



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](#))

Members:

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

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

FRIDAY, 3 MAY 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.

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Amended 20 May 2013

The committee met at 9.04 am.

DI DIO, DR ANTONIO, President, Australian Medical Association (ACT)
SOMERVILLE, MR PETER, Chief Executive Officer, Australian Medical Association (ACT)

THE CHAIR: Good morning and welcome, everyone. I declare open this third public hearing of the Standing Committee on Health, Ageing and Community Services inquiry into the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018.

Before we proceed, I would like to take a moment to acknowledge that we meet on the lands of the Ngunnawal people. I pay my respects to elders past, present and emerging, and recognise the continuing contribution of their culture to this city and this region.

Today the committee will be hearing from four groups of witnesses: the Australian Medical Association, ACT branch; the Canberra Alliance for Harm Minimisation and Advocacy; Mr Shane Rattenbury MLA, in his capacity as leader of the ACT Greens; and ACT Policing. On behalf of the committee, I would like to thank all witnesses for making time to appear today. I remind witnesses that the proceedings are being recorded by Hansard for transcription purposes and are being webstreamed and broadcast live.

I thank the first witnesses from the Australian Medical Association, ACT branch, for appearing and for the AMA's written submission to the inquiry. I remind you both of the protections and obligations afforded by parliamentary privilege and draw your attention to the pink-coloured privilege statement there on the table. Can you both confirm for the Hansard record that you understand the privilege implications of the statement?

Dr Di Dio: Yes. Does that mean I can say terrible things about Peter and get away with it?

THE CHAIR: Not that we condone it, but technically—

Dr Di Dio: I have longed for such an opportunity.

MRS DUNNE: Technically, so long as it is not unparliamentary.

THE CHAIR: Yes.

Mr Somerville: Yes, and thank you; I understand the nature of the privilege statement.

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

Dr Di Dio: Yes, I would. First, I would like to thank you all very much for having us here today. We do not take for granted the fact that we are here and that you are listening to us. We really appreciate it. I will try to keep my opening statement brief.

I am a GP in Yarralumla. I have been a GP for 25 years. I have lived in Canberra for about the last 15 of those. I appear today with Peter Somerville, our CEO of AMA ACT.

We acknowledge that cannabis use is harmful and can lead to adverse chronic health outcomes, including dependence, withdrawal symptoms, early onset psychosis and the exacerbation of pre-existing psychotic symptoms. While the absolute risk of these outcomes is low, and those who use cannabis occasionally are unlikely to be affected, those who use cannabis frequently and for sustained periods, or who initiate cannabis use at an early age or who are susceptible to psychosis, are most at risk.

The AMA also recognises that cannabis use has short-term effects on cognitive and perceptual functioning, which can present risks immediately to the safety of users and to other people. The AMA considers that cannabis use should be seen primarily as a health issue and not primarily as a matter for law enforcement. The most appropriate response to cannabis use should give priority to policies, programs and regulatory approaches that reduce the harms potentially associated with its use, particularly the health-related harms. The position outlined in our submission and the associated position statement, “Cannabis use and health”, should be read in the light of this harm reduction principle.

In our view—AMA ACT’s view—the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 is premature and does not appropriately recognise that legalising the cultivation and personal use of small amounts of cannabis may be detrimental to some groups within the population. More nuanced deliberations must occur in relation to the benefits of legalising the cultivation and personal use of small amounts of cannabis as well as the need to better protect the groups of people who are vulnerable to the deleterious effects of cannabis.

THE CHAIR: Thank you. Mr Somerville, you are happy for us to go to questions?

Mr Somerville: Yes, thank you.

THE CHAIR: I wanted to pick up on something that you mentioned in your opening statement, Dr Di Dio. You talked about cannabis being a widely used drug, for want of better terminology, amongst many Australians.

Dr Di Dio: Yes.

THE CHAIR: You mentioned also in your position statement some treatment options. In some of the information that you provided, you noted that there are not as many treatment options for people who use cannabis but who may not want to use it. Can you expand on that a little more? Having never tried it, I am not really sure about it.

Dr Di Dio: Yes, certainly. I guess that you have a group of people who take cannabis very sporadically and occasionally and who feel that they have complete control over their use of cannabis. Then there is a separate group who, whether they acknowledge it or are still in a state of denial, cannot really control how much cannabis they use.

In my own experience, I have quite a few patients, particularly vulnerable young

people, who will either say to me, “I take way too much cannabis; it dominates my entire life; I need help,” or “Yes, I take an enormous amount of cannabis and my family and my friends are very concerned but I can stop at any time I want to. I just have chosen not to and now I am age 30 and I have not got a job or a life and have done nothing.”

They are either in a state of denial or a state of acknowledgement, but there are people whose use of cannabis is problematic. For them, it is very challenging, once they make a decision that they do not want to use it as much as they did before, as to how they reduce that consumption.

THE CHAIR: How does that differ from, say, cigarettes or alcohol, which are both legal drugs?

Dr Di Dio: Good question. In terms of people who live with someone who is addicted to a drug, there is not a lot of difference. People who are addicted to cigarettes generally can function pretty well as a human being, can have a job and support a family and have a life. Yes, they will have major deleterious health effects eventually, but it does not seem to stop them from living what you and I would consider to be a normal life. About 17 per cent of Australians smoke. At the end of World War II it was about 76 per cent. It was regarded as fundamentally compatible with a completely normal life.

In relation to addiction to alcohol, it is a lot more similar to addiction to cannabis. The difference is that if you are addicted to cannabis, you do have a greater risk of coming into contact with the more criminal aspect of our society in accessing cannabis, whereas with alcohol you do not. But the challenges that you have in surviving, in coping with major health problems, in being able to attend the workplace and function as a citizen are very similar.

THE CHAIR: I guess that in part this particular bill that we are looking into is trying to help to minimise that interaction with criminal elements by legalising a certain amount of cannabis.

Dr Di Dio: Yes, and we very much agree with you insofar as trying to remove, as much as possible, contact with the criminal justice system for people who have problems with cannabis use. However, we think that it can be done in a way that does not automatically result in a conscious or unconscious societal approval of the use of cannabis. In other words, we feel that there are so many significant harms that can happen to people, particularly the most vulnerable people in our society, from the use of cannabis that you cannot expose people to the criminal system but at the same time you cannot automatically legalise it.

We think that any punitive measures, for want of a better term, for people who break the rules around the consumption of cannabis should be analogous to something like a parking fine rather than a criminal conviction and that a small amount of cannabis, strictly supervised in a medical context, for a person with a medical indication is completely appropriate. But we think that we should have the opportunity, with whatever bill gets introduced, to provide a piece of legislation that not only is for the betterment of Canberra society but also protects its most vulnerable.

MS LE COUTEUR: I get the impression that you do not think the proposed legislation is as it should be.

Dr Di Dio: Absolutely.

MS LE COUTEUR: How would you want it changed?

Dr Di Dio: Allow me to whiz over to my notes so that I answer you as carefully as I possibly can.

Mr Somerville: The legislation, as introduced, does not appear to be where this bill is heading. In other words, there are obviously amendments put forward by the Greens and the government which probably more closely indicate, if this bill was to succeed, what the bill might look like at the end of that.

MS LE COUTEUR: I think we can be confident that, if passed, it will be amended.

Mr Somerville: The position the AMA have taken in our submission is that, as Antonio has just pointed out, there needs to be some sort of societal indication that the use of cannabis is a bad thing, and the legalising of small amounts of cannabis does not send that signal.

Antonio has mentioned one option in terms of keeping people out of the criminal justice system—that is, a parking fine-type approach. But the other matter is that every time a cannabis user comes in contact with a person who might be part of that type of scheme there is an opportunity to divert into other areas as well.

Antonio has also mentioned the reference for having people before general practitioners as well other medical professionals. A bit like the pill testing trial, there should be an opportunity to educate and inform people who might be either currently taking or planning to take illicit substances.

MS LE COUTEUR: There are many things that are legal that are not particularly good for you. The Greens get accused of supporting a nanny state—

MRS DUNNE: I would never say that.

MS LE COUTEUR: Some of your colleagues have made comments like that. It is neither practical nor good public policy to outlaw everything which is not good for us. We have more people dying from obesity, lack of exercise and all those systemic things, so just because it is not good for us is not a reason to make it illegal. What do you think we should do for the legislation?

Dr Di Dio: I think you should find out what has happened in all the other jurisdictions where it has become legal and see if any data is available in relation to health outcomes and other social outcomes. From an extraordinarily pragmatic point of view, you should decide if those results are the results you want in your jurisdiction, in our community. Have a look at the evidence we have in Australia about health outcomes in relation to the use of drugs.

You are absolutely right when you say that lots of things that are bad for you are legal. There are all sorts of arguments my organisation has with government about soft drinks and how toxic they are. But if something already is illegal it would seem you would need a very good reason to make it legal. You would need to have a reason to think: “Is it going to make our society better if we make this legal? Is it going to protect our young people and our vulnerable people?”

