**CANNABIS FOR PRIVATE PURPOSES BILL, 2020 (B 19 OF 2020)**

**Comments and Responses**

**Portfolio Committee on Justice and Correctional Services**

**Comments received:**

**1. F Saaiman**

**2. Black Butter**

**3. Western Cape Government (1)**

**4. Western Cape Government (2)**

**5. Wonderlife Cannabis Institute**

**6. Marc Wegerif (University of Pretoria)**

**7. Traditional Healers Organization (THO)**

**8. Schindlers Attorneys and Notaries (Schindlers)**

**9. South African Medical Association (SAMA)**

**10. New Race Consciousness (NRC)**

**11. Dagga Party of South Africa (Jeremy Acton) (DPSA)**

**12. COSATU**

**13. Cannabis Development Council of South Africa (CDCSA)**

**14. Cannabis Development Council of Gauteng (CDCGP)**

**15. Cannabis Trade Association Africa**

**16. Azibuye Emasisweni Institute of Wellness and Indigenous Knowledge Systems**

**17. Jeff Verlinden**

**18. K Shandu**

**19. M Noonan**

**20. Moleboheng Semela**

**21. GSR Consulting (Pty) Ltd (GSR)**

**22. Theocracy Reign Order of the Nyahbinghi South Africa/ Ras Tafari Ganjah Council: Free State (TRO)**

**23. Black Star Liner Rastafari Theocracy Reign Church of Nyahbinghi Order (BSL)**

**24. Organization of Alliance and Unity (OAU)**

**25. South African Cannabis Community & Regulatory Association (SACCRA 1)**

**26. South African Cannabis Community & Regulatory Association (SACCRA 2)**

**27. Rastafari National Council**

**28. South African Drug Policy Initiative (SADPI)**

**29. South African Medical Research Council’s Alcohol, Tobacco and Drug Abuse Research Unit (Professors Charles Parry/ Bronwyn Myers) (SAMRC)**

