

Solovjev Anna

From: Pavleka Andrea
Sent: Thursday, 26 September 2019 12:31 PM
To: de Crespigny Mark; Carter James
Cc: McNaughton Sarah; West Lisa
Subject: RE: CDPP advice on ACT cannabis legislation [SEC=OFFICIAL]
Categories: ACT/AGD corro

OFFICIAL

Thank you Mark and James

I just had a quick chat with Mark, and on further reflection, we think that additional line that has been included is probably not needed. The last line probably says it all. Lisa – just wanted to double check the date of 20 September 2019 – is that correct?

On that basis, our final is as follows:

Thank you for your enquiry.

Attached are copies of the two letters that have already been released to the media by the ACT Government..

The initial letter considered whether the defence in s313.1 of the Criminal Code (Cth) of conduct justified or excused by or under a law of a State or Territory, would be applicable to a federal charge in the ACT of possessing controlled drugs under s308.1(1). There has not been detailed judicial consideration of the defence contained in s313.1 and its potential scope.

On 20 September 2019 a legal authority, on a provision similar to s313.1, was brought to this office's attention by the Attorney-General's Department, which resulted in further consideration being given to the issues and prompting the second letter to Mr Glenn.

Should relevant matters be referred to this office by police, they will be considered in accordance with the Prosecution Policy of the Commonwealth.

Andrea

Classification: OFFICIAL

From: de Crespigny Mark
Sent: Thursday, 26 September 2019 11:37 AM
To: Carter James <james.carter@cdpp.gov.au>; Pavleka Andrea <andrea.pavleka@cdpp.gov.au>
Cc: McNaughton Sarah <Sarah.McNaughton@cdpp.gov.au>; West Lisa <lisa.west@cdpp.gov.au>
Subject: FW: CDPP advice on ACT cannabis legislation [SEC=OFFICIAL]

OFFICIAL

Dear Andrea

James and I have been discussing this and here is our input:

Thank you for your enquiry.

Attached are copies of the two letters that have already been released to the media by the ACT Government..

The initial letter considered whether the defence in s313.1 of the Criminal Code (Cth) of conduct justified or excused by or under a law of a State or Territory, would be applicable to a federal charge in the ACT of possessing controlled drugs under s308.1(1). There has not been detailed judicial consideration of the defence contained in s313.1 and its potential scope. The CDPP is not able to provide legal advice to members of the public.

On 20 September 2019 a legal authority, on a provision similar to s313.1, was brought to this office's attention by the Attorney-General's Department, which resulted in further consideration being given to the issues and prompting the second letter to Mr Glenn.

Should relevant matters be referred to this office by police, they will be considered in accordance with the Prosecution Policy of the Commonwealth.

Regards

Mark

Classification: OFFICIAL

From: Pavleka Andrea <andrea.pavleka@cdpp.gov.au>

Sent: Thursday, 26 September 2019 10:47 AM

To: Carter James <james.carter@cdpp.gov.au>; de Crespigny Mark <mark.decrespigny@cdpp.gov.au>

Cc: West Lisa <lisa.west@cdpp.gov.au>; McNaughton Sarah <Sarah.McNaughton@cdpp.gov.au>

Subject: FW: CDPP advice on ACT cannabis legislation [SEC=OFFICIAL]

OFFICIAL

Dear James and Mark

I wondered if we might seek your views on our response to this media enquiry. Both of you have a bit of background on this matter. Both of our letters have already been released to the ABC as has the AGD letter. I have also attached the advice we received from AGD, plus our two letters.

Suggested Response

Thank you for your enquiry.

Attached are the two letters.

The initial letter considered whether the defence in s. 313.1 of the Criminal Code would be applicable, and whether or not de-criminalising the relevant conduct would amount to an excuse or justification pursuant to s.313.1. There has not been detailed judicial consideration of this provision and its potential scope.

On 20 September 2019 a legal authority, on a provision similar to s.313.1, was brought to this office's attention by the Attorney-General's Department, which resulted in further consideration being given to the issues and prompting the second letter to Mr Glenn.

Should relevant matters be referred to this office by police, they will be considered in accordance with the Prosecution Policy of the Commonwealth.

Classification: OFFICIAL

From: CDPP Media
Sent: Thursday, 26 September 2019 8:33 AM
To: West Lisa <lisa.west@cdpp.gov.au>; McNaughton Sarah <Sarah.McNaughton@cdpp.gov.au>
Cc: CDPP Media <CDPP.Media@cdpp.gov.au>; Pavleka Andrea <andrea.pavleka@cdpp.gov.au>
Subject: FW: CDPP advice on ACT cannabis legislation [SEC=OFFICIAL]

OFFICIAL

Hi

Please see below. I note that yesterday we received advice from the ACT Government that they had released the two letters (email attached) so I was wondering if we refer this enquiry to ACT or if we are in a position to respond?

Also Sarah given we are getting enquiries I was wondering if I could grab a copy of the CDPP advice sent to ACT (and if you are comfortable with us also releasing them?)

Thanks
Tom

CDPP
Australia's Federal Prosecution Service

Tom Heffernan
*Media & Communications
Commonwealth Director of Public Prosecutions*

Direct: 02 6206 5716
Media line: 0476 848 106
tom.heffernan@cdpp.gov.au
media@cdpp.gov.au

www.cdpp.gov.au

Adelaide
Brisbane
Cairns
Canberra
Darwin
Hobart
Melbourne
Perth
Sydney
Townsville

Classification: OFFICIAL

From: Paul Karp <paul.karp@theguardian.com>
Sent: Thursday, 26 September 2019 8:17 AM
To: CDPP Media <CDPP.Media@cdpp.gov.au>
Subject: CDPP advice on ACT cannabis legislation

Hi,

I've seen an [ABC report](#) that Sarah McNaughton gave some advice about the CDPP position on the ACT's new law to decriminalise cannabis.

Could I please ask:

- For a copy of the two sets of advice referred to in that story?
- Why is it no longer the CDPP's position that the ACT law provides a defence to the Commonwealth offence of possessing cannabis?
- What are the "legal complexities" that were not initially appreciated at first - leading to the first set of advice being rescinded?
- How did the CDPP become aware of these legal complexities?
- Is there any practical guidance you can give to ACT residents considering coming into possession of cannabis after January 2020 about whether that is legal and whether they might be prosecuted?

Thanks for considering! This is for a feature to run over the weekend but I might write news as well depending on what you're able to tell me.

Cheers,

Paul

--

Paul Karp

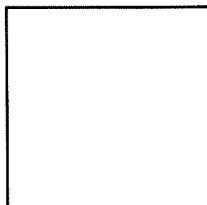
Political reporter

The Guardian | Australia

+61 (0) 420 868 336

paul.karp@theguardian.com

twitter: [@Paul_Karp](#)



Suite 68, Parliamentary Press Gallery
Parliament House, Canberra, ACT 2600
theguardian.com/au

This e-mail and all attachments are confidential and may also be privileged. If you are not the named recipient, please notify the sender and delete the e-mail and all attachments immediately. Do not disclose the contents to another person. You may not use the information for any purpose, or store, or copy, it in any way. Guardian News & Media Limited is not liable for any computer viruses or other material transmitted with or as part of this e-mail. You should employ virus checking software.

Guardian News & Media Limited is a member of Guardian Media Group plc. Registered Office: PO Box 68164, Kings Place, 90 York Way, London, N1P 2AP. Registered in England Number 908396