



**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**

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 8 MAY 2019

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

By authority of the Legislative Assembly for the Australian Capital Territory

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

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Amended 20 May 2013

The committee met at 3.39 pm.

BARR, MR ANDREW, Chief Minister, Treasurer, Minister for Social Inclusion and Equality, Minister for Tourism and Special Events and Minister for Trade, Industry and Investment

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MARTIN, MR VICTOR, Acting Executive Branch Manager, Legislation, Policy and Programs, Justice and Community Safety Directorate

THE CHAIR: Good afternoon everyone and welcome. I declare open the final 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 are meeting on the lands of the Ngunnawal people. I pay my respects to their elders, past, present and emerging, and the continuing contribution of their culture to this city and this region. And I pay my respects to any Aboriginal and Torres Strait Islander people we have with us today.

Today the committee will be hearing from the Chief Minister, Mr Andrew Barr MLA, and accompanying ACT government officials. Can I remind witnesses that the proceedings are being recorded by Hansard for transcription purposes and are being webstreamed and broadcast live. On behalf of the committee, I would like to thank witnesses for making the time to appear today and I would like to thank the ACT government for their submission outlining their proposed amendments to the bill.

Chief Minister, may I remind you and your officials of the protections and obligations afforded by parliamentary privilege and draw your attention to the pink-coloured privilege statement before you on the table. Has everyone had a chance to read and understand? And if they have, can they just identify that for Hansard?

Mr Barr: Yes.

Ms McGregor: Yes.

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

Mr Barr: No. Since that standing order changed I have adopted the view that I should not make opening statements; so I will not. I make closing statements. I did in the last hearing on another matter.

MRS DUNNE: This is health related but it is also an overarching question. You say in the original correspondence to the committee about addressing the harms associated

with marijuana usage, Chief Minister:

The ACT Government has been clear that we do not condone or encourage the recreational use of cannabis, which represents health risks.

How do you marry that with the fact that you are supporting legislation that is coming forward to make it easier for the recreational use of marijuana and the impact the educative power of the law would have on the general public?

Mr Barr: It is an interesting conundrum that we face. I guess you can go back to first principles in relation to drug law policy more specifically and say that it manifestly failed; that prohibition has not worked. If I were to draw a philosophical base for my personal views on this, to quote an unlikely source for a centre-left politician to draw upon, the late Milton Friedman had quite a lot to say on this topic. And a lot of what he said made sense. That is, I guess, the starting point for us in our consideration.

But one moves from the theoretical into the practical and the interoperation of territory laws with commonwealth laws: questions of how you would balance a person's personal use versus that which might be considered was cultivated for supply purposes for others. There are a range of issues that are obviously raised by this private member's legislation. But my starting point is to try to find a way to make it work rather than adopt a Nancy Reagan approach of just saying no.

MRS DUNNE: But a number of witnesses have come before us, both for and against the legislation, who have started with the opening premise that marijuana is a dangerous drug ... but! How do you as the—

Mr Barr: Well, alcohol is a dangerous drug ... but!

MRS DUNNE: We are in the situation where alcohol has been legal for a long time. We are now being asked to consider legalising marijuana, adding another dangerous drug to the list of already legal dangerous drugs. How do you, as a legislator, and the senior legislator in the territory, marry the real concerns about the health implications of the use of marijuana and the one where you have said that the government does not condone this? How do you balance that with what would appear to be, to the average man in the street, the average man on the bus, the ACT government condoning the use of marijuana and saying it is okay?

Mr Barr: The logical extent to your argument is that we should never, as a jurisdiction, have introduced the simple cannabis notice offence arrangements and to have effectively downgraded its illegality, if you like.

MRS DUNNE: No. It is still illegal. But it is the way we treat it that is different.

Mr Barr: Yes. Nevertheless, if one were to pursue the logical extent of your proposition there would be to—

MRS DUNNE: No, it is not a proposition. It is a question to you.

Mr Barr: Framed from a certain—

MRS DUNNE: You could assume a point of view but you may be wrong.

Mr Barr: Framed from a certain philosophical perspective—

MRS DUNNE: No. The question to you is: how do you balance? You are saying that the ACT government does not condone this use with the apparent condoning of this—

Mr Barr: Yes, and these are the live questions that we as a government, and as individual legislators, are considering. It is why we are looking at various elements of the private member's bill, looking at the detail of it, why we are appearing before a committee today. And those are questions that individuals will draw upon—even their own philosophical framework or their other experiences or their professional backgrounds or their view—ultimately around the liberty and freedoms of an individual.

MRS DUNNE: That is a non-answer. Thanks.

MS LE COUTEUR: To my mind, the most important question is: how does our proposed legislation, whatever you think of its being right or wrong, fit with the commonwealth legislation? We have heard extensively from—

THE CHAIR: Ms Le Couteur, we are going to—

MRS DUNNE: Can we park that one? We are going to do health questions first and then legal questions later.

THE CHAIR: Yes. I was just about to interrupt you to say that you must have missed the first part.

MS LE COUTEUR: I did miss the first part, yes.