**30. Mpumalanga Rastafari Community**

**31. Tony Budden**

**32. KZN Rasta Business Foundation**

**1. GENERAL COMMENTS AND CLAUSE 1(2) OF THE BILL**

|  |  |
| --- | --- |
| **Comments** | **Responses** |
| 1.1 Professors Parry/ Myers both whom may be regarded as experts on drug abuse, comment as follows: (a) The legal decision to decriminalise cannabis for private use is the correct one. It is not appropriate from a human rights perspective to incarcerate a person who uses cannabis, give them a criminal record and waste state resources. (b) While the Bill does acknowledge the need to protect children, others in the vicinity of cannabis smokers and other road users, it is believed that the Bill needs amendments to mitigate risks. This may also require changes / emphases in legislation, regulations and policies of government departments, other than the DOJ&CD.(c) Allowing cannabis for private use is likely to lead to increased use of cannabis by adolescents due to more open use and therefore greater exposure. Adolescents who are regular smokers of cannabis are at risk of having arrested psychosocial development. There is also a growing concern regarding the long-term effects of regular cannabis use on adolescent brain development. Brain development continues until the age of 25, so this is also a concern for young people in emerging adulthood. It is known that there are some short-term effects in terms of cognitive functioning and memory based on fMRI research conducted in Cape Town. There is now a 10-years study in the USA looking into this.(d) While there is only a small risk of cannabis triggering latent mental health problems among people with underlying risks for these conditions, it is not negligible. Local research has highlighted the burden of cannabis-induced psychoses on under-resourced psychiatric services in KZN, the Eastern Cape and the Western Cape. It has also highlighted the role that it plays in inducing first-episode psychoses. Any increased use of cannabis (which is likely at a population level when cannabis is decriminalised) will by implication increase the need for psychiatric services. These services are already chronically under-resourced and are unlikely to cope with an increased demand. In addition, currently cannabis comprises between 22% (Eastern Cape) and 40% (Limpopo and Mpumalanga) of drug treatment demand in South Africa, and between 24% (Eastern Cape) and 77% (Free State, North West, Northern Cape) of drug treatment demand among persons 19 years and younger. This has increased over the past decade, except in Limpopo and Mpumalanga. Funds need to be provided to address increasing demand for mental health and drug treatment services for persons who will inevitably experience problems with the private use of cannabis, including some chronic users becoming dependent on cannabis (dependence syndrome).(e) The public should be aware of the harms associated with cannabis use and presenting further public health information on this in an accessible format is essential. (f) Improved population level monitoring of use and associated harms and the reporting of these harms could increase public awareness of the potential risks associated with using cannabis. Improved monitoring will pinpoint where action is needed to address harms. Indicators are needed in the following areas and they need to be collected and collated on a periodic basis:- Extent and patterns of cannabis use among adults and adolescents (not just prevalence of use, but also frequency of use, quantity of use, potency of cannabis, and mode of use (especially edibles). - Cannabis-related road traffic offenses. - Cannabis-related trauma presentations. - Cannabis-related demand for psychiatric/mental health and substance abuse treatment. - Cannabis induced psychosis. (g) A concern is raised that the Bill will cause a slippery slope (*de factor* legalisation) and that we will not have the means or will to go after widespread (illegal) cannabis growing, trading, use in the streets, etc.(SAMRC (p 1 – 3) | 1.1 (a) Agree fully with the sentiments of the Professors that the legal decision "to decriminalise cannabis for private use is the correct one" and that it is "not appropriate from a human rights perspective to incarcerate a person who use cannabis, give them a criminal record and waste state resources".1.1(b) (i) In ***Minister of Justice and Constitutional Development and Others v Prince*** 2018 (6) SA 393 (CC) (**Prince Judgment**), the Constitutional Court declared that—- section 4*(b)* of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992) (the Drugs Act), read with Part III of Schedule 2 of that Act, is unconstitutional and therefore invalid to the extent that it criminalises the use or possession of cannabis by an adult in private for that adult’s personal consumption in private; and\* section 5(*b)* of the Drugs Act, read with Part III of Schedule 2 and with the definition of “deal in” (“cultivation” is regarded as to “deal in”) in section 1 of that Act, is unconstitutional and therefore invalid to the extent that it criminalises the cultivation of cannabis by an adult in a private place for that adult’s personal consumption in private.(ii) The Constitutional Court held that the aforementioned provisions limited the right to privacy entrenched in section 14 of the Constitution of the Republic of South Africa (the Constitution) and that the State did not satisfy the Court that these provisions are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom as required by section 36 of the Constitution. The Constitutional Court suspended its order of invalidity for a period of 24 months to give Parliament an opportunity to correct the constitutional defects in the Drugs Act and the Medicines Act and granted interim relief by way of a reading-in to the provisions of the Drugs Act and the Medicines Act to ensure that during the period of suspension of invalidity it would not be a criminal offence for an adult person –\* to use or be in possession of cannabis in private for his or her personal consumption in private; and\* to cultivate cannabis in a private place for his or her personal consumption in private.(iii) The Department of Justice and Constitutional Development (DOJ&CD), is responsible for the administration of the Drugs Act and the main objects of the Bill is therefore to give effect to the Prince Judgment through appropriate legislative provisions to -\* respect the right to privacy of an adult person to possess cannabis plant cultivation material; to cultivate a prescribed quantity of cannabis plants; to possess a prescribed quantity of cannabis; and to consume cannabis; \* regulate the possession of cannabis plant cultivation material; the cultivation of cannabis plants; the possession of cannabis; and the consumption of cannabis by an adult person –- in line with the Prince Judgment; and- to protect adults and children against the harms of cannabis that may result from such legalisation of cannabis. (iv) It is correctly stated that various Departments, other than the DOJ&CD, have to develop and implement appropriate measures to deal with the associated harms of the legalisation of cannabis. The Prevention of and Treatment for Substance Abuse Act, 2008 (Act No. 70 of 2008), provides for appropriate measures to address the harms associated with cannabis and involves various other role-players, among others, government departments responsible for social matters, finance, education, health, justice, arts and culture, sports and recreation, local and provincial government, correctional services and police. 