



Australian Government
Attorney-General's Department
Deputy Secretary
Integrity and International Group

Mr Richard Glenn
Acting Director-General
Justice and Community Safety Directorate
PO Box 158
CANBERRA ACT 2601

Dear Mr Glenn

I refer to your letter of 30 August 2019 regarding the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 and its interaction with Commonwealth law.

Your letter outlines proposed amendments by the ACT Government to the Bill intended to resolve potential incompatibilities with Commonwealth laws, including the *Criminal Code Act 1995*. Specifically, your letter seeks advice on whether proposed amendments would effectively excuse relevant conduct from offences in Division 308 of the Commonwealth Criminal Code. I understand the ACT Government proposes to retain existing offences in the *Drugs of Dependence Act 1989* (ACT) for possession and cultivation of cannabis over prescribed limits, with the inclusion of an exception such that those offences do not apply to anyone over 18 years of age.

Section 313.1 of the Criminal Code provides an exemption where conduct is justified or excused under the law of a State or Territory. The requirement for the conduct to be justified or excused by or under a law requires some positive basis in the law for the conduct that constitutes the offence. The department has not seen the proposed terms of the ACT Government's proposed amendments, but there is a question about whether an exception of the kind you describe would satisfy this requirement. The justification or excuse may need to be more explicitly identified as such in the terms of the Act. I note that while it may be possible for such a provision to enliven a defence under section 313.1 of the Code, the interaction between any new provision and other relevant Commonwealth laws would need to be considered.

Yours sincerely

Sarah Chidgey
20 September 2019