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CDPP

Australia's Federal Prosecution Service

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16 September 2019

Mr Richard Glenn
A/g Director-General
Justice and Community Safety Directorate
GPO Box 158
CANBERRA CITY ACT 2601

Dear Mr Glenn

Private Member's Bill – Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 (ACT)

Thank you for your letter dated 30 August 2019 regarding the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 (ACT)*, (***Personal Cannabis Use Bill***) which is being considered by the ACT Legislative Assembly. As you note in your letter, the purpose of the Bill is to allow for the personal use and possession of cannabis up to 50 grams and for the cultivation of up to four plants. You have also provided me with the ACT Government's drug policy and proposed amendments set out in a letter dated 18 March 2019 (**proposed amendments**).

In particular, you seek our view as to whether the introduction of the *Personal Cannabis Use Bill* and the proposed amendments, will operate as an excuse to an offence under section 308.1 of the Criminal Code (Cth) (**the Code**) by virtue of section 313.1 of the Code, and whether there is any inconsistency with Commonwealth Legislation.

The offence of possessing a controlled drug contrary to section 308.1 of the Code came in operation on 6 December 2005, and its purpose was to capture the possession of small amounts of drugs. Subsections 308.1(3) – (5) were included to pick up any State and Territory sentencing options available such as drug diversion programs, which provide education, treatment and support for drug users.

Section 313.1 of the Code provides the mechanism for recognising the “many legitimate uses of controlled substances in our community”¹ through available defences where a person engages in conduct in a State of Territory and the conduct is justified or excused by or under a law of that State or Territory.

¹ Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Bill 2005 Explanatory Memorandum page 100

These sections were introduced with the specific intention to operate in conjunction with State and Territory laws.

If the ACT government passes a law that legalises the possession and use of small amounts of cannabis, then it would be open for a person charged with section 308.1 of the Code in the ACT, to rely on this fact for the purpose of establishing a defence under section 313.1 of the Code. In this regard, the proposed amendments would appear consistent with the object and terms of section 308.1 of the Code.

I further note that any available defence would also be a relevant consideration in assessing whether there are reasonable prospects of conviction under the Prosecution Policy of the Commonwealth should such a matter be referred to this office for prosecution².

I hope this has been of assistance to you. Please do not hesitate to contact me should you wish to discuss this further.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'S. McNaughton', with a stylized, cursive flourish at the end.

Sarah McNaughton SC
Commonwealth Director of Public Prosecutions

² See paragraph 2.6 of the Prosecution Policy