



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)
MS C LE COUTEUR**

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

FRIDAY, 29 MARCH 2019

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**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.

WITNESSES

CHOUDHURY, MS FARZANA , Program manager and solicitor, Street Law, Canberra Community Law	42
KUKULIES-SMITH, MR MICHAEL , Chair, Criminal Law Committee, ACT Law Society	49
RYAN, MR JOHN , Chief Executive Officer, Penington Institute	55
STANHOPE, MR JON , Senior Adviser, Winnunga Nimmityjah Aboriginal Health and Community Services	60
TONGS, MS JULIE OAM , Chief Executive Officer, Winnunga Nimmityjah Aboriginal Health and Community Services	60

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Amended 20 May 2013

The committee met at 1.41 pm.

CHOUDHURY, MS FARZANA, Program manager and solicitor, Street Law, Canberra Community Law

THE ACTING CHAIR (Mrs Dunne): Ms Cody sends an apology for lateness. She has another appointment she cannot get out of yet. We will start. Good afternoon and welcome. I declare open the second 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 would like to acknowledge the Ngunnawal people because we meet on their land. I pay respects to their elders past, present and emerging, and the continued contribution of their culture to the city and the region.

Today the committee will be hearing from Street Law, the ACT Law Society, the Penington Institute and Winnunga Nimmityjah Aboriginal Health and Community Services. I would like to thank witnesses for contributing to the inquiry and making themselves available today. I remind people that these hearings today are being recorded by Hansard for transcription purposes and are being webstreamed live and broadcast live.

Thank you for your appearance today, Ms Choudhury, and for Street Law's written submission to the inquiry. Can I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the statement. It is not there.

Ms Choudhury: I have read it.

THE ACTING CHAIR: You understood it?

Ms Choudhury: I understand it.

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

Ms Choudhury: I do.

THE ACTING CHAIR: Before we proceed to questions, would you like to make an opening statement?

Ms Choudhury: Yes. Thank you very much for the opportunity to speak to you all today and to bring to your attention some of the issues that people who are homeless or at risk of homelessness may face if the bill is passed as drafted. Street Law supports the proposed amendments to make it legal for adults to possess up to 50 grams of cannabis for personal use. This support is based on a few factors, namely our desire to reduce our clients' interactions with the criminal justice system, our support for minimising the burden that fines under the SCON scheme can have on people with complex needs experiencing financial disadvantage and also our view that cannabis use should be dealt with primarily as a health issue rather than a criminal justice issue.

While we are generally supportive of the proposed reforms, we do have some concerns around the proposal for making it an offence to smoke cannabis in public, and that is largely due to the effect this might have on people who are rough sleeping. Public space offences, like the proposed offence that we have here, are especially relevant to people who are homeless because they often spend a lot more time in public places than other people. While we do acknowledge that there may be some community health concerns around cannabis use in public, we are concerned that introducing this offence in its current form might potentially result in more people who are experiencing homelessness being subjected to the criminal justice system, which is not at all what we want.

Our other concern with this specific proposed offence is that the maximum penalty is 30 penalty units, up to \$4,800 currently, and this seems disproportionately high compared to what the penalties are for other public space offences of a similar kind—things like drinking in public and smoking in certain public spaces. I also note that there does not seem to be a specific on-the-spot fine available for this, whereas that is an option for the drinking and smoking in public spaces. If this particular offence were to be created, we would be recommending that an option be available for police to issue a criminal infringement notice similar to the other public space offences.

Another option might be to list this as another simple cannabis offence, although we do note that that scheme also has some limitations as well. It is potentially a simpler way of ensuring that people do not end up in court for something like this. We would also be very open to a reduction in the maximum penalty that is currently drafted so that it is a little more in line with the drinking and smoking in public offences. It seems quite disproportionately high. For the existing offences around smoking in an enclosed space or drinking in public the maximum is five penalty units. If you contravene a direction to stop, then it does increase to 20 penalty units. That is still a fair bit lower—

THE ACTING CHAIR: Significantly smaller than 30.

Ms Choudhury: than the 30 penalty units that we are seeing, without having the option of an infringement notice.

Further to the points that were raised in our submission, I want to raise a few concerns around how these reforms affect young people who are doing it tough. I note that it is still an offence for people under 18 to possess cannabis at all, and there is that SCON scheme in place for those lower quantities.

Our concern around the SCON scheme is that, while it is great that this potentially diverts young people out of the criminal justice system, if you are experiencing financial hardship your only option really is to pay the fine within 60 days. There is no option of asking for an extension of time to pay or seeking an instalment, which is quite dissimilar to the ACT traffic fine system, where you do have a whole lot of other options. We would be recommending that, if the SCON scheme is to replace this, some further work into what the SCON scheme looks like to provide some other options for people experiencing hardship should be explored as well.

This is something that we raised in our submission, but I want to draw the committee's attention to the potential risk that we might see more people charged with drug driving for having cannabis in their system, unless these reforms are accompanied by a broader public awareness and public information campaign about how long cannabis can stay in your system and also what impact that can have on your driving as well. We do see the value in retaining any drug driving offence, for community safety reasons, but to us it just does not seem fair that someone who might have a small amount of cannabis detected in their system may be subjected to the same penalties as someone who was clearly very well affected by drugs at the time and who may actually physically be impaired.

Yes, we would welcome further reforms. It may be outside the scope of this little package of reforms that may be underway but I think it is something to think about. Thanks very much for the opportunity. Those are my submissions. If you have any questions about the written submission or what I have mentioned today, I am really happy to answer any questions.

THE ACTING CHAIR: Just before I go to my substantive question, can I clarify something? Did you say that 30 penalty units was \$4,800?

Ms Choudhury: Yes.

THE ACTING CHAIR: My calculation is \$4,500.

Ms Choudhury: One penalty unit is \$160.

THE ACTING CHAIR: It increased recently?

Ms Choudhury: It increased in November, since 1 November.

THE ACTING CHAIR: That is how you get to \$4,800.

Ms Choudhury: Yes. It is pretty recent.

THE ACTING CHAIR: I want to dwell, if I can, a little on the public spaces offences. I was wondering whether you could outline for the committee how the impact could be minimised on people who spend a lot of time in public places. The bill as it is written is about consenting adults in private. But what you have characterised is that there are people who, if they were in private, would be acting completely legally but because they do not have access to private space then they run the risk of running the gauntlet of the law again. Have you thought about how that might be minimised for people?

Ms Choudhury: Having the option of an on-the-spot fine, rather than just a straight charge and ending up in the court system, would be one way of doing that. We have found that there are currently not that many people coming to us for advice on public space offences. The prosecution rates do seem to be low. Our concern is that, with all of this buzz around cannabis use, this could be something that police start targeting people for. If you are experiencing homelessness and you are on the streets, you are subjected to that real risk.