1.1(c) and (d) Legalisation will definitely give rise to increased use of cannabis, not only by adults but also by children due to the availability of cannabis and the greater exposure thereto. It is acknowledged that increased cannabis consumption will require a proportional increase of the already under-resourced initiatives/ measures to deal with the harms associated with cannabis. 1.1(e) Public education and awareness programmes as harm reduction measures are not provided for in the Bill since the Prevention of and Treatment for Substance Abuse Act, already caters therefore as well as other harm reduction measures against substance abuse. However, effective public education and awareness programmes are dependent on available resources.1.1(f) It is submitted that the Prevention of and Treatment for Substance Abuse Act, already caters for population level monitoring of use of cannabis and associated harms. 1.1(g) Although clause 2 of the Bill respects the right of privacy of an adult person to use and possess cannabis and to cultivate cannabis plants as reflected in the Prince Judgment, it is subject to clauses 3, 4, 5 and 6, which impose justifiable limitation on this right, to protect other persons, including children, against the harms of cannabis.  |
| 1.2 The Bill does not:\* Protect employers and public in general, when a THC intoxicated employee causes damages, including the failure to comply with contractual obligations or endangering life, limb or property of colleagues, the public or clients;\* confer a right on employers to test employees for THC intoxication; or\* provide for instances where a person, who is under the influence of cannabis, operate dangerous equipment or embark on activities which may cause damage or harm.(Maureen Noonan) | 1.2 These aspects are regulated in terms of applicable labour law and employment contracts. |
| 1.3 SAMA:(a) World Medical Association (WMA) Statement on Medical Cannabis, although focused on cannabis for medicinal and not recreational use, affirms that “national medical associations should support strategies to prevent and reduce recreational cannabis use". (p8)(b) The Austrian Medical Association’s position on cannabis also asserts that “the personal recreational use of cannabis should also be prohibited”. (p8)(c) SAMA respects the compelling scientific evidence of the health and societal harms of recreational cannabis use and believes that the WMA framework provides sufficient guidance for our views at this stage. While SAMA urges caution on the part of the South African Government regarding the on-going rapid progression of cannabis decriminalisation for non-medical purposes, SAMA supports, and urges government to avail resources to strengthen drug (cannabis in this context) treatment, prevention, and harm reduction interventions. (p 9)(d) The World Drug Report 2019 records that, in 2017 in South Africa, between 29 and 56 per cent of those in treatment had cannabis as the primary drug of concern, and that the proportions were higher in the under 20 age group (p 9 – 10).(e) Typically, high unemployment, poverty, a struggling healthcare system, high drug abuse, high crime rate, a young population, and the legalisation of cannabis may stimulate cannabis abuse. Economic pressures for expanding cannabis use, or following of global trends, must be evaluated against the resultant health and societal costs. (p 9 -10).(f) The multiple cannabis-related harms identified in literature include: -Abnormal pregnancy outcomes, including lower birth weight and preterm birth; - Mental health issues ( psychosis, later diagnosis of schizophrenia);- Increased driving impairment and an increase motor accident fatality rate;- Cannabis smoke contains multiple carcinogens and smoking give rise to respiratory problems including asthma; - Cannabis dependence; and- Risk of toxicity where children are exposed to cannabis smoke (p12).(g) The Bill must not negate the objectives of current on-going stricter reforms for tobacco and alcohol control in South Africa and must ensure public safety and health benefits (p11).  | 1.3 (a) The Prevention of and Treatment for Substance Abuse Act, aims to achieve these objectives. 1.3(b) The view of SAMA is acknowledged, but this would be in conflict with the Prince Judgment. 1.3(c), (d), (e) and (f) The health and social harms associated with cannabis use are extensively discussed in the subject matter literature. It is acknowledged that increased cannabis consumption will further burden the already under-resourced initiatives for treatment, prevention, and harm reduction interventions pertaining to cannabis use. The Bill aims to curb some of the health and social harms by regulating the cultivation of, availability of and use of cannabis. Other countries opted for commercialisation of cannabis as a harm reduction measure, which ensures available funding for initiatives to address the resultant harm of cannabis. 1.3(g) The Tobacco Products Control Act, 1993 (Act No. 83 of 1993) and the Liquor Act, 2003 (Act No. 59 of 2003) aim, among others, to regulate aspects relating to commercial activities of tobacco or liquor, restrict the use of a tobacco or liquor to certain places, prohibit the selling or providing of tobacco or liquor to underage persons etc. The Bill on the other hand, prohibits dealing in cannabis cultivation material (clause 3(7)); cannabis plants (clause 3(6)) and cannabis (clause 4(5)). The on-going stricter reforms referred to in the comment will therefore not be directly applicable to the Bill, but should definitely be considered if commercialisation of cannabis is realised as a harm reduction measure (see clause 1(2) of the Bill).  |
| 1.4 The lack of consultation on the Bill is criticised. (F Saaiman (p 1) | 1.4 It is acknowledged that the Bill was not made available for public comment before its introduction into Parliament. Although preferable, it is not an absolute requirement, to subject a Bill to public consultation process before its introduction into Parliament. In any event the proposed ambit of the Bill is rather narrow (see the discussion in paragraph 1.5 below), since it aims to address provisions of the Drugs Act which have been declared unconstitutional since they infringe on the right to privacy of an adult to use cannabis in private, to possess cannabis in private for his or her own consumption in private, and to cultivate cannabis in private for his or her own consumption in private.  |