THE CHAIR: For the purposes of Hansard and for the purposes of those listening at home, due to the Chief Minister representing the whole of government today we are starting from a mental health perspective. We will then move to a legal perspective and any other questions that the committee has from government directorates. But we will try to do them in directorates rather than higgledy-piggledy.

MS LE COUTEUR: I am interested in some statistical things about current cannabis use. Do we have any idea how many people in the ACT seek assistance from our health facilities for something that is largely related to cannabis use? I am not saying something that is incidental; this would be their primary issue. Do we have any idea?

Ms McGregor: I think that is a question we would probably take on notice. I am looking at the Chief Health Officer. I do not know that we have anything here, but we can take that question on notice.

THE CHAIR: Ms McGregor, you can take it on notice but if you can answer the question before the end of the hearing, you can also come back us with the answer.

Ms McGregor: Let us see if we have anything. So we have some figures that suggest that cannabis use is declining. However, this looks like self-reporting kind of information.

Ms Nixon: We do not have exact statistics on how many people are seeking help for cannabis use. What we do know is that the percentage of Canberrans who are using cannabis has actually been declining. I think the important point to note there is that it has been declining since we have decriminalised cannabis use.

Back in the mid-1990s we went to simple cannabis offence notices. This effectively decriminalised cannabis use. I have some statistics from the Australian Institute of Health and Welfare. In 1998, which is around the time that these changes were introduced, we had 20 per cent of ACT residents aged 14 years and older using cannabis in the past 12 months. In 2016 this figure had fallen to eight per cent.

MRS DUNNE: Are they AIHW figures?

Ms Nixon: Correct. That is the national drug strategy household survey.

MRS DUNNE: Is that their survey or is it an ABS survey?

Ms Nixon: That would be the AIHW survey.

Ms McGregor: I think that that national drug survey has been running for quite a long time.

MRS DUNNE: Yes, it is quite a long survey.

Ms Nixon: Absolutely, yes.

MS LE COUTEUR: Do they have any commentary about why this is? Is it mainly because other drugs have supplanted it, if that is the expression?

Ms Nixon: I think it is fair to say from what we know that alcohol and tobacco still create a much bigger burden of disease in the community where we have drug-related health issues. Whether that is supplanting cannabis use, I could not say.

MS LE COUTEUR: If this bill were passed, have you done any modelling as to whether you would expect it would make any difference to the amount of cannabis use in the ACT?

Ms Nixon: It is actually very hard to say whether it would or not. We have been looking at the experience in other jurisdictions to see if cannabis use has increased as a result of changes in access. I think the difference here—this is the point that the Chief Minister was making earlier—is that we are not going all the way to kind of promote cannabis as a drug of choice in the ACT. We are trying to find a middle ground where we are not actually criminalising people for using cannabis, but hopefully removing some of the stigma so they can seek help for their drug use.

MRS DUNNE: To follow up on that, Ms Nixon, could you expand on the issue of

stigma; that people feel stigmatised and therefore are unwilling to seek or accept assistance for their drug use? People say it and sort of move on. I would like to drill into what that actually means.

Ms Nixon: Not being a front-line health worker, I would be kind of anecdotally saying that that is what we hear from our front-line health workers. When there is stigma attached to using a drug it might dissuade people from seeking the help that they need. When it is no longer an illegal drug, I guess that that barrier is no longer there to seeking help. You are not worried about facing some sort of criminal penalty for seeking help from a health system.

MS LE COUTEUR: What you are saying is that it is not actually a matter so much of the stigma—that people think cannabis is good or bad. It is more that this is actually illegal. Therefore, if I get involved in a bit of the government, I do not know where it is going to end up.

Ms Nixon: Absolutely. Again, we have seen that from recent pill testing trials that we have been running in the ACT—

THE CHAIR: I was going to ask—

Ms Nixon: The very strong communication message that we are giving out to young people is: please seek help if you need it. This is not a criminal matter. First and foremost, please seek help. We know that that is a barrier to young people seeking help for themselves or their friends who might have overdosed because they are worried about criminal implications.

THE CHAIR: You see that by legalising that, it could remove some of the stigma attached with people being more readily accepting and able to seek help?

Ms Nixon: That would be what we are expecting to happen. Whether that is backed by hard science, I could not say.

MS LE COUTEUR: So given that that is what you are expecting, are you preparing for resources for more people accessing help?

Ms Nixon: Yes, I think that is something we will have to monitor over time. We could not say hand on heart whether there will be an influx of people to our alcohol and other drug services as a result of this change. What we have looked at in other jurisdictions is that, while the evidence is limited, there is actually a little bit of offset. So where some people have been receiving involuntary treatment for their drug use in the past, they now might be seeking voluntary treatment. It is a matter of how much that is offsetting the voluntary treatment in the system.

MRS DUNNE: What treatments are there available in the ACT drug and alcohol space for people with dependency or problems with marijuana use?

Ms Nixon: I guess it depends how severe that dependency is. Very rarely would we see people with a cannabis dependency requiring inpatient services. It would be more likely that they would seek counselling-type services.

MRS DUNNE: Are they mainly counselling services rather than detox? It is not really practical for detoxification services.