Our Indigenous men and women have a 4½ to 3.3 times higher rate of admission to hospital for mental health-related conditions in relation to the use of drugs. That is not cherry-picking a statistic; the statistics all point to the negative impact of drugs, including cannabis, on mental health outcomes. There is zero safe level of cannabis use in pregnancy.

There are so many reasons why cannabis has a negative impact on health that you would surely want to have an incredibly safe and robust piece of legislation before you introduced it as somehow being legal in our community. I am not saying you cannot; I am saying you would want to base your decision upon really good, strong, robust evidence.

The great advantage we have in Canberra is that lots of other jurisdictions have done it, so we can see their outcomes and decide if they suit us. In our members’ view, it appears that you really can have your cake and eat it insofar as you can compassionately allow a much better system where people who use recreational cannabis in very small quantities are not exposed to the criminal justice system. We think that is a potentially great outcome for people in Canberra.

MRS DUNNE: One of the things this committee has heard quite a bit is the statement that marijuana is a dangerous drug but we need to make changes to the law, we need to legalise it et cetera. You have said today that marijuana is a dangerous drug and because it is illegal we should be very careful about taking steps to make it legal.

Dr Di Dio: That is correct, yes.

MRS DUNNE: Thank you. I have just come back from Canada, where they recently changed the drug laws and they are implementing a retail-based system. I had lots of conversations with people in the street. Somebody accosted me one day and discovered I was a legislator and said, “You ought to do what Canada’s doing.” There is a very large body of work that starts with the Swedish military study in the late 1980s and goes through a very big longitudinal study in New Zealand and other studies in Australia and Finland and elsewhere that all point to quite appreciable increases in psychosis and schizophrenia as a result of particularly an early start in the use of marijuana. Even when you take account of all the other societal and educational factors, there is an increase. What is the AMA’s view about those studies and how have they informed your position?

Dr Di Dio: There are numerous studies that demonstrate the increased incidence of psychosis and early detected psychosis in people who use cannabis either in a larger quantity or at an earlier age. There is evidence that supports your assertion. That is one of the reasons we feel it is premature to legalise the use of cannabis. We are all

products of our own experience and our anecdotes and we all bring that experience to our decision-making and our lives. I grew up in a small country town where the population was either a farmer or a hippie and there was an awful lot of cannabis use.

MRS DUNNE: Was it Nimbin?

Dr Di Dio: It was near Nimbin. I have numerous positive and negative and tragic stories about cannabis, but it is anecdotal and it is not helpful. It makes my arguments emotive but not logical. What we need is evidence based on research, and what you are describing is evidence based on research. More and more research is happening, and we should take advantage of that when we make our decisions. Our submission is based on evidence from research, and that is why we think it is a good submission. It is not anecdotal and it is not just describing personal experience; it is describing research over a large body of people.

MRS DUNNE: If I could continue with a couple of points that you have raised, you talked about what could be described as the educative power of the law, that this law applies to adults, people 18 and older. But if we pass a law that says it is all right for adults to smoke small amounts of pot, marijuana, what does that say to the younger people who are just under the legal age but who are, in a sense, probably more at risk than older people?

Dr Di Dio: I am probably no more qualified than anybody here to answer that, but I can answer that as a parent of four teenagers and as a GP who specialises in teenagers. I see an enormous number of them and many of them have problems with drugs and alcohol. For the vast majority of them, their gateway was cannabis. And many of them have parents who have positive or negative attitudes towards the consumption of drugs. I can tell you from my own anecdotal, non-research-based experience that kids whose parents smoke pot will smoke pot. That is a bit of a given.

THE CHAIR: My father did, and I have never tried it.

Dr Di Dio: There you go. That just goes to show, I think, that my anecdotal experience is just that. What we need to rely on is research. You are the exception that proves that anecdotal evidence is not worth that much. But I would hope very much that that fantastic point you made about your dad and you informs all the decisions that your committee and the parliament make about what information you take on board.

THE CHAIR: Absolutely. Again, from a very personal perspective, not a researched one, I am an anomaly—I think; I am not sure—because my father was a very heavy cigarette smoker as well, three packets of Winfield Red a day, and I have never touched one. It is an interesting anecdote.

Dr Di Dio: Very much so. The evidence that people should be listening to is the evidence based upon what Mrs Dunne was talking about.

MRS DUNNE: Could I briefly touch on something which is tangentially associated with this inquiry and has been brought up, and because you are here I think I should ask the question. You touched on GP-supervised use of marijuana in particular

circumstances. But could I just touch on your and the AMA's experience of the implementation of the medical marijuana scheme and where you see the clunkiness. I gather there is clunkiness in it.

Mr Somerville: This is the context also of the proposed Greens amendment to lift the limit on personal use for those people who seem to struggle to get access to medicinal cannabis under the current regime.

MRS DUNNE: I was really interested in your perspective on the rollout of the medical cannabis scheme as it currently exists in Australia. I am not really interested in the Greens. But if you feel I have sidelined you by that, I am willing for you to go away and contemplate it.

Mr Somerville: No, it was only in the sense that the said-to-be difficulty with accessing the scheme for medicinal cannabis is a reason for the amendment. It seems to fit together, but I am not sure.

Dr Di Dio: In terms of the rollout of medicinal cannabis, there is no doubt that medicinal cannabis is very useful for the right patient at the right time. The last data I saw from New South Wales was at least 3,000 patients already, across the country. That is pretty slow. It is taking a long time. Part of the reason for that is trying to get adequate and safe supply—adequate supply chain distribution. It is very hard to actually manage it. Pharmacists need a special, dedicated fridge—all those sorts of logistically difficult things. They did, until very recently. The net result of that is that it is going to end up being very expensive for patients unless it gets subsidised on the PBS.

MRS DUNNE: It is not on the PBS.

Dr Di Dio: And it will not be in the foreseeable future. That is going to be a real barrier to people. Again, it might be available in a different way under a special S100 scheme or in a different way again through public hospital pain clinics or other avenues. But at the moment it is logistically very difficult for people to access it. Even a person who specialises in pain management at a hospital pain clinic thinks, "Wow, this is the right drug for this person. We've tried everything else and the research is pointing us to prescribing this." Even in those cases it is frustratingly difficult for a lot of practitioners to access it.

MRS DUNNE: Do you see a reluctance by practitioners to prescribe?

Dr Di Dio: There are two parts to that question. Not so much a reluctance to prescribe, if it is the right drug for the right patient. What might be a barrier for doctors in general is the time and the education required to prepare yourself to be able to prescribe it. For example, if a new drug becomes available for the treatment of Parkinson's disease there is no way that I am going to prescribe it. I might refer a patient to a neurologist who specialises in Parkinson's, and that might be a two-month wait, or I might go to a course and educate myself about how to prescribe this drug. That course might not be available for six months. But I am certainly not going to do it unless I do a course and I really know what I am doing. The vast majority of practitioners in Australia, even if they have an interest in prescribing medicinal

cannabis, would not have the confidence to prescribe it unless they have educated themselves about how to go about doing that.

MRS DUNNE: Could I ask about that example you used, Dr Di Dio. If a new Parkinson's drug came up, who would run the course that you would go to to make yourself aware?

Dr Di Dio: Generally those courses would be run by colleges of the appropriate faculty, the College of Physicians, and it would be sponsored—let us be honest—amazingly enough, by the manufacturer of the drug. Who would have thunk it? But many, many courses are also sponsored, as they are in Canberra, by the relevant primary health network. We have a superb one here, the Capital Health Network, which is independent of drug manufacturers—I certainly hope it is—and constantly supplies us with education programs that are very, very good. They are very responsive in so far as if a large enough body of practitioners in a local primary health network says, “We would like to be educated about the following,” they say, “Okay, we will put on a course about the following.”

THE CHAIR: Thank you very much for appearing and chatting with us today. It was very educational. When available, a proof transcript will be forwarded to you to provide an opportunity to check the transcript and make any suggestions, should they be required. On behalf of the committee, I would like to thank you both for appearing for the Australian Medical Association, ACT branch.

GOUGH, MR CHRISTOPHER, Manager, Canberra Alliance for Harm Minimisation and Advocacy

THE CHAIR: Thank you, Mr Gough, for appearing today and for CAHMA's written submission to the inquiry. I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement on the table. Can you confirm for the record that you have read and understand the implications of the privilege statement?

Mr Gough: I have read this statement and I am happy with it.

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

Mr Gough: I put in a written submission, but CAHMA and the people of Canberra with whom we talk regularly and who use cannabis and other drugs regularly feel this piece of legislation is, to be frank, overdue and that it is an excellent step forward in terms of taking away the burdens of discrimination that people who use drugs feel in what is an incredibly criminalised and marginalised part to play in the community.