Decreasing the penalties would be another way of minimising the effects. Of course, if someone does end up going to court, the magistrate can take into account someone's living arrangements and their financial capacity, but if someone goes to court and they are not represented, they might not think to raise that sort of thing. It is about mitigating the risk of a high penalty. As I say, I do understand why that offence is there. It makes sense, given that we already have those offences for things like drinking and smoking. We want to see that be a bit more in line with the current penalties for smoking in public.

THE ACTING CHAIR: Refresh my memory. Is it five penalty units?

Ms Choudhury: Yes, five penalty units, which is an \$800 fine for smoking in an enclosed space, for smoking in a prohibited outdoor eating or drinking place, or for smoking at a declared smoke-free public place or event. In relation to drinking, it is similar. That is five penalty units. If the police tell you to stop and you do not, you risk that additional penalty; so it would be 20 penalty units.

THE ACTING CHAIR: For persisting rather than not desisting?

Ms Choudhury: Yes, that is right. For all of those there is the option of an infringement notice penalty, which is a lot lower than if it were to go to court. They are all \$110, if you are doing it, and if you contravene a direction to stop it goes up to \$440. It is a bit higher for drinking alcohol in a no alcohol zone. You are subjected to \$800—five penalty units. There does not seem to be an on-the-spot option for that. That is all a lot lower than the maximum \$4,800, which does not seem to align with this idea that community attitudes are changing around cannabis use and possession.

MS LE COUTEUR: Under the current legislation, as I understand it, you cannot smoke within 20 metres of a child. I understand that that is going to be removed, due to the inherent problems of people living in an apartment block where there might be a child on the other side of the wall and you do not know about it. Do you think there could be some possibility of public place legislation—some way of making it so that if you are entirely living in public spaces you would not necessarily be infringing the law?

Ms Choudhury: Yes, that would certainly be another way of mitigating that risk for people who are sleeping rough. It is a very tricky one. I do understand that there are community concerns around health, but, as lawyers representing people experiencing homelessness, we want to make sure that those issues are at the forefront as well.

THE CHAIR: Mrs Dunne, I will ask questions later, as I missed the start.

MRS DUNNE: One of the things that you have touched on in your submission relates to people who are homeless or who have uncomfortable housing arrangements. They are not all strictly homeless in the sense that they do not have a roof over their head—how people in these circumstances are more likely to come up against the criminal justice system. Could you elaborate on your experiences of how you see that that will interplay with this legislation?

Ms Choudhury: It is largely due to visibility. If you are spending more time in public spaces, the chances are that you may have more interactions with police as a result. We also find with the clients that we see at Street Law that they are often experiencing multiple, complex issues. Health is a big one. A lot of our clients are escaping domestic violence and previous trauma. It does make it more difficult for them to deal with fines, on top of all of the other issues that they are often facing.

Even something as simple as turning up to court can be a really terrifying experience for many of our clients. For us to engage with them, a lot of the time we will just lose contact because they do not have a phone or they are out of credit. That can be really difficult. If they are not getting that legal assistance, and assistance from other supports that want to help them, it can mean that they end up in this difficult predicament with the law.

MS LE COUTEUR: You talked about infringement notices. Is that something that would need to be part of the legislation or is it something that can be done through, effectively, guidance of the police and the courts to say, “This is an alternative”?

Ms Choudhury: It could be done by way of regulation, which is what is in place for the smoking and drinking public offences. There are a number of Magistrates Court regulations which set out what the specific infringement notice penalties are.

MS LE COUTEUR: Would those be regulations under this particular bill?

Ms Choudhury: I expect they would be regulations under this bill. I may need to look into this further. With the Magistrates Court, the smoke-free public places infringement notice regulation is the particular regulation which deals with any offences under that Smoke-Free Public Places Act. It would mostly likely be Magistrates Court drugs of dependence notices.

MS LE COUTEUR: That makes sense.

Ms Choudhury: That regulation would be the way to do it. That is consistent.

MS LE COUTEUR: Would you need to do something like that with flexible payment options? You were talking about how the traffic infringements have flexible payment options. How will you get it for your clients for cannabis offences?

Ms Choudhury: It would be about looking at what the current SCON scheme is. I do not think that necessarily needs to be in any regulation. If ACT Policing were on board, it would be about the processes for dealing with those fines. At the moment you basically just need to pay it. If you do not do that within 60 days, you could end up with a criminal record. I do not think that would necessarily need to be legislated.

MS LE COUTEUR: That would just be a direction to the cops?

Ms Choudhury: That is it.

MRS DUNNE: It might be a bit more complicated than that because, overall, my understanding is that—and you might be better placed than us to advise on this—the

SCON scheme does not have a repayment option. You either pay it or you do not.

Ms Choudhury: You either pay it or you do not, yes.

MRS DUNNE: To modify the SCON scheme or any other simple infringement notice would require an amendment to that legislation, would it not?

Ms Choudhury: I am happy to take your question on notice.

MRS DUNNE: I think that is where we were going, yes.

Ms Choudhury: ACT Policing might be better placed to answer that question. There are options for paying by instalment for criminal infringement notices, and that is all on the ACT Policing website.

MS LE COUTEUR: In your experience, are your clients typically charged with criminal offences for cannabis possession or do they get SCONs?

Ms Choudhury: We largely see people who have been charged with things like drink-driving or drug driving, and, as a result of that, we become aware that they may have a substance abuse issue. For a lot of them, within their criminal histories, drug possession or drug-related charges are part of that. We do not see that many clients coming to us for drug possession or for SCON-related fines. That is not to say that people do not receive those fines and they are just not paying them off or just not seeing us, but it is something that does come up. I would not say it is the large bulk of the work that we do. Most of the work we do is around housing, Centrelink, other minor criminal matters and general civil law.

MS LE COUTEUR: Do you see people, if they are charged with more serious offences, getting cannabis offences added on, as it were? The police have suggested that that is what is happening.

Ms Choudhury: Yes, we have seen that. We have had clients who have been charged with cannabis possession of a very low amount. A case study in the submission touched on that. It does happen.

THE CHAIR: Thank you for your time today. We really appreciate it. When available, a copy of the proof transcript will be forwarded to you, to provide an opportunity to check the transcript and suggest any corrections. I note that you did take a question on notice.

Ms Choudhury: Potentially.

THE CHAIR: If it turns out that we do require an answer to that, the committee secretariat will let you know, and we require an answer within about a week of that notification.

Ms Choudhury: That is fine. ACT Policing is more likely to have the answer to that question.

PROOF

THE CHAIR: That is why I am saying we may get back in touch with you, depending on what we hear from them.

Ms Choudhury: Sure.

THE CHAIR: On behalf of the committee, thank you for appearing today on behalf of Street Law.

KUKULIES-SMITH, MR MICHAEL, Chair, Criminal Law Committee, ACT Law Society

THE CHAIR: We will move to our next witness, appearing today on behalf of the ACT Law Society. Thank you for appearing and for your written submission. I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the pink privilege statement on the table. Could you confirm for the record that you understand the privilege implications of the statement?

Mr Kukulies-Smith: I do.