Ms Nixon: Again, it is hard to say because it depends on whether there is a cocktail of drugs involved and other issues with that person as to the extent of help they might require. But certainly with straight recreational cannabis use I think you would expect from what we have been looking into that most of those people would seek sort of counselling services rather than sort of residential rehabilitation or inpatient service.

MRS DUNNE: But are there cannabis-specific services?

Ms Nixon: There are. I might have to take that one on notice, unless I could get Lisa's notes here. Yes, there are services run by government such as the Controlling Your Cannabis Use Group and other counselling services run by ACT Health. There are a number of trusted community groups that also offer alcohol support services. They include places like Directions and CAHMA, among others.

THE CHAIR: Do we have any further health-related questions at this point?

MRS DUNNE: Yes, I have a couple.

THE CHAIR: Do you want to keep going with that while we have the officials here?

MRS DUNNE: When the government was being briefed on these issues, was the government briefed on what are seen as the sort of adverse outcomes from marijuana use and particularly the early onset use of marijuana?

Mr Barr: Yes, I think people are aware of those issues, yes.

MRS DUNNE: What was covered in the sort of briefing materials? There is a body of work. Some of it is contested; some of it is not.

Mr Barr: Contested, yes.

MRS DUNNE: But also there is a view about early adoption—I know this is a piece of legislation for adults. However, again, the question is: if you say that it is alright for adults, you perhaps run the risk of inadvertently and unintentionally encouraging younger people to try marijuana.

Mr Barr: I think they already are.

MRS DUNNE: They may well be, but if you go through a stage of saying that it is now legally okay to do so if you are 18, it may be an enabling mechanism for younger people as well. So what is the government aware of in relation to what appears to be the research about early onset use of marijuana and the increased prevalence of psychosis?

Mr Barr: Obviously, there is a range of research papers. There is a range of risks that you need to balance. There is no perfect answer to suggest that the current

arrangements do anything to address the concerns that you have raised. I think it is a point worth discussing as well. There are going to be competing views within the medical profession about the extent of the risk. There are going to be competing views within the broader community about the extent to which even what the ACT did two decades ago would constitute a step down the path of encouraging, or having a lighter touch in terms of a legal response, and what impact that might have had on behaviour.

I guess the only thing you can look at is real world examples in other parts of the world, in as like countries as possible, of what has actually happened. But there is no perfect answer here, Mrs Dunne. I think you have to accept that there are risks involved in any legal regime, any health intervention regime. At some point you have to make a value judgement or a moral judgement.

I think there is also a range of economic issues that need to be brought into this debate. In effect, most of the government regulation, most of the government law enforcement, is underwriting the profits of drug cartels and large suppliers. I think you have to be honest and up-front about that. The war on drugs is not succeeding in stopping people from using illicit or illegal drugs. It is simply lining the pockets of cartel suppliers. I think that is an inescapable fact around the world.

I think some people could reach a perfectly legitimate view that they are content with that as a counterbalance to the potential impact of legalisation or further decriminalisation encouraging more use. Ultimately, these are things that you have to make a values judgement and a moral and economic call on.

I do not think that there is a settled and definitive view or position. There is no authoritative source that says, “This approach will absolutely work and this one absolutely will not.” It all appears to be contested. The ultimate conclusion on either this specific piece of legislation or the broader public policy issues will be framed by a range of factors from, I guess, your intellectual starting point to your personal experiences, to those of family and friends or, ultimately, whether you hold a libertarian or other view: “As long as there is no harm done to other individuals, do I really care what the personal drug use of others is?”

There is a lot harm caused by overeating. There are massive costs in our system at the moment arising from overeating, from people drinking too much. There is a range of behaviours that are probably less than ideal. I am in middle age now. I have had time to reflect on a few issues in the world. Everything—

THE CHAIR: I am happy with the middle age comment, just quietly.

Mr Barr: Everything in moderation seems to work for most people as a guiding life principle. Do anything to extreme, to excess, and you are likely to cause either some personal harm or harm to others. Everything in moderation, Mrs Dunne, and I think that is also how one might approach dealing with legislation like this.

MRS DUNNE: One of the issues is that the government, along with a whole lot of other people who have come before us, has said that marijuana is a dangerous drug. But if this legislation comes into force—along with overeating, overindulgence with sugar, overindulgence with alcohol and tobacco, and stuff like that—does the

government have a health promotion campaign of some sort that realistically outlines the problems?

Mr Barr: And explains, yes, the risks; absolutely. I think that—

MRS DUNNE: What thinking has been done about that?

Mr Barr: We obviously have many and varied public health campaigns. We are not the only level of government or entity that could be actively engaged in such health promotion. Certainly, I am a very strong advocate of information and education and allowing people to make informed choices. But the worst thing governments can do is keep people ignorant of the impacts and effects of choices that they might make or of particular substances that they might consume.

MRS DUNNE: But my question, Chief Minister, was this: what work has been done in that space, because your amendments propose that this will commence 30 days after notification of the bill? If we do this in July or August, or sometime this year, by the end of the year we would have this regime in place. So what work has been done?

Mr Barr: We would be in a position, then, to be able to explain—we would need to be able to explain—the laws and to provide information.