I applaud the ACT Legislative Assembly for being brave enough to do this. I understand that it is not politically palatable. However, CAHMA feels it is a necessary first step in order to assuage some of the stigma and discrimination which is felt daily by people who choose to use cannabis.

THE CHAIR: Some of the information we have heard is that because cannabis is an illegal substance people may not be forthcoming in asking for education or support. Is that a fair assumption? I know it is an anecdotal question, but you probably speak to more people about this than we do.

Mr Gough: You may say it is anecdotal, but I think it is something we all know is true. Anybody who has had any sort of drug use in their family knows that the fact that it is illegal means you cannot have the same discussions that you have even around the smoking of cigarettes and alcohol use. Having said that, the drug and alcohol sector in the ACT is one entered into voluntarily, and that is what makes it so effective.

The entire problem is that not only are we as a society placing these drugs in the hands of the black market, and therefore unable to be regulated, but the people who use these drugs cannot hold their heads up high and cannot have those very difficult conversations. That becomes really critical. Of the total harms that are caused by drugs, around 80 per cent are due to the criminalisation of drugs, and that is what you are talking about. The crossover comes when somebody uses drugs in a way that is problematic and it then becomes hard to even have those conversations. So it is almost like a double whammy and very serious.

Over the Easter long weekend more people were picked up drug driving than drink-driving. I have no evidence, but anecdotally some of the reasons for that could be things like: if you are at a family lunch and you have had too much to drink you

have a conversation with your family about leaving your car somewhere and going home via a taxi with your children, for example. If you have smoked cannabis you cannot have those sorts of conversations and so the choice becomes out yourself to your family or take the risk. As I said, I have no evidence at all for that supposition, but I am just trying to give you an idea of how it impacts people's livelihoods and how people end up in the criminal justice system because of things like this.

MRS DUNNE: I want to continue down this path. In the ACT, with the simple cannabis offence notices, cannabis use and possession in small quantities should not necessarily come into the criminal justice system. The point you made about people being picked up for drug driving follows on from that. But, in the experience of your organisation, are the people who get a SCON, pay their fine and move on with their lives adversely effected by their minor brush with the law?

Mr Gough: To be honest, we do not interact with those people all that much. I have talked to a number of people who have had SCON notices and paid the fine and moved on. They feel incredibly lucky to have had that chance.

However, I have also talked to people who have had SCONS and then have been caught again with small amounts of cannabis, and it becomes increasingly difficult to keep yourself out of the criminal justice system. It is almost like, "Okay, we're going to let you go this once, but if you do it again you'll be in trouble."

That is not actually the portion of society that I am necessarily worried about with the SCON. With the simple cannabis offence notice, what we see most often is police making a judgement call about a person. To be clear, police will make an on-the-spot judgement call to decide whether a person is eligible for the SCON. We applaud the efforts of the police in preventing crime. However, I do not consider it to be the police's role to judge whether somebody should or should not be given a simple cannabis offence notice.

The reason I say that is that we often see people for whom the police use this as a lever or, for whatever reason, they decide that the person is ineligible. There are no criteria set down for this, so we have no way of having a look at the judgement exercised by the police. I do not want you to think I am against the police here; that is not the case.

MRS DUNNE: No. I am just asking for your experience and what you see as the administration of the SCON.

Mr Gough: My experience is that it is a slippery slope and that, for me, is highly problematic.

MRS DUNNE: So, to summarise, it is a one strike and you're out system?

Mr Gough: In a lot of cases.

MRS DUNNE: And the decision about who gets a SCON and who does not is possibly an individual judgement on behalf of an individual officer. Are you saying that there is not enough direction or there is no direction about the circumstances in

which that might happen?

Mr Gough: To be honest, I am not in a position to know the policies of the police around this. But what we see quite strongly is that people who use drugs are highly marginalised. They are often very afraid of the police and in that situation they come across as being very nervous. All of the stigma and discrimination and fear comes out.

In that situation they often act in quite unpredictable ways. Sometimes they will argue with the police, so it becomes very difficult for a police person on the street, in that situation, to weigh up in a way that is fair and equitable whether a person should have a SCON or not.

The main point I would like to get across is that CAHMA would say that the simple cannabis offence notice should not be something somebody gets once and is then disadvantaged and nor should it include a fine. There is not a fine for drinking alcohol or smoking cigarettes. We live in a democratic society where the law should reflect what the society feels and thinks. If you look at the number of people who use cannabis recreationally, it is unfair to apply a fine to them and then, if they are caught again, slide them further into the judicial system because of something that society has, in CAHMA's belief, made a fairly strong statement to say should not be criminalised.

MS LE COUTEUR: I have a few questions that are based on your submission. You talk about believing in the principle of "nothing about us without us". That seems like an utterly reasonable principle, not just in this regard but in general.

You may not be aware, but the Greens are proposing an amendment that would establish an independent cannabis advisory council. It would probably have five to seven people and it would include someone who had been a personal user of a drug of dependence, but the rest of the members would not necessarily be so. They would be experts of some other sort. Do you think that would address your issues in terms of involvement from users, or is there a better way?

Mr Gough: You are talking about a governance body that would oversee the rollout of this legislation?

MS LE COUTEUR: Oversee might be slightly too high, but advise at any rate.

Mr Gough: Advise, sure. Yes, there are a number of ways in which you can ensure that lived experience is captured in these processes. Certainly, one at the most high level is to have people with lived experience on advisory committees such as this. I know it gets very difficult when you are trying to get a small group of people together to balance everybody's expertise.

I think the answer is very simply yes. If there is anything that I would add to that, it is that, in our experience, with essentially consumer representation, sometimes you need two people on these committees and you need to afford the consumer or the person with lived experience the training to actually take part in those meetings.

Sometimes it is as simple as knowing the terms of reference, knowing what the

reporting provisions are in order to participate fully in the committee. But, yes, absolutely; the Health Care Consumers' Association and a number of others, including CAHMA, would be happy to support something like that and support the person, although I am sure you will be able to find somebody who uses cannabis who has the necessary expertise to sit on that committee.

The short answer is yes, absolutely. "Nothing about us without us" is the standard in terms of health care and should be the standard across the board. It is simply acknowledging that the expertise of somebody who lives through it is valuable and it goes with that person-centred care stuff which is part and parcel of our system these days.

MS LE COUTEUR: One issue that you did not talk about is public places and consuming cannabis. It is something that was talked about by some previous submitters and how this could be particularly problematic for more vulnerable users. Have you got any views about that?

Mr Gough: Yes. I saw, I think, the St Vincent de Paul submission, in which they talked about homeless people and the effects of provisions in the law which would mean that they were not able to smoke cannabis in public places. I think that in reality this is a problem that society faces not just for cannabis but for everything. Homeless people have the same problems with alcohol consumption and with everything that they do.

I must say that this is something that I overlooked in my submission. So I actually have not canvassed as widely as I would have liked to on this. Speaking personally on this one, I do not think that you can endanger the public by allowing homeless people to smoke cannabis in public places, which may then influence others or create second-hand smoke. There are reasons that we have these sorts of restrictions around smoking, and cannabis smoking has exactly the same, if not more, risks associated with it in terms of cancer.

I think, rather, that we should be trying to address the core reasons that people are homeless and trying to provide funding for services to support them in a more holistic way. I do not think it is something that we can address within this particular legislation.

But I do think that it is a very important issue and one that should be addressed through the funding of services such as St Vincent de Paul homeless support, street to home, the Early Morning Centre and also, of course, funding some more crisis accommodation, which, frankly, in the ACT it is impossible to get at the moment. We have gone backwards in that area, but I do not think that we should be dealing with that in the context of this legislation.

MS LE COUTEUR: Fair enough. You have a very interesting discussion in your submission about the weight of cannabis and how obviously it varies between wet and dry. You note that if you were attempting to have a supply over a period of time, it would be up and down. Your recommendation 3 is that guidance be given to people wishing to cultivate up to four plants to ensure that they keep within the legal limits. You have talked about how plants all flower together et cetera.

Could you expand on how you think that could really work? Who would give the guidance? I cannot see that the government would feel particularly happy about doing. I cannot see there being an ACT government guide to growing your own. It seems unlikely.

Mr Gough: Australia has a long history of education via the affected community. It goes back to the HIV response in the 1980s. I would say the same principle applies. In the 1980s the government did not want to step into the HIV response and do things like talk to gay men about explicit sexual behaviour. So they funded ACON and they funded the other AIDS councils and AFAO. The affected community, who held the lived experience to do that, then went forward and educated the community.

I am in the unenviable position of saying this. I do not want to say that CAHMA is in the right place. I am not spruiking for funding here. But I would say that there are people who have the expertise. There is a strong community within the ACT which has the expertise on this. I understand that this would not be palatable to government, but we certainly have a long history of allowing the necessary education, in terms of harm minimisation, to do this. Certainly, any horticulturalist would be able to do some of this education.