| 1.5 Cannabis has the potential to be an economic multiplier, yet the Bill provides for the growing of cannabis and cannabis use as lawful activities while at the same time it does not allow the trade of cannabis. It is submitted that this will result in unintended consequences which will contribute to a growing number of unlicensed outlets and individuals selling seedlings and cannabis products both for recreational and medicinal purposes. (Western Cape Government (1) (p 1)) | 1.5(i) The objective of the Bill is to give effect to the Prince Judgment (summarised in paragraph 1.1 above) to address the impermissible limitation in sections 4*(b)* and 5*(b)* of the Drugs Act on an adult person's right of privacy to use or be in possession of cannabis in private for his or her personal consumption in private, and to cultivate cannabis in a private place for personal consumption in private, within the context:\* That Parliament must determine an appropriate amount of cannabis for personal use (paragraphs [79] to [81]);\* that any activity in connection with the cultivation of cannabis by an adult in private for his or her personal consumption in private must not be criminalised paragraphs [85], [86];\* that the permitted use or possession of cannabis or cultivation of cannabis plants is not confined to a home or a private dwelling since there are other places other than a person’s home or a private dwelling where the prohibition of the use or possession or cultivation of cannabis would be inconsistent with the right to privacy if the use or possession or cultivation of cannabis was by an adult in private for his or her personal consumption in private (the term “in private” instead of “at home” or “in a private dwelling” is preferable) (paragraph [108]);\* that the use, including smoking, of cannabis in public or in the presence of children or in the presence of non-consenting adult persons is not permitted (paragraph [109](b)]);\* that dealing-in cannabis is a justifiable limitation of the right to privacy (paragraph [88]); and\* that the use or possession of cannabis in private other than by an adult for his or her personal consumption is not permitted (paragraph [109](c)).1.5(ii) Although the Constitutional Court indicated that dealing in cannabis cannot be legalised on the basis of an unjustifiable infringement of the right to privacy, it may be justified on the basis of other protected right. It must further be pointed out that the DOJ&CD cannot promote legislation that provides for commercial activities relating to cannabis, since such initiative falls within the mandate of other Departments (Departments of Health; Agriculture, Land Reform and Rural Development; and Trade, Industry and Competition). Clause 1(2) of the Bill does provide for the promotion of other legislation that may deal with commercialisation of cannabis.  |
| 1.6 According to the author the Bill curbs the medicinal use of cannabis and infringes on cultural practices.(Black Butter) | 1.6(i) Medicinal use of cannabis is regulated in terms of the Medicines Act. Section 22A(5) of the Medicines Act, provides that a Schedule 6 substance may only be distributed by an authorised person such as a medical doctor, pharmacist, dentist, veterinarian. Cannabis was previously regarded as a Schedule 7 substance in terms of the Medicines Act, which restricted its u medicinal use. However, in terms of Government Notice No. 586 of 22 May 2020 (GN 586), cannabis and THC have now been included in Schedule 6 and can be used for medicinal purposes.1.6(ii) Clause 1(2) of the Bill does provide that the provisions of the Bill do not apply to any person who is permitted or authorised in terms of any other Act of Parliament to deal in cannabis plant cultivation material, cannabis plants, cannabis or a cannabis product; or cultivate cannabis plants. If cultural practices involving cannabis are authorised by any other law, such practices will be excluded from the provision of the Act on the basis of clause 1(2) or the authorisation in such other law. |
| 1.7 The punitive approach to cannabis use, is inconsistent with legislation regulating alcohol production, sale and consumption. The Bill’s continued emphasis on the criminalisation and incarceration of persons for cannabis use, cultivation, possession and sale above the threshold quantities would require an investment in police and criminal justice resources that cannot be justified in the South African context at present, where police capacity is desperately needed to reduce serious and violent crime. (Western Cape Government (1) (p 2)) | 1.7(i) It is agreed that criminalisation of small quantities of drugs for personal use is not an appropriate measure to deal with drug abuse due to the fact that the victim of the offence is the drug user and there is no harm to others. However, the offences contemplated in clauses 3, 4, 5 and 6 of the Bill aim to address the possible dealing in cannabis and protect others against the harms associated with cannabis use. Many countries that opted for commercialisation of cannabis have similar provisions as those contemplated in clauses 3, 4, 5 and 6 of the Bill to protect others against the resultant harm of cannabis in a controlled legalisation environment see among others:\* The Canadian Cannabis Act, 2018 (S.C. 2018, c. 16): possession offences (section 8); distribution offences (section 9); dealing offences (section 10); Importing and exporting offences (section 11); (Cultivation, propagation and harvesting offences (including limitations) (section 10(4) – (7);\* Uruguay (Law No. 19.172): personal possession limitations; private cultivation limitations; limitation on sharing at home; dagga club limitations. \* Australian Capital Territory (Drugs of Dependence (Personal Use) Amendment Act, 2019: Allow possession of 50 grams of dried cannabis/ 150 grams of fresh cannabis; two cannabis plants per person, with a maximum of four plants per household; use cannabis in private; prohibit use in a public place; criminalise the exposure of a child to cannabis smoke; criminalise the storing of cannabis in a place that can be accessed by children; and criminalise the growing of cannabis in a public place. \* US States: New York (Marijuana Regulation and Taxation Act); Washington (Initiative 502); Colorado (Const. Art. XVIII, Section 16 and Criminal Code); Illinois; California; and Washington.1.7(ii) It is submitted that the Bill is not inconsistent with legislation regulating liquor production, sale and consumption. The various liquor laws, among others, prohibits the supply of liquor to a minor (with the exception of moderate use in the presence and under the supervision of and adult and for purposes of religious sacrament); the involvement of a minor in any activities regarding the production or supply of liquor; the consumption of liquor in certain places; the manufacturing of liquor and selling of liquor without a license.  |
| 1.8 Reasons must be provided why the Bill was not made available for public comment prior to its introduction in Parliament. (Western Cape Government (2) (p 1)) | 1.8 See paragraph 1.4, above. |
| 1.9 The regulation of private use and quantity restrictions that are imposed in effect criminalise available safe, effective, inexpensive natural cannabis treatment which do not have the horrific side effects of conventional pharmaceutical drugs including chemotherapy, radiation, and nuclear treatment.(SACCRA 1 (p 1)) | 1.9 Due to the Schedule 6 status of cannabis in terms of the Medicines Act, it is available for medicinal use. |
| 1.10 The Bill must provide for scientific and academic research and studies relating to cannabis. (Wegerif (p1and 10) | 1.10 The ambit of the Bill is discussed in paragraph 1.5. Other applicable legislation should provide for research and development.  |
| 1.11 The positive aspects of the Bill are:\* The expungement of prior criminal records regarding the use and/or possession of cannabis in terms of the relevant legislation.\* The Bill protects children from being over exposed to, using, and dealing in cannabis, as well as protecting children from adults who would engage children in this manner.\* The Bill provides for the repeal and amendment of the relevant laws which currently criminalise the use and possession of cannabis.\* The Bill allows for the legal possession, without penalty, of cannabis and does so in relation to greater quantities of cannabis than many other jurisdictions worldwide.\* The Bill allows for the exchange of cannabis plants and cannabis provided it is without remuneration. Importantly, this accommodates past and existing practices of local sharing in particular for traditional medicinal uses.(Wegerif (p 2 - 3)) | 1.11 Noted |