MRS DUNNE: And you are going to do that in the 30 days between the passage of the legislation and—

Mr Barr: We can obviously—none of this is new. We do not have to prepare—

MRS DUNNE: My question is: what work has been done now?

Mr Barr: We do not have to prepare any new information. It is all there and available. It is just a case of how it would be packaged up and made more readily available to people should they wish to access that information. That is not a particularly onerous task and it would be one of the questions that the government would need to consider in terms of the timing of the debate on this legislation; it is a private member's bill; it is not a government bill.

MRS DUNNE: The member owns the legislation, yes.

Mr Barr: Yes. This is something we will need to consider. It depends, of course, on the ultimate outcome of the Assembly's consideration—what, if any, amendments are moved—as to exactly what sort of information we would need to provide, what information people feel they already have access to. That would all need to be part of the thinking. It is a good question to ask. I do not have a problem with you asking the question.

MRS DUNNE: But you have a problem with providing a comprehensive answer.

Mr Barr: Because I have not prepared the legislation. I am responding to a piece of private member's legislation. This is one of the things that we would consider if the legislation passes.

MRS DUNNE: Sorry, but my point is that if the legislation passes, you are giving yourself 30 days to implement this. In that time you are saying that you are going to be able to roll out an effective public health program that would inform people—

Mr Barr: We will have more than 30 days' notice of when the legislation would pass, if it is going to pass.

MRS DUNNE: So when are you going to start thinking about it?

Mr Barr: We have already started thinking about it.

MRS DUNNE: So what work has been done?

Mr Barr: A lot of work.

MRS DUNNE: In relation to a public health campaign?

Mr Barr: In relation to all of the issues if this legislation is passed.

MRS DUNNE: No, I am specifically asking about a public health campaign. What work has been done in relation to a public health campaign?

Ms Croke: The whole-of-government comms and engagement team have started to do work where we have gathered already what is publicly available information and are starting to pull a comms plan together. But as the Chief Minister said, it depends largely on where the bill lands in terms of exactly what goes in. However, some of that thinking has been done. We are working with Health and working with our JACS department as well. It is not a formed plan but certainly thought has gone into what those key elements would be.

MRS DUNNE: Thank you.

THE CHAIR: I would imagine that there are already harm minimisation strategies in place due to pill testing, cigarettes and—

Mr Barr: Again, none of this is new. A process argument about when work will or will not begin on a public health campaign is not a reason not to consider the bill.

THE CHAIR: I would imagine, like we do with tobacco and alcohol, those public health campaigns change over time?

Mr Barr: Of course, yes.

THE CHAIR: Any other health questions? I have some more legal type questions.

MRS DUNNE: Not from me that I can think of at the moment.

MS LE COUTEUR: Particularly given that we are halfway through our time already.

Mr Barr: Thank you, team health. Bring on the lawyers!

THE CHAIR: Chief Minister and officials, I am not sure how much of the other hearings and testimony you have had a chance to read, or the submissions, but one of the questions that have come up a lot is the commonwealth versus state, or territory in our case, legislation. We had some interesting evidence from the Law Society. Mr Garrisson, I am not sure if you have had a chance to read it.

Mr Garrisson: No, I have not, I am afraid.

THE CHAIR: Part of the question was that overall it is the territory legislation and how would the territory, for example, be able to legalise personal use cannabis when the commonwealth legislation is still opposing that. I would like to hear what you think about that. Let us start there and then I might ask you further questions on the Law Society stuff.

Mr Garrisson: Are you happy for me to answer?

Mr Barr: Yes, and I will offer any commentary that may assist.

Mr Garrisson: The starting point is the commonwealth Criminal Code which criminalises possession and cultivation of controlled drugs and controlled plants, which includes cannabis. And it applies to any quantity. Then there are varying penalties depending on quantity. There are also trafficking offences which also can depend on quantity in terms of determining criminal intent. Selling controlled plants is also an offence.

The commonwealth code has to be seen in the context of the approach the commonwealth has taken to the regulation of drugs. The starting point for that goes back quite a long way to the Single Convention on Narcotic Drugs that was entered into in 1961.

MRS DUNNE: Entered into with whom?

Mr Garrisson: It is an international convention to which Australia is a signatory.

MRS DUNNE: That is what I was getting at.

Mr Garrisson: That convention remains operative. Australia is a party to it, and that convention permitted the signing parties to engage in the regulation of medicinal use of drugs, in particular cannabis. That, of course, ultimately has led to the Narcotics Act which regulates the medicinal use of cannabis at the commonwealth level. But it also has as its premise a prohibition on other drugs. The commonwealth Criminal Code in fact reflects that position. But of course whilst it also, for example, provides the constitutional power for the commonwealth to pass the narcotics legislation, using its external affairs power, it being a sovereign parliament, it can make such laws as it sees fit.

In relation to the prohibition on controlled drugs, there are certain exceptions from the operation of the law and certain defences. The relevant exception is that it is not an

offence under the Criminal Code—indeed the Criminal Code does not apply—where the conduct is justified or excused by or under a law of a state or territory. That can go to the differing nature of offences, because different states and different territories have got different penalties and differently configured offences. It also provides an avenue to excuse, if you will, or justify a law in the nature of what is being proposed.