The reason that I wanted the committee to start thinking about this is that there is a danger here that the legislation, in trying to encapsulate all of the different ifs and buts, will become too complex and ungainly and people will walk away from it. I do think, however, that there will be a necessity to educate people about things like staged harvest and some of the considerations around growing a cannabis plant and cutting the cannabis plant down. If you do not have the wet and dry weight then suddenly you have gone from a plant to well over 50 grams of cannabis.

Likewise, if you cut a flower off a cannabis plant, a cannabis flower is 80 per cent water. A cannabis bud that weighs 200 grams when you cut it off a plant is completely unusable as a drug. You have to dry that. It will dry down to about 20 per cent dry weight. It is at that point that it becomes something. In fact, it is not even psychoactive at that point. You need to heat it to over 115 degrees Celsius in order for the THC to activate. There are a lot of complexities within this.

THE CHAIR: More than I imagined.

Mr Gough: So when CAHMA discussed this, there were a number of lines and we had to try to put forward one to the committee that balanced some simple messaging within the legislation without making it too complex. There are a number of ways to skin this cat. When I talked to some of the people who are more involved, they told me to forget plants and to forget weight; you need to go on square meterage and things like that.

When we looked at it, we realised that that would be unpalatable to the political powers that be. So we went for what we thought was quite a simple alteration to the legislation that was put forward in terms of saying what is wet weight, what is dry weight and having some education around when you cut down your plant you take 50 grams of product, which you are putting aside to smoke, and then you must discard

PROOF

the rest in a safe way through the green bin, through home composting or something like that. So we really wanted the Assembly to try to think about making a law that was practical for the person at home without getting too complex.

THE CHAIR: Thank you so much for coming to speak to us today, Mr Gough, and for CAHMA's submission. When available, a proof transcript of today's hearing will be forwarded to you to provide an opportunity to check and to suggest any corrections. On behalf of the committee, I would like to thank you and the Canberra Alliance for Harm Minimisation and Advocacy for its submission.

RATTENBURY, MR SHANE MLA, Member for Kurrajong and Leader,
ACT Greens

THE CHAIR: We will now move on to the next witness appearing today, Mr Shane Rattenbury MLA, as leader of the Greens. Thank you for appearing today and for your written submission outlining the ACT Greens' proposed amendments to the bill. Can I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the pink privilege statement that is before you on the table. Can you please confirm for the record that you understand the privilege implications of the statement?

Mr Rattenbury: Yes, I do.

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

Mr Rattenbury: No. I am happy to go straight to the discussion.

THE CHAIR: I want to start with a question. In your submission you talked about medical marijuana and the issues we are having. We heard some evidence this morning from the AMA about some of the medical marijuana issues. The Greens are proposing to increase to 150 grams the legalised limit for people wanting to access medical cannabis. That is a threefold increase. Can you expand on why that would be important?

Mr Rattenbury: I think there are a number of issues with the medical cannabis scheme where the feedback that we have had and the research that we have been able to do indicate that, despite it now being made legal and a system being put in place for people to access cannabis for medicinal purposes, people are still having trouble accessing it, for a range of reasons.

One of the issues we have come across is people having a supply problem. We think that allowing a higher limit would mean that, if somebody is on a medical regime and they are reliant on having it on an ongoing basis, having a larger stockpile, for want of a better word, gives them confidence that they are not going to suddenly run out. So having a larger supply at home or wherever they keep it means that they have got that and they can top it up ahead of getting to the point where they have run out and potentially have a gap in supply.

THE CHAIR: This is going to sound like an extremely ignorant question and I apologise. Fifty grams, to me, seems like a relatively large quantity. How much would an average person, for personal use, use in a day? Do you have any—

Mr Rattenbury: I do not have any useful figures for that, and it of course would vary a little depending on people's circumstances, and perhaps their tolerance. Someone who has just started using will obviously need less than someone who has used over a sustained period.

THE CHAIR: We hear people talk about—I think someone used the term this

morning—a cone, which, from my memory of high school, is something that you put the marijuana in for a bong. Do you know how much marijuana a cone holds?

Mr Rattenbury: I am afraid I do not.

THE CHAIR: Sorry, this is all very new to me.

Mr Rattenbury: The rationale for choosing 150 grams was to try to find a balance between a trafficable quantity, where we do not want to be, and being practical for those individuals who, through their medical condition, may have a dependence. I do not mean that in a medically dependent sense but a reliance on having a steady supply. That is what we are trying to strike the balance between here.

THE CHAIR: I know you have mentioned that for chronic pain, for example, someone may need to use slightly more cannabis than, say, someone that has a multiple sclerosis diagnosis.

Mr Rattenbury: For me, one of the strengths of the medical cannabis system is that people will now work with their doctors to have this prescribed and they can get guidance on how much is right for them. They can monitor it more openly with their medical professionals to ensure that there are no side effects for them. I think that, like any other treatment regime, one should monitor it as you go along. For some people, some things will not work or the quantity will not be quite right. For me, the very strength of that system is having that medical supervision.

THE CHAIR: Just very briefly, on the rule about not being able to smoke within 20 metres, what are the rules around cigarette smoking currently?

Mr Rattenbury: To my recollection, the health minister sets these regulations. Certain areas are designated non-smoking areas. We have a concern about the 20-metre rule that has been proposed in the legislation for what we think could be unintended consequences. As we have touched on very briefly in our submission, for example, if you are in an apartment the person in the apartment next door may literally be three metres away but the second-hand smoke would not necessarily impact on them. I think that is an unintended consequence of the way it was written. I think it is right to try to have some limitations and prevent that second-hand exposure. But we think there are some better ways to do it.

I understand that the Labor Party part of the government is bringing forward some amendments on that, and we will be having a look at those. But I think that, from the brief discussions that I have had with them, they will come up with a way to deal with that that seems practical.

MRS DUNNE: I want to ask questions about your appearance here today, and I do not want to appear combative. I just want to get an understanding. You touched on it then. You said “the Labor Party part of the government”. You are the Minister for Mental Health and you have a whole lot of other ministerial capacities. You say that today you are here in your capacity as the leader of the ACT Greens. How do you keep the Chinese walls going on this important public policy debate?

Mr Rattenbury: Just the same as we do on any other things. The parliamentary agreement is a public document. It sets out the rules around the conduct of me as a Greens member of the cabinet and it explains that I am required to maintain cabinet confidentiality. There are circumstances in which I can also not hold cabinet solidarity, where we can agree to disagree between the Labor Party and the Greens. From your experience in this place, you know that as the Greens we also bring amendments forward. In this case, we have done our research and we have come up with some amendments. The government has also looked at this and sought formal advice out of the public service. The government is bringing some amendments forward as well.

MRS DUNNE: Sorry, I just want to drill down on that. You have agreed to disagree with the government or do you agree with the government?

Mr Rattenbury: No. In our research we have identified different issues. For example, on the issue we were just talking about, the 20-metre rule, we were concerned about that as well but we are aware that the Labor Party have come up with some amendments. I do not know if we are going to agree with them yet. We still have to do a little research on their final version. Similarly, we have identified some angles and I am hopeful that the Labor Party may support our amendments as well.

MRS DUNNE: What you are saying is that the amendments that you are bringing forward and the proposition that you are bringing forward today are essentially informed by work done in your office, as opposed to stuff that you have drawn upon from the cabinet process?

Mr Rattenbury: Yes.

MRS DUNNE: I will ask a similar question to the one that I asked the AMA this morning. A lot of people have come to this inquiry and begun by saying things along the lines of—and this is paraphrasing—“Marijuana, cannabis, is a dangerous drug, but” and “We need to do this, we need to change the law, we need to legalise and we need to relax this.” The point that the AMA made this morning was that marijuana is a dangerous drug and it is currently illegal, albeit decriminalised in some circumstances, and that we should take a very precautionary approach to changing the law in this place. “Precautionary” was not the AMA’s word. It is my word. I used it deliberately to be provocative because it is a word that the Greens use often in relation to legislative and policy change.

Mr Rattenbury: I will take it as a paraphrase, and I understand the point.

MRS DUNNE: What do you say to the people who say marijuana is a dangerous drug and therefore we should be very cautious about legalising it and about the impact the educative power of the law has on people if you suddenly say, “This is bad; this is bad; this is bad. Okay, it is not bad anymore.” It still continues to be a dangerous substance.

Mr Rattenbury: I think it is a good question. I think it really goes to the heart of the discussion around this legislation. To my mind, alcohol, tobacco, cannabis, other illicit drugs all cause harm to varying degrees and in different ways. That is, I think, a statement of fact. I think that is not one that anybody disagrees with. Certainly it is not

my view that cannabis is harmless.