| 1.12 It is not clear whether a SEIAS was conducted in respect of the Bill. (Western Cape Government (2) (p 1)) | 1.12 A SEIAS was conducted as it is a requirement before Cabinet can be approached for permission to introduce a Bill into Parliament. The SEIAS certificate is attached as **Annexure A**. |
| 1.13 The impact of the Bill on other legislation should be considered, among others:(a) How will child protection investigation processes be affected by the Bill? Would a child protection social worker conduct a cannabis investigation to determine whether the caregiver or guardian who uses cannabis complies with the law or is offending beyond the legal requirements stipulated in the above-mentioned clauses?Screening of foster parents and safety parents who consume cannabis.(b) The impact of the Bill on Rastafarian families must be considered. In the Bill’s current form, children in those families may be removed because they are exposed to the use or abuse of cannabis.(c) The impact of prenatal exposure on the child’s cognitive development must be considered.(d) Should the Bill be enacted, it should be accompanied by a public awareness campaign to inform the public on cannabis-related harms. (Western Cape Government (2) (p 1-2)) | 1.13 (a) The ambit of the Bill is discussed in paragraph 1.5. The Bill, similar to applicable liquor legislation, is subject to the provisions of other applicable legislation such as the Children's Act, 2005 (Act No. 38 of 2005). 1.13(b) Rastafarian families are not exempted from the provisions of the Bill. Amendments to the Bill may be considered to accommodate religious groups, see paragraph 1.24, below.1.13(c) It is correct that the impact of prenatal exposure on the child’s cognitive development must be considered. However, this should also be considered in the context of tobacco, alcohol and all the drugs included in the Drugs Act. Public education and awareness programs are possible mechanisms to address the issue.1.13(d) Public education and awareness campaigns need not be included in the Bill since the Prevention of and Treatment for Substance Abuse Act, already caters therefore. |
| 1.14 The Bill is not an amendment Bill. The general explanatory note on top of page 2 of the Bill is misplaced as it is required only in the case of amendment Bills. (Western Cape Government (2) (p 2)) | 1.14 The Bill amends the Drugs Act and the National Road Traffic Act in Schedule 5 to the Bill, and the explanatory note relates to those amendments. |
| 1.15 The Bill is silent on the medical use of cannabis administered to children under the age of 18 years. Clarity is required on whether this was considered. It is proposed that express provision must be made in the Bill in this regard. (Western Cape Government (2) (p 2)) | 1.15 The Medicines Act deals with the medicinal administration of cannabis - see paragraph 1.6(i), above. |
| 1.16 It is proposed that a clause should be inserted in the Bill to clarify whether “hemp” is subject to the application of the Bill or whether it is to be subjected to prescripts separate and extraneous to the Bill. (Western Cape Government (2) (p 2 - 3)) | 1.16 In terms of the Bill: A cannabis plant is defined as a plant of the genus Cannabis, but excludes hemp. Cannabis is defined as the flowering or fruiting tops and the leaves of a cannabis plant that have been separated from the plant, but excludes any seed, seedling, the stalk and branches without any leaf, fruit or flower, and the roots of a cannabis plant. Hemp is in turn defined as a plant of the genus Cannabis which has a concentration of THC in the leaves and flowering heads that does not exceed the percentage as may be prescribed in terms of, and is cultivated under authority of, a law that regulates its cultivation. In terms of the afore-mentioned definitions, hemp, is regarded as cannabis for purposes of the Bill unless it has a concentration of THC in the leaves and flowering heads that does not exceed the percentage as may be prescribed in terms of, and is cultivated under authority of, a law that regulates its cultivation. Similar to foreign jurisdictions, the Bill requires that legislation be enacted to regulate all aspects relating to hemp. |
| 1.17 Legalisation of cannabis as an agricultural crop is proposed and that this matter must fall under the Department of Agriculture. (Wonderlife Cannabis Institute p1) | 1.17 See paragraph 1.5(ii) above.  |
| 1.18 The Medicines Act and the Traditional Health Practitioners Act, 2004 (Act 35 of 2004), exclude cannabis from the ambit of medicinal use. All substances for medicinal use are subject to regulation by SAPHRA and the current system mainly benefits large pharmaceutical companies. The Bill should cater for the use of traditional medicines such as cannabis. Furthermore with reference to the Medicines Act it is proposed that its current scheduling (incorrectly referred to as Schedule 7) (Schedule 6), should be changed to Schedule 0. (TOH; Wonderlife Cannabis Institute (p 3)) | 1.18 The scope of the Bill (see paragraph 1.5), does allow for such amendments. See paragraph 1.6(i) above, which discusses the new scheduling status of cannabis for medicinal use. |
| 1.19 The practical implementation of the Bill is questioned. (Schindlers (p 20); Cannabis Trade Association Africa (p 1)) | 1.19 The Bill is substantially in line with foreign legislation regulating the cultivation and use of cannabis for personal use.  |
| 1.20 According to DPSA the Bill:\* is an unreasonable, unjustifiable and irrational limitation of a person's rights that resulted from the Prince Judgment; and\* is *contra* the spirit of the Prince Judgment. (DPSA (p1 - 2) (the commentator also provides their interpretation of the right to privacy in the sphere of cannabis regulation from pages 2 to 13). | 1.20 The Bill complies with the Prince Judgment (see paragraph 1.5(i), above). |
| 1.21 COSATU welcomes the Bill but raises the following concerns regarding the Bill:\* it does not deal with aspect relevant to the cannabis industry; and\* some clauses of the Bill are harmful, unworkable, counterproductive, disproportionate, discriminatory or run counter to the spirit of the Prince Judgment.(COSATU (p3) | 1.21 The ambit of the Bill is discussed in paragraph 1.5. The Bill aims to remove the restriction in the Drugs Act on hemp commercial activities, subject to the enactment of legislation that will regulate such activities. It is acknowledged that various foreign jurisdictions have enacted legislation that legalise commercial activities pertaining to the recreational use of cannabis, among others Canada, Uruguay and various US States. This was considered as an option, see **Annexure B**. However, the DOJ&CD cannot promote legislation that provides for commercial activities relating to the recreational use of cannabis, since this falls within the mandate of other Departments (Departments of Health; Agriculture, Land Reform and Rural Development; and Trade, Industry and Competition). Clause 1(2) of the Bill does provide for the promotion of other legislation that may deal with commercialisation of cannabis but the relevant Department that intends to promote such must consider the international obligations of the RSA under the International Drug Control Regime.  |
