

**Misuse of Drugs Amendment
(Lawful Personal Use of
Cannabis) Bill 2024**

Explanatory Memorandum

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Overview of Bill

The *Misuse of Drugs Amendment (Lawful Personal Use of Cannabis) Bill 2024* (**Bill**) amends the *Misuse of Drugs Act 1981* (**Act**) so as to make lawful the possession of a limited amount of cannabis and the cultivation of a limited number of cannabis plants for personal adult use.

On Royal Assent, it will be legal to grow up to six cannabis plants at an adult's principal place of residence - indoors, or outdoors; to share or gift up to 50 grams of cannabis; and to possess and use up to 50 grams of cannabis in private without an offence being committed.

The Bill also addresses potential risks to public safety by requiring that cannabis cannot be smoked or inhaled near children (referred to in the Act as "young persons") nor in a public place.

Clause 1. Short Title

This clause provides that, when the Bill receives Royal Assent, it will be known as the *Misuse of Drugs Amendment (Lawful Personal Use of Cannabis) Act 2024*.

Clause 2. Commencement

Clause 2 provides for the commencement of the Act.

Sections 1 and 2 come into effect on the day upon which the Act receives Royal Assent.

The rest of the Act comes into operation the day after Royal Assent.

Clause 3. Act Amended

The Bill amends the *Misuse of Drugs Act 1981*.

Clause 4. Section 5 amended

Section 5 of the Act provides for offences relating to premises and utensils used in relation to prohibited drugs and prohibited plants.

Clause 4 inserts new section 5(4), providing that a person does not commit a simple offence under subsection (1)(a), (b) or (c) (in relation to the occupation, ownership, leasing or management of premises) by reason only that the premises are being used for the preparation, use or supply of cannabis or cannabis plants, in circumstances that are lawful under new Part IIIA Division 4 as inserted by the Bill.

Clause 5. Section 6 amended

Section 6 of the Act provides for offences relating to prohibited drugs generally.

Clause 5 inserts new section 6(6), providing that a person does not commit a crime under subsection (1), or a simple offence under subsection (2), by reason only that the person possesses, prepares, supplies, offers to supply, or uses cannabis in circumstances that are lawful under new Part IIIA Division 4 as inserted by the Bill.

Clause 6. Section 7 amended

Section 7 of the Act provides for offences relating to prohibited drugs generally.

Clause 6 inserts new section 7(4), providing that a person does not commit a crime under subsection (1), or a simple offence under subsection (2), by reason only that the person possesses, cultivates, or supplies a cannabis plant in circumstances that are lawful under new Part IIIA Division 4 as inserted by the Bill.

Clause 7. Section 7A amended

Section 7A of the Act provides for offences relating to things used in the hydroponic cultivation of prohibited plants.

Clause 7 inserts new section 7A(4), providing that a person does not commit an indictable offence under subsection (1) by reason only that the person sells, supplies, or offers to sell or supply a thing in circumstances that are lawful under new Part IIIA Division 4 as inserted by the Bill.

Clause 8. Section 7B amended

Section 7B of the Act provides for offences in relation to drug paraphernalia.

Clause 8 inserts new section 7B(8), providing that a person does not commit an offence under subsections (2), (3) and / or (6) by reason only that the person displays, sells, or possesses drug paraphernalia in circumstances that are lawful under new Part IIIA Division 4 as inserted by the Bill.

Clause 9. Part IIIA heading amended

This clause amends the heading of Part IIIA, to reflect the changes made to the Act in relation to young persons and the personal adult use of cannabis.

Clause 10. Section 8B amended

This clause amends the definition of a "*minor cannabis related offence*" in section 8B(1) by deleting reference to an offence under section 5(1)(d)(i). This is a consequential amendment, as section 5(1)(d)(i) has been deleted in a previous amendment to the Act, and so there is no longer an offence under that section for the purposes of this definition.

Clause 11. Part IIIA Division 2 heading amended

This clause amends the heading of Part IIIA Division 2, by inserting the words "for young people" after the word "requirements". This Division, which relates to Cannabis Intervention Requirements, will only continue to apply to "young persons" when the Bill comes into effect.

Clause 12. Section 8E amended

This clause amends section 8E by:

- (a) inserting the word "*young*" after the words "*believe that a*" in section 8E(1); and,
- (b) deleting section 8E(4) in its entirety.

The effect of this amendment is that a Cannabis Intervention Requirement (**CIR**) will only be able to be given for a minor cannabis related offence, to a young person after the amendments come into effect. This is because the limits that apply to a CIR will be lawful in relation to adults when the Bill comes into effect.

Clause 13. Section 8F amended

This clause makes two minor amendments to section 8F in favour of gender neutral language, replacing "he or she" with "they" in both cases.

Clause 14. Part IIIA Division 4 inserted

This clause inserts a new Division 4 which provides for the lawful personal adult use of cannabis and cultivation of cannabis plants in certain circumstances. It inserts new sections 8MA to 8MH.

Section 8MA defines new terms used in the Division, being "personal use," and "public place".