What I believe, and what the Greens believe, is that the best way to reduce that harm is to deal with it as an issue of health, not as an issue of law and order. As I touched on before in my earlier discussion about medical cannabis use, I would rather see people going to their doctor and having a conversation about this. Our understanding is that people do not at the moment. Certainly, research has shown that people with drug and alcohol problems can wait up to 18 years before they seek treatment because of the stigma attached to it because of the illegal nature. I think it is much better that we are having an open conversation about these things.

There are some people that, because of a predisposition or a mental health concern, really should not use cannabis. I would rather them be having that conversation with their doctor than being peer pressured by their mates to be part of the thing that they are all doing.

MRS DUNNE: If we accept the argument that people are predisposed to adverse outcomes from cannabis, most of the people do not know until they try it. Take 10 kids in the street who are all being peer pressured. Two of them who succumb might have adverse outcomes of the sort that the research refers to. But we cannot identify that. They do not go around with a special mark that says, “These people should not ever go near it.”

Mr Rattenbury: I think we know some of that already, though. There is medical evidence that shows certain mental health conditions and other things will be exacerbated by cannabis use. To be honest, through my younger years that stuff was not being talked about at all.

MRS DUNNE: That is true, yes. That is certainly true.

Mr Rattenbury: I think we are in a better place now to be doing those things. Recently I obtained a fact sheet from headspace about cannabis use, and they are very clear in that. Again, I think it is better to be in a space where we are dealing with it through that health lens and having that conversation openly and trying to deal with the discussion in a mature way rather than saying, essentially, “If you use this you are a bad person.”

MRS DUNNE: I think that most people are in that space. I suppose the question is: headspace can have that conversation with young people who are not covered by this legislation, people under 18?

Mr Rattenbury: Of course, yes.

MRS DUNNE: There are still lots of kids out there who are going to experiment. And there is a risk that they will be more encouraged to do so because, for someone who is a couple of years older than they are, it is legal. Again, the educative power of the law brings other pressure on people who are not subject to this legislation. I agree with you that having organisations like headspace being able to have a conversation about the known and substantial risks, especially with younger doctors, is a very important place to be. Certainly the evidence from the AMA was that they thought that the

consumption of marijuana needed to be dealt with in a health space rather than a justice space. But, taking that as a given, how is the situation made better by this legislation? How do we address the known harms by changing the law to make it easier and more acceptable at the same time?

Mr Rattenbury: I do not think this legislation particularly addresses the educative side of things. I think that that is a job we need to do, irrespective of this legislation. And there are a range of channels where we will do that. We can probably do it better, and all those points.

What this legislation does is remove some of the harms on the other side of the equation around the fact that in the ACT in 2016 and 2017 75 per cent of the people who were arrested for cannabis possession were charged with a cannabis offence. Only 25 per cent went through the simple cannabis offence notice scheme. So we are still seeing a significant proportion of those who are interacting with the justice system going through the more serious side of it. I think that is problematic. I think it puts people into a criminal frame for something that should not be dealt with in a criminal way, where we are talking about individual use or possession.

MRS DUNNE: But there has not been a mechanism or an appetite for perhaps improving the guidance to police officers about who gets a SCON and who does not. There has not been a discussion about that. We have gone to this leap from a process of having fairly universal agreement in relation to decriminalisation to a legalisation process, of sorts, without any discussion about whether we could make the decriminalisation process better. I am certainly not aware of any discussion in my time in this Assembly about how to make the decriminalisation better as a means—and it was clearly put forward as a means—of keeping mainly young people who are low-level users out of the criminal justice system.

Mr Rattenbury: Yes. You are right. I do not recall that conversation particularly taking place. There are a number of options open to us. What you have described is one; this is another. We think this is an acceptable pathway and, even with the SCONs, again I do not have data on it but we have anecdotal feedback that it is all about police discretion. You are right, but I think the intent behind it was that young people in the first place perhaps do not end up, on their first occasion, going through the criminal justice system. But, frankly, someone who is 30 and who gets picked up with a little bit of cannabis, I do not think, should be in the criminal justice system either.

Our anecdotal feedback is that you might get a SCON once but then if you are picked up a second or a third time the police tend to escalate, because that tends to be the culture. The first time you get the warning, the second time you might get the low-level offence and then you go up the scale from there. We do not believe that someone who is 35 years old and gets picked up on their third cannabis offence should go into the criminal justice system.

MS LE COUTEUR: I want to talk a little more about medical cannabis and the increased quantities. The witness before, I think it was actually just after we finished hearing the evidence, talked about the use particularly of green cannabis and that people were growing large quantities which they were then juicing for their kids for medical use. The point I am making is that 150 grams may be fairly insignificant

compared to some people's usage of it. Certainly in the instance he was talking about, as they were talking about wet weights, it would not help them an awful lot. There is a lot of difference between an oil which would be very concentrated and a wet plant. Is there any way that we could have some more flexibility to meet the aim of your amendment?

Mr Rattenbury: I think you have drawn out a point that we have given some thought to, which is the issue of wet versus dry weight. Clearly, there are some really important definitional questions to be sorted out about, whether it is 50 grams or 150 grams, what that is based on. Obviously, if you plucked a whole plant out of the ground and included the roots and all those sorts of things, the weight would be much more, versus if you are talking about dried parts and the like. That is an area in which I believe the government is preparing some amendments, and I think it is very important that we have that clarified as part of refining this legislation before the Assembly could pass it. But it is not an area in which I claim great expertise, I am afraid.

MS LE COUTEUR: This could potentially change when the government makes some amendments around wet and dry weights?

Mr Rattenbury: Yes. I think it is one of the moving parts that need to be sorted out as we go through this legislation.

MS LE COUTEUR: Would you envisage the possibility that it could change for an individual user, depending on their condition? I do not know the medical advice given to the people talked about by a previous witness, but, assuming that he is correct in what he said, they would clearly have a requirement for kilograms and grams over a week or two. If they are juicing it for their kids to drink, it could be significant quantities.

The difference between changing it here rather than trying to improve the medicinal cannabis scheme is that we are going to a different regime—we are going to a non-commercial regime where you can grow your own. Are you envisaging moving this legislation such that it provides for people who need a long-term, non-commercial, non-medical supply of what is effectively medical marijuana?

Mr Rattenbury: I am not aware of the examples you have described; I have not come across them before. I think that goes to issues around needing to deal with the supply system generally for the medical use of cannabis. In some ways this is a fix for the fact that at the moment the medical system is not providing cannabis as effectively as some people need.

We are very conscious of trying to find the right balance between allowing individuals to create their own supply in the absence of a supply regime, which really needs a federal government role, and creating too permissive a mechanism where those who want to essentially deal, traffic—whatever word you want to use—are able to use the loopholes. That is certainly one of the discussions about the number of plants, for example, that a person can have.

I know the government is working on some amendments in that space. At the moment

the proposal is four plants per person, but you can imagine loopholes where, if you get a large number of people registered who are living in house you could potentially create a de facto grow house. That is problematic, so these are areas that need further thought

MRS DUNNE: I want to ask about the Greens' disposition in this place. You have come here today, Mr Rattenbury, and spoken in a thoughtful way about some of the issues. But when this legislation was first mooted you and others posted what have been described as indiscriminately positive messages to join the Greens and join the party, decorated with marijuana leaves and things like that. That sent a message that you considered this a party drug and it was all jolly. Would you like to reflect on the social media posts you made at the time and whether that was necessarily appropriate?

Mr Rattenbury: It has been drawn to my attention that some people interpreted our social media posts differently to how we envisaged them. We made some observations about the fact that it is well known that for a long time the Greens have held the view that cannabis possession and use should be either decriminalised or legalised. We have brought legislation into this place a number of times, and on each occasion previously it was rejected by the other parties in this place.

This time it has been brought forward by a Labor backbencher, which I think is a welcome development. Our social media tile was trying to engender a bit of humour when we said, "Welcome to the party." We were very pleased that the Labor Party was proposing legislation to this effect. That was the intent of that social media tile. I acknowledge that others have interpreted it differently. It is not the first and will not be the last time someone's social media tile is interpreted differently by others.

MRS DUNNE: I have just come back from Canada, where they have essentially legalised state-sanctioned pot shops and they are rolling out in various places across Canada as part of the federal legislation. I took an active interest in what was going on and I noticed a pot shop in Ottawa. I was told, "Don't go there because they're illegal." It was around the corner from the parliament; everyone knows it is there but it is not under the legal structure, so I wonder how that could happen.

There was a lot of public discussion, and because I was a legislator people asked me what we are doing in Australia. It was put to me that the proposal we are talking about was not the optimal way of doing it and that if you were going to have a cannabis regime you might go with one more like the Canadian model or various other models. If you had your druthers, would you persist with this model or would you go with a more regulated sale model?