THE CHAIR: Would you like to make a brief opening statement before we get started with questions?

Mr Kukulies-Smith: Certainly. The society, in our submission, have identified a number of issues that we have in relation to the bill in its current form. The first of those is the interaction or possible interaction with the Commonwealth Criminal Code and the possibility that it will remain an offence in the ACT, irrespective of the intention of the bill that it not be an offence, for there to be possession of cannabis under 50 grams or natural cultivation of one to four plants by an individual. We have concerns that that would not excise the commonwealth offence provisions, in particular 308 of the—

THE CHAIR: Sorry, it would not?

Mr Kukulies-Smith: Would not, yes. Of the other issues we have identified, one is similar to a number of the other submissions that you have before you, namely the issue of the 50 gram weight and the possibility—we would think likelihood—that if a person had up to four plants they could easily exceed the 50 grams in harvested product from those plants. That is particularly the case where the proposed legislation deals with natural cultivation only. Obviously we live in particular climatic conditions in the territory. Absent artificial cultivation, it seems likely that plants are going to die at times of the year, and if that—

THE CHAIR: Should I be concerned about that?

Mr Kukulies-Smith: If they do, the product falls. The leaves fall off; the person retains them. Should they be found criminally liable because the product they retained goes over the 50 grams when all that has happened is the death of the four plants they were lawfully growing up until the point they perished. That is the issue that we foresee in relation to that.

The other concern is that unless there is some legalisation in relation to obtaining seed, it seems that the legislation itself may be promoting criminal activity because there would have to be what would still constitute trafficking cannabis: the person receiving the drug is not the person guilty of that offence but they are at least promoting the offence by purchasing the drug to cultivate their own plants, which will be lawful for them to do.

The other issue we identified was in relation to the drug driving laws and how the drug driving laws in the territory operate effectively on a zero-tolerance basis but these laws operate on a permissive for personal use basis. That creates a potential conflict, particularly with a drug like cannabis, which remains in a person's system for some time as detectable. That is at least a matter of days. It may be that the impairment has since passed but the detection can be made and therefore there is an apparent conflict between the laws.

The Law Society has no difficulty with it being illegal. I make the point that the society has no difficulty with it being illegal to drive whilst impaired by cannabis. What we are simply saying is that if cannabis is going to be legal at some level, there needs to be thought to making the drug drive laws operate in a way more consistent with or more similar to the laws in relation to alcohol and driving. Alcohol is freely available to adults in our community and can be freely consumed by adults in our community, but we still, quite rightly, have drink-drive legislation that regulates and punishes people for the degree of impairment that they actually have rather than just that they have engaged in their lawful right to consume a single drink.

That is effectively where we are concerned. The same thing could happen with the cannabis legislation: a person lawfully has a joint one evening; they may not be affected at all the next day; however, under our current drug drive laws it is clear that they would, almost certainly, if they were pulled over, be detected and guilty of an offence that is punished as though it was a level 4 drink-drive, which is the harshest drink-drive offence that we have in the territory. That is the concern that we have there.

Those are the main concerns that we have identified in relation to the bill. I am happy to answer questions in relation to those or other matters.

THE CHAIR: I have a couple of quick questions. Picking up on drug driving, our legislation, I think you rounded out what I was going to ask but I might ask the question anyway: do you know of other jurisdictions where cannabis has been legalised and they have an ability to test for—

Mr Kukulies-Smith: I believe they do in Canada, but I do not know the details. They certainly test, and what they criminalise in Canada is impairment. That is the basis of their system. At a testing level, I know police have raised a concern—I am not sure whether they have in this committee, but certainly publically—in response to what we have said in relation to drink drive legislation. They have raised that as a comparison, saying they do not have the technology to test. I do not know how Canada deal with that issue, but I know that the way they criminalise it is based on impairment, as opposed to simple presence of the drug.

THE CHAIR: Thank you for that. I also wanted to touch on something you mentioned in your submission about persons under 18 years old and how that impacts. It is a dot point. I was wondering if you could expand on that. You have just said that the society supports that the clause be included with the meaning of the simple cannabis offence. I guess you are agreeing that under 18 they should still receive what is commonly known as a SCON. Is that correct?

Mr Kukulies-Smith: It is a matter for the Legislative Assembly as to whether people under 18 should. Certainly we would not want to see it become more criminalised as a result of this. That is, I think, the point. It is ultimately, we accept, an appropriate decision of, and we defer to, the Legislative Assembly as to what the age should be. It certainly seems consistent with the legislation in relation to alcohol and other legalised products. We just do not want to see an increase in penalty that results in children going to court where they would not otherwise.

THE CHAIR: I am happy to be corrected if I am wrong, but currently if a minor, for want of better terminology, is caught smoking a cigarette there is no threat of imprisonment or thousands upon thousands of dollars of fines for that minor.

Mr Kukulies-Smith: No. In the 15 years I have personally been in practice, the only charge I have ever seen related to that related to the person who sold the person those and the offence they committed, not the individual.

THE CHAIR: Yes. And you would see that possibly there could be a correlation? If cannabis was legalised, there could be a correlation with that.

Mr Kukulies-Smith: Yes. The same can be said of alcohol. There are not offences per se for the consumption of the alcohol by youth, but there are offences in relation to attempts to purchase and offences in relation to the sale itself.

THE CHAIR: That is correct, yes. I just wanted to clarify those issues.

MRS DUNNE: I would like to go to the issues that you raised about the Commonwealth Criminal Code. It was put to the committee earlier this week that the possibility exists—I hope I am not paraphrasing or being too unwieldy about this—that we risk creating a vacuum so that, by taking away the ACT offence, you in a sense make the commonwealth offence more prominent and there is always the capacity for people to be charged under the commonwealth offence.

Mr Kukulies-Smith: I think that is a fair characterisation.

MRS DUNNE: We will have vacated the field.

Mr Kukulies-Smith: Yes. There are two provisions in the commonwealth code. There is the offence provision itself, 308.1 of the Criminal Code. It then deals, in its own subsections (3) to (5), with the commonwealth not covering the field if there are comparable offences or diversionary schemes within states and territories.

The commonwealth took a decision in 2005 to allow for diversionary schemes et cetera within states and territories and not cover the field. That seems to be an intention by the commonwealth not to cover the field. However, it seems premised on the basis that there is actually a scheme there. That seems confirmed by 313.1 of the code, which provides for defences. But the circumstances in which it provides for those defences talk about recognising legitimate use et cetera.

In our current offence provisions and even in the proposed amended provision, what is proposed in relation to 171AA, the possessing cannabis offence, subsection

(3) currently and as proposed precludes sections (1) and (2), the offence provisions, from applying in circumstances if a person is authorised under the Medicines, Poisons and Therapeutic Goods Act or another territory law to possess the substance. It seems to deal with express authorisation.