It is a complex issue about the interaction between commonwealth and state laws, in particular between commonwealth and territory laws, because, in addition to any other legislative power that the commonwealth has, it of course has got power over the territory under section 122, the territories power.

The critical question is whether the possession and use of cannabis that is permitted under whatever the final form of the bill is going to be amounts to a justification or excuse so that the offence of the commonwealth law is not enlivened. Views will differ in relation to whether it justifies or excuses it. In part, that will be a matter of fine tuning the drafting of the way it operates. That provision basically dis-applies the criminal offence.

MRS DUNNE: Could you just say that again? Which provision dis-applies the criminal offence?

Mr Garrisson: This is 311(1) of the Criminal Code, which is the justification or excuse under a law of a state or territory. There is also a defence that the person charged is under a mistaken but reasonable belief that the conduct is justified or excused, a principle that is reasonably well known to the law. Mistaken but reasonable belief is often presented by way of a defence and, indeed, is available as a defence more generally under the Criminal Code. And that again would be a matter of evidence to be presented to the court about what the ACT law said, what the person believed it said and the surrounding circumstances of it. I am not sure if that assists you in understanding—

MRS DUNNE: No.

THE CHAIR: To be clear, no.

MRS DUNNE: No, it probably does not, because really what you are saying—

Mr Barr: I thought it was very helpful. Thank you.

MRS DUNNE: Actually, what you seem to be saying, Mr Garrisson, is that it really depends on how the legislation is drafted?

Mr Garrisson: Correct.

Mr Barr: Yes.

Mr Garrisson: Absolutely.

MS LE COUTEUR: But you were saying possibly even more than that, that it probably would depend on a few court cases to try to work it out?

Mr Garrison: That is the second tranche of it, if I might.

Mr Barr: And who might bring prosecution.

Mr Garrison: Yes.

Mr Barr: This will depend a lot on—

MRS DUNNE: There could be prosecution or whether it could be tested by the commonwealth.

Mr Barr: Obviously it will depend a lot on the attitude of the commonwealth, the commonwealth government of the day, clearly.

MS LE COUTEUR: We have talked obviously to the police association and the Chief Police Officer and they are—I do not want to verbal them—uncomfortable, I think would be a fair description of their views about this. How do you think this could actually work in practice? Are we just going to wait around for a decent court challenge?

Mr Garrison: If I might be so bold as to say that there are many laws that have been drafted over the years that one is confident will withstand legal challenge, and it would be very bold to assert that it will until such time as the challenge occurs, so that all that can be done is anticipate what those challenges might be in terms of ensuring that if the bill is to move forward the provisions are drafted in as careful a way as possible to minimise the prospect that it does not—double negative—amount to a justification or excuse; in other words, to say that it is a justification or excuse.

MS LE COUTEUR: Would you think that the current drafting is like that or does it have to have something very clearly saying this is a justification and an excuse?

Mr Garrison: I think there is a continuing dialogue within the Justice and Community Safety Directorate in relation to how any further amendment may be required and it is not really for me to press a view about that.

THE CHAIR: Part of what you mentioned then was 313(1) of the Criminal Code. The Law Society gave evidence that they believed that the commonwealth code, particularly in 308(1) or in its own subsections (iii) to (v), does not cover the field in comparable offences or diversionary schemes within states and territories and that could be one way that the territory is able to stand—

Mr Garrison: The—

THE CHAIR: I am taking a bite out of evidence that was given. There is more evidence around both sides of that bite.

Mr Garrison: Certainly. On the question of whether or not commonwealth law—there are all sorts of terminology—covers the field or is an exclusive statement of the law on the topic, the commonwealth law plainly is not because it allows room for

state and territory laws to operate. The question then becomes, in effect, a matter of construction to see if the state and territory law can in fact operate within the leaps and bounds of what is permitted under the commonwealth law, that is, that it is properly a justification or an excuse under a law of a state or territory and that it is not such a wildly divergent justification or excuse as to in fact amount to an incapability with the commonwealth code.

One thing that both states and the commonwealth have learned over the years is that you might have a provision in a commonwealth law that says “and a state law can operate” but it is ultimately a matter for the courts to determine whether or not it is in fact inconsistent and inoperable.

In the ACT’s instance, it is not only fitting within that statutory framework that is within the Criminal Code but also obviously within the provisions of section 28 of the self-government act which provides for dealing with inconsistent laws between the commonwealth and the territory.

THE CHAIR: One would assume that because we currently do pill testing, which would technically seem to be outside the bounds of commonwealth law, we are already—

MRS DUNNE: That is not a legislated scheme.

Mr Garrison: That is a—

THE CHAIR: It is a scheme about harm minimisation.

Mr Garrison: It is.

MRS DUNNE: But there is no legislation that supports it.

Mr Garrison: It is not supported by a legislative framework and—

Mr Barr: Yet.

THE CHAIR: That is right.

Mr Garrison: Yet.

THE CHAIR: Anything is possible. It is 2019.

Mr Barr: Indeed.

