

A proposed bill for Tasmania: Misuse of Drugs (Cannabis Decriminalisation) Bill 2021

Submission proposing legislation to decriminalise
cannabis in Tasmania

2 September 2021

Contents

Who we are.....	4
Proposed Misuse of Drugs (Cannabis Decriminalisation) Bill 2021 for Tasmania	5

Who we are

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Proposed Misuse of Drugs (Cannabis Decriminalisation) Bill 2021 for Tasmania

TASMANIA

MISUSE OF DRUGS (CANNABIS DECRIMINALISATION) BILL 2021

CONTENTS

PART 1 – PRELIMINARY

1. Short Title
2. Commencement

PART 2 – MISUSE OF DRUGS ACT 2001 AMENDED

3. Principal Act
4. Section 22B – Cultivation of 1 or 2 cannabis plants
5. Section 22C – Cultivation of more than 4 cannabis plants
6. Section 25A – Storage of cannabis
7. Section 25B – Possession of cannabis
8. Section 28A – Offence Notices
9. Section 28B – Smoking cannabis in public place or near child

PART 3 – CONCLUDING PROVISION

10. Repeal of Act

CANNABIS DECRIMINALISATION BILL 2021

(Brought in by ...)

A BILL FOR

A Bill to amend the *Misuse of Drugs Act 2001* to decriminalise the non-commercial cultivation, possession, and use of small quantities of cannabis and for related purposes.

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short Title

This Act may be cited as the *Misuse of Drug (Cannabis Decriminalisation) Act 2021*.

2. Commencement

This Act commences on a day to be proclaimed.

PART 2 – MISUSE OF DRUGS ACT 2001 AMENDED

3. Principal Act

In this part the *Misuse of Drugs Act 2001* is referred to as the Principal Act.

4. Section 22B – Cultivation of 1 or 2 cannabis plants

The Principal Act is amended by inserting the following section into Division 2 of Part 3:

Section 22B – Cultivation of cannabis plants

- (1) A person commits an offence if the person cultivates 1 or 2 cannabis plants.

Maximum penalty: 1 penalty unit.

- (2) This section does not apply if the person –
 - (a) is 18 years old or older; and
 - (b) cultivates the plants in the State of Tasmania.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see *Evidence Act 2001 s 142A*).

- (3) In this section:

"artificially cultivate" means –

- (a) hydroponically cultivate; or
- (b) cultivate with the application of an artificial source of light or heat.

"cultivates" has the meaning given in s 3, but does not include artificially cultivate.

5. Section 22C – Cultivation of more than 4 cannabis plants

The Principal Act is amended by inserting the following section into Division 2 of Part 3:

Section 22C – Cultivation of more than 4 cannabis plants

- (1) A person commits an offence if –
 - (a) the person cultivates a cannabis plant at premises; and
 - (b) more than 4 cannabis plants are being cultivated at the premises.

Maximum penalty: 50 penalty units, imprisonment for 2 years or both.

- (2) Strict liability applies to subsection (1) (b).

- (3) It is a defence to a prosecution for an offence against section 22C (1) if the defendant proves that the defendant –
- (a) lived at the premises when cultivating the cannabis; and
 - (b) was not aware, and could not reasonably have been expected to be aware, that more than 4 cannabis plants were being cultivated at the premises.

Note The defendant has a legal burden in relation to the matters mentioned in s (3) (see *Evidence Act 2001 s 142A*).

- (4) A person commits an offence if –
- (a) the person cultivates a cannabis plant; and
 - (b) the cannabis plant is cultivated at a place other than where the person lives.

Maximum penalty: 50 penalty units, imprisonment for 2 years or both.

- (5) A person commits an offence if –
- (a) the person cultivates a cannabis plant; and
 - (b) the cannabis plant is cultivated in an area lawfully accessible to a member of the public.

Maximum penalty: 50 penalty units, imprisonment for 2 years or both.

6. Section 25A – Storage of cannabis

The Principal Act is amended by inserting the following section into Division 3 of Part 3:

Section 25A – Storage of cannabis

- (1) A person commits an offence if the person –
- (a) possesses harvested cannabis; and
 - (b) does not store the cannabis out of reach of children.

Maximum penalty: 50 penalty units, imprisonment for 2 years or both.

- (2) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant took all reasonable steps to ensure that a child could not access the cannabis.

Note The defendant has a legal burden in relation to the matters mentioned in s (2) (see *Evidence Act 2001 s 142A*).

7. Section 25B – Possession of cannabis

The Principal Act is amended by inserting the following section into Division 3 of Part 3:

Section 25B – Possession of cannabis

- (1) A person commits an offence if the person possesses –
- (a) 50g or less of dried cannabis; or
 - (b) 150g or less of cannabis that has been harvested and –
 - (i) is not dried cannabis; or
 - (ii) is a mixture of dried cannabis and cannabis that is not dried cannabis.