That is certainly what the commonwealth Criminal Code dealt with in 313.1. The explanatory memorandum for that provision talks about the defences being required to recognise legitimate uses of controlled substances in our community. These legitimate uses are authorised through the licensing of permit schemes established under health, industrial, or other regulatory schemes. So the commonwealth act seems to be predicated on there being express authorisation rather than simply silence.

The concern then is: how does one, as a matter of statutory interpretation, deal with this scheme if it is to come in as it is? We feel that it is ambiguous. It may be that judges decide, “We’re not going to permit the commonwealth, because that just seems unjust.” But maybe they cannot come to that. Maybe they feel that conclusion but as a matter of statutory interpretation they just cannot get to that conclusion. Our position is that, if that is the intention of the legislation, it is preferable that it be expressed in the legislation.

For example, where now we have that subsection (3) in the proposed legislation, looking again at 171AA, where it talks about that express authorisation it could also perhaps include a further subsection that says that this act authorises the use of cannabis by individuals for personal purposes or to possess cannabis for personal use or personal purposes at less than 50 grams. Expressly stating that it is an authorisation in the legislation would seem to at least avoid vacating the field. The commonwealth do not seem to have expressed a desire to cover the field themselves, but in the absence of any other law—and that seems to be the issue.

The Law Society’s concerns were raised: we did not know the position of ACT Policing until earlier this week when the submissions to this committee became public. But when we became aware of that, it confirmed and reinforced our concern, because the other way we had envisaged, and discussed our submission, dealing with it was perhaps a memorandum of understanding with the police. But if they feel that they are bound by it, I am not sure and the society is not sure that that would necessarily be sufficient if the Chief Police Officer’s view is what it appears to be from the submission. I note that the Chief Police Officer has not formed a conclusive view, it seems, on that. It just seems to be expressed as a concern that they may, but it seems that if it can be dealt with by way of legislation, it would be better to be certain.

THE CHAIR: To be explicit.

Mr Kukulies-Smith: Yes.

THE CHAIR: That is interesting.

MS LE COUTEUR: I was going to ask you all about this. Given what you have just said, would your advice be (a) to make the changes as you suggested and (b) soon afterwards to try to have a test case so that we know—

Mr Kukulies-Smith: If the changes are made, the test case would be. A test case implies that there is a period of uncertainty and someone has to be the guinea pig.

MS LE COUTEUR: I thought you were giving the impression that you thought there was uncertainty. You think we can legislate so that—

Mr Kukulies-Smith: I think there is as it is, but if it is legislated to authorise then—

MS LE COUTEUR: If it was legislated to authorise, would you—

Mr Kukulies-Smith: My view and that of the society is that that would then mean that for the commonwealth law, because it is presently permissive of what is authorised in the states, it would then satisfy the current state of the law. There is always, of course, the spectre of a 122 constitutional challenge, or use of power by the commonwealth to overrule. But it would, on our reading, require the commonwealth to take legislative action to do that, whereas in the current legislation it does not necessarily need the commonwealth to do anything for people to start being charged with the commonwealth offence.

MS LE COUTEUR: What you are saying is that the commonwealth can always rule something we have done outside they have done it with euthanasia.

Mr Kukulies-Smith: Yes, and they have done it with civil unions in the past.

MS LE COUTEUR: But in that instance no individual gets prosecuted. We merely get told, “No, go away.”

Mr Kukulies-Smith: Correct. So it at least gets resolved as a matter of intergovernmental and legislative action, rather than involving the arrest and charging of an individual.

MRS DUNNE: The idea you have expressed is that the legislation would require the creation of a permission structure rather than to be silent on the subject. Is that a usual course of action, in your experience in criminal law?

Mr Kukulies-Smith: I cannot think of many examples. There are exceptions to what is otherwise a criminal offence because there are often authorisations for certain individuals. For example, there are authorisations that allow police to carry firearms of a category and type that are prohibited in other circumstances. Capsicum spray or oleoresin spray is another of those examples where it is clearly a prohibited weapon but there are express authorisations that permit individuals—in that case the police—to have them.

MRS DUNNE: I am trying to explore the permission structure you are talking about. It is often aimed at a class of person, whereas this is a permission structure for anyone over the age of 18.

Mr Kukulies-Smith: Yes, and that would be unusual.

MS LE COUTEUR: You talked about supply of seeds, which would be part of this

regime. Would your concerns be less if they were not supplied for money and were gifted?

Mr Kukulies-Smith: It still makes out the offence of trafficking.

MS LE COUTEUR: I assume, then, the only legal thing to do would be to grow your own seeds as well, because presumably—

MRS DUNNE: But you have to have seeds in the first instance.

MS LE COUTEUR: Yes, you have to have seeds in the first instance, but if we forget about that, once you are established you would then legally be able to continue, as long as you did not have more than 50 grams?

Mr Kukulies-Smith: Yes. The issue seems to be how to get started. Absent immaculate cultivation, it seems that we are not going to—

MS LE COUTEUR: And if only two plants are required, keeping a consistent supply of seeds would be challenging.

MRS DUNNE: I will defer to you; you profess greater expertise on the subject than me.

MS LE COUTEUR: It is just that I am a gardener. They have males and females.

THE CHAIR: Thank you for your submission and for your evidence today. We found it extremely interesting. When available, a proof transcript will be forwarded to you to provide an opportunity to suggest any corrections. Thank you for appearing today on behalf of the Law Society of the ACT.

RYAN, MR JOHN, Chief Executive Officer, Penington Institute

THE CHAIR: We will now move to our next witness, from the Penington Institute. Thank you for appearing today and for your written submission to the inquiry. I remind you of the protections and obligations afforded by parliamentary privilege and I draw your attention to the pink privilege statement before you on the table. Can you confirm for the record that you have read and understood the statement?

Mr Ryan: Confirmed.

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

Mr Ryan: Thank you, yes. The Penington Institute is a non-government organisation trying to advance safety and human dignity in relation to drug use issues. We did submit a written submission; so I think in terms of an opening statement, I would really just like to (a) thank you for the opportunity to speak and (b) thank you for paying attention to this difficult and challenging part of public policy.

I really emphasise that no matter how complex the legislative reform process might be and how the various submissions have been identifying ways that there could be improvements found, the most important thing to acknowledge is that the criminalised approach to drug use problems has not been successful in terms of managing drug use issues in the community.

More particularly, for people who do consume drugs it is a major barrier to access to health care. Whilst cannabis is not criminal to the same extent as, for example, methamphetamine, people are typically having to engage with cannabis suppliers who are also often methamphetamine suppliers or other illicit drug suppliers. So, in my view, the most significant result of the legislation, if it finally gets through, in terms of shifting to a non-criminalised, non-diverted approach to cannabis, is that we would be able to disentangle people who are cannabis consumers from the illicit drug market.

I think that is very important. Whilst there are not many people who are being charged with small quantity possession or use of cannabis in the ACT, the fact is that just about all cannabis consumers, unless they are growing their own at the moment, are having to engage with the criminal underworld. I would like to think that we could disentangle that link between cannabis and the criminal underworld.

