure how you would classify it if someone removed a whole plant from the ground, whether you would weigh that. I think common sense would dictate that you would count it as a plant, unless you were preparing it, in which case it would then go to the wet limit.

**MS LE COUTEUR:** I think it is probably a bit of ambiguity. The one thing that I am concerned about that does not seem to be ambiguous is the provision relating to 20 metres away from a child. If you happen to live in a block of apartments, you could well be less than 20 metres away from the next-door neighbour who has a child. You may even have no knowledge of this fact. It does not seem to me to be in any way, in fact, practicable given things like that. I would have thought it would make more sense just to have the same sorts of regulations that relate to smoking tobacco. How do you think the 20 metres is going to work?

**Mr Pettersson:** What I was saying is that there is an amendment coming forward from government that will address this. It is no longer about distance but about awareness of children.

**MS LE COUTEUR:** That makes a lot more sense.

**THE CHAIR:** To bring it more in line with cigarette smoking—

**Mr Pettersson:** Yes.

**THE CHAIR:** rules and regulations. Ms Le Couteur, did you have another question?

**MS LE COUTEUR:** Probably it is your turn again now. That was one lot of questions that I had.

**THE CHAIR:** Mr Pettersson, why now? Why introduce this piece of legislation now?

**Mr Pettersson:** I think that Canberra likes to think of itself as a very forward-thinking jurisdiction, but on this issue we are falling behind the rest of the world and Australia as a whole. For a long time, research and scientific studies into cannabis were inhibited by the prohibition on cannabis right around the world. But as that prohibition has lifted and more scientific studies have taken place a lot of the stigma and myths about cannabis are getting debunked. As we learn more about cannabis and we see other jurisdictions legalise cannabis, we have actually got a lot on which to base and inform our decisions, which is why I am very comfortable and confident bringing forward this legislation and why I think most Canberrans are as well.

**THE CHAIR:** The AFP this morning were reported as saying that this could prove difficult if the ACT introduced legislation because of the interaction with commonwealth legislation. What is your thought process around that?

**Mr Pettersson:** Thank you. That is a very good question and it is something that a lot of people have asked about and are concerned about. So it is good to get a chance to address it. I am very confident we can legalise cannabis. The ACT government is very confident we can legalise cannabis. They are also confident we can do it without any adverse repercussions. But we are not alone in that. Some of Mrs Dunne's colleagues actually support us in this view. Greg Hunt, when he was health minister, said that the states—

**MRS DUNNE:** He still is, I think.

**Mr Pettersson:** Still is. Sorry, I am looking forward to the federal election.

**MRS DUNNE:** Do not count your chickens.

**Mr Pettersson:** The states have sole and exclusive ownership of laws dealing with the treatment of individuals in possession of cannabis. Susan Lee, as health minister, stated that decriminalisation of cannabis for general cultivation or recreational use remains a law enforcement issue for individual states and territories.

Why do I, why does the ACT government and why do these federal coalition health ministers believe this? If you look at the Commonwealth Criminal Code, it is very clear in numerous instances that the commonwealth defers to states and territories on this matter. I refer, for example, to division 308, possession offences under commonwealth law. It allows for a person to be tried, punished or otherwise dealt with as if the offence were an offence against the law of the state or territory. Also, division 313 of the Commonwealth Criminal Code provides a defence for any non-trafficking commonwealth drug charge, provided that the use is justified or excused by territory law.

There is much concern that we cannot do this. We can do this. There is confusion and uncertainty about how our laws will interact with the commonwealth laws. On this point, I am very confident that we can legalise cannabis both in a technical sense and in a practical one.

**MRS DUNNE:** In putting together your scheme what research did you do into the harms or otherwise of cannabis?

**Mr Pettersson:** A vast amount.

**MRS DUNNE:** So what is your understanding about the medical research that looks at the adverse effects of cannabis?

**Mr Pettersson:** I am very aware of large bodies of work on it.

**MRS DUNNE:** So you are aware of the large bodies of work. A question time brief

that was prepared for the health minister says amongst other things that the major studies report adverse effects from short-term cannabis use including impaired short-term memory and motor coordination loss and altered judgement and, in high doses, paranoia and psychosis and, from long-term or heavy use addiction, altered brain development, symptoms of chronic bronchitis and increased risk of chronic psychosis disorders including schizophrenia in persons with a predisposition for such disorders. When you were doing your research and thinking about a scheme of legalisation did you ever have any pause that you may be creating a situation where you are increasing the risk of bad health outcomes for people in the ACT?

**Mr Petterson:** There are a couple of points that I would like to make. First and foremost our current laws do not stop people from using this substance; people who want to use cannabis use it. Further, for people who use cannabis and develop or experience adverse medical conditions, their medical conditions are not improved by interacting with the criminal justice system. Criminalising this substance creates stigma making it harder for these people to seek treatment for those issues.

**MRS DUNNE:** And the counterargument would be that, yes, people are using the drug anyway, but by creating a legislative regime that allows it you create a permission structure for more people to use it. So some people would not use it because they know it is illegal but, once you say it is legal, do you run the risk of increasing the health risks? Have you considered the increase in health risks associated with a legalisation program?

**Mr Petterson:** If you look at the evidence from other jurisdictions, in the long run cannabis usage rates do not change when it is legalised. The logic is very simple: cannabis is very easy to get your hands on. People who want to smoke cannabis do it right now. For the most part people are not concerned about the legal consequences of their cannabis use right now.

**MRS DUNNE:** So when you say that research or experience shows that legalisation does not increase use, can you refer the committee to examples of that?

**Mr Petterson:** I would be very happy to.

**MRS DUNNE:** Great. So you will provide that stuff on notice?

**Mr Petterson:** I will take it on notice.

**MS LE COUTEUR:** Currently there is the SCON; I have always found that a weird term to use, I must say.

**THE CHAIR:** Simple cannabis offence notice.

**MS LE COUTEUR:** Yes, but it seems weird talking about getting a SCON. Did you consider as part of this legislation changing that so that there is a bit more overlap? Currently if you get above 50 grams you incur the whole force of the law: 51 grams, big problem; 49 grams, not. If your scales and those of the police do not line up you could be in a bit of bother. Have you considered trying to do something that makes it less of a hard line there?

**Mr Pettersson:** I do not think it is the worst idea in the world to implement a more progressive scale of criminal justice repercussions. You are right; there is quite a leap in the consequences from 49 grams to 51 grams. There are numerous ways you could do that. I have not proposed them in my private member's bill, but that is something that I would encourage you to pursue further and potentially bring forward yourself.

**MS LE COUTEUR:** Is there anything more you can say about how your legislation would interact with commonwealth law? We have all read some of the police's submissions and their reporting in the *Canberra Times* which give the impression that your legislation is not workable with the commonwealth legislation.

**Mr Pettersson:** We cannot change commonwealth laws; we can only work within the confines of what those laws are. The police submission talks about commonwealth laws that are on the books; they do not go into detail on the defences on the books under commonwealth law.

**MRS DUNNE:** Sorry could repeat that? I think I misheard.

**Mr Pettersson:** The police submission talks about offences under commonwealth law. Those are things we cannot change; they will remain on the books. However, what the police submission does not delve into, but which they mention very briefly and say is unclear because it is untested, are the defences on the books under commonwealth law. And the defences are things I mentioned before. Section 313 of the Commonwealth Criminal Code provides the defence for any non-trafficking commonwealth drug charges provided that the use is justified or excused by territory law. There are defences on the books if we change our laws.

**THE CHAIR:** That would mean that they could interact.

**Mr Pettersson:** Yes. But because we or any jurisdiction have never legalised cannabis that defence has never been utilised in this particular way.

**THE CHAIR:** Never been tested.

**Mr Pettersson:** But I, the ACT government and several federal coalition health ministers are very certain that we can.

**MRS DUNNE:** You sought submissions and input from the public in relation to your bill. Can you provide those submissions to the inquiry?

**Mr Pettersson:** A lot of those submissions I received were given to me in confidence with people talking about their personal experiences.

**MRS DUNNE:** So is there material that you received that was not in confidence that you could share with the committee?

**Mr Pettersson:** I would have to think about it.

**MRS DUNNE:** Thank you. If you could dwell on that and come back to us that would

be useful.

**THE CHAIR:** Thank you for appearing today, Mr Pettersson. When a proof *Hansard* is issued it will be forwarded to you to provide the opportunity to check the transcript and suggest any corrections should they be required.

You agreed to take a couple of questions on notice. In accordance with standing order 254D, as a member of the Legislative Assembly, responses to the questions you took on notice will need to be submitted within five business days of receipt of the uncorrected proof *Hansard*.

On behalf of the committee I thank you for appearing today.

**BUSH, MR BILL**, President, Family and Friends for Drug Law Reform  
**BRYANT, MS BERNADETTE**, Family and Friends for Drug Law Reform  
**McCONNELL, MS MARION**, Family and Friends for Drug Law Reform

**THE CHAIR:** Thank you for attending today and for the written submission to the inquiry. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement on the desk. Can you confirm for the record that you have read and understood the privilege statement?

**Ms McConnell:** I have read it.

**Ms Bryant:** Yes.

**Mr Bush:** Yes

**THE CHAIR:** Would you like to make a very brief opening statement?

**Ms Bryant:** Yes, we would thanks.

**Mr Bush:** Thank you very much for hearing us. Families and Friends for Drug law Reform has been going for 24 years and in that time we have met many politicians who privately agree that drug prohibition is not reducing the amount of drugs available and, in fact, is having a stimulatory effect. They potentially admit this to us in private but in public they do not. This makes us despair at times. We are hopeful that this committee will be different.