Mr Rattenbury: Ideally we would take a national decision on this and we would go down the path of a regulated system. My federal colleagues have put a view that we should have a regulated supply, probably done through the government to eliminate the criminal element and to ensure some sort of quality consistency, for want of a better term, so that people would know what they were getting and to take away some of those riskier elements. The current model has a significant criminal or black market involvement and those sorts of issues can be a problem.

A national approach would be a better pathway, rather than a state and territory

approach. But in the absence of that, and given some of the other pitfalls the current system has, we are probably not going to have a revolution in this space in Australia and an evolutionary step is the step we are restricted to. I think an evolutionary step will help the overall discussion. That is why we are comfortable in supporting this legislation in principle, subject to wanting to make some amendments.

MRS DUNNE: Proponents have said to us that this legislation is designed to keep people out of the black market—dealing with bikies and the traffickers and stuff like that—but it does not really, does it?

Mr Rattenbury: It does in the sense that if you are able to grow your own plants at home you do not need to seek them from somebody. That is certainly one of the reasons we have—

MRS DUNNE: Where do you get the seed from?

Mr Rattenbury: I do not know where people get their seeds from.

MRS DUNNE: We all know that you grow a plant, you garner the seeds and you replant those and over time you get problems in the system. Even if you are growing your own, where do you get seed from in the first place and when the plant diminishes in quality, where do you get the seed from again? It does not really keep people out of the trafficking system, does it?

Mr Rattenbury: There has been discussion of grow clubs where people—

MRS DUNNE: Grow clubs have to get their seed from somewhere as well.

Mr Rattenbury: Sure. But I think then you have people who are community minded, if you want to use that expression, where they are doing it as a shared effort rather than as a criminal effort. Those sorts of informal networks exist now and I think they would exist more openly under this kind of legislation, so you would see a non-criminal, community-minded approach. Just as we have Facebook groups, for example, the buy nothing groups in the inner north and various parts of the city, I think you would see a similar community-minded approach. People do not want to be involved in the criminal element if they can avoid it.

THE CHAIR: Do you have anything to add, Mr Rattenbury, before we wrap up?

Mr Rattenbury: I was going to make a point in response to your question, Mrs Dunne, although it is a slightly different path. One of the reasons we have proposed allowing people to use artificial cultivation goes to that purpose—if we are going to allow people to grow cannabis at home, obviously with Canberra's climate at certain times of the year it is not going to go very well. If we are going to have this model—

MRS DUNNE: I understand it is not a very frost-tolerant plant.

Mr Rattenbury: I am told that as well. Having never have grown it, I cannot comment.

MRS DUNNE: Given where it grows naturally, it is not a very frost-tolerant plant.

Mr Rattenbury: The Brindabellas are not renowned for the growing of illegal cannabis, so that is one of the reasons we proposed the amendment on artificial cultivation. It is part of wanting people to be able to access it in a way that does not involve interacting with the criminal system.

THE CHAIR: I am not a gardener in any way shape or form, but would artificial cultivation include a greenhouse?

Mr Rattenbury: Yes, in my mind it would. At the moment there is a limit in the legislation that you can only grow it naturally outdoors. I think that is the way it is framed.

MRS DUNNE: And a greenhouse is not naturally outdoors.

THE CHAIR: That was my question.

MRS DUNNE: That would be my interpretation.

THE CHAIR: Yes, and I want to confirm that Mr Rattenbury also feels a greenhouse would be considered artificial cultivation?

Mr Rattenbury: Certainly we would not want to see that precluded from how you grow it, because it is an obvious and natural way to do it.

THE CHAIR: Thank you. When available, a proof transcript will be forwarded to you, Mr Rattenbury, to provide an opportunity to check the transcript and suggest any corrections, should they be required. Thank you for appearing today.

Hearing suspended from 10.36 to 11.32 am.

JOHNSON, ASSISTANT COMMISSIONER RAY, Chief Police Officer,
ACT Policing

WALTERS, COMMANDER MARK, Deputy Chief Police Officer, Crime,
ACT Policing

THE CHAIR: We will now move on to our final witnesses for today. I thank the witnesses from ACT Policing for appearing today and for your written submission to the inquiry. I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the pink-coloured privilege statement in front of you. Could you both confirm for the record that you understand the implications of the statement?

Asst Commissioner Johnson: Yes, I understand it.

Cmdr Walters: Yes, I do.

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

Asst Commissioner Johnson: Yes. Thank you very much for the opportunity to appear before the committee. ACT Policing appreciates the opportunity to provide evidence to the standing committee in its inquiry into the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2019. We are committed to initiatives that improve community safety and support the ACT government's commitment to the principles of harm minimisation and the treatment of substance abuse as a health-led initiative. ACT Policing supports the government in delivering its drug, alcohol and harm minimisation policies. However, we have some concerns with this bill, which we have articulated in our written submission to the committee.

Our primary concern is the interaction of the bill with commonwealth law and the flow-on consequences to Australian police officers executing their duties. As to the broader matter of drug policy, and this is a matter for government, health professionals are best qualified to provide government with advice on the health benefits and costs of the policy change which is before you for consideration. Again, I thank you for the opportunity to provide evidence today and welcome questions that you have of ACT Policing.

THE CHAIR: Thank you very much. I note that you do have some questions about the commonwealth stuff. I will come to that but there were another couple of things in your statement that I wanted to ask about.

Asst Commissioner Johnson: Yes, certainly.

THE CHAIR: One of them—I think you covered it; it has been covered in other submissions and in other evidence—is that, currently, if you are stopped for a random drug test, my understanding is that the test only identifies if you have substance—

MRS DUNNE: THC.

THE CHAIR: Well, no; is it any substance, any drug?

Asst Commissioner Johnson: The roadside drug test will test for the existence or otherwise of the substances as opposed to how much of a substance would be present.

THE CHAIR: So it does test how much of a substance is present, does it?

Asst Commissioner Johnson: The nature of the test will only primarily indicate substance existence above a certain point. You are testing my technical knowledge now but if I remember my advice correctly, the roadside drug testing that we use measures, using cannabis as an example, at 30 nanograms per millilitre of blood—

THE CHAIR: Okay.

Asst Commissioner Johnson: though other jurisdictions can and do measure it at a lower level, if that makes sense.

THE CHAIR: Right.

Asst Commissioner Johnson: So anything above that comes up as a positive test, so anywhere theoretically between 31 and whatever—

THE CHAIR: A million.

Asst Commissioner Johnson: would have an effect. But that is a question of the sensitivity of the test.

MRS DUNNE: Assistant Commissioner Johnson, is that just a test for the presence or is it a test for impairment?

Asst Commissioner Johnson: It is a test for the presence.

MRS DUNNE: Is there a view about what is the level of the substance that leads to impairment?

Asst Commissioner Johnson: I am lead to believe that there are no substantive studies that have been done into the level of cannabis and the progressive impairment. I am not aware of any studies that give that level of detail.

MRS DUNNE: Because what we do with roadside alcohol testing is that we are essentially testing impairment by the presence of an amount equal to or greater than, but this is just a test for presence?

Asst Commissioner Johnson: Yes, and the technology certainly exists to do the roadside test, which gives you an indicative amount of alcohol and then a more accurate test at the station using breath analysis, which gives you a much more accurate indication of alcohol. A number of studies give you an idea of at what point important impairment becomes unacceptable risk-wise. Again, arguably drinking any amount of alcohol has an impact on your driving.

THE CHAIR: You said that there are no studies currently on the amount of

impairment. Is that because ultimately in a high number of jurisdictions cannabis is still considered illegal and, therefore, there is no inclination to start testing for that?

Asst Commissioner Johnson: I am not sure I could actually give you good advice on that one. I would imagine studies may be ongoing now and time will reveal them. There are jurisdictions that are going down this path. I understand—we can provide you with more written information if you would like—that in Canada there is a process where they test and they have a threshold. But their threshold is actually much lower than our roadside swabs. I think it goes down as far as five nanograms per one millilitre. That is the point at which they have made the decision. We would have to confirm what they base that decision on as that threshold.

But the test is able to indicate even at that level. Our test currently is roughly about the 30 nanograms, at which point we can be satisfied that you have had cannabis and that you are driving a vehicle, which is the current legislation.

MRS DUNNE: So it is not about impairment? The drug driving stuff is not about impairment; it is presumably because the substances are illegal—

Asst Commissioner Johnson: Well, I guess not—

MRS DUNNE: and cause impairment?

Asst Commissioner Johnson: Yes, that is right. The underlying precept is that there is still impairment as a result of taking a substance like that. There are studies that would suggest that there is a link between cannabis use and road trauma. So there are studies around it that sort of do draw that link.

THE CHAIR: It is then considered illegal to be driving with cannabis in your system; so it is not necessarily a SCON, it is actually an offence. Is that correct?

Asst Commissioner Johnson: Yes, it is a traffic offence. I think it becomes like driving under the influence of alcohol. It is the same sort of offence as a traffic offence.