Secondly, the other big benefit of some form of legalised regulation of cannabis would be that we would be reducing the financing of organised crime, because cannabis profits are extremely high. Cannabis production profits are extremely high. In our current system, that money is used for whatever gangster purposes are prioritised. But it includes the capital for drug importation of much more dangerous drugs from overseas. I would be very keen that we break the nexus between cannabis and the underworld. I think that this process you are going through is a very significant step in that direction.

THE CHAIR: Thank you, Mr Ryan. I want to touch on a couple of points that we

have heard about during the hearings thus far, some of which we have just been talking about with our earlier witnesses. There have been a few people look at different parts of the bill and how some of them may not easily interact in a societal form. Some of those mentioned have been not being allowed to smoke outside and smoking no closer than 20 metres from children. How does the Penington Institute feel about those sorts of things?

Mr Ryan: In a general sense, I hate to answer your question with a cliché but I cannot help it, sorry.

THE CHAIR: That is okay. That is fine.

Mr Ryan: I think the perfect is often the enemy of the good.

MRS DUNNE: Somebody said that before.

Mr Ryan: Did they? See, that is the good thing about clichés.

THE CHAIR: I think I have heard that a couple of times.

Mr Ryan: I heard the previous two witnesses. There are challenges in the bill, but I would strongly encourage fixing up as many challenges as you can and then still proceeding forward. Then, in a year or two, or in three years, when unforeseen problems become more apparent, they can get addressed in a responsive way. Canada has shifted very significantly recently. We quoted the purposes of the Canadian legislation in relation to cannabis in our submission because it really does, I think, show a path forward. In terms of the specifics, I do not want to give legal advice. In terms of things like smoking outside or the disparity between penalty units for different offences, I think those things are able to be addressed as you move forward.

THE CHAIR: I have one very brief question. In your submission you talk about the harm associated with cannabis use and you go on to note that there are also considerable harms with alcohol, tobacco and pharmaceuticals. You talk about a study done by Professor David Nutt. Can you expand on that and give us a little more information about your views on this.

Mr Ryan: The problem with our traditional approach to drugs is that we have not legislated or regulated in relation to their dangers. Tobacco, for example, is much more available than cannabis, but tobacco smoking is much more harmful than cannabis. Professor Nutt has gone through a process of trying to identify the relative harms of various drugs, and in that formulation cannabis comes out as a much less harmful drug than, for example, alcohol or tobacco.

That coincides with most of the evidence that we have seen internationally, particularly in relation to tobacco smoking. We were referencing that research because we wanted to highlight the disconnect, for example, between cannabis and methamphetamine. We have traditionally in Australia had a group of drugs that are illegal and cause extreme harm, and other drugs. Cannabis is the best example: much less harmful. MDMA is actually considerably less harmful than methamphetamine.

The challenge, I think, is simple legalisation. Those old arguments between legalisation and criminalisation I do not think are convincing in the context of pharmaceutical misuse of drugs. We have seen in America the increase in overdose deaths originally driven by pharmaceutical drugs. We are seeing it in Australia as well. There is no silver bullet solution. Even legal drugs provided by a doctor on script via a pharmacy can cause death. But within that context of high potency opioids in combination with benzodiazepines or with, for example, legal tobacco, cannabis is so much less harmful than all of them.

THE CHAIR: I have a follow-up. Mr Ryan, would you be able to provide, on notice, the committee with the link to that or some information that we can access?

Mr Ryan: Yes, certainly.

THE CHAIR: I am referring to Professor Nutt's research.

Mr Ryan: Yes, certainly.

MRS DUNNE: You have spoken about the stated objects of the Canadian Cannabis Act. My recollection is that that legislation came into effect in about September-October last year; is that right?

Mr Ryan: That is my recollection, yes.

MRS DUNNE: So, six months down the track of the operation in Canada, are we seeing particular trends or are we only working on anecdotal things that have happened as a result of that legislation? Is there already a body of research in that space?

Mr Ryan: There is certainly lots of research. Because it was such a significant reform it has not been very smooth or uniform across the country. I think it is too early to make definitive conclusions. But I was looking at Canadian drug driving detections in relation to cannabis and I was reading a media article quoting a senior police person saying they had not noticed an increase in detections so far.

MRS DUNNE: It is probably too early but one of the points a witness made—it may have been Mr Moore, who was amongst the architects of the simple cannabis offence notice in the ACT—was a claim that we have seen since the introduction of the SCOA a tapering off of recorded cannabis use in the ACT. The committee has not delved into that claim as yet. Is it too soon to see any sort of trend like that in Canada?

Mr Ryan: Yes. I am sorry, but to my mind it is way too soon.

MS LE COUTEUR: You made some comments that suggested to me that you thought 50 grams was too low an amount. Have you any idea what would be more realistic? Or is that just a very hard question?

Mr Ryan: The problem is that there needs to be a limit of some sort. To an extent, if it captures most people as appropriate then good. For people that are highly cannabis dependent 50 grams is probably not many weeks of supply. That is the potential

problem for that small minority of people who are extremely dependent. They could still be finding themselves in the underworld, so to speak, which is not a positive outcome. But I think the limit is arbitrary to some extent.

MRS DUNNE: There has to be a limit somewhere?

Mr Ryan: Yes.

MS LE COUTEUR: As the legislation currently does not allow artificial cultivation, you presumably would be cultivating it outside. As many people have noted, you will not be doing that in Canberra over winter.

Mr Ryan: I think that is right. A positive amendment to the bill would be to allow indoor cultivation. Artificial light is an acceptable way of cultivating cannabis; I do not think it requires sunlight. Requiring people that live in congested circumstances near their neighbours to have access to sunlight is probably putting them at risk of break-in. Canberra weather being what it is, it leaves them with one crop cycle for the year, so it is just not feasible for people to maintain a supply over the year with only 50 grams.

To my mind, the solution would be to allow indoor cultivation with artificial light. I am agnostic about whether that extends to hydroponic cultivation. Soil cultivation with artificial light should be allowed partly for climatic reasons and partly for people living in highly dense areas. I am thinking of people living in public housing.

MS LE COUTEUR: And people who live in apartments with very tiny balconies.

Mr Ryan: Yes.

MS LE COUTEUR: You said you could not see any particular issue with artificial lights or hydroponics. Some people have suggested we could be producing a different product with greater potency with artificial cultivation. Is that a real concern?

Mr Ryan: The whole issue of seed stock is a challenge. There is evidence, which I would be pleased to send you, on the differential between high CBD and low CBD cannabis. The psychoactive element of THC has certainly been increasing over the decades, but the CBD has been decreasing. It is protective in terms of mental health, so having access to legal seed stock that was high in CBD would be protective of people's mental health.

There is no incentive for gangsters to provide high CBD cannabis; their incentive is high THC cannabis. We actually have more dangerous cannabis in Australia than we need to have because of its criminal supply method of production, which just emphasises intoxication.

MS LE COUTEUR: And it has been getting worse?

Mr Ryan: Yes.