| 1.22 The Bill raises core constitutional issues around adequate public consultation in framing the legislation, human rights in making cannabis accessible to all, criminalisation of indigenous customs, limits in equal access and accessibility, and has numerous unforeseen and unintended consequences when interpreted with other legislation. It reflects a lack of understanding of cannabis in general and its social economic potential for the people of South Africa. The DOJ&CD has adopted criminalisation over commercialisation without any consultation on the matter. This has resulted in a narrow approach of cannabis regulation through criminalisation and without considering the social aspects involved. (CDCSA (p 2)) | 1.22 See paragraph 1.4 regarding consultation; paragraph 1.5 regarding the scope of the Bill; and paragraph 1.21 (and **Annexure B**).  |
| 1.23 The Bill is not aligned with the Drug Masterplan, which:- Recognises the inappropriateness of criminalization as a measure to deal with drug-related issues; and- proposes alternative measures to deal with drug-related issues through the health and social systems. (CDCSA (p 3)) | 1.23 See paragraph 1.7(i) above. |
| 1.24 BSL: (a) \* The Bill does not give effect to the Prince Judgment and if passed in law, will be challenged (p 2).\* Cannabis should be regulated similarly to alcohol and tobacco (p 3).(b) The Rastafari community, as well as other indigenous communities, do not view cannabis as a psychoactive substance that must be prohibited. Cannabis is used by the Rastafari community at all cultural gathering or celebration and has various other uses (p 3 – 5).\* The Bill discriminates against the Rastafari and other indigenous communities.\* A self-regulatory framework in respect of the Rastafari community are proposed, which, among others, also caters for the dealing in cannabis (p 5 (paragraph 7.2.5) – p 10 (paragraph 9.2)).(also Rastafari National Council (p 2)) | 1.24(a) See paragraph 1.5 and paragraph 1.21 regarding the scope of the Bill in respect of commercial activities.(b) (i) In ***Prince v President of the Law Society of the Cape of Good Hope*** 2002 (1) SACR 431 (CC) (**Prince 1 Judgment**), the appellant contended that the Drugs Act and Medicines Act (which criminalise the use and possession of cannabis), although legitimate in its purpose and application to the general public, was overbroad since it did not cater for the Rastafari who uses cannabis for religious purposes by way of an appropriate exemption.The Court held that in the proportionality analysis in terms of section 36 that the right to freedom of religion and to practise religion were important rights in an open and democratic society based on human dignity, equality and freedom, and that the disputed legislation place a substantial limitation on the religious practices of Rastafari. Three of the Judges held that the limitation was justifiable since it serve an important governmental purpose in the war against drugs and the failure to provide for such an exemption is a reasonable and justifiable limitation. (According to the court, such an exemption will adversely affect law enforcement since there is objective way in which cannabis for religious purposes and for recreational purposes could be distinguished and that a permit system would be impractical.Judges Ngcobo, Sachs and Mokgoro held that the provisions are inconsistent with the Constitution to the extent that they prohibit the use or possession of cannabis by Rastafari adherents for *bona fide* religious purposes without making an appropriate exemption.(ii) **It is submitted that an exemption on the basis of cultural/ religious use of cannabis may be considered, but will probably be subject to the same practical implementation problems as those identified in the Prince 1 Judgment.**  |
| 1.25 According to the Rastafari National Council:(a) The Bill is unconstitutional.(b) Cannabis should be a Schedule 0 substance in terms of the Medicines and Related Substances Act(Rastafari National Council (p 2)) | 1.25 (a) **The Bill gives effect to the Prince Judgment. The Prince 1 Judgments already interpreted cannabis criminalisation in the context of freedom of religion of the Rastafari. Amendments to the Bill may be considered to accommodate religious groups.** (b) The Bill cannot override the Medicines Act, where cannabis is regarded as a Schedule 6 substance. |
| 1.26 (a) The criminalisation of cannabis in terms of the Drugs Act and the Schedule 7 status (incorrect) assigned thereto in terms of Medicines Act, is unsupported and without any scientific evidence to substantiate such criminalisation or scheduling. Alcohol and tobacco, on the other hand whose harms, in primary and secondary consumption, are well documented scientifically are not subject to same draconian regulatory measures as cannabis in terms of the afore-mentioned laws.(b) By dictating terms of personal use by adults in private and the policing thereof, the Bill under the guise of upholding the right to privacy in fact derogate that right by making it possible for police to search a person or property at any time without clearly defined grounds. (SACCRA 1 (p 1)) | 1.26(a) Noted.1.26(b) The Criminal Procedure Act, 1977 (Act 51 of 1977) (CPA), limits the powers of the SAPS to search property or a person. In general a search warrant, as contemplated in section 21 of the CPA, is a requirement before the SAPS may conduct a search. In terms of section 21 of the CPA a search warrant may only be issued by a magistrate or judge, if there are reasonable grounds for believing that an article which is concerned in, may afford evidence of, or is used to commit an offence is in the possession or under the control of or upon any person or upon or at any premises within his or her area of jurisdiction. |
| 1.27 The Bill continues to adopt a prohibition and criminalisation-based approach to drug policy. The focus remains on restricting access to, and the use of, cannabis against the threat of severe legal sanction in the form of criminal punishment. Drug (mis)use is a complex social issue dependent on various personal, community and economic factors. Legislation in respect of cannabis ought to be considered in cooperation with various other Departments and relevant role-players. The international community as well as national policy favour a multidisciplinary harm reduction approach to drug-related matters and proposed legislation should reflect this. Drug abuse should be addressed from a public health and sociological perspective instead of a criminal justice point of view.(SADPI (p 3)) | 1.27 See paragraph 1.7, above. It is correct that criminalisation is inappropriate to deal with drug abuse. However, the offences contemplated in clauses 3, 4, 5 and 6 of the Bill aim to address dealing in cannabis and protect others against the harms associated with cannabis use. If no restrictions are placed on cannabis cultivation material, the number of cannabis plants that may be cultivated or the quantity of cannabis that may be possess in a private place or a public place, it would be near impossible to address dealing in cannabis and the criminal activities associated therewith. The Prevention of and Treatment for Substance Abuse Act, provide among others for  a comprehensive national response for combating substance abuse; mechanisms aimed at demand and harm reduction in relation to substance abuse through prevention, early intervention, treatment and re-integration programmes; and other related aspects. |