We have no love of illicit drugs. Marion—a founding member of the organisation—and her family suffered immensely and bitterly from the availability of a drug that she understood was not to be available. So it is this availability despite the undertaking of the state to protect young people from it that really got families and friends going.

The drug that got families and friends going was heroin, but it is said quite often that cannabis is the gateway drug to heroin. As Bernadette reminded me, just because most people who use heroin start off with cannabis you could make the same argument in relation to milk or water. But it is the psychosocial factors that explain the gateway effect. This is what the evidence shows. It is a peer group distribution system. It is mightily effective, and Amway and similar direct marketing, peer-to-peer marketing systems show that it is worth some \$8 billion or \$9 billion a year in turnover. The big-pin drug people have latched on to the fact that this is the way to go.

Cannabis has always been available in the ACT. The only time that it was in short supply was as a result of the bushfires in 2003, and I can give you the reference to that.

**THE CHAIR:** Thank you, Mr Bush.

**Mr Bush:** We congratulate the committee and the Assembly for considering moving to overturn a failed policy system. Supply reduction is one of the alleged pillars of drug policy in Australia. The national drug strategy sets it out and the recently

adopted ACT drug strategy also reflects that.

The Chief Police Officer refers to tension between the law and this bill, but this is a tension built into the whole drug strategy. It is a tension that is present in so many government policies that the Chief Police Officer refers to. The instructions given to the Chief Police Officer refer to support for restorative justice. Restorative justice is one of the things where there is a tension. So the mere fact of there being a tension is, from our point of view, a case of the tail of legalistic formalism wagging the dog of humanity and empathy and common sense.

We thank you for this, but we are a greedy lot; we do not think that you have gone far enough. Our concern is that young people are still subject to the criminal disciplinary process via the SCON system. We cannot see how you can justify the fact that someone who happens to be under 18 is going to be subject to that system and potentially to enforcement through the Children's Court of fines if they have not paid them whereas their dad, their bigger brother or sister gets off scot-free. That is not desirable.

If it is accepted that the application of the criminal law is both ineffective but also harmful, that is all the more reason that an alternative needs to be sought for dealing with children. We have therefore suggested in the submission that we look at establishing some sort of tribunal. If kids are caught with cannabis the police can seize that substance, but they could then be referred to a tribunal made up of potentially a lawyer but particularly social workers and drug treatment people. In that way the system can work to engage a young person in treatment and something that is therapeutic rather than punishing them. We think that this should be considered by the committee as a complement to the legislation.

If the SCON system is put in place what is absolutely essential is that the negative attitude of police, reported in the assessment of the SCON system by the University of New South Wales a couple of years ago, is overturned, that is, SCONs are just too much work. A number of station sergeants are reported as not encouraging their team to issue SCONs.

The figures in our submission show that something like 90 per cent of all the arrests are of consumers and not suppliers. Overwhelmingly it is the consumer that is used, and cannabis offences are an offence of convenience for the police rather than serving any useful purpose for the wellbeing of this territory.

Having said that, our submission in a sense reluctantly strayed into medicinal cannabis. The reason for that—and Bernadette will talk to that—is the failure of the health department to organise the availability of it and the failure of the medical profession. People who need cannabis for a medical condition are not able to get it through the medical system and therefore will be driven onto the black market.

Another indication of a very negative aspect of the present law is the stigma around it. One of our members declined to give evidence today. She has a family member who has a medical condition that is known to be helped by cannabis. She lives in a regional New South Wales town. She is the head of an organisation of people with that condition. She has been prevented by her members from speaking out publicly in

favour of the benefits of cannabis. That is because of the stigma brought about by the criminalisation of it.

**Ms Bryant:** Thank you for listening and giving us a chance to speak to you today. Five years ago I was a mum of a very sick child. I had five of them—four of them thankfully are healthy. My youngest daughter, who at that stage was 18, has a very severe form of ankylosing spondylitis, which you may or may not have heard of. It is an autoimmune disease. She was in and out of hospital on ketamine drips every six weeks or so. Like all desperate parents, we were googling in the middle of the night and desperate for a solution for our daughter.

We had explored every avenue of medical intervention we could and she was getting no respite. She was bedbound for years before we accessed cannabis for her. To say that it was lifesaving is not an understatement. She had got to the point as a young woman who had very severe chronic pain where she was suicidal. She was under the care of a CATT team and that sort of thing. Within about two weeks of her starting cannabis it was miraculous. She is now 24 and is thriving as much as she can. It has just been a wonderful thing.

I am a middle aged mum from the suburbs. I never thought I would become an expert on cannabis. I would like to try to give you a glimpse into the fundamental misconceptions we have about cannabis. It has been used as a medicine for 2,000 or more years, but it has been pilloried and had stigma attached to it since the 1920s when DuPont in America developed plastic and its major competitor was hemp. That is how we basically got to the prohibition of cannabis.

I encourage you to not rely on the anecdotes you have heard about what cannabis may or may not do. I have just spent three days at a symposium—it is the fourth one I have been to that has been run by United in Compassion—so I can educate myself. My daughter now has access to cannabis by prescription, but I am approached so many times by people in the community who are desperate to access this medicine. Why am I the person they come to? Because I have information, because I have educated myself about cannabis.

I want you to understand that there are a lot of fundamental misconceptions about cannabis, about the dangers, about it being a gateway drug. I can quote chapter and verse. I can provide you with the evidence. I would be really happy to talk to any of you if you want to pick my brains about cannabis.

I am really passionate about it because I know how helpful it has been. I have educated myself about this and I am now in a position where my daughter is accessing it legally. I understand there is so much demand for it in the community and this is why I remain involved and continue to educate myself and why I am passionate about getting the legislation right.

When you restrict the supply the black market proliferates. We are good examples; my husband and I are in our mid-50s and have not smoked dope since we were at uni. Where were we going to find it? But we did. We were desperate and we found it, and it was the law be damned. When you have a sick child that is your priority. The reality for me now is that I know how effective this medicine is for people. It is

not for all people; it is not a panacea, it does not kill cancer. But it is a fundamentally safe medicine for people to have.

I implore you to educate yourselves about the realities of cannabis. There are enormous amounts of evidence; I have just spent three days listening to world experts, researchers, doctors et cetera. I have come to the point where it is not something that scares me. I do not care about the stigma anymore because I understand about it.

For a good regulatory system we need a quality product. I think we have that now. We need access to the system, and we certainly do not have that. It needs to be an affordable price. Three small bottles of medicine that will last my daughter about two weeks is \$450. I do not get any of it back from private health; it is not on the PBS. But we also need patient engagement, and I am not sure that we see that happening. I am certainly happy to answer any questions.

**THE CHAIR:** Mr Bush, you talked about treatment and the current proposed legislation only being for people over the age of 18, and how you would like to see an ability for people to propose treatment for people under 18. I note the AFP in the media this morning said that without being able to provide law enforcement interaction people do not necessarily get to interact with treatment options. Do you see that as a major issue if it is legalised for those over 18? We have to speak on the bill as it stands at the moment.

**Mr Bush:** I will criticise the explanatory memorandum because it casts the reason for including 18-year-olds, making them still subject to the SCON system, as being for their therapeutic benefit and cites that this is parallel to what is done with tobacco and alcohol. That is not the case. There is no overriding rule that makes the possession of either tobacco or alcohol illegal in the hands of a minor. If you are in a licensed premises and you are a minor, you are not allowed to have it, under the Liquor Act. But generally it is legal.

We have seen huge developments in terms of reduction of levels of smoking and things like this in the community. This has been achieved in an environment where you have not had to have the criminal law to leverage the change. In fact the criminal law actually, we know, impedes it. For one thing it becomes a dare, and we know that many young people rise to a dare. This is one of the psychological assumptions: that you need to have a coercive thing behind you. It simply does not work.

But you could be innovative in this area. Okay, keep the possibility of a SCON for people under 18. That would be that if they do not turn up to this tribunal then they can be given a SCON. But, as I understand the Portuguese system, which really inspires our suggestion, it is moved basically from other measures. There are other incentives that can be used, relating to driving licenses and, dare one say, social security payments. That is a federal matter, so that really cannot operate here. But there would be certain incentives that could incentivise young people to appear before the tribunal. Keeping the SCON as a possibility, with the understanding that it would very rarely be used would, to me, to be a way forward.

**MRS DUNNE:** I want to go back to a point that you made in your opening comments, Mr Bush, and also in your submission, in relation to the conviction of consumers

versus suppliers. You draw out that there is a large discrepancy in the number of consumers who are arrested, as opposed to suppliers. Could I drill down into that a little? In your understanding, what would be the ratio of consumers to suppliers in the ACT?

**Mr Bush:** The figures are there on page two. There are those—

**MRS DUNNE:** That is the number of arrests. But I want to drill down into what might be behind that and what might inform these figures. What would be the ratio?

**Ms McConnell:** The figures that I have are from the Australian Criminal Intelligence Commission's report for the year ended 30 June 2017. It says that in the ACT there were 386 arrests for cannabis. Fifty per cent of arrests—that is arrests for all illicit drugs—84 per cent were classified as consumers and just 16 per cent were cannabis providers.

**MRS DUNNE:** That is the bare figures on the numbers of arrests. What I am trying to drill down into is whether you have an understanding of, in the ACT population, how many cannabis suppliers there might be as opposed to how many cannabis users there are?

**Ms McConnell:** I am not sure if those figures are available.

**MRS DUNNE:** It might be something we could pursue—

**Mr Bush:** I mean, it is illegal—

**Ms McConnell:** Because it is an illegal thing, you cannot state it. We do not know what the figures on the providers are.