MS LE COUTEUR: We have also had evidence of a concept called cannabis social

clubs, where a number of people each possess—whatever that means—a number of plants that could be grown together but would still be individually possessed.

THE CHAIR: Like a community garden?

MS LE COUTEUR: A community garden where you employ a gardener. With community gardens you usually do your own gardening. So the concept is that a gardener is employed but these plants are yours and those plants are someone else's and in that way you fit within the four-plant possession rule. Have you any views as to the workability or usefulness of such?

Mr Ryan: I think it is an excellent model. It is often promoted because there is a fear of and anxiety about the commercialisation of cannabis supply, similar to what happened with big tobacco and to some extent big alcohol in terms of marketing and promotion. In some jurisdictions in America there is a very commercial orientation to the cannabis business.

I do not think it is an either/or situation in Australia. I think cannabis clubs are a sensible opportunity, but I think commercial supply is also a sensible opportunity. Australia has a much better track record of managing advertising and managing cigarette point-of-sale displays. In fact, we have a much stronger public health regulatory framework and culture in Australia, so I think it is feasible that we could have commercial supply in Australia without the extreme elements of the American system. Nonetheless, cannabis clubs are a sensible way of managing some of the issues for people without any capacity to grow privately.

THE CHAIR: When talking about growing plants inside and using artificial lights, would that include greenhouses?

Mr Ryan: Greenhouses generally operate off the sun, so I am just referring to electric lights.

THE CHAIR: Thank you for appearing today, Mr Ryan. When available, a proof transcript will be forwarded to you to provide an opportunity to suggest any corrections if required. You have agreed to take a couple of questions on notice. Although we have not set a deadline for the receipt of those responses, it would be amazing if we could have them in about a week from today. It would be great if you could email them to the committee secretary. I thank you for appearing on behalf of the Penington Institute.

Hearing suspended from 2.45 to 3.20 pm.

TONGS, MS JULIE OAM, Chief Executive Officer, Winnunga Nimmityjah
Aboriginal Health and Community Services

STANHOPE, MR JON, Senior Adviser, Winnunga Nimmityjah Aboriginal Health
and Community Services

THE CHAIR: We will now move to our final witnesses for today's hearings, Winnunga Nimmityjah Aboriginal health service. Thank you for appearing today. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the pink privilege statement on the table. Can you just confirm for the record that you understand the privilege implications of the statement?

Mr Stanhope: Yes.

Ms Tongs: Yes.

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

Ms Tongs: I do.

THE CHAIR: Thank you.

Ms Tongs: Firstly, can we just do one correction. It is Winnunga Nimmityjah Aboriginal Health and Community Services.

THE CHAIR: Thank you; we will correct that on *Hansard* for you.

Ms Tongs: Thanks for the opportunity to come and meet with the committee today. Clearly, prohibition has not worked, and in particular it has not worked for disadvantaged and vulnerable people, including Aboriginal people. As we all know, Aboriginal people are massively over-represented in the AMC. We also know that a very large percentage of the Aboriginal people and people from other disadvantaged backgrounds who go to prison are sent there as a result of drug-related crime and their addiction to drugs. I agree that drug law reform is well overdue. We simply have to recognise that drug addiction must be treated as a health issue and not a justice issue. This requires a complete rethink of our drug laws.

I understand the basis of the proposal to legalise the growing of marijuana for personal use and I am fully supportive of the motivation and good intention of those that have proposed the change to these laws. I do think, however, that we need to be very careful of possible unintended consequences from implementing the proposal that is currently on the table.

My major concern arises because of the circumstances my people live in; they are people living in severe disadvantage. I note that comments were made about the possible impact of these laws on homeless people. As you know, Aboriginal people are over-represented in Canberra as homeless. This and other aspects of the lives of Aboriginal people give me cause for concern. I should also say that as far as I and the

Aboriginal community are concerned, our number one priority in relation to illicit substance use is the need for an Aboriginal-specific, community-controlled residential drug and alcohol facility.

I will now ask Jon Stanhope to make some opening remarks if he wishes.

Mr Stanhope: Thanks very much. If that is okay, madam chair.

THE CHAIR: Certainly.

Mr Stanhope: I have at this stage not much to add to the opening statement that Julie has made, other than that in my work at Winnunga Nimmityjah I have become very familiar over the last four years with the circumstances of many people within the Aboriginal community of Canberra and the Canberra region. In the work that I do at Winnunga Nimmityjah I have studied closely data in relation to the life circumstances of Aboriginal people in this community.

I note that, for instance, from the last Australian Institute of Health and Welfare data in relation to drug use, around 40 per cent of Aboriginal males in Canberra over the age of 15 have used an illicit substance in the last year and 32 or 33 per cent of Aboriginal females over the age of 15 have used an illicit substance in the last year. Illicit substance use is a massive issue within the Indigenous community. Combined with other issues that many people within that community live with, such as intergenerational trauma and their comorbidities, most particularly in relation to mental health, there is a need for very serious action in relation to drug use, drug abuse and the way the law in relation to drugs operates.

I share the point that Julie made about the very good intentions of this legislation. I myself think it is very good to see a proactive response to the need for genuine drug law reform here in the ACT and it is very gratifying to see the ACT leading on this.

I might say that personally—I will not speak for Winnunga Nimmityjah in saying this—I have some concerns in relation to the model that is on the table. I would perhaps have preferred an approach that explored all options in relation to the possible legalisation of marijuana and perhaps the decriminalisation of other drugs, rather than the specific initiative that is on the table. I share some of the concerns that were expressed by the police. I share the concerns that have been expressed in relation to the unintended consequences and their impact on vulnerable people, including the Aboriginal community.

There are other aspects. The homelessness issue, which was raised before the committee yesterday, is very pertinent to the Aboriginal community. In addition to that, there are other aspects which Julie could comment on in relation to the insecurity of housing that many Aboriginal people face, particularly those that are in touch with the criminal justice system. With the proposal to grow two plants, there are many Aboriginal people that live here that change, that are very mobile. They simply do not have a house. Their lives are lived in a degree of disorder that would make it impossible for them to cultivate. They are simply not settled. It concerns me that there is a group of people within Canberra who will never have an opportunity, realistically, to grow marijuana for personal use. They will resort, in their acquisition of drugs, to

exactly and precisely what they are doing now, which involves being within the criminal justice system. That is a major concern I have about this particular approach to the decriminalisation of marijuana for personal use.

THE CHAIR: Thank you. I want to briefly touch on a couple of things that Mr Stanhope raised and get your opinion. With witnesses that we have had in previous hearings, there was comment about—this goes directly to your point, Mr Stanhope—cannabis social clubs. Would that be something that may to some degree address the ability for people to not stay in the criminal justice world to purchase illicit substances?

I used the community garden reference, but apparently I was not quite on the money. The idea is that you have an area where—Mr Stanhope, I am going to use you as an example—you may have two to four plants. At the moment the legislation is proposing up to four plants that are yours to grow. Six other people would also have their four plants to grow, and there would be a gardener in charge who does not own any of the plants. Those plants are owned by individuals; they are the only ones that can access their plants, but they have a gardener that tends to the whole crop, for want of a better word.