MRS DUNNE: Can I go back to first principles? You said, Mr Garrison, that Australia was a signatory to an international treaty.

Mr Garrison: Yes.

MRS DUNNE: What does the international treaty bind us to do?

Mr Garrison: It doesn't. It is like any treaty; once it has been accepted, then Australia, the commonwealth, has, if one will, moral obligations in relation to the fulfilment of those treaty obligations.

MRS DUNNE: But moral obligations, not—

Mr Garrison: It is not to say that a jurisdiction cannot depart from the terms of a treaty, particularly one in the nature of this convention. It sets out the principles for the participating jurisdictions. Indeed, as I have already indicated, in the case of the commonwealth, being a signatory to an international treaty enlivens the commonwealth's capacity to make laws utilising the external affairs power in circumstances where it may not otherwise have a clear constitutional power to make a law in respect of a particular area.

MRS DUNNE: I suppose the question I am getting at is this: I have just returned from Canada where they have had a full national legalisation drive. Most of the provinces have sort of come on board with their complementary legislation. So you now have government-run dope shops, which are like government-run liquor stores. I suppose Canada would also be a signatory—

Mr Barr: Always been opposed to expansion of the public sector.

MRS DUNNE: Yes, government-owned liquor stores are not me. What would—

THE CHAIR: I would like to see government-owned dope shops, but anyway—

MRS DUNNE: What would allow Canada, which is presumably also a signatory, the United States or the Netherlands, which are presumably also signatories, to legislate in the way that they have done?

Mr Garrison: The signing of an international convention does not create legally enforceable rights or obligations. Of course, treaties—

Mr Barr: As we found with the Paris agreement.

MRS DUNNE: That was not a treaty.

Mr Garrison: Treaties and conventions, for example, are addressed in a range of fora around the world. Complaints of breaches of national obligations, for example, are raised in the International Court of Justice and a range of other places. But from the perspective of a sovereign state, if it chooses to legislate contrary to the terms of a treaty or convention that it is signed up to, it is not necessarily a good thing, but it is not something that would provide a basis for challenging it.

Of course, in the Australian courts, the fact that Australia is a signatory to an international convention means that the terms of that international convention can in fact be taken into account by a federal court in interpreting commonwealth legislation. It was a principle that was slow to emerge but it is now relatively well recognised. There is, if you will, not a particularly straight line in terms of determining how international treaties and conventions influence domestic law. What it does not do is

tie the hands of a legislature to make a law that is otherwise within its constitutional power to make.

MS LE COUTEUR: I think that is probably as far as I can go in terms of the legal interpretations. I have other questions that are not fully legal ones.

MRS DUNNE: I have some about the amendments.

THE CHAIR: And I have one quick question about legal.

MS LE COUTEUR: We probably should finish the legal one.

Mr Barr: Fire away then.

THE CHAIR: Another thing that has been discussed in the hearings was the drink-driving, drug-driving testing regime that is currently occurring. We had ACT Policing appear last week. It was really great to listen to the evidence that they provided. Obviously, at the moment, drink-driving laws are based on the—

MRS DUNNE: Impairment.

THE CHAIR: impairment, not just the fact that you have alcohol in your system. It is the level of alcohol in your system that impairs you to drive. Drug-driving may not be quite as advanced.

Mr Barr: The testing is not as sophisticated in terms of measuring impairment.

THE CHAIR: That is the question we asked ACT Policing. They are getting back to us on that. We have done some research on some of the Canadian stuff. They have lots of different levels of impairment and lots of different levels of what level of impairment you can be and the different fines that go along with that. If this legislation is to be enacted, is that some work that—

Mr Barr: I would not envisage that it would change drug-driving laws. I note that there is a difference, as I understand it, between how long cannabis stays in your system, in the detectable sense by way of a drug test, and how long alcohol does. The period from which you would consume cannabis to when it would be—

MRS DUNNE: Out of a system.

THE CHAIR: And still detectable.

Mr Barr: Yes, but then, I guess, safe to drive, but perhaps still in your system is a matter of science and presumably it would differ from individual to individual in a way that alcohol does.

MRS DUNNE: But for alcohol we have actually determined—

THE CHAIR: A level of impairment.

MRS DUNNE: a level without measuring impairment.

Mr Barr: Yes, sure, although New South Wales have just unilaterally changed that, I think, with the legislation they have introduced, or propose to introduce. It is clearly a moving feast here in terms of where jurisdictions are going on that questions. Again, I do not see the intersection of drug-driving—excuse the terrible pun there—

MRS DUNNE: I did not even notice it; so it was not that bad.

Mr Barr: Thank you, Mrs Dunne—with this legislation. Again, it is not a compelling reason why you could not consider it if there were any further advances in terms of the testing methodology or further research and information around impairment. But we seemingly do not obsess about various cold and flu tablets, antihistamines and things that make you drowsy that would impair your driving ability that are prescription drugs that you can get over the counter. We are not as obsessed about that as we appear to be on this question. But it is obviously a factor and government will have to look at that, and so would the legislature in considering this legislation.