**Mr Bush:** There are reasonably good estimates of the number of drug users. We give the figure of something like 30,000. But we do not know. The research indicates that many drug users who have become severely dependent will think that the most honourable way to support their habit is to deal to other people who are using, rather than ripping off their parents or shoplifting and things like this. That is one of the dynamics that operate where you have a criminalisation process.

**Ms McConnell:** The other figure that is a worry to us is that 25 per cent of the cannabis consumer arrests were occasions on which people were issued with a simple cannabis offence notice. Only 25 per cent were given that notice. The remaining 75 per cent were charged with a criminal offence. So we would certainly see that the SCON system is not working as well as it should.

The overall thing for Family and Friends for Drug Law Reform is that you cannot treat this in a vacuum. The overall finish would be to improve people's lives. Keeping people out of the criminal justice system as much as we can is what we should all be wanting to do. We are criminalising people for the use of a drug that is readily available because of prohibition. We have this big market out here and what we are doing there is simply wrong: criminalising these people who are able to get drugs because of prohibition.

Removing the criminal sanctions for small quantities of cannabis possession surely should be looked on in this way: that we are improving people's lives by doing that. We are living in a world where we see hate having devastating effects. This is not a vacuum that we are in with this cannabis stuff. We are living in a world of hate at the moment, where we see increasing suicide rates, more homeless people, and the list can go on. Our objective today should be to take away the stigma and criminalisation response to drug use and replace it with connection and caring for people.

The nitty-gritty things are there and I know that they have to be handled but, overall, we should be looking at improving people's lives. From personal experience, prohibition has certainly not. It certainly did not save my son's life, whereas I think help and connection certainly could have. This is what we should be thinking of here today: how we are going to improve people's lives in this world where there is so much hate and disconnection. To me that is more important than the nitty-gritty issues.

**Mr Bush:** Marion is absolutely right. A report by Australia21 was released outside in the reception room last year. Its 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*. It is referred to in our submission. I urge the committee to consider it for the very reasons that Marion has been talking about. This is an issue of human understanding and empathy. As I said, we should not let legal formalism wag the tail of good government and what is a benefit for the community as a whole.

**MS LE COUTEUR:** Ms Bryant, you spoke very eloquently about the need for medical cannabis. The thing that I would be more interested in is whether you think this bill would in any way help the provision of medical cannabis, be it formally through a pharmacy—which I cannot see how it would—or would the informal provision be of any use to—

**Ms Bryant:** I think it would. I have always been very hesitant to get involved in the recreational use of cannabis space, simply because there is so much more work that still needs to be done for people to access it medicinally.

Personally we ran the risk of a criminal prosecution by accessing it. If the police had come round and seen what was in my pantry years ago, we would easily have been subject to the full force of the law. But it was a risk that we were prepared to take and we are not alone. There are people who see this as an effective adjunct to the treatment that they are receiving and if they cannot do it with the supervision of their doctors they will do it outside the law. From my point of view, of accessing cannabis for medicinal purposes, any distance we can put between those caring families, who are just trying to do the best thing for the person in their family, and the legal system: to me it is a no brainer.

People are desperate and they will access it. Twenty per cent of our population suffer from chronic pain—that is a figure I got on the weekend—and it is at a cost to our Australian government of \$34.3 billion dollars a year. Cannabis is known, the evidence says, as an effective treatment for pain. My daughter takes her medicinal cannabis at night. It is a one-to-one CBD-THC ratio. If she gets any kind of buzz from it, she sleeps through it. It is not like if we open up the system to people who are able

to get some relief medically we are going to have social disorder and chaos, because you know what, it is happening now. People who are desperate ring me; they ring Laura. It is—

**MS LE COUTEUR:** This system will not produce oils, for instance.

**Ms Bryant:** I understand that.

**MS LE COUTEUR:** That is really where I was going. It is only going to produce, basically, raw product at best.

**Ms Bryant:** We started with raw product for Laura, because that was what we could get. If raw product is what people can get, that is what they will use while they are waiting for the medicinal cannabis legislation and access scheme to catch up. And there is great evidence that shows that the whole-plant medicine can be much more effective for a lot of things than the single element, the CBD or the THC. So there is a good argument for whole plant consumption. As I said, anything that can be done to distance caring families—caring, sensible, educated families—from the legal system is a job well done.

**THE CHAIR:** I am sure we could sit here and talk with you for a lot longer. But unfortunately, we have reached our time limit. When the proof *Hansard* is issued, it will be forwarded to you all to provide the opportunity to check the transcript and suggest any corrections, should they be required. Mr Bush, you took on notice to provide the committee with the information—

**Mr Bush:** The reference about bushfires.

**THE CHAIR:** Yes. While the committee has not set a deadline for the receipt of responses, the answers to these questions would be appreciated within one week from the date of this hearing. On behalf of the committee, thank you for appearing today.

**Short suspension.**

**LENTON, PROFESSOR SIMON**, Director, National Drug Research Institute

**THE CHAIR:** We will now move to the next witness, who is representing the National Drug Research Institute. On behalf of the committee, thank you for appearing today and for the National Drug Research Institute written submission to the inquiry. I remind you of the protections and obligations afforded to you by parliamentary privilege. I believe the secretary emailed you a copy of those?

**Prof Lenton:** I received those.

**THE CHAIR:** Can you confirm that you understand the implications of the statement?

**Prof Lenton:** Yes, I do, thank you.

**THE CHAIR:** Excellent. My name is Bec Cody. I am the chair of the committee. I have Mrs Vicki Dunne to my right and Ms Caroline Le Couteur to Mrs Dunne's right.

**MRS DUNNE:** Good morning, Professor Lenton.

**THE CHAIR:** Just a reminder that when you first speak, particularly as you are giving evidence on the telephone, say your name and the capacity in which you are appearing before the committee. Before we proceed to questions, do you have a very brief opening statement you would like to make?

**Prof Lenton:** Yes, a very brief statement.

**THE CHAIR:** Excellent, go ahead.

**Prof Lenton:** Could I also ask you, when any of the members of the committee speak, to let me know who is speaking? That would be helpful.

**MRS DUNNE:** Yes, we will.

**MS LE COUTEUR:** Sure.

**Prof Lenton:** Thank you for that. My name is Simon Lenton, I am the Director of the National Drug Research Institute at Curtin University in Perth. We put in a submission to the exposure draft and a more recent submission last week to the full inquiry, which I am assuming you have seen. Our key points are that we think that the intention of the proposed bill is a good one. We have some specific issues around the extent to which the bill will address the supply side of the market because our research has shown that only a minority of cannabis users actually grow their own cannabis. We could talk to that.

We have some issues on the exclusion of artificial cultivation from the bill and also the definition of artificial cultivation. I note that a number of other submissions have pointed to some of the problems with the exclusion of cannabis consumption within 20 metres of a child. We could talk about that. I know that that is being handled by

others.

I would note that clause 9(a) of the revised bill, on our reading, would mean that herbal cannabis that has been self-grown could be self-supplied to a therapeutic agent. From my understanding, that would make it the first case in Australia of herbal cannabis being provided under legal provisions for use as a medicinal agent. All the other provisions, as I understand it, are about medicines containing extracts of cannabis.

Our final point would be that whatever happens with this bill, should there be legislative change, it is incredibly important from the work that we have done previously that there is comprehensive and targeted education about the new law, how it is applied and how it relates to people, in addition to information about the health effects of cannabis. That is my opening statement. I am happy to take questions based on our submission.

**THE CHAIR:** Thank you, Professor Lenton. It is Bec Cody, the chair of the committee. I want to touch on one of the things you raised both in your submission and what you said then in your opening statement about the minority of users actually growing their own cannabis. Can you expand on that for me?

**Professor Lenton:** Yes, sure. There have been a handful of studies that have looked at this question of what proportion of cannabis users actually self-supply by growing. Back in 2010 the national drug strategy household survey asked a question of all Australians about whether they used cannabis. They estimated about three per cent.

We have done work on this. For first-time apprehended cannabis users—who are probably a more entrenched group just because they are more likely to get apprehended the more often they use cannabis—we found that it was 30 per cent. In a recent study that we did of 18 to 30-year-old cannabis users in Melbourne, in Armidale in New South Wales and in Perth, we found that 11 per cent of those people said that they grew their own cannabis as their main source of supply.

The SCON scheme in the ACT has been in operation for a number of years; so there may be a higher proportion of cannabis users growing their own cannabis in the ACT. But I would be surprised if the figure were over 20 per cent of people growing their own cannabis for personal use. That would fit with work done internationally. So we have a minority of people who self-supply. My issue is that I think the bill does some good things in terms of making that no longer an offence, but it does not really deal with the supply to what I imagine would be 80 per cent of cannabis users who do not grow their own cannabis.

This is for a variety of reasons. Some cannot be bothered, some do not smoke cannabis regularly enough, growing cannabis to produce quality buds, quality heads, is not easy. People need to have access to a place to grow. There are all sorts of potential barriers. So I think the type of missing thing here is: how does the bill address the supply side for the 80 per cent of cannabis users who we estimate will not be prepared to grow their own cannabis?

**THE CHAIR:** It is still Bec Cody here. You also mention the cannabis social clubs.

**Prof Lenton:** Yes.

**THE CHAIR:** What does that sort of look like to you? Can you expand on that a little for me as well?

**Prof Lenton:** This is a model that began in Spain and that has moved to a number of other primarily European countries. It has also been picked up in Uruguay in their cannabis legalisation scheme. It is about trying to find a mid-range option. We have seen the sort of full commercialisation of cannabis supply for recreational use in a number of states in the US and now in Canada. We have a PhD student who is doing work on the Colorado scheme.