Maximum penalty: 1 penalty unit.

- (2) A person commits an offence if the person possesses –
- (a) more than 50g of dried cannabis; or
 - (b) more than 150g of cannabis that has been harvested and –
 - (i) is not dried cannabis; or
 - (ii) is a mixture of dried cannabis and cannabis that is not dried cannabis.

Maximum penalty: 50 penalty units, imprisonment for 2 years or both.

- (3) Subsection (1) does not apply if the person—
 - (a) is 18 years old or older; and
 - (b) possesses the cannabis in the State of Tasmania.
- (4) Subsections (1) and (2) do not apply if the person is authorised under a Tasmanian law, to possess the cannabis.

Note The defendant has a legal burden in relation to the matters mentioned in s (2) (see *Evidence Act 2001 s 142A*).

- (5) In this section:

"dried cannabis" means cannabis that has been subjected to a drying process.

8. Section 28A – Offence Notices

The Principal Act is amended by inserting the following section into Division 5 of Part 3:

Section 28A – Offence notices

- (1) If a police officer reasonably believes that a person has committed a simple cannabis offence, he or she may serve an offence notice on that person.
- (2) If an offence notice is served on a child and the police officer serving the notice reasonably believes that the child is residing with a person who stands in loco parentis to that child, the police officer shall serve a copy of the notice on that person.
- (3) An offence notice shall—
 - (a) specify the nature of the alleged simple cannabis offence; and
 - (b) specify the date and time when and place where the simple cannabis offence is alleged to have been committed; and
 - (c) contain a statement to the effect that, if the alleged offender pays the prescribed penalty for the

alleged offence within 60 days after the date of service of the notice, no further action will be taken in relation to that offence; and

- (d) specify the amount of the prescribed penalty; and
 - (e) specify the place where and how the prescribed penalty may be paid; and
 - (f) state that –
 - (i) unless a court orders otherwise, the government analyst may, under section 193C (Destruction of cannabis without court order), destroy seized cannabis without a court order; and
 - (ii) the alleged offender may apply to the Magistrates Court, under section 193D (Order for preservation of cannabis), for an order for the preservation of cannabis to which the offence relates; and
 - (g) contain any other particulars prescribed under the regulations.
- (4) If the prescribed penalty is paid in accordance with the offence notice –
- (a) any liability of the person in relation to the alleged simple cannabis offence shall be deemed to be discharged; and
 - (b) no further proceedings shall be taken in relation to the alleged simple cannabis offence; and
 - (c) the person shall not be regarded as having been convicted of the alleged simple cannabis offence.
- (5) Any substance, equipment or object seized under any Act in connection with the alleged simple cannabis offence that would have been liable to forfeiture in the event of a conviction shall, on payment of the prescribed penalty in

accordance with the offence notice, be forfeited to the Territory.

- (6) Subject to subsection (4), nothing in this section shall be construed as affecting the institution or prosecution of proceedings for a simple cannabis offence.
- (7) In this section:

"child" means a person who is under 18 years old on the date of the alleged offence.

"simple cannabis offence" means –

- (a) an offence against section 22A (Cultivation of 1 or 2 cannabis plants); or

Note Section 162 does not include artificial cultivation of cannabis plants.

- (b) an offence against section 25A (1).

- (8) In relation to a simple cannabis offence, the prescribed penalty is 1 penalty unit.

9. Section 28B – Smoking cannabis in public place or near child

The Principal Act is amended to include the following section into Division 5 of Part 3:

Section 28B – Smoking cannabis in public place or near child

- (1) A person commits an offence if the person smokes cannabis in a public place.

Maximum penalty: 30 penalty units.

- (2) A person commits an offence if –
- (a) the person smokes cannabis; and
- (b) a child is exposed to smoke or vapour from the cannabis the person is smoking.

Maximum penalty: 30 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that the defendant –
- (a) took all reasonable steps to ensure that the child was not exposed to the smoke or vapour; or
 - (b) believed on reasonable grounds that the child was 18 years old or older.

Note The defendant has a legal burden in relation to the matters mentioned in s (2) (see *Evidence Act 2001 s 142A*).

- (4) In this section:

"personal vaporiser product" – has the same meaning as in section 3 of the *Public Health Act 1997*;

"public place" – has the same meaning as in section 3 of the *Public Health Act 1997*;

"smoke" *cannabis* means –

- (a) to directly puff smoke, or vapour, from cannabis, or a product that contains cannabis, whether or not a device for the inhalation of smoke, or vapour, is used; or
- (b) to hold or to have control over –
 - (i) cannabis, or a product that contains cannabis, while it is ignited; or
 - (ii) a personal vaporiser that contains cannabis and that is activated.

Examples – devices – par (a)

- a personal vaporiser
- a pipe (including a hookah, water pipe or bong)
- a cigarette holder

10. Repeal of Act

This Act is repealed on the three hundredth and sixty fifth day from the day on which this Act commences.