I think I come back to first principles here. People are currently consuming cannabis. It is not as if the current arrangements are providing the perfect workable solution to the range of issues that are sought to be addressed by the private member's bill. But these are always questions of extent and level of risk that the community is prepared to accept and lively debates about what types of drugs and what sorts of impacts they will have on individuals.

There is a range of very legitimately held personal views on this. I am not seeking to say that there is any one right or wrong answer. But I guess, to be clear about how we are approaching this, it is with a view to try to make it work, not to find 100 reasons why you could not possibly consider this—

THE CHAIR: I guess that was my point. It comes back to the education, the notification and the ability to be able to tell people—

Mr Barr: Look, it may be that we cannot make it work and that we cannot find the set of the amendments that will perfectly land this. Then we will have to make an assessment about relative risk at that point. But we are determined to try to see if we can work together collaboratively across the parliament and to bring the best advice that we possibly can and the widest range of views and inputs into delivering an outcome here.

That will mean working with the commonwealth as well. It will come as no surprise to this committee that I would expect it to have a more open mind if Australia votes for change on 18 May than what we would get from a continuation of the current administration. These are all factors that would go into how we would shape any amendments.

We have obviously put some on the table to give the committee a sense of the issues that the government is looking at in considering the private member's bill. That is not an exhaustive list. We look forward to what the committee has to say and what other issues are brought forward during this process. I think it is a good debate for this

Assembly and this community to have. It is long overdue and I thank the committee for their consideration of these matters.

THE CHAIR: Are you able to talk about the amendments that you have sent through to the committee?

Mr Barr: Yes. I will not read them out. You have all seen them.

THE CHAIR: We have got questions on the amendments.

Mr Barr: If there are specific issues that you would like to talk about then we will do our best to assist.

MS LE COUTEUR: I was going to ask: particularly talking about the issue of supply, have you thought about this? It is obviously a silly question. You will have. There is clearly an issue that the plants would require seeds and there is also the issue that we have demonstrated with many things that people do not actually that much want to grow their own. Most of us could grow a lot more vegies than we do. We have supermarkets and things. I have got no reason to think that cannabis consumers are much more into agriculture than the rest of Canberra.

We have heard quite a bit of evidence about social cannabis clubs where the cannabis would be owned, if that is the word, by or identified with a human being but cultivated more communally. Have you thought at all about these issues of both seed supply and other supply?

Mr Barr: They are clearly factors as would be, I guess, hydroponic cultivation as opposed to—

MRS DUNNE: Or greenhouse?

MS LE COUTEUR: Greenhouses, yes.

Mr Barr: Yes, as opposed to relying upon our ever-changing climate. These are factors that need to be considered. On the question of how you would account for a different number of people in households—all those sorts of questions around what would constitute sufficient supply for personal use as opposed to supply for sale beyond an individual—it may be that it is not possible through this style of legislation to address all those, dare I say it, supply side issues.

However, I do note the observations from ACT Policing that—not that we necessarily always want to encourage an expansion of the public sector in relation to this—if the nation, and the commonwealth at a national level, goes down a path around medicinal cannabis, and there is a regulation of supply and the like, then presumably that would be a step towards a more sensible consideration.

Where should it ultimately end up, as a taxable item, ultimately under a clear regulatory model for production as states and territories cannot levy excise tax? Ever since this issue has been raised I have had more than a few bright young economists and bright sparks say, “This is how you will address budgetary issues at a state and

territory level.” I hate to break the news to all those who are thinking that we could have a Colorado solution here to state and territory budgeting, but unless there were a change to the constitution in that regard we cannot. I think it would be preferable longer term that there is a regulated supply that is taxed and you then get greater assurance around the nature of the product that was going into the market.

Whether we need government shops is another matter but I could see that as a job in retirement for former members of the Assembly to be retailers at the—

MS LE COUTEUR: Would you see that as complementary to people growing their own or would you be suggesting that in your ideal world you actually could not grow your own, it would have to be a regulated, commercial—

Mr Barr: We are really getting into the realms of hypotheticals here but I guess if you look at some of the scaled production of some other drugs—let us use alcohol as an example—yes, there is home brewing.

MS LE COUTEUR: There is, and it is legal.

Mr Barr: Everyone has a view about whether their home brew is good or bad, and then we have craft brewers and whether they produce something that is better than the mass produced product. Similarly, with tobacco—not so much home production—there are necessarily different sources and some people would argue that tobacco sourced from a particular source is better than that from another. It is more regulated. It is taxed. That would be an ideal outcome but I guess we are dealing with what is within the realms of this place and with the type of member’s bill before us.

MRS DUNNE: Do you actually see that it would not be possible for the ACT to go down a regulated path?

Mr Barr: From a supply side, I am yet to see any compelling evidence to say we absolutely could.

THE CHAIR: Can I draw your attention to the Law Society’s submission, and you would might like to have a small read.

Mr Barr: Yes, I will have a look at that.

THE CHAIR: In one of their last paragraphs they say—

Mr Barr: Perhaps I should have given a rider on my comments that you will always find a lawyer somewhere who will argue absolutely everything.

THE CHAIR: No. It was an interesting discussion.

Mr Barr: It is a bit like economists in that regard too. There are more opinions than there are professionals, but yes.