My view on it is that really those full legalisation schemes with a great deal of promotion, with many outlets and so on, look like some of the worst of alcohol and tobacco in the legal market. There is not a great deal of regulation, but greatly increased access. Our view is that it is likely—the evidence is still emerging; we are starting to see some harm emerging now—with that kind of model of cannabis supply that we will see harm similar to what we have seen in tobacco provision through commercial profit-driven markets, and alcohol as well.

That is obviously not ideal from the public health perspective. But, of course, there are all the problems with criminalisation, criminal records and people's lives being affected at the other end. Really, there is a missing piece of the puzzle, which is sort of the mid-range options. The cannabis social club model is one that is worth looking at. It aims to provide cannabis within a regulated system to those people who are not prepared to grow their own cannabis.

What happens is that people join what is called a closed cannabis social club. It is usually regulated after the same kind of non-profit organisation laws that apply to other non-profit organisations within the community. They have to provide their details: their drivers licence or some other identification. In that membership, they are able to have up to five—sometimes four, sometimes six—cannabis plants, which are barcoded. They belong to them. But they are cultivated; they are grown by the club.

The club employs a grower or growers who look after the cannabis plants that belong to its members. The scheme was not regulated in Spain. It has kind of got out of control. Organised crime looks like it has been involved in some of the clubs that have 5,000 members, which is plainly pretty difficult to regulate.

But in other places it is much more tightly regulated; in places like Belgium and elsewhere. What it means is that these people will then have their cannabis grown for them. At harvest time they come and collect their cannabis. They are not allowed to sell it to anyone. They are not allowed to have people who are not members of the club accessing the cannabis. They can lose their right to be a member of the club if they breach any of those conditions.

What is important is that what we know from work that we have done with growers is that a lot of the most harmful aspects of cannabis use happen when the growing process is not regulated or is not controlled by the person who is consuming the

cannabis. That is where we get problems with pesticides, bud-stimulating chemicals and so on that are known to be harmful.

But, in effect, these people are in control of the cultivation of cannabis. They are members of the club. In that way, it provides an outlet, an access point, for the majority of people who really are not capable of growing or are not willing to grow their own cannabis, without the issues associated with a great deal of promotion of cannabis, increased access points, profit-driven motives. There is no profit here; there is no sale here; it is all kept within the bounds of that club. That, in essence, is the model.

**MRS DUNNE:** To what extent would a cannabis club meet the demand in the community? It seems to me that to join a cannabis club you would have to have a reasonable amount of pre-planning and premeditation and that you do not get immediate gratification so to speak. You have to join up and grow the plant or have the plant grown for you. To what extent does that meet demand in the community amongst recreational, for want of a better word, cannabis users and to what extent would there still be unmet demand from people who spontaneously think, “Gee I wouldn’t mind a smoke right now,” or they are going to a party or whatever and might procure some for the purpose? They might be less regular users for instance.

**Prof Lenton:** That is a good question. It is quite clear that occasional users are not going to have their needs met by a cannabis social club. But, from what we know, the majority of cannabis consumed in the community is probably consumed by people who are more regular users using it on a daily or near-daily basis. For the majority of cannabis consumed in the community it is possible that this kind of market would meet the needs of a substantial proportion of those people.

I do not think that it is the only solution but I think that it is an important potential component. But, in addition—we made comments to this in our submission—whatever happens with regards to the bill we think that not prohibiting the gifting of cannabis, if you like, is important as well.

In a situation that you described it might be that someone is passing a joint around at a party. Technically the person who passes that joint from A to B is offering cannabis to person B. That is not the intention, I would have thought, of the supply law. I would imagine we should at least have regulations which would encourage police not to charge people with cannabis as gifted. The young cannabis users study that I described earlier suggested that up to 50 per cent of people who grew cannabis actually gave it away to people. So gifting is a common thing within the community of people who use cannabis.

I think a cannabis social club is not an answer for the occasional user who might smoke a joint at a party or something, but other things can be done to address that side of the supply system.

**MS LE COUTEUR:** Have you thought about what legal changes would be needed to make the cannabis social club legal within the ACT context? You mentioned gifting; have you thought more?

**Prof Lenton:** Yes, certainly. One of the problems with the bill as we see it is that it limits the number of plants a person can cultivate. I think you are looking at four. As we said in our submission, that would effectively bar the cannabis social club model in the ACT because in that system you might have a grower growing for a cannabis social club who might be growing for 30, 40 or 50 people with maybe four plants each, and that would be problematic.

We recommend the wording in our submission which basically says that a person cannot possess more than four plants. In other words, if I am a member of social club I might have left those four plants, they are barcoded to me, they are my plants, but they are grown at a site which is tended by a grower. That grower does not own the plants; I own the plants. If you were interested in making the bill allow options like cannabis social clubs the definition of how growing more than four plants is defined in law would need to be adjusted in something like the way we suggested in our submission.

**MS LE COUTEUR:** I think the legislation at present has stuff about residential premises because it is talking about maximum number per household. That, I presume, would have to change?

**Prof Lenton:** Yes, it would. Those kinds of provisions have been used in a number of expiation notice schemes, which obviously limit four people in a house each growing four plants, 16 plants and so on and that is understood. There may be a way to keep that provision but to have an exemption for things like cannabis social clubs where they would not be grown in a residential property I would not have thought.

In Europe there are places set up often in industrial areas. They are secure, the police know where they are, they are registered and so on. So it is quite a different set-up to just a bunch of people growing multiple plants in a residential property.

**MRS DUNNE:** You said something along the lines that the majority of users are using on a regular, even daily basis. Is it your institute's remit to look at issues associated with the health implications of regular and daily use of cannabis? If so, what conclusions have you drawn?

**Prof Lenton:** To clarify, I do not think I said the majority of users, and if I did that was a mistake. I thought I said the majority of cannabis which is consumed is probably being consumed by more regular users. I think that is what I said; that was my intention anyway. I would ask for that to be corrected if I got it wrong.

So does our institute focus on the harm associated with cannabis? We always articulate the harm associated with cannabis in a lot of the work we do, but that is not a particular focus of our research. If you are asking me about what the harms are, what we know is that harms are mostly likely to occur with people who commence cannabis use at an early age in their early to mid-teens. They are most likely to have some of the more concerning adverse consequences of cannabis use, including rare but possible mental health problems, in particular psychosis, which is something that people are very concerned about, understandably.

People will be aware that the likelihood of psychosis roughly doubles when people are

regular users particularly starting at an earlier age. But it doubles from one relatively low number—probably about 0.7 per cent—to about two per cent. So, for the majority of cannabis users, even those who start early, the evidence is they will not develop psychosis. But it is a very concerning effect and it does occur and we need to be aware of that.

The other thing we know is that probably one in 10 regular cannabis users develops some dependence on cannabis. We know that people who start earlier are more likely to develop a dependence. We also know all the problems associated with smoking a drug. The evidence suggests that many of the respiratory problems associated with tobacco are likely to be an issue for people who regularly smoke cannabis.

There are all those kind of effects: dependence, risk of mental health problems, and problems associated with smoking a drug. The evidence is that those problems are more likely with regular use and with early onset.

**MS LE COUTEUR:** Your submission talks a bit about artificial cultivation and notes that you do not think that the proposed prohibition in the bill is sensible and you talk about it no longer being necessarily a market for sophisticated criminal activity. Do you have any knowledge about the different outputs and whether it could be seen that artificial cultivation led to more potent dope and that that could be a reason for regulation?

**Prof Lenton:** My comments now are based on the study that we started on 6,500-odd cannabis users in 11 countries, including Australia. We had 430 active cannabis growers who had access to an online survey in Australia. The evidence on yield is that where cannabis is grown hydroponically, that is, with both the use of artificial light and a nutrient rich solution in a non-soil medium, people can control the number of crops they get per year by changing the way the light is switched on and off to stimulate flower production, bud production, when the plants are still quite physically small thus getting a maximum yield in a short amount of growing time which might produce four or more crops a year.

In terms of crops there is no doubt that hydroponic cultivation can produce more crops in a year. Clearly Canberra is pretty cold in winter so if you are growing your plants outside they are not going to survive in winter. Hydroponic cannabis cultivation enables a larger number of crops to be produced.

In terms of the amount of cannabis per plant, our work is consistent with work done some years ago, that is, that large plants grown outdoors are more likely to produce a larger weight per plant of smokeable heads. Of course, when cannabis is grown indoors the environment can be controlled more. You do not get female plants being fertilised early, which is an issue, and you also do not get female plants changing their gender, which they can do when they are grown outside and are exposed to pollen and other things from other cannabis plants.

So indoor cultivation in a controlled environment is more likely to produce more output as a total although weight per plant can be greater when plants are grown outside. For all sorts of reasons growing indoors may be of better social and community benefit than growing outdoors in people's gardens in terms of plants being

stolen and kids seeing them and having access to them and so on. It is more secure if people grow their plants indoors.

A substantial proportion of the cannabis users we accessed were growing plants indoors in soil, so not hydroponic—not in a non-soil medium with lots of nutrients—but just in a plant pot like you would grow anything else indoors, but with artificial light. For some people it was fluorescent lights, for some people it was more sophisticated lighting equipment. But essentially they were growing their cannabis non-hydroponically but indoors and under artificial light.

The definition of “artificial” in the bill refers to either artificial light or soil—non-soil growing medium—and we think that that is a problem. If you are going to exclude artificial cultivation it should simply be based on growing them in a non-soil medium for the reasons that I articulated. Does that answer your question?

