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Former ACT chief minister Katy Gallagher says it is up to Canberrans to sort out the confusion created by inconsistent cannabis laws for themselves. Her comments came as ACT Chief Minister Andrew Barr released correspondence showing the Commonwealth Director of Public Prosecutions Sarah McNaughton judged the ACT proposal consistent with federal laws as recently as September 17, but withdrew her advice on Wednesday this week. The September 17 letter from Ms McNaughton to the ACT justice directorate said anyone charged under the section of the Commonwealth criminal code that makes cannabis illegal (section 308.1) could rely on section 313.1 of the code as a defence. Section 313.1 recognised the "legitimate uses of controlled substances" and allowed conduct that was justified or excused by a state or territory law. The ACT's cannabis laws "would appear consistent", she advised. She also suggested that her office would not prosecute a case if one was referred to her, saying "any available defence would also be a relevant consideration in assessing whether there are reasonable prospects of conviction". Six days later, on Monday this week, a deputy secretary in the Attorney-General's Department, Sarah Chidgey, wrote to the ACT with different advice, saying the 313.1 exemption referred to by Ms McNaughton "requires some positive basis in the law for the conduct that constitutes the offence". The department had not seen the final shape of the ACT legislation, "but there is a question about whether an exception of the kind you describe would satisfy this requirement", she said. "The justification or excuse may need to be more explicitly identified as such in the terms of the act." And on September 25, Ms McNaughton followed up, telling the ACT, "This office has since given the matter some further consideration. It is now apparent that the issues you raise are attended by legal complexities that we had not initially appreciated in formulating our response. On that basis, I have concluded that it would not be appropriate to provide a view on the proposed legislation. I apologise for any inconvenience caused." The confusion prompted Mr Barr to ask "what changed?" "Has there been any communication between federal ministers and the [Attorney-General's] department to what should be an independent director of public prosecutions?" he said. Attorney-General Christian Porter responded, "There was no involvement of the [Attorney-General's] office in correspondence from the [Commonwealth director of public prosecutions] to the ACT". Asked whether they government would make any directions to federal police or look to overturn the ACT laws in the federal parliament, Mr Porter would only answer, "This is a matter for the ACT, but where Commonwealth laws apply they remain enforceable." He did not respond to requests to clarify. Senator Gallagher said all ACT laws could be subject to a federal parliamentary veto. "My experience is that they do everything they can to overturn ACT laws," she said. READ MORE: Senator Gallagher, now in federal parliament, said if she had been voting on the legalisation of cannabis in Canberra she would probably have supported it. But asked how Canberrans should deal with cannabis becoming legal under ACT law but still illegal under federal law, and illegal under ACT drug-driving laws, she said the "onus is on citizens to understand how the laws interact with each other". "I would say for anyone who was going to consume marijuana that they do so in the knowledge of the laws, both commonwealth and the ACT," she said, speaking to reporters on Wednesday as the ACT parliament debated the cannabis laws. Under Canberra's drug driving laws, it remains illegal to drive with any amount of marijuana in your system, which could effectively make legal driving impossible for someone who smokes twice a week or less, given marijuana is detectable for much longer than alcohol. A spokesman for federal Health Minister Greg Hunt said while many Australians may believe cannabis harmless, almost a quarter of Australia's drug and alcohol treatment services were for people who had identified cannabis as their principle drug of concern. "The government does not support legalising cannabis for recreational use but notes this is an issue for individual states and territories. "Australia remains committed to the international drug control regime established by UN international drug conventions which do not support the legalisation of cannabis for recreational use. "... The issue of whether the proposed ACT legislation ... would conflict with Commonwealth law raises constitutional law considerations and is therefore a matter for the attorney-general."

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September 26 2019 - 4:00AM

Up to Canberrans to sort out confusion around drug laws: Katy Gallagher



[Kirsten Lawson](#)

[ACT Politics](#)

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Her comments came as ACT Chief Minister Andrew Barr released correspondence showing the Commonwealth Director of Public Prosecutions Sarah McNaughton judged the ACT proposal consistent with federal laws as recently as September 17, but withdrew her advice on Wednesday this week.

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Labor's Katy Gallagher. Picture: Sitthixay Dithavong

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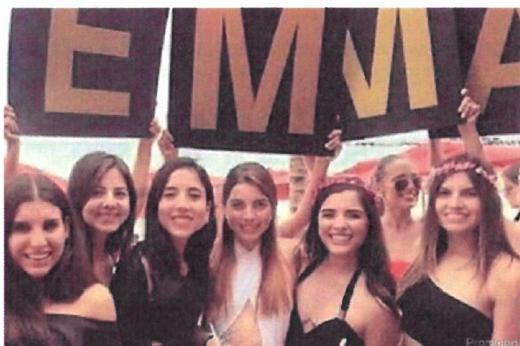


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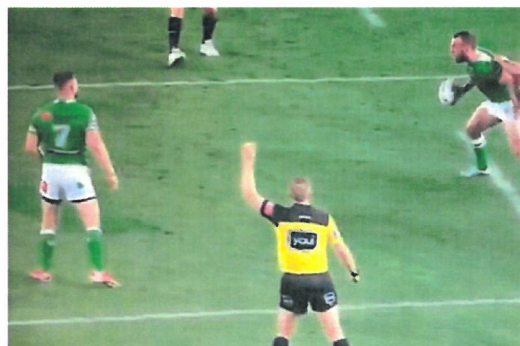
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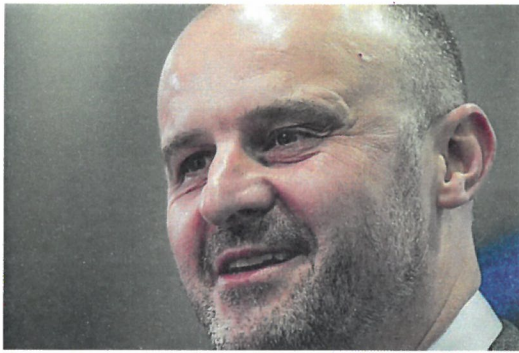
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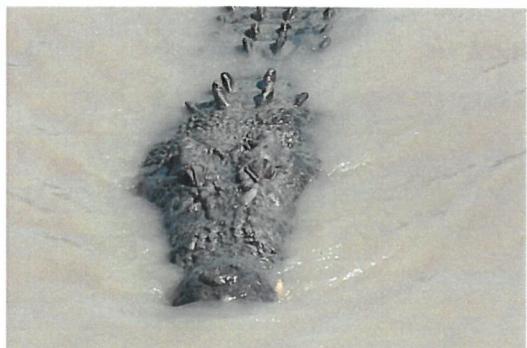
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