THE CHAIR: They actually mention:

For consequential amendment [1.2] (section 618(2) of the Criminal Code 2002) to be workable law, the Bill should also provide for the name of the legal supplier(s) of cannabis plant seeds and location of a legal central seed depository.

It is interesting to—

Mr Barr: Yes, a little more interesting.

MRS DUNNE: Could I ask a couple of questions—I am mindful of the time—about the amendments that you put forward. Admittedly this is a first blush read but when you first read the amendments the new section 162(1)(b), where you are saying there is a two-plant limit for individuals, is obvious. When you go to 171AAA it says “cultivation of more than four plants”. When you read it through it is “per premises”. I am just wondering whether in style and drafting terms it might be more appropriate to have that actually in the section heading or the clause heading because it is a little weird.

Mr Barr: Far be it for me to do parliamentary counsel’s drafting job but I will take that on board.

MRS DUNNE: Thankfully, although this is a 50-penalty unit or two years imprisonment or both, it is not a strict liability offence. What does “storing out of reach of children” mean and what would the test be? Mr Garrisson or Mr Martin might like to answer that.

Mr Martin: Really that will depend on the drafting exercise with parliamentary counsel and a conversation with policy officers across government.

MRS DUNNE: Will “out of reach of children” be described somewhere in a dictionary or other place?

Mr Barr: We will probably need to.

THE CHAIR: Or the explanatory statement?

MRS DUNNE: It is a two-year imprisonment offence and “out of reach of children” is a bit amorphous. It is the sort of thing that you see on the back of a packet of paracetamol but there is no two-year penalty applying to that.

Mr Barr: No.

Mr Martin: Certainly, in similar situations the precision of language is key. Firearms is a good example. We ask firearms licensees to store their firearms in certain containers. We are very precise about how we prescribe those containers. We prescribe that the key is to be kept in a separate location. If the item is to be transported it is to be transported in a particular way.

MRS DUNNE: Is it a possibility that you would have to be more prescriptive about what “out of reach of children” means?

Mr Barr: It could well be, yes.

MS LE COUTEUR: You have also got in regard to smoking “prohibiting, knowingly and intentionally exposing”. I presume from the answer you gave to Mrs Dunne that you will need to do some more drafting as to what that might mean?

Mr Martin: In the end it will come down to the drafting exercise but also to the explanatory material for the government amendments.

MS LE COUTEUR: Have you an idea now of what that might mean, given that previously it was within 20 metres of a child which was to my mind clearly unworkable given apartments in Canberra these days, apart from anything else? Have you any idea what it would mean in practice, though, the “knowingly and intentionally exposing” the child?

THE CHAIR: Would it be something like the current tobacco legislation?

Mr Barr: A reference point, yes.

MRS DUNNE: My other question is: the proposed 177AAB talks about people committing an offence if they cultivate in an area which is lawfully accessible to a member of the public. Even private property in certain circumstances can be lawfully accessible. How do they interact? If I see that there is a fire in someone’s house I am lawfully able to go and render assistance.

Mr Barr: Go and try and put it out, yes.

MRS DUNNE: Then do I go and dob somebody in because they have got five plants in their back yard? How does it work? These are just questions from a first blush read of the amendments, and I am getting the impression that these are place marker-type amendments rather than the real thing.

Mr Barr: Yes, there is quite a process to go through, obviously. As I said, they are not the full extent of all the amendments the government would consider. There is a lot of further consideration. The bill is not imminent before the Assembly either. I think we have got time to consider all of them.

We obviously now have this process as well. With all those questions, it is good that they are raised and to the extent that the parliamentary drafters can endeavour to answer as many of them, through the legislation, through the dictionary, through the explanatory statement, we would endeavour to do that.

But again, I guess I come back to the point I have been making repeatedly that we are not going to have excessive process arguments about this and we are going to look to try to find a way to make it work. If that takes a little longer, it takes a little longer.

MRS DUNNE: You specifically say, Chief Minister, that you have not got at this stage amendments about wet weight, dry weight. Is it likely that you would have even some initial thinking before this committee concludes?

Mr Barr: I guess it depends on how long you guys—

MRS DUNNE: We have got a reporting date which is 6 June.

MS LE COUTEUR: Yes, it is the June sitting week.

MRS DUNNE: Is it possible that this committee could have a look at what your thinking is?

Mr Barr: I will endeavour to get that information to you.

THE CHAIR: I note the time. It has been interesting having you here. When available, a proof transcript will be forwarded to all witnesses to provide an opportunity to check the transcript and suggest any corrections. I do not think anyone ended up taking anything on notice.

MS LE COUTEUR: I have a question that I did not get to.

MRS DUNNE: The Chief Minister said that he would think about where we were with wet weight, dry weight.

Mr Barr: Yes, that is correct.

MRS DUNNE: Which is not a definitive commitment to come back to us.

THE CHAIR: No.

Mr Barr: If I can, I will.

THE CHAIR: Chief Minister, you may be receiving questions from today's hearings that members of the committee may still like answered. On behalf of the committee I would like to thank you and all the officials for appearing today and providing evidence. The hearing is adjourned for today.

The committee adjourned at 4.44 pm.