**MS LE COUTEUR:** Yes, but I was also interested in, regardless of the quantity produced artificially or otherwise, is there a difference in the potency of the product?

**Prof Lenton:** Yes. It is the case that hydroponically grown cannabis is often seen as being more potent, but that seems to have much more to do with the strains that are grown and the freshness of cannabis, so how soon after harvest it is consumed. That is because THC degrades quite quickly. So if you are consuming cannabis at a point in time closer to when it is harvested it is likely to be more potent. Hydroponic cultivation methods have really changed what people smoke over time. Back in the 60s and 70s people were smoking leaf mixed with heads and so on. We know heads are a much more potent part of the plant, and because of the ability to control the growing processes now it is just the heads that are smoked and they are more potent.

It is more likely to be due to more potent strains being cultivated, the control of growing, just smoking of heads, and the freshness of the cannabis rather than the method of growing. If you have two identical seeds and grow one by hydroponic means and one placed in soil there is no evidence that the hydroponic one would be more potent.

**MRS DUNNE:** May I follow up on the issue of potency, Professor Lenton? This is Vicki Dunne again. My understanding is that what we are seeing in the 21st century is quite a different drug from what we sort of experienced in the 60s, 70s and 80s—in the previous century. Probably the potency may have increased as much as tenfold. Is that correct?

**Prof Lenton:** No, there is no evidence that it has increased tenfold. It may have doubled but there is no evidence that it has increased tenfold. Yes, that is largely to do with strains and freshness of production. In the 60s and 70s a lot of cannabis was grown outside of Australia and brought in in buddha sticks and so on. It was pretty stale by the time it got here whereas now we are talking about domestic production and people smoking it close to where it is grown.

So it may have doubled or a little bit more over that period. But in respect of the tenfold figure, no-one has been able to find out where that comes from. It was a claim that was made 15 or 20 years ago. But when you look at the studies that have been

done in the US of monitoring potency over time, we are talking about a twofold increase at most.

**MRS DUNNE:** Just to clarify, what people were smoking before the turn of the century was half as strong as what it is now and that takes into account the fact that it was staler or now it is fresher. Is it just a function of the potency of the plant or is it a function of what is smoked and the time lapse between production and smoking?

**Prof Lenton:** When you refer to the turn of the century, that was only 20 years ago. I am talking about changes that—

**MRS DUNNE:** Yes, earlier than that.

**Prof Lenton:** Yes.

**MRS DUNNE:** I was at university in the 70s, Professor Lenton—

**Prof Lenton:** So was I; I was there too.

**MRS DUNNE:** but I did not use, just to put that on the record.

**Prof Lenton:** Good. It is probably a function of three things. One is strains. There has been a lot of experimentation that has been done on producing high potency strains with high ratios of THC compared to CBD. That is cannabidiol, which is the anti-anxiety affecting drug or chemical in cannabis that is now being used for treatment for a variety of things. So there has been a selection of strains and that is in an illicit market. People have been selecting strains for being potent.

With that, there are the changes to cultivation, which have included hydroponics. This has meant that people are much more likely to be smoking heads only now than in the 70s when you and I were both at university. The final thing is that freshness thing. Yes, it is closer to production. In respect of my guesstimate of it doubling in potency, things vary within a plant, in fact. You can get different levels of THC within a plant and US studies have also shown that within a particular sample of harvested cannabis you can get variation. But in ballpark terms we are talking about possibly a doubling of potency over that period, but certainly not a tenfold increase.

**THE CHAIR:** Professor Lenton, thank you appearing today. Your information has been invaluable to the committee. Unfortunately, we have run out of time. When a proof *Hansard* is issued, it will be forwarded to you to provide you with the opportunity to check the transcript and, if required, to suggest any corrections. I do not believe you undertook to provide the committee with any further information. I thank you again for appearing today on behalf of the National Drug Research Institute.

**Prof Lenton:** Thank you for the opportunity.

**MOORE, MR MICHAEL AM**, private citizen

**THE CHAIR:** On behalf of the committee, thank you for appearing today, Mr Moore. I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the pink privilege statement before you on the table. Could you, for the record, let us know that you understand the privilege implications of the statement?

**Mr Moore:** Yes, I do.

**THE CHAIR:** Before we proceed to questions from the committee, would you like to make a brief opening statement?

**Mr Moore:** I would, thank you, chair. I am appearing in a personal capacity; however, I want to make a declaration of my background and some of the organisations I am involved with. I am not representing them but it adds to credibility. I am the acting chair of the National Research Institute, which Professor Lenton just spoke on. I am the immediate past President of the World Federation of Public Health Associations. I am an adjunct professor at the University of Canberra, visiting professor at the University of Technology Sydney and a distinguished fellow with the George institute. They are all parts of the background. I do not want people to associate me as representing those organisations. I am not representing those organisations; I am putting a personal view. However, they will help inform my view.

Cannabis is a harmful product. There is no denying that. You have heard evidence around that today. I think it is a message that we still need to make sure we get to the community. One of the things that have been most interesting to me over the years involved in drug policy is that our drug policy is invariably counterintuitive. In other words, you get better outcomes against your immediate reaction, your intuition. The Family and Friends for Drug Law Reform submission had a graph with an upside-down U illustrating what happens if you go either too hard into prohibition or too hard into free marketing. Both of those actually increase the harm associated with drug use, because they would be illegal or legal drug use. Prohibition does not work. Free market makes things worse, as we have seen with alcohol. And they do not provide us with the tools we need as policymakers to improve the situation.

It is important that we focus on attempting to minimise the harm in whatever we do. That is Australian drug policy, and I think that is fine. Australian drug policy, in seeking to minimise the harm, talks about supply reduction, demand reduction and harm reduction.

It is also important to understand the difference between an approach that looks at the personal and an approach that looks at a population. I will use e-cigarettes as an example. If somebody has been smoking forever and they think they can stop smoking through e-cigarettes, then probably e-cigarettes should be available and helpful for that person. If you have a broad drug policy that makes e-cigarettes widely available, we are seeing more and more evidence recently, especially from Canada, that it increases the use of e-cigarettes among young people. So on a population level there may be some serious disadvantage in having a broader policy; at a personal level

there may be some advantage. So how do you balance those two: the difference between what happens at a personal level and what happens at a population level?

There is a similar issue around cannabis, for people for whom there can be a very helpful use. We heard this morning from Bernadette talking about the use for her child. I think we have to keep those things in perspective. So when we look at deregulation of cannabis, as is happening here, we are only looking at a very small part of regulation. Some people are saying, “Oh this is just legalising it.” Legalising implies that there is no regulation around it at all. In fact there is a whole series of regulations, just as there are around cigarettes, for example. Yes, it is still legal, but there is a whole series of regulations that govern how we make it available, and the law covers those with some issues.

I will also comment on two other things. First there is the forbidden fruit notion that when we have things that are illegal they become of much more interest to some people. That might be an issue in how we approach this. I am taken back to when I introduced legislation in 1992 for the simple cannabis offence notices. At that stage, many people told me that this would increase use. In fact exactly the opposite has happened. Looking at the Institute of Health and Welfare figures from 2018, not only is the ACT lower than the national average over the past 12 months but also use in Australia is lowest in the ACT, where we have the most liberal laws around cannabis. As I say, it is counterintuitive but sometimes that is what has happened.

However, we also need to be able to extrapolate from other countries and look at what our risks and opportunities are. As I said, cannabis is widely available. I do not think this will change availability. I know I can get cannabis very easily if I so wish. I do not happen to but I know I can. In the Netherlands when they had a very open legal system of cannabis use there were reports of a significant increase in use. In fact it was about tourism. There was a lot of cannabis tourism, and that is something we need to keep in mind as well. But for Netherlanders themselves there was actually a very significant reduction in use when it was made legal.

The only other comment I would make is that with this legislation, should it pass, there should also be a commitment to appropriate education and marketing campaigns about the harms associated with cannabis, what the legislation means and what its limitations are. I am very happy to take questions.

**THE CHAIR:** How do you see the bill as it currently stands, as it has been referred to the committee, interacting with the current SCON system?

**Mr Moore:** I do not think it is necessary to remove the SCON system at this stage, although my preference would be to say that this is the transition, that it is time to remove the SCON system. At the personal use level, I would not make the distinction between an adult and not an adult at 18. I think our comparison there is with cigarettes. Yes, there is a limitation on who can buy and so on, but we do not actually criminalise somebody for using cigarettes. Yet our use has gone down and down. In fact there is great news in the ACT and in Australia, where the percentage of 12 to 14 year olds that are taking up smoking is now minuscule. I think it is below 2 per cent. I would expect exactly the same thing with cannabis, even lower.

**THE CHAIR:** There have been a few things raised about black markets. At the moment, that is really the only available link for people. Do you think that the legalisation of cannabis will help to limit the black market supply?

**Mr Moore:** I do not think it will vary it very much at all. Perhaps people would be a bit more comfortable about growing their own, but in the end for those people who are using it for personal use and growing their own, the risk of a \$100-odd fine and a cannabis notice was not a huge deterrent. I think the deterrent effect that we expect from that part of the law will not apply very much and will not change. The police still have an important role to play in supply reduction, and an appropriate role to play. The legislation, as far as this goes, is fine. I do not think it will change the black market aspect at all.