Ms Tongs: I think that all illicit substances should be decriminalised. I do not know why we just choose cannabis. To me, cannabis is a middle-class drug. A lot of middle-class people smoke cannabis. People that can afford to buy it will smoke. We work with a lot of very vulnerable people. A lot of those people come before the courts and end up incarcerated because of their addictions. Rich people can afford to pay for it; poor people steal to pay to feed their addiction. That is my dilemma. It all sounds great that you would have this garden, but then what? The garden gets targeted by others that want to go there.

THE CHAIR: That is why I am seeking some input. This is just an idea that someone else has introduced into the conversation. I thought it would be interesting to hear what your views are on that.

Ms Tongs: I just have some real concerns around that. I do not think the vulnerable people and those men and women that are incarcerated or out on the street using—it is ice and other harder drugs, not cannabis, that are bringing them into the justice system.

THE CHAIR: It would be great if we could look at all the other drugs, but unfortunately we have limited scope.

Ms Tongs: Yes, I understand.

Mr Stanhope: I understand and accept that an underlying principle here is that if marijuana is decriminalised it may be that that will become a drug of choice. But one argument one might use is that the drug of choice at the moment, for a large proportion of Aboriginal people, is ice, because they can afford it. The drug they would probably prefer is heroin. Would that be correct?

Ms Tongs: Heroin or cocaine.

Mr Stanhope: But they are out of reach.

THE CHAIR: Do you think that it would become more affordable if cannabis was legalised?

Mr Stanhope: It could introduce some competition in the market, perhaps. But there is a need to understand the life circumstance and the living circumstance of vulnerable Aboriginal people, most particularly those that are in touch with the criminal justice system. I share Julie's concern. From my observations, I doubt that many—and I do not want to be disrespectful—of the Aboriginal people in touch with the criminal justice system, with prison records, on exiting prison or while in the community, almost all of whom remain unemployed, almost all of whom have very unstable housing, many of whom become homeless, will change their behaviours. They will not be living in a circumstance where they are stable enough to grow and nurture marijuana. They simply will not. They will continue the point that Julie made. I am sure this is what will happen within the cohort of Aboriginal people that fit that description. They will continue to use ice.

THE CHAIR: So legalising cannabis will not necessarily have any effect.

Mr Stanhope: I imagine it would have some impact. I must say, philosophically and symbolically I think it is an important thing to do. But I am concerned that it will have very little impact on drug use within that cohort of the Aboriginal community. My concern is that it will have no impact on offending, it will have no impact on incarceration and it will have no impact on rehabilitation, particularly, as Julie said, where the infrastructure for dealing with Aboriginal people with a drug addiction is suboptimal.

Ms Tongs: If I thought for one minute that people would just use cannabis, it would be wonderful. But I do not have a magic wand.

THE CHAIR: That is okay. It is just such a shame that we are only looking at this bill, so we have to confine our investigations, our witnesses and our evidence to the bill that is in front of us. You have both raised some amazing points. It is a complex issue.

MRS DUNNE: I would like to go to the point that you, Ms Tongs, made in relation to the need for dedicated Aboriginal and Torres Strait Islander residential alcohol and drug services. We are a long way down the track from 2007-08, when I think we appropriated five and a half—

Mr Stanhope: I thought it was seven—

MRS DUNNE: It was something slightly south of \$6 million. I have the supplementary appropriation cabinet submission in front of me, which I have obtained under FOI. That seems to be \$5.7 million. That was appropriated initially in 2007 and we have not made any progress. We have a building—

THE CHAIR: And this relates to the bill—

MRS DUNNE: It relates to Ms Tong's evidence about the need for dedicated Indigenous drug and alcohol services. We are a long way down the track and we have not seen anything in that space. How much of an impact does that have in your community?

Ms Tong: It has an enormous impact on our community, because there are people in the AMC, in the prison, that really should not be there. They are there because of historical circumstances. Also, when you are born into poverty and you are faced with racism every day of your life, you then come under the watch of the police. Then before you know it you are in juvenile detention. Then from juvenile detention and fairly minor offences they end up in prison, when really they should either be in proper mental health facilities or in drug and alcohol residential rehab. We talk about legalising a substance when there are people we know who, given an opportunity, could turn their lives around. You only need a few people to do that and others will follow.

MRS DUNNE: There does seem to be a bit of a disconnect at the same time. You are saying that it should be legalised. I understand that that is to get it out of the criminal justice prism. But at the same time you are saying that it is really bad for them and we need opportunities to help people turn their lives around.

Ms Tong: At the end of the day it is a choice whether you take a drug or not. But when you have an addiction, the addiction overtakes the reality of that choice. There are people that legalising cannabis will absolutely support. They are the people that can smoke socially. It is a bit like responsible drinking, responsible smoking. But with addicted people it does not matter whether it is cannabis, ice or alcohol; it is multiple—and even prescription drugs. I guess this is the dilemma.

I really believe that we should be able to change the laws, but on the other hand we have tobacco. That is a legal substance that people do not want because of the health impacts. They are trying to stop that. They have stopped it in prisons around the country and it has had a disastrous impact. I think that what we would do is create another underbelly. That is what we have done in other jurisdictions, because tobacco has become contraband. I wrote to Minister Rattenbury when I first heard about this inquiry and suggested that we allow the detainees in the Alexander Maconochie Centre to grow two plants each for their own personal use. If it is going to be legal—

MRS DUNNE: I would like to see the response.

Mr Stanhope: The response was equivocal. There is an interesting philosophical point here for us. This letter was written seriously, with no intention of mischief. But there is an interesting and important philosophical point here. Tobacco is a legal substance. The government has signalled that it proposes to ban the use of that legal substance in the AMC. Marijuana is an illicit and illegal substance at the moment. The government proposes to legalise that, and we interpret the minister as suggesting that it will be banned in the AMC. We believe that that is an issue that should be explored more deeply.

THE CHAIR: Is that to come in line with what appears to be a tobacco ban? Is that what you are getting at?

Mr Stanhope: It is an issue around, I presume, those that would advance this position. The position being advanced by the government is that tobacco will be banned in the prison, in the interest of the health of detainees. It will be legal everywhere else in the ACT but not inside the prison. We think that is an inconsistency that needs to be fully explained as to why. I feel this quite deeply. A prison officer can walk outside the gates of the AMC and have a smoke, then walk back inside, but it is proposed that the 500 detainees inside the AMC not be able to have a smoke at all because they cannot walk outside. They are going to ban smoking on the site. You have 500 people there who essentially will be banned from using tobacco.