*(CLAUSE 1(2) OF BILL)*

|  |  |
| --- | --- |
| ***Comments*** | ***Responses*** |
| 1.28 Reference is made to the State of the Nation Address on 13 February 2020 where it was stated that “This year we will open up and regulate the commercial use of hemp products, providing opportunities for small-scale farmers; and formulate policy on the use of cannabis products for medicinal purposes, to build this industry in line with global trends”, and it is remarked that:(a) The Bill cannot achieve the intended result of commercialisation;(b) other legislation will be promoted to address this policy statement and there is a risk that the Bill, if passed into law may hinder the development and implementation of such initiatives; and(c) wider consultation and the involvement of other relevant Portfolio Committees should be involved in the Bill.(Wegerif (p1 -2) | 1.28 It is correct that the Bill does not give effect to the intended industrialisation of cannabis. The ambit of the Bill is discussed in paragraph 1.5 above, and other legislation must be promoted to give effect to the intended industrialisation of cannabis. The DOJ&CD cannot promote legislation that provides for commercial activities relating to cannabis, since such initiative falls within the mandate of other Departments (Departments of Health; Agriculture, Land Reform and Rural Development; and Trade, Industry and Competition). In terms of the Bill, the limitation on the cultivation of hemp, which existed under the Drugs Act, is removed subject to the promotion of appropriate legislation to regulate the cultivation of hemp. Clause 1(2) of the Bill does provide for the promotion of other legislation that may deal with commercialisation of cannabis for recreational purposes. However, the obligations of the RSA in terms of the International Drug Control Regime must be considered in this regard.  |
| 1.29 Schindlers:(a) South Africa’s obligation under the International Drug Control Regime (to ‘control’ its drug cultivation, production, possession and distribution) is ultimately subject to its own Constitution and need not be enforced through the criminal justice system as proposed by the Bill which -\* prescribes incredibly harsh penalties, which, in turn, are linked to arbitrary limitations imposed on the quantities of cannabis-related matters that citizens may use and exchange in private; and \* contrary to the Judgment and to the right to privacy, seeks to make the use of cannabis, in the private lives of persons, the business of the State. In paragraph [34] of the Prince Judgment it is stated that there are a multitude of options available to fight this problem (use of small quantities of cannabis – paragraph [32]) as opposed to the blunt use of the criminal law which is disproportionate to the harms that the legislation (the Drugs Act and Medicines Act) seeks to curb. The Bill relies on criminalisation to address perceived harms associated with cannabis and would infringe various protected rights, among others:\* Equality (section 9): Alcohol and tobacco use are not criminalised. Why should cannabis use be criminalised?\* Dignity (section 10): Criminalisation results in criminal proceedings which is an infringement of a person's dignity, a criminal record, unemployment and in some instances incarceration with resultant exposure to hardened criminals, hard drugs etc).\* Life (section 11): Although not adequately explained in paragraph 27.3, the right to life is involved in the fact that prohibition certainly give rise to unlawful dealing in cannabis, gang activities and serious criminal conduct that impact on the right of life; measures to control the quality of the product that is available for use etc.\* Freedom and security of person (section 12): The commentator refers to arrest, detention and incarceration as a result of criminal enforcement mechanisms. \* Privacy (section 14): The Judgment deals with this aspect. It is pointed out that:- the Judgment does not suggest that the right to privacy if forfeited because of using and possessing cannabis exceeding a quantitative threshold; and - alcohol and tobacco are not subject to these quantitative restrictions.\* Freedom of religion, belief and opinion (section 15): Cannabis is used in religious and cultural activities, among others, by the Rastafari community. It is remarked that the State respects and protects the religious and cultural rights to use alcohol and tobacco and the question is raised why should cannabis be treated differently in such context. \* Freedom of trade and occupation (section 22): Government has already indicated that it will promote commercialisation of cannabis to contribute to the economy. \* Environment (section 24): Hemp represents ecologically sustainable development and use of natural resources.\* Property (section 25): What justification exists for the State to deprive a person of their property when it exceeds a certain amount, when this is not done with the likes of tobacco, alcohol and pornography?\* Healthcare (sec 27): A person has the right to self-medicate an may involve quantities of cannabis exceeding the lawful limitation prescribed in the Bill.(b) In terms of the Prince Judgment, criminalisation has already been regarded as disproportionate to the harms associated with personal use and consumption of cannabis. The provisions of the Bill which criminalises conduct related to the personal use of cannabis is therefore not a justifiable limitation, in terms of section 36 of the Constitution, of the aforementioned protected rights (in paragraph (b)). In terms of the National Drug Master Plan, it is acknowledged that drug abuse cannot appropriately be addressed through criminalisation.