**MRS DUNNE:** I would like to dwell on the disconnect, which has been the case ever since we have had the simple cannabis offence notice, between how you treat an individual who just happens to have some cannabis and the supply chain. This legislation seems to me to emphasise that more. There is a disconnect where we are saying, "It's all right for you as an individual to have a small amount." We have heard Mr Pettersson this morning saying that he wanted to break the nexus of the criminal classes and the average recreational user. But the legislation on the simple cannabis scheme has not done that. For the most part, and we have heard the evidence, most people do not grow their own. Those people who are not growing their own are going into the black market in some way. As a very experienced policymaker, how do you get around that disconnect?

**Mr Moore:** It is quite a complex way of thinking and a rather important point that you raise. The same disconnect, for me, started with needle and syringe programs. When I first became involved in this, I thought, "How can we offer needle and syringe programs for an illegal product?" More recently, exactly the same issue was raised with regard to a needle and syringe program in the Alexander Maconochie Centre.

I think the nature of drug policy around harm minimisation does wind up with a disconnect, because we have three pillars. Demand reduction and harm reduction sit okay together but when you are trying to look at supply reduction it is another issue. We have a similar disconnect with regard to tobacco. We put out huge messages all the time to discourage people from smoking tobacco but it is a legal product. So I think that there is a disconnect, by the nature of drug policy that happens to work. It is a choice, in policy terms, between what is ideal, what we would like to see, and what is pragmatic, and the pragmatic solution is the one that seems to deliver. In all the areas I have looked at, it is the one that delivers least harm.

**MRS DUNNE:** So you are saying that the perfect should not be the enemy of the good?

**Mr Moore:** That is a very neat way to put it, Mrs Dunne. It is exactly the issue. All of us who are interested in better health outcomes would love to see nobody smoking cannabis, nobody smoking tobacco and nobody using alcohol in a harmful way. But what we are looking for is just what Dr Stephen Mugford, when he drew up that inverse curve, referred to as the Goldilocks solution: not too hot, not too cold. It is pragmatism.

**MS LE COUTEUR:** Talking about a pragmatic solution, you have been here all morning and heard a number of discussions about cannabis social club solutions. What do you think of that as a possibility?

**Mr Moore:** I was certainly aware of the NDRI submission and was comfortable with the social club as part of the solution. I think it is probably more pragmatic to deal with the black market that Mrs Dunne was talking about in terms of ensuring that people who wish to access cannabis are not getting it through the black market but are getting it, if you like, through a coordinated system of friends. I think it does have some merit.

I guess it is one of those things where we can look at evidence from overseas. We should just extrapolate from that evidence. We cannot copy from what happens overseas. I made that mistake myself when I was here in the Assembly in supporting more liberalisation of alcohol laws. I looked at southern Europe and thought that it does not cause any problem there. In our society, actually, I think more liberalisation of the laws has created more harm associated with alcohol. I think that it requires very careful monitoring and evaluation. I think that whatever happens with this legislation, monitoring and evaluation processes do need to be put into the place to see what happens to use, what happens to criminality, what happens, most importantly, to harm.

**MS LE COUTEUR:** Absolutely. A step not quite as far, but related to cannabis social clubs, would be allowing gifting legally. Do you have any views on that? It is certainly something which, as Mrs Dunne said, happens commonly.

**Mr Moore:** Yes, I think it would be very hard to work out what was gifting and what was not. But I think gifting makes quite good sense to me. It is quite clear that people who use cannabis personally are not going to always grow their own. I do not have a green finger at all. I do manage to get my lawns to grow mostly but—

**THE CHAIR:** You are doing better than me.

**Mr Moore:** and some trees and even some vegetables sometimes but I am just not very good at it. I suppose that would be the same with this particular product as well.

**THE CHAIR:** Mr Moore, you have obviously read the National Drug Research Institute submission.

**Mr Moore:** Actually, I have read all the submissions.

**THE CHAIR:** You mentioned in your opening statement about the education of people if this ever became legal. But what about how it interacts with the road transport legislation? We currently have drug testing.

**Mr Moore:** Yes, we do have drug testing and I think it is entirely appropriate. We know that cannabis has an impact on motor coordination. It is entirely appropriate that, to minimise the harm, we continue to monitor it. There are some challenges compared to alcohol monitoring. I go back to what Mrs Dunne said. The perfect can be the enemy of the good. People can still have some cannabis detection well past the time

when their motor coordination is affected.

I think that that probably will require more research but people should not be driving when they are incapacitated. They put themselves in danger and they put others in danger. When they put themselves in danger, that also can be a significant cost to the community.

**MRS DUNNE:** I want to touch on some issues, given your experience in public health. There have been some submissions and evidence this morning that touched on the supply of medicinal cannabis. There is sort of a sense that legislation like this as proposed by Mr Pettersson would be sort of a reprieve for people who are trying to access the medicinal cannabis process, which is pretty clunky. For the benefit of the committee, could you reflect on, firstly, the usefulness of the medicinal cannabis scheme and, secondly, the temptation that people might have to enter into a scheme like this as a halfway house?

**Mr Moore:** The medicinal cannabis scheme was deliberately made to be very restrictive. It was a national approach to which states and territories came on board in various different ways. It had the strong involvement of medical practitioners and certainly the chief medical officer of the commonwealth was involved. So probably it should not be surprising to us that it is very restrictive.

The downside to being very restrictive is that it has also become very expensive. When it is very expensive, there is access for people who can afford it and not access for those who cannot. As happens in public health, we always refer to the social determinates of health. People who are wealthy can access cannabis oil and others who would like that treatment cannot. You described that as a halfway, that this might be halfway house. I actually think that that is not such a bad thing.

Yes, we know about the harms associated with cannabis. We can warn people about those. To experiment and to find that actually cannabis does have an impact for a person who has a serious illness I think is something that we should just be compassionate about and to acknowledge that, yes, we get that. Maybe if you are finding it is helpful but not helpful enough, perhaps you should look at the more formal medicinal cannabis approaches.

**MRS DUNNE:** On the subject of the more formal medicinal cannabis, what is your understanding about medicinal cannabis, which essentially has the THC stripped out of it? How effective is that and in what circumstances?

**Mr Moore:** It certainly appears to have very good outcomes for some people. Quite interestingly, while some people have very good outcomes, somebody else with exactly the same condition does not have a good outcome. I think there is still a long way to go in terms of the research as to just how good it is. Certainly, the peer review medical journals that I have read on medicinal cannabis are not particularly favourable.

That having been said, there are so many people who use it, so many people who wish to use it, in order to treat and who find they have very positive outcomes. I am certainly familiar with individuals, I know individuals who had very positive

outcomes, including very young individuals. They have had very positive outcomes.

I think it is much more than a placebo effect. But I think we have still a long way to go to look at the literature. When we look at the literature in terms of medicines, we are very tight and controlled in how we look at those, for very good reasons. Think of thalidomide and so forth. I think there is a lot more evidence around cannabis that, yes, it is harmful but nowhere near that level of harm. That is the issue here. So I think half a house is not a bad thing at all.

**MRS DUNNE:** You also touched on the issue of the cost of the medicinal cannabis scheme to individuals. That is because, while it is listed as prescribable, it is not listed on the pharmaceutical benefit scheme.

**Mr Moore:** Yes.

**MRS DUNNE:** As a public health official, what would need to happen for us to get to the point of having it on the PBS?

**Mr Moore:** It is a normal process that pharmaceutical companies go through. The person or company that wants to have it listed actually has to pay quite a lot of money to go through the process and have it listed. It may well be that in five, eight, 10 years, companies that are here in Australia involved in the production of cannabis oil decide that they do want to take it through the TGA. But it is only going to be a recommendation from TGA. They are really going to have to be very clear about the evidence rather than what we have, which is actually a case series of individuals who say, "Look how much it has helped me." The case series is really important but it is not a gold standard medical study.

**MS LE COUTEUR:** You have experience with Canberra's drug and alcohol rehabilitation treatment scheme. My question is twofold. Is it dealing adequately with issues of cannabis use now? If this proposed legislation changed things such that there was increased cannabis use, would it be able to cope?

**Mr Moore:** I have to say that I am way out of date on that. I have seen so many wonderful people working in drug rehab in so many different ways. I have great admiration for them, but I am not that familiar at the moment; I just have not looked closely in the last five years. I am not familiar with what sorts of stresses they are under and how they are coping. I wish I could answer better but that one is beyond me. Could I just make one final point?

**THE CHAIR:** Please.

**Mr Moore:** I was listening as Michael Pettersson responded to a question and read the police submission about the interaction between the federal legislation and the ACT legislation. I think you can put exactly the same argument around the needle and syringe program; you can put exactly the same argument around pill testing. This is quite a normal tension that happens between these sorts of legislations and something that the police have actually been very effective in handling. Whilst I think it is right for them to raise the issue, I think it is not that critical.

Secondly, the submission by the federal Department of Health talks about international treaties and the single convention on narcotics drugs and our obligations under that. It was the United States that was the most strident in pushing for these treaties, or maintaining these treaties, over many years. Yet 10 or 12 states within the United States have legal regimes; actually, regimes that are way beyond what is in those treaties. I do not think we need to be concerned about that, either.

**MS LE COUTEUR:** I have a final question. The proposed legislation does not apply to anyone under 18. Do you think that that is a reasonable part?

**Mr Moore:** No, I would remove that restriction. I certainly do not want to see people under 18 using cannabis. The harm is greater. It is clear. But I think perhaps we have to treat it in the same way we are treating tobacco. It is only an idiot who is going to be smoking cannabis for recreational purposes constantly, or just smoking, full stop.

The real question becomes: how do we make it so that it is socially unacceptable, just the same as we have made smoking unacceptable amongst our teenagers. How do we make cannabis unacceptable? In a counterintuitive way, making it a forbidden fruit is going to do the opposite.