We think that is incongruous, particularly in an environment where the government is proposing to legalise a currently illicit substance that is also not good for your health but also to ban that in the AMC, we think, reading between the lines. It would be amazing to think that the government proposes to ban tobacco in the AMC but not cannabis. We believe at Winnunga that that is an incongruity that should be explored and explained. The point Julie was making is that, as we all know, there is a very healthy black market in illicit substances. To think for one minute that if tobacco is banned that it will not—what it does is that it just creates a market. What is the price of a packet of—

Ms Tongs: It is anywhere between \$350 and \$600 for a 25 gram packet of White Ox tobacco that you can buy in the tobacconist for \$39. It might be \$43 now. What happens is that when the person inside comes from a family that does not have the resources to be able to pay to keep you and to provide you with the money to buy the tobacco, then they run up tobacco debts like they run up drug debts. Then somebody has got to pay, and it is usually the family on the outside. These are my concerns about this. If we are going to legalise cannabis then I really think, if there is going to be a cannabis industry, we could do it at AMC.

Mr Stanhope: It is a structured activity.

MRS DUNNE: I want to correct the record. Mr Stanhope, your recollection is better than mine. I was not reading the recurrent costs when I was talking about that. It was actually 10.9?

Mr Stanhope: Yes, and actually the money was rolled over too.

MRS DUNNE: Yes; it has been rolled over several times.

MS LE COUTEUR: The first question I was going to ask is: the police came and told us that basically the only time someone will be prosecuted by them for a cannabis-related offence is if it is with something else—that they simply do not target cannabis by itself, for possession at any rate, as distinct from a significant supply. Is it your experience that that is the case?

Ms Tongs: I have not really—

MS LE COUTEUR: Not necessarily your personal experience alone but that of your clients. Are you finding that people—

Ms Tongs: I smoke tobacco. I do not smoke cannabis.

MS LE COUTEUR: I was not meaning your personal experience but your clients' experience

THE CHAIR: We were not talking about you personally, Ms Tongs.

Ms Tongs: The clients, yes.

Mr Stanhope: I think we do not know the answer to that, but we can probably say intuitively that the majority of our clients, of Winnunga's clients, that go to jail—a vast number of them—go to jail for a drug-related offence. It is not for possessing ice so much as stealing in order to buy ice. Would that be right, Julie?

Ms Tongs: Yes. It can start off with a smoke or a drink and then you have too many bongs or you have too many drinks. That leads to other things. When you have got an addiction and then that just—

THE CHAIR: Snowballs?

Ms Tongs: Yes.

MS LE COUTEUR: Snowballs appreciably. Earlier today we talked to Street Law and they talked a lot about the problems of this legislation for people who do not have a home. One of the things that I was interested in was that they thought it would be good if there was some way that, as you can do with traffic fines, you could have an infringement notice that you could pay off the fine rather than all in one go, which would seem to be the likely situation if this legislation is passed. If you have got more than 50 grams you would be up for significant money. Would you think that a payment plan or being able to work off a fine in some way would make this legislation better for your clients?

Ms Tongs: I think it depends on the fine. If it is thousands of dollars, there is no way. If they are going to do it once, they are going to do it more than once because this is the nature of addiction as we know it. And it is not that easy. Where people have driven without a licence or whatever and we have come to an arrangement with Access Canberra, they have been able to attend Winnunga groups, do things at Winnunga, to pay that fine off.

MS LE COUTEUR: That is the sort of thing we are talking about. If there was a system like that for any marijuana-related fines, would that reduce the potential problems, the burden?

THE CHAIR: Potentially?

Mr Stanhope: Potentially.

Ms Tongs: Potentially, but I just do not know how that would work. Often it just does not stop with the cannabis. There are actual people I know that absolutely can manage

their intake of whatever. But then you have got really vulnerable people. The problem is that, for those people with excessive use, the drug is a symptom. It does not matter which drug it is, whether it is any drug or alcohol. That is the symptom. The underlying issue is the historical trauma and all those unresolved issues from the past. This is what we are trying to manage in our community.

MRS DUNNE: Could I summarise that Winnunga's view is that this is a step in the right direction, in that it takes a section of drug using out of the criminal justice system, but from your perspective there needs to be much more effort put into drug and alcohol rehabilitation?

Ms Tongs: Absolutely. I think that people need to be able to have an option. At the moment there is no option. The only option is go to court, go to jail.

Mr Stanhope: Or to a drug and alcohol residential rehabilitation facility that is not Aboriginal community controlled. All the evidence will tell you it produces sub-optimal outcomes for Aboriginal clients. Just on that, we make the point seriously about residential rehabilitation and the importance of it being community controlled. There are related issues which are perhaps not relevant to this committee, but at one level they are.

There is another issue too, the drug court. It is a wonderful initiative but, going to the point that Julie just made, where is the drug court going to divert Aboriginal clients with a drug addiction to—a mainstream drug and alcohol facility which will have suboptimal results? I guarantee it will not be effective, from all our lived experience. The point is relevant.

I also applaud the symbolic importance and significance of beginning a process of drug law reform, but let me predict now, without being too negative, that the drug court will produce far lesser outcomes for Aboriginal clients than it will for non-Aboriginal clients because there are mainstream drug and alcohol facilities to which mainstream non-Aboriginal clients will be referred from the prison. Nobody has answered this yet. We have asked this question. The drug court is kicking off in a couple of months. Where is the court going to refer Aboriginal drug addicts, to divert them from jail? They will go to jail. I guarantee it. All our experience tells us that.

MRS DUNNE: While we are here and while we are on the subject of rehabilitation, why is it that mainstream programs are sub-optimal?

Mr Stanhope: It is the evidence. Julie could probably answer better than I could. The evidence across every aspect of service delivery for Aboriginal people is that Aboriginal community controlled services produce optimal outcomes. Mainstream services do not.

Ms Tongs: I guess, for Winnunga, because we provide the wraparound services, it is about trust. People get sick of telling their story. They have been traumatised over and over and over and over again. They want to come to a safe place where people know them; they know their family, they know their history and they know what has happened in their lives. They just want to be provided with services.

PROOF

They do not want to be bounced around to every service. They have got no transport. Often they do not have a phone. They have not got any internet access. This is the dilemma of this cohort in the community. Not all vulnerable and Aboriginal families' kids that have lived in poverty or are living in poverty are the ones that are making up the numbers in the incarceration rates in the prisons.

We have got kids, not just from Aboriginal families but from all walks of life, that have obviously tried a drug, become addicted very quickly and gone on that downhill spiral. Drugs do not discriminate. It does not matter whether you are rich, you are poor, you are a politician, you are a doctor, you are the most vulnerable person in the community—an addiction is an addiction and drugs do not discriminate. We really need to think seriously about what we do in the future. I really believe prohibition has not worked and the only way forward is to do things differently.

THE CHAIR: Thank you very much. When available, a proof transcript will be forwarded to you to provide an opportunity to check it and suggest any corrections, should they be required. On behalf of the committee, I would like to thank you both for appearing today on behalf of Winnunga Nimmityjah Aboriginal Health and Community Services. That is the end of our hearing for today. Thank you.

The committee adjourned at 3.52 pm.