THE CHAIR: Yes, I wanted to make sure I had that all straight in my head.

MRS DUNNE: Yes, they are two separate pathways.

Asst Commissioner Johnson: Correct, they are—

MRS DUNNE: One is about possession and use and one is about driving.

Asst Commissioner Johnson: That is correct, yes. You could be under the influence and clearly not in possession—

THE CHAIR: Yes.

Asst Commissioner Johnson: and in possession, not under the influence. Both are possible.

MRS DUNNE: I will start with the simple cannabis offence notice. There has been some evidence—and I think that there was evidence today; correct me if I am wrong—that in the past year, of the number of people who were charged with cannabis offences, only 25 per cent of them received a simple cannabis offence notice. I stand to be corrected but I think that it was reasonably large but less than a majority of offences. What are the circumstances in which a police officer would choose or decide to issue a simple cannabis offence notice rather than charging somebody? And are there discretions?

Asst Commissioner Johnson: There are discretions. How might I best tackle a question?

THE CHAIR: Just before you answer that question, can I make it very clear that if there is evidence that you need to give, due to operational responsibilities, we can consider ways to—

MRS DUNNE: We could close.

THE CHAIR: Yes, we could do an in-camera hearing. I want to make it clear that if there is anything that you feel the committee does need to know but you do not necessarily want it to be publicly broadcast please feel free to stop and let the committee know and we can then consider it.

Asst Commissioner Johnson: I appreciate that, thank you. I think I can answer this without doing that. If my colleague nudges me in the rib and says, “Stop talking,” we will come back to that. But I think I will be okay.

How best to go about this question? The SCON arrangement has been in place for some time. It is certainly a matter of discretion for police officers to choose a pathway to issue a simple cannabis offence notice or potentially take another pathway, and we can certainly provide this detail, to the extent you do not already have it, on notice. I think I have got some figures here that over the past five years we have issued 441 simple cannabis offence notices, 487 drug treatment education diversion referrals, 40 cautions, which is not a cannabis offence notice either, it is a simple caution. All of those are affectively diversions away from court.

Of the 209 simple cannabis offence charges that went to court in that period, only 10 of them went to court only because of possession. Perhaps a search warrant might be an example. You are searching for stolen property; you might find stolen property and you might find possession of cannabis. There is a court process in place as a result of the stolen property and the possession of cannabis might be an extra charge. It is not just the charge for cannabis but possession.

Could we have diverted from those ones? Possibly, but in that five-year period, of the charges that went before court, only 10 of them went only because of possession. Does that answer your question?

MRS DUNNE: Yes. In that period how many matters that included cannabis went to court? There were 10 that were only.

Asst Commissioner Johnson: Of 209.

MRS DUNNE: Sorry, you said that.

Asst Commissioner Johnson: Yes. That is 10 out of the 209.

MRS DUNNE: That means that in that five-year period there were 470 and another 400-odd which were diverted, 40-odd warnings and that 200 and something. That is about 1,500—

Asst Commissioner Johnson: 968 total referrals away from the justice system between 2013-14 and 2017-18.

MRS DUNNE: But then there were another 200 that went to court?

Asst Commissioner Johnson: Yes.

MRS DUNNE: Overall we are actually talking about 1,200, 1,300 offences?

Asst Commissioner Johnson: I just need to make sure there were actually discrete differences.

MS LE COUTEUR: You could take that on notice.

Asst Commissioner Johnson: We might take that on notice. Inevitably these things get more complex. They were arrests and charges. Can we take that on notice and we will give you an exact, really clear breakdown?

MRS DUNNE: I would really be interested to see, overall, how many cannabis offences you have dealt with in a particular period and then a breakdown of how they were dealt with: diversion, caution, SCONs and then matters that were brought to court.

Asst Commissioner Johnson: Indeed.

MRS DUNNE: Also in that would be people who had SCONs and who ended up in court because they objected or did not pay their fine or whatever?

Asst Commissioner Johnson: Yes, that then converted into a summons or something similar. The other statistic that I think is useful—and I have got a preliminary but will give you the firm position on this one—is: of the matters that would fit into the possession impacted by the bill in the past five years—I am getting the nod—66 per cent were diverted and 34 per cent were not. Sixty-six per cent over that same period, five years, were diverted. That would fit into the things that are impacted by this bill.

MRS DUNNE: When you say “diverted”, did not even get a SCON?

Asst Commissioner Johnson: Correct, including cautioning—those things that I spoke about. That is, in a percentage sense, 66 per cent. But let us give you a better,

written—

THE CHAIR: It would be nice to have it broken down so that we can actually look at it and also—

Asst Commissioner Johnson: Yes, indeed.

THE CHAIR: We also do not want to put you on the spot and if your figures are out a little then you have to correct it.

Asst Commissioner Johnson: Thank you.

MRS DUNNE: On that, though, we were talking about discretion and my question was really about discretions. What are the gateways or the points where an officer would exercise discretion to warn somebody, divert them, issue a SCON or escalate it up the criminal justice system?

Asst Commissioner Johnson: I guess there would be a range of things that would play on an officer's mind when they were making that choice, perhaps things like the age of the person in possession. Where there is significant other criminal history might play a part in it. Yes, it would be a range of those sorts of things. Obviously one of them is if there are multiple other charges related to other activity.

MRS DUNNE: At the same time?

Asst Commissioner Johnson: At the same time. If they are already going to court for one reason or another, I think often the logic is then: I will lay the charge related to possession as well. Therefore it turns into a matter before court.

Cmdr Walters: There are some guiding principles around portioning, for example, recidivism. That is a repetition of offences, and things come into play. There is some guidance for—

MRS DUNNE: Sorry that was my next question. Is there written guidance for officers to help them make those decisions?

Cmdr Walters: Yes, there is around cautioning.

Asst Commissioner Johnson: There is around cautions.

MRS DUNNE: But about SCONs and diversion?

Cmdr Walters: We would take that on notice, I think. I am not too sure.

Asst Commissioner Johnson: Yes, we will take that on notice. If we can get an answer before the end of the hearing, we will give it to you. Otherwise we will take that on notice. I would be surprised if we have not given guidance. Certainly the principle, if not in written guidance, is that, for the most part, we would prefer those pathways to be taken. And most police officers sense that it is the simplest pathway to deal with a matter if they come across somebody in possession, only in possession, in

circumstances where they have got to take some action. But we will confirm with you if there is written guidance.

MRS DUNNE: And if there is written advice, can we receive that? It might be operational and when we receive it—

THE CHAIR: That would be kept in confidence.

Asst Commissioner Johnson: I think if we can even provide it to you publicly, we will do that. We will assess.

MRS DUNNE: But we would like advice about whether it is operationally sensitive, and we appreciate that.

Asst Commissioner Johnson: I appreciate that, thank you.

Cmdr Walters: I think, if I could just refer you to our submission where we talk about formal criminal cautions—unfortunately the pages are not numbered—it does say:

Formal Criminal Caution—clearance of an offence by way of a formal police warning where:

- a. an offender has not previously been charged with an offence,
- b. a warning is appropriate given the circumstances of the offending, and
- c. the offender has appropriate support processes or mechanisms in place, which are appropriate to address the criminal conduct.

They are some of the principles upon which officers will exercise their discretion around the appropriateness of the caution.

Asst Commissioner Johnson: And as I suspect, as an organisation that loves governance, we do have some governance on this. There is an operating procedure for simple cannabis offence notices. We will take that on notice and provide you that either as a confidential submission or as a public submission. My instinct is that it may actually be published anyway. But we will give you advice on that when we know. Rather than getting into it now, I think it is useful if you could have that document.

MS LE COUTEUR: On my reading of your submission, the major issue you have is that this is an area where clearly there is commonwealth legislation and we are considering ACT legislation and it is your belief that the commonwealth legislation is the relevant legislation.

Asst Commissioner Johnson: Yes.

MS LE COUTEUR: Obviously, we do not want to pass legislation that is ineffectual because commonwealth legislation overrides it. We will be talking to the government about why they think this legislation can work. If that were the case, would you have

significant issues with it? Leaving aside the driving issue, which, from an impairment point of view, is clearly a substantive issue, if our legislation was written in a way that gave it precedence over commonwealth legislation, do you think there would be any problems for you?

Asst Commissioner Johnson: I am not a legal expert, but if it could be clear how that interplay worked that would give us some comfort. As I understand it, the practical issue would be that, in the absence of any laws dealing with that issue, the only remaining law is the commonwealth law in terms of possession of those amounts of cannabis. The commonwealth draws its power to legislate from our signing of treaties and UN conventions and the like, so that is all fine.

MS LE COUTEUR: We are not disputing the commonwealth's power.

Asst Commissioner Johnson: I am not a constitutional law expert, so I could not advise on how that might work. It would need to remove any doubt around its applicability, if that makes sense.