**THE CHAIR:** Thank you very much for your time today, Mr Moore. When a proof *Hansard* is issued, it will be forwarded to you to provide the opportunity to check the transcript and to suggest any corrections should they be required.

**Mr Moore:** Thank you for your invitation.

**SMITH, MS ANGELA**, President, Australian Federal Police Association  
**CARUANA, MR ALEX**, Vice-President, Australian Federal Police Association  
**ROBERTS, MR TROY**, Manager, Media and Government Relations, Australian  
Federal Police Association

**THE CHAIR:** Thank you for appearing today and for the submission you have provided to the committee. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement before you on the table. Can you confirm for Hansard that you have read and understand those?

**Ms Smith:** Yes.

**Mr Caruana:** Understood.

**Mr Roberts:** Yes.

**THE CHAIR:** Do you have a brief opening statement?

**Ms Smith:** Yes, I do, thank you, chair. Firstly I thank the committee for inviting the AFPA to discuss the Drugs of Dependence (Personal Cannabis Use) Amendment Bill of 2018. I also acknowledge Mr Pettersson in relation to this bill. It is a courageous bill that he has developed but it is a bill the AFPA cannot support.

The AFPA acknowledges that it is hard to deny the widespread use of cannabis in the ACT and elsewhere in Australia and that cannabis is very much here to stay for the foreseeable future. We also do not deny that the community's perception of cannabis is softening. We also do not dispute that cannabis may have medicinal purposes, but we are not here to discuss these matters today.

When the issue was first raised with the AFPA in late 2018 it came from left field. It really came from the media, not from the government. The AFPA represents over 4,000 AFP employees on matters such as this, and I was a bit surprised that no consultation had occurred with us.

Over the course of the past few weeks I have had the opportunity to speak to a number of ACT Policing AFPA members about this bill and all are opposed to it. As such I welcome today's opportunity to raise those concerns, and I speak on behalf of the AFPA members. Once again I thank the committee for this opportunity.

**THE CHAIR:** Thank you. Ms Smith, in your submission you talk about the disconnect, for want of a better word, between the ACT and the commonwealth legislation if this were to be legalised. I am not sure if you had a chance to hear Mr Pettersson's response to that.

**Ms Smith:** Only parts, chair, sorry.

**THE CHAIR:** That is okay. Mr Pettersson said that parts of the federal legislation could be used as defence but it has never been tested. Can you expand on your

submission where you talk about the disconnect between the two pieces of legislation and if you could see that as something that is a workable option for your members?

**Ms Smith:** Are you talking about whether commonwealth legislation prevails? Because our concern initially is that when similar pieces of legislation butt up against each other the state or territory legislation is the lesser legislation and the commonwealth legislation will prevail according to section 109 of the constitution.

This legislation butts up against the commonwealth Criminal Code Act so those two pieces of legislation are not talking to each other. For my members, if it is decriminalised in the ACT the commonwealth legislation would prevail and they have that option of charging people under the commonwealth legislation. So it becomes quite problematic for the ACT community. If they are going to consume cannabis and have cannabis in their possession and cultivate cannabis, the option is there for us to charge under the commonwealth legislation.

**THE CHAIR:** How does that interact then for something like pill testing?

**Ms Smith:** Good question. I am not sure. I have not gone down that path, sorry, chair.

**THE CHAIR:** As we know, we have had at least one occasion where the ACT has provided pill testing and I believe that there will be another one shortly. I imagine that that is also contrary to commonwealth legislation.

**Ms Smith:** Is it because it is in a testing regime? I am not sure.

**THE CHAIR:** I guess that is why I am asking.

**Ms Smith:** That would probably be a good question to ask ACT Policing, how they view that. I do not know. I did not do my homework on the pill testing side. It is certainly a good question. We can take it on notice if that is an option?

**THE CHAIR:** Absolutely, if you wanted to, particularly from the perspective of your members. You talk for your members today and it would be interesting to get their perspective.

**Ms Smith:** I have spoken to a number of members in relation to pill testing. They are certainly not against it and there is a perception of harm minimisation. For them a lot of it is a health issue. Some of our members have teenage children and they would not want them to be consuming a pill that could kill their child.

**MRS DUNNE:** Going back to the issue of the interaction with commonwealth law, Mr Pettersson says that the commonwealth law at section 308 of the Crimes Act says that this is a matter for the states and territories. Are you saying that if there is no territory law the commonwealth law would click in?

**Ms Smith:** That is right.

**MRS DUNNE:** So we run the potential of creating a vacuum in the law in the ACT?

**Ms Smith:** That is possible, yes. The thing about being AFP is that we function in the federal arena as well as the state arena, but we have the option, as do all states, to use the commonwealth legislation. So if the legislation is not there the next step is to use the commonwealth legislation, which is section 308 under the Criminal Code Act. Does that answer your question?

**MRS DUNNE:** I thought that that was what you were saying but I wanted to clarify.

**Ms Smith:** Yes, so the discretion is there.

**MS LE COUTEUR:** I do not know if you heard the evidence of the Family and Friends of Drug Law Reform. The transcript will certainly be an interesting read but hopefully you might find it useful as well. They talked quite a lot about that issue. I did not write down the sections so I am paraphrasing, but they said that the commonwealth law is written in a way that if there is a territory law then that overruled it.

They said this had never been tested but that a number of commonwealth health ministers—Sussan Ley and Greg Hunt—are publicly on the record saying that that is what it is for. So if a state or territory chooses to go down a different route there is a defence already written that. “Yes, you could be seen as being guilty of this commonwealth offence but you are in this state or territory and we defer to those laws.” As I understood it they saw that as a defence. I appreciate it has never been tested, but it would seem to be a potential solution for your members.

**Ms Smith:** Possibly. The thing about the ACT Drugs of Dependence Act and the Criminal Code Act is that under the Drugs of Dependence Act if someone is in possession of small amounts of cannabis we will charge under that and that is the discretion we will use. Police always have a discretion; that is part of being a constable of police. Larger amounts—over 50 grams or over more than two cannabis plants—they would use section 308 of the Criminal Code Act. That is how I understand it.

There are two options: one for small amounts and one for larger amounts. But if that became a vacuum as the deputy chair has suggested, we would immediately refer to the commonwealth legislation and use that. Is that how you understand that, Troy?

**Mr Roberts:** Yes.

**Ms Smith:** As far as we are concerned, because we deal in legislation all the time that is the only way we could use that.

**MS LE COUTEUR:** I am not quite understanding this. How would it be that if Mr Pettersson’s bill were passed there would be a vacuum? The ACT would have legislation basically saying that personal ownership of 50 grams is okay. It would not be a vacuum as far as I see it. I am confused.

**Ms Smith:** That was the deputy chair’s word. But if it decriminalised for cannabis, the problem is that you butt up against the commonwealth legislation. We would have no choice. This is the problem: if you are bringing in a piece of legislation that butts

up immediately against commonwealth legislation the territory legislation does not prevail. The commonwealth legislation prevails. It has to. When those two pieces are inconsistent with each other we would have no choice but to charge under section 308. It is not an ideal situation but that is how it would work.

**THE CHAIR:** This morning Mr Pettersson and, I think, the people Ms Le Couteur is talking about, Family and Friends for Drug Law Reform, quoted from 313 in the Criminal Code, which says:

Defence—conduct justified or excused by or under a law of a State or Territory

This Part, other than Division 307, does not apply in relation to conduct if:

- (a) a person engages in the conduct in a State or Territory;
- (b) the conduct is justified or excused by or under a law of that State or Territory.

So there are parts of the Criminal Code that can provide a defence; they have just never been tested because there is no current state or territory that has legalised marijuana.

**Ms Smith:** It would certainly make an interesting case. I am in the committee's hands in relation to that, but our members have the concern that if it is decriminalised there is still that piece of commonwealth legislation that, for us, would prevail at this stage until there is a decision made on how they would work together. It is an open thing, is it not?

**MS LE COUTEUR:** What we will need is a very quick test case.

**Ms Smith:** That is right, and someone who is willing to do it.

**MS LE COUTEUR:** Someone who would like to volunteer to do this and have the ACT government pay the legal expenses.

**Ms Smith:** I am not sure if the chair is up for that.

**THE CHAIR:** You said in your submission that there was no consideration given to current drug-driving legislation in section 20 of the Road Transport Act. Can you expand on that a bit? I imagine that there has to be some sort of offence if you get caught driving under the influence of drugs.

**Ms Smith:** Our point with this is that the bill is not talking to the road transport legislation. We do not have an issue if it does, but at the moment it does not.

**THE CHAIR:** So you are saying that if there were legislation put in place and cannabis were to be legalised there had to be an offence under that?

**Ms Smith:** That is right, and you would have to amend that legislation.

**MRS DUNNE:** To clarify, you are saying that, as the legislation is currently drafted,

there is no connection with the drug-driving provisions in the Road Transport Act, and you would need to establish that for there to continue to be an offence of driving under the influence of cannabis?

**MS LE COUTEUR:** We already have a drug-testing regime. Driving under the influence of cannabis, in my understanding, is already illegal and tested for. What more do you need than being illegal and tested for?

**Ms Smith:** As I was saying to the chair, if cannabis were decriminalised you would have to adjust the road transport legislation in order to take away the test for cannabis.