Section 8MB(1) provides that it is lawful under these amendments for a person to knowingly permit premises to be used for the purposes of:

- (a) possession, preparation and use of cannabis as permitted in section 8MC;
- (b) possession and cultivation of cannabis plants as permitted in section 8MD; and
- (c) supply and offer to supply cannabis as permitted in section 8MH.

Section 8MB(2) then goes on to confirm that it is lawful for a person to be knowingly concerned in the management of premises used for the purposes set out in subsection (1)(a), (b) and (c).

Section 8MC(1) makes it lawful for the purposes of the Act for an adult to possess, prepare and use not more than 50 grams of cannabis for personal use, in a place other than a public place, and subject to section 8MG (not smoking or inhaling near young children).

Section 8MC(2) goes on to confirm that it is lawful for a person to possess, prepare and use more than 50 grams of cannabis at the person's principal place of residence, if the person proves that the cannabis was derived from cannabis plants that were lawfully cultivated under section 8MD (i.e. from not more than 6 plants).

Section 8MD(1) makes it lawful for an adult to possess and cultivate, including by hydroponic means, at the adult's principal place of residence, not more than 6 cannabis plants for personal use.

Subsection (1) is subject to the restriction that no more than 6 cannabis plants may be cultivated at a single place of residence, regardless of whether those plants are cultivated by one person or different people, at the same residence.

Section 8ME makes it lawful for an adult to sell or supply, and to offer to sell or supply a thing that may be used to cultivate a cannabis plant by hydroponic means if the adult believes on reasonable grounds that the thing will or may be used to cultivate cannabis plants in circumstances that are lawful under section 8MD (no more than 6 plants at a person's principal place of residence).

Section 8MF makes it lawful for a person to:

- (a) display drug paraphernalia for sale in a retail outlet (subsection (1)); and
- (b) sell drug paraphernalia to an adult (subsection (2)),

so long as the person or seller believes on reasonable grounds that the paraphernalia will be used in circumstances that are lawful under section 8MC (not more than 50 grams for personal use not at a public place).

Section 8F(3) makes it lawful for an adult to possess drug paraphernalia in or on which there is cannabis, so long as the paraphernalia is for use in circumstances that

are lawful under section 8MC (not more than 50 grams for personal use not at a public place).

Section 8MG(1) confirms that it is an offence, for the purposes of section 8MC, for an adult to smoke cannabis so that a young person is either passively exposed to or actively can smoke or inhale the smoke or fumes of the cannabis.

Section 8MG(2) provides that a person does not commit an offence under section 6(2) by reason only of the person smoking cannabis in contravention of subsection (1) if the person can prove that they:

- (a) took all reasonable steps to ensure that the young person was not exposed to, or could not smoke or inhale, the smoke and fumes of the cannabis being smoked by the adult; or
- (b) if the person believed on reasonable grounds that the young person was at least 18 years old.

Section 8MH makes it lawful for an adult to supply or offer to supply cannabis to another adult if:

- (a) the supply is not for payment, reward, consideration, barter, exchange, or compensation; and
- (b) the quantity of the cannabis being supplied or offered for supply does not exceed 50 grams.

Section 8MH(2) makes it lawful for an adult to supply or offer to supply cannabis plants to another adult if:

- (a) the supply is not for payment, reward, consideration, barter, exchange or other compensation; and
- (b) the number of cannabis plants does not exceed 6.

In effect these provisions allow the gifting of cannabis and cannabis plants within the lawful limits for personal use and cultivation under the preceding provisions of the Division.

Clause 15. Section 32A amended

This clause inserts, after section 32A(1), the following additional subsections.

Subsection 32A(1A), which gives a court discretion in relation to the declaration of a person as a drug trafficker in relation to cannabis if the court is satisfied that it would be clearly unjust to do so, having regard to the circumstances of the commission of the offence, and any other matter the court considers relevant.

Subsection 32A(1B), which requires a court to give reasons if it, because of subsection 32A(1A), chooses not to declare a person to be a drug trafficker in relation to cannabis.

Clause 16. Part VII Division 3 inserted

This clause inserts a new Division - Division 3 - Provisions for *Misuse of Drugs Amendment (Lawful Personal Use of Cannabis) Act 2024*.

This Division contains transitional provisions. If there is a CIN (Cannabis Infringement Notice) in effect on the day the amendments come into effect in relation to an adult, then the CIN ceases to have force so the offender does not have to comply with it or pay any fine in relation to it.

This reflects the fact that the possession or use of cannabis or possession of drug paraphernalia for which a CIN was issued, would be lawful under the amendments to the Act when they come into effect.

Clause 17. Schedule III Division 1 amended

This clause deletes Schedule III Division 1, Item 27, which relates to the number of cannabis cigarettes that determine the court of trial.

It is more appropriate to determine the quantity of cannabis by weight, not by number of cigarettes.

Clause 18. Schedule V Division 1 amended

This clause deletes Schedule V Division 1, Item 27, which relates to the number of cannabis cigarettes that give rise to a presumption of an intention to sell or supply a prohibited drug.

It is more appropriate to determine the quantity of cannabis by weight, not by number of cigarettes.