MRS DUNNE: The AFP Association talked to the committee and said that in the absence of territory law the commonwealth law would stand. As commonwealth officers, would you be obliged to charge under commonwealth law because we had abandoned the field?

Asst Commissioner Johnson: "Obliged" is the wrong word. I think it comes back to discretion. Each constable has their own discretion and is responsible for the decisions they make. I am at pains to say that all our officers are keen to do the bidding of government in terms of achieving policy outcomes, and their use of SCONs and so forth is part of that effort. I am not for a minute suggesting that if this was passed suddenly everybody would be being arrested all over the place under commonwealth law, but police officers have a responsibility to turn their minds to it and I cannot guarantee that, depending on the circumstances of the day or the time, a charge might not be laid under commonwealth law.

The other thing that comes into play is that, because under commonwealth law it remains an offence to possess, whilst a police officer may choose not to take a prosecutory path, they are left with a decision about whether to seize the cannabis, which still leaves them in an awkward position. Our very strong direction to members now is that you have a very clear way to ensure your own integrity. If you are not going to take action on a particular matter, you need to handle what is an illicit substance very carefully—seize it appropriately, record it appropriately et cetera. So there are issues with not only the potential for a charge to be laid but also what we do about possession and what advice we would give our members about how they handle that. That is the other key part of my concern around how we will operationalise it.

MRS DUNNE: Has ACT Policing sought advice about the integration of commonwealth law in this instance?

Asst Commissioner Johnson: Yes, we have had a couple of pieces of advice. We got some advice from the Attorney-General's Department, and I think that is included in here. We can probably give you the email which gives some guidance about the

interplay. We can provide you with anything else we have got; I am happy to come back to you on that.

Just to be clear around the commonwealth legislation element, all police officers are in Australia, so if you are a police officer by act of parliament in any jurisdiction in Australia you are empowered by commonwealth legislation. For example, if Western Australia took the same path, in theory, Western Australian police officers would have the same power to activate—

MRS DUNNE: They would be in the same situation. So it is not just because you are commonwealth officers; it is because you are a sworn police officer?

Asst Commissioner Johnson: That is right.

MRS DUNNE: That is a very important clarification.

THE CHAIR: I am not sure if you have had a chance to read some of the evidence provided in the hearings thus far, but the Law Society gave evidence specifically relating to this matter. They seemed to think that one option would be to have an MOU in place. Another option would be to not be silent, so the ACT would be specific and therefore that could be a possibility to overcome the differences between the commonwealth and the territory information. I am paraphrasing, but the *Hansard* record is there. Have you had a chance to read any of that testimony?

Asst Commissioner Johnson: Certainly the MOU question is one we have pondered—or any other guidance. In a practical sense—and this is a matter of longstanding principle of law—even I cannot direct my members to take certain action or not take certain action. The responsibility and accountability for their actions is theirs alone in the model. I could give all sorts of guidance about what I would prefer to happen and, to be honest, for the most part, I would not have any problem with people adopting that model. I just cannot guarantee the result of their responsibility to turn their mind to the law on the day and how that might take effect on the day.

An MOU would not address that issue. We have not looked at how a positive statement in ACT law might interplay with the commonwealth. I think we would have to understand that, and I could not comment on that at this point. But I can give you a sense of the success or otherwise of an MOU, and it certainly would not address the issue.

THE CHAIR: I assume you are working with government on any amendments that might be brought forward to ensure that they do not make it even more difficult for ACT Policing to do their job.

Asst Commissioner Johnson: We are getting positive engagement. There is certainly no suggestion that we not being consulted in that process.

MRS DUNNE: I have a question about the supply of seeds and the like, which you touch on in your submission. The proponent of the bill has sort of said that this is a way of helping average recreational users, for want of better words, not to be engaged

in the criminal system and dealing with drug traffickers et cetera, which sounds good at first blush. But if you are going to grow your own—this is legislation that allows you to grow your own—somewhere along the line you have to get seed stock or plant stock of some sort.

Asst Commissioner Johnson: Yes.

MRS DUNNE: The original plant; I am not as expert as others in gardening and specifically the growing of—

Asst Commissioner Johnson: Horticulture.

MRS DUNNE: Horticulture or this particular plant, although I can grow tomatoes and I gather that they are somewhat similar. But, as we know, if we grow tomatoes from seed again and again, you get worse and worse tomatoes, and fewer and fewer tomatoes.

THE CHAIR: I did not know this, by the way.

MRS DUNNE: Yes, but I can grow tomatoes. Presumably if you grow from seed, in the first instance you are going to have to go and buy seeds. But somewhere along the line that seed is going to be less viable and you are going to have to go and buy more from somebody who is—

Asst Commissioner Johnson: Yes.

MRS DUNNE: pretty much an undesirable sort of character. So it does not really keep you out of the black market. It keeps you out for a while, but then you would have to go back under the current arrangements.

Asst Commissioner Johnson: I understand the point that you are making. I was unaware of the issue about tomato plants and whether it interplays with cannabis. I am assuming that to be correct—

MRS DUNNE: No, they are similar.

MS LE COUTEUR: Similar cultivation requirements is what Mrs Dunne is saying.

MRS DUNNE: They have a similar habit.

Asst Commissioner Johnson: I guess that in principle, yes, you have to go to somebody then to resupply your seed stock, if you have to do that regularly. I guess that could be undesirable individuals or it could be another model, although even if it is done for free it still amounts to supply. Under the current legislation in the ACT and the commonwealth law, that would still be supply. You have the character that you may well have to deal with and then you have the legal implications of still having to be supplied, if that makes sense.

MRS DUNNE: So this legislation does not address the issue of supply?

Asst Commissioner Johnson: No.

MRS DUNNE: So acquiring the seed in the first instance is still technically supply?

Asst Commissioner Johnson: Yes.

THE CHAIR: And then acquiring the seeds, if it became legalised—I will use this as an example. If Mrs Dunne, Ms Le Couteur and I all decided to grow four plants and my seeds were getting to a point where they were no longer producing, and I just happened to speak to Mrs Dunne and she said, “Here, have a couple of mine,” that would be considered supply and it would still be illegal even if cannabis itself was legalised?

Asst Commissioner Johnson: Yes.

THE CHAIR: Thank you.

Asst Commissioner Johnson: Yes.

THE CHAIR: I just wanted to double-check that.

MRS DUNNE: Don’t come to me.

THE CHAIR: No, don’t come to me.

Asst Commissioner Johnson: And not that police would be going around looking for people who are swapping their plants—

THE CHAIR: No.

Asst Commissioner Johnson: but in a practical law sense, yes, it would still be supply.

MRS DUNNE: Yes.

Asst Commissioner Johnson: It would be supply.

THE CHAIR: I just wanted to clarify.

Asst Commissioner Johnson: Yes.

MRS DUNNE: There are things that you said that you would provide to us.

Asst Commissioner Johnson: Yes, we can.

THE CHAIR: Which I am just about to go to.

MRS DUNNE: Sorry, including advice from the commonwealth AG?

Asst Commissioner Johnson: Yes. We probably cannot provide the actual legal

advice, but we can provide the email with the derivative of it—

MRS DUNNE: Okay.

Asst Commissioner Johnson: and anything else we have that gives us guidance around that point we can share with the committee.

MRS DUNNE: Great.

MS LE COUTEUR: Great.

Asst Commissioner Johnson: The more I think about the importance of the issue around impairment and driving, whilst I know the bill does not entertain that necessarily at this point, if we progress down this path, the question of impairment becomes a relevant one. So we will do a bit more work on making sure we understand what does and does not exist there—the statistics. We will also provide you with a copy of the better practice guide on simple cannabis offence notices, either in confidence or as a public document. We will work out which one is best for us, if that is okay.

THE CHAIR: Absolutely. As long as you let the committee know, when you are providing the information, what parts need to be made confidential and what parts are able to be published, that would make our lives a little easier—

Asst Commissioner Johnson: Yes, indeed.

THE CHAIR: because we do not want to inadvertently publish something that should not be published.

Asst Commissioner Johnson: I am reasonably sure you will be able to have it publicly, because I suspect it is actually on the information publication scheme. But we will make sure.

THE CHAIR: When it is provided to us, that would be—

MRS DUNNE: Yes, but make it very clear. That would be great.

THE CHAIR: When available, a proof transcript will be provided to you. We will forward it to you to provide you with an opportunity to check it and to suggest any corrections, where required. As discussed, you have taken a number of questions on notice. The committee has a rather tight time frame; so we request those responses a week from today. That would be greatly appreciated.

Asst Commissioner Johnson: Yes.

THE CHAIR: On behalf of the committee, I would like to thank you both, and everyone, for appearing today and for the work you put into the submission. That is the end of today's hearings.

The committee adjourned at 12.04 pm.