**MS LE COUTEUR:** Why would it take it away?

**Ms Smith:** You would just have to remove that, I think. What would be the point in having it? You are allowed to smoke or consume cannabis at your home. Then the next day or two days later you get pulled over by the police—

**MS LE COUTEUR:** We do that with alcohol. You can drink an awful lot at home—

**Ms Smith:** Alcohol is legal.

**MS LE COUTEUR:**—but if you start driving—

**Mr Caruana:** With alcohol we have a prescribed amount that equals inebriation or equals an amount that means a person is incapable of safely driving a motor vehicle. Currently under the legislation if we legalise cannabis use and then it gets tested, we are testing that they have cannabis in their system; we are not testing if they are safety able to drive a motor vehicle or impaired to drive a motor vehicle. Currently in the ACT the test is a pass or a fail: you have drugs in your system or you do not. We are not testing whether the person has enough of the substance in their body to impair them.

**MS LE COUTEUR:** I am aware of that. And it would obviously be preferable if you could test for impairment or not. But surely if this legislation were passed it would not make that situation any worse. It is arguably silly but it would not be any sillier.

**Mr Caruana:** Sure. But how does the person who is driving the car know that they are impaired or that they still have enough substance in their body for them to pass or fail a roadside drug test?

**MS LE COUTEUR:** That is a real question but not one that is made harder by this. The statistics say that apparently nine per cent of us smoke at least once a year, so the situation already exists.

**THE CHAIR:** It is currently just a pass or fail, is it?

**Ms Smith:** Yes, a negative or positive.

**THE CHAIR:** It is not testing for impairment?

**Ms Smith:** It is not testing for level, no.

**Mr Caruana:** It is not a test for impairment.

**Ms Smith:** Because it is a controlled drug and it has a level of addiction, it is either—I think that is how they are doing it—in your system or not. Unlike with alcohol, there is no level of impairment.

**THE CHAIR:** There is no impairment level as with alcohol?

**Ms Smith:** That is right. Because those two things are not talking to each other, it is difficult to know what to do with that. Do you remove cannabis from drug-driving? This is the difficulty that has come up: how those two things butt up against each other. Do you then develop a system that determines impairment, like with alcohol?

**MRS DUNNE:** You make a point in your submission that the legislation as proposed is silent on the impact it may have on people in dangerous or hazardous occupations. Some building sites conduct drug testing and things like that to ensure that people that working on building sites are not impaired by alcohol or do not have drugs in their system because it can be dangerous.

It seems to me that you are saying that there could be a bit of a disconnect between saying that this is a legal thing and at the same time not having a regime that might require government employees and people in risky occupations to be unimpaired in the same way we would require them to be unimpaired by alcohol. We have had the discussion about roadside drug testing that it is about you have it in your system or you do not rather than impairment level. Is the AFPA aware of a more sophisticated regime of drug testing which would measure impairment rather than just the presence of a drug?

**Ms Smith:** I am not aware of a system.

**Mr Caruana:** I am not aware of a system either.

**Ms Smith:** The problem with having an addictive substance in your system is that it is a bit like alcohol: everybody reacts slightly differently. Everyone is impaired to a different level according to your metabolism. We are not aware of any system, and certainly a lot of work would need to be put into something like that. Years ago that went into the whole alcohol testing regime and the machinery and the technology that is now behind that. So I think we have a long way to go before we can get to that point with drug testing.

**Mr Caruana:** The technology and the science might not have caught up yet to where we are in society moving forward. It might be similar to alcohol; there might be some further science that needs to be done. That said, we are happy to be proved wrong and for someone to say, “No. there’s something in Netherlands where they’ve come up with something.

**MS LE COUTEUR:** You say one of the problems with the proposed system is that under SCOns you can refer people to education and health programs as a form of

diversion. Given that none of us is in favour of increasing cannabis use, if the bill were passed, could you see another way that people could be referred to education and health programs?

**Ms Smith:** You would use the same sort of system I guess. One of the premises of the bill is to take people out of the criminal justice system. We do not immediately put people into the criminal justice system now; there are things in place. So for first-time possession of a small amount—under 50 grams of cannabis—we will divert you into the health system. The second time you will get a SCON. The third time we will probably have to do something with you. I would think we would always try to have an education program in place regardless of the legislation. You would be going backwards if you removed that process.

People will try it, they get caught. If you can get them early it might steer them away pretty quickly. You have to continue with those sorts of processes, SCONs and diversion systems, absolutely.

**MRS DUNNE:** But how would you do that in a situation where possessing small amounts is no longer a criminal offence? It is still illegal with SCONs but we are looking at diversion for very small amounts. But this legislation says that very small amounts are legal therefore it would not come across the police radar. In that environment how would you attempt to divert people into health issues?

**Ms Smith:** You would have to get their consent, I would imagine.

**Mr Caruana:** It would move away from a policing power to a health power or a health benefit, I guess, similar to what we currently do with minimising alcohol and tobacco usage. With an education or health campaign it would move away from a police function so it would not be something our members would really be able to do. It is out of our control.

**Ms Smith:** It is similar to the Foundation for Alcohol, Research and Education. They try to be out there a fair bit to educate the public about alcohol use and abuse. So it would be nice to have something similar in place.

**MS LE COUTEUR:** The evidence of the AFP as distinct to the association was that most of the arrests for cannabis were incidental along with a more substantive issue.

**Ms Smith:** That is right.

**MS LE COUTEUR:** I appreciate I should ask them the question, but do you have any figures about the more substantive issues we are talking about?

**Ms Smith:** As in numbers?

**MS LE COUTEUR:** Numbers and for what sorts of things. You drove 10 kilometres over the limit, you were stopped for that and then there was a small amount of cannabis in the car. Is it that sort of stuff or robberies? Do you have any figures as to what sorts of offences are connected with arrests for cannabis use? It was certainly claimed that there are seldom arrests just for cannabis use.

**Ms Smith:** That is right. I do not have any figures; you would have to ask ACT Policing. They would have to download that out of their database. But certainly if all you have is under 50 grams of cannabis there is no arrest, unless you are a recidivist possessor. But if you are arrested for burglary or some other offence the cannabis possession is a secondary offence if it is on you. Then it is dealt with in the same statement of facts similarly to any other additional charge laid against a person.

**Mr Caruana:** From my understanding it is a mixture of offences; it is not generally related to just traffic offences or burglary offences or drug-related offences. It is across the board. So it would be a secondary offence related to any of the other offences police can charge a person for.

**Ms Smith:** And then the court deals with that drug possession as it sees fit. Sometimes they will plead to one or two and then it is quite random how it then gets dealt with. You can check with the Chief Police Officer but we do not arrest for 50 grams or under; we try to divert or educate or give a small fine.

**MRS DUNNE:** It was put to the committee this morning—this is also something we will have to ask the AFP proper—that the amount of paperwork involved in the SCON is such that sergeants and the like discourage people from issuing it. Do you have a comment on that?

**Ms Smith:** I remember them as being one piece of paper; it is a carbonated piece of paper. I think it is just one A4 piece of paper, but is a few years since I have done one. I do not believe anyone would really discourage using it.

**Mr Roberts:** I think the issue is that there is a lot of work following up from the initial SCON. An officer will give someone a SCON and if it does not get paid it turns into a summons and compiling a summons can be a lengthy process. Then the matter goes to court and you have your hearings and your mentions and eventually you will get a court date and then you will appear in court. So I think the issue is when the SCON is not paid then that translates into quite a lengthy process.

**Ms Smith:** But I could not imagine that there would be discouragement of issuing that first SCON. It would be, “Please pay the SCON so I then don’t have to create a brief of evidence to go to court.”

**MRS DUNNE:** For less than 50 grams?

**Ms Smith:** That is right and for a \$100 SCON. There is a cost of time to put a brief together to go before the court and there is a number of people in that chain. For police to go to court and give evidence for a \$100 fine is onerous to say the least.

**MRS DUNNE:** So maybe there is a disincentive to follow up on unpaid SCONs?

**Ms Smith:** I guess you then weigh up if it is in the public interest and there are a few things that you would look at. At what point do you follow up a \$100 fine given all the other jobs police have hanging over them? You could probably triage it a bit. Sometimes they can be written off quite quickly, so where is the incentive to chase up

a \$100 fine?

**MRS DUNNE:** In some of the evidence this morning it was put to the committee that the police concentrated more on collaring consumers than suppliers and that figures indicated that somewhere between 10 and 20 per cent of the people convicted for cannabis offences were suppliers and that somewhere between 80 and 90 per cent, depending on the figures, were consumers. I will also take this up with the AFP, but what is your perception of the ratio of suppliers to consumers in the ACT?

**Ms Smith:** I do not have those figures. But I can understand where those figures come from in that there are always going to be a smaller number of suppliers than consumers.

**MRS DUNNE:** If it was a one-to-one ratio it would not be much of a business model.

**Ms Smith:** That is right. Where is the money to be made there? Why would you go into that business? A cannabis plant can grow to the size of a tree, so a lot of deals can be made off one particular cannabis plant. So the ratio is always going to be greater with consumers. Plus, if you arrest somebody for, say, a burglary or a higher offence and they have cannabis on them, that is always going to add to the figures; that person is a consumer.

The dealers and suppliers are always a little bit harder to locate. For example, a grow house will have a sitter and not the supplier living at the house and there are any number of consumers for those cannabis plants. But as to figures, put that to the Chief Police Officer.

**THE CHAIR:** Thank you for coming today. When a proof *Hansard* is issued it will be forwarded to you to provide the opportunity to check the transcript and suggest any corrections if required. If witnesses undertook to provide further information or took questions on notice during the course of the hearing, whilst the committee does not have a set deadline for receipt of responses, answers to these questions would be appreciated within one week from the date of this hearing.

I again thank you for appearing today on behalf of the Australian Federal Police Association.

**The committee adjourned at 12.47 pm.**