(Schindlers (p 3 – 15))(c) The Medicines and Related Substances Act, is currently the only applicable legislation that authorises commercial activities in respect of cannabis and that other legislation must be promoted to deal with commercialisation as contemplated in clause 1(2). Legislation that deals with the commercialisation of cannabis must not "set the barrier for entry so high as to (illegitimately and short-sightedly) exclude the poorest-of-the-poor from an economic step-up and must provide for harm-prevention strategies. (Schindlers (p 17) | 1.29 (a) It is acknowledged that South Africa's obligations under the International Drug Control Regime are subject to its Constitution. However, the constitutional exception that resulted from the Prince Judgement *vis-a-vis* the International Drug Control Regime obligations is that the criminalisation of the use or possession of small quantities of cannabis by an adult in private for that adult’s personal consumption in private and the cultivation of cannabis by an adult in a private place for that adult’s personal consumption in private is an unjustifiable limitation of the right to privacy. Clause 2 read with Schedule 3 of the Bill respects the right of privacy of an adult person to use and possess cannabis and to cultivate cannabis plants as reflected in the Judgment. The prescribed quantities in Schedule 3 are in most instances above quantities that are allowed in other jurisdictions where cannabis has been legalised. Clause 2 is however subject to clauses 3, 4, 5 and 6, which impose limitation on this right, to protect other persons, including children, against the harms of cannabis. The limitations in clauses 3, 4, 5 and 6 are similar to those in other jurisdictions.1.29(b) The objection to the Bill on the basis that the Prince Judgment, regarded criminalisation as disproportionate to the harms associated with personal use and consumption of cannabis, must strictly be interpreted in the context of personal use. If no restrictions are placed on cannabis cultivation material, the number of cannabis plants that may be cultivated or the quantity of cannabis that may be possessed in a private place or a public place, it will be extremely difficult to limit cannabis to personal use, to address dealing in cannabis, and to lay down criteria that can be used to enforce the limitations imposed on the personal use of cannabis. Criminalisation in this context must not be seen as a measure to address drug addiction, but rather as necessary measures to ensure that there is compliance with limitations imposed by the Bill to protect others against harm. The penalties that are prescribed in respect of some of the offences in clauses 3 and 4 may be considered by some as disproportionate taking into account the quantity by which the legal prescribed quantity is exceeded. A broader range of offences based on stepped increased of quantities, similar to foreign legislation may be considered. However, the South African sentencing dispensation does not restrict a court to impose a sentence that is less than the maximum penalty prescribed. For instance, although a court may impose 15 years imprisonment for a commercial quantity of cannabis plants that are cultivated, a court will take into account the quantities that are involved and with reference to the offence, the circumstances of the accused and the interest of society impose an appropriate sentence (see S v Zinn 1969 (2) SA 537 (A)). **Amendments to the Bill may, however, be considered to address this objection.** 1.29(c) See paragraph 1.28 above. Promotion of legislation to legalise cannabis for recreational use, can only/should only be done on the basis that it is an appropriate harm reduction measure to appropriately regulate cannabis for private purposes. By implication it should allow for specific measures to reduce the harm, such as appropriate measures to monitor cannabis usage, restrictions on the quantity of cannabis which may be sold to a person, product quality control, advertising restrictions and warning labels, public education regarding the harms, among others.  |
| 1.30 Fields Of Green For All and MSA opt for commercialisation of cannabis, which will stimulate the economy, create jobs, ensure quality control and the facilitate the implementation of appropriate measures (similar to those relating to alcohol and tobacco) to address the harms associated with cannabis. (F Saaiman (p 3)) | 1.30 Although commercialisation of cannabis for recreational purposes will contribute substantial to the economy, it will similarly to alcohol and tobacco place substantial strain on Government resources to address the resultant harms of cannabis use.  |
| 1.31 According to NRC, the Bill should be amended to redress previous discrimination against cultural, religious and linguistic communities who are primary users of the cannabis. Although not clearly discussed in the comments, such redress measures may include:\* Permit/ licensing exemptions which would allow them to cultivate cannabis for medical, scientific research and other purposes;\* Private Public Partnership between large pharmaceutical companies/ other persons and cultural, religious and linguistic communities represented by the Rastafari Ganjah Council who must "own a combined 40% stake in such business". \* Measures to facilitate small farmer participation.(NRC (p 18 – 19); TRO (p 5); Khehla Shandu; NRC regarding the inclusion of small farmers (p 18 – 19)) | 1.31 The ambit of the Bill is discussed in paragraph 1.5 and cannot accommodate aspects relevant to medicinal cannabis. |
| 1.32 (a) Factors which influence industrialisation of cannabis are the following: \* There are various persons, organisations and churches that still see it as a hard drug which causes substantial harm. Public perception therefore has a substantial influence on a political decision to commercialise cannabis. \* The International Drug Control Regime to which the RSA is a signatory does not currently allow for recreational use of cannabis but do allow for industrial and medical use thereof. Even though the Constitution trumps convention obligations and the ruling in favour of private adult use of cannabis, it is unlikely that the Government will risk international grant funding, World Bank loans etc, to legalise the commercial cultivation and trade of cannabis for recreational purposes in breach of its convention obligations, even though countries like Canada, USA and Uruguay have done so without sanction.(b) A proposed solution to the afore-mentioned limitations: (i) The International Drug Control Regime, however, does not prohibit the industrialisation of hemp. Hemp should therefore be removed from the Drugs Act and the Medicines Act to enable the relevant Departments (Agriculture and Trade and Industry) to adopt legislation to provide for hemp industrialisation.(ii) A cannabis healthcare and wellness regime should be implemented. The International Drug Control Regime does provide for the establishment of an agency to, among others, allow for the use of cannabis for medical reasons. In the context of a cannabis healthcare and wellness regime such an Agency should be established as an entity outside the Department of Health and SAPHRA to regulate the use of cannabis. The use of cannabis for health/wellness should be available on recommendation of a doctor or traditional healer which would entitle a person to become a recognised medical cannabis user. The commentator also discusses a regulatory system for the cultivation, processing and supply of cannabis for purposes of the healthcare and wellness regime.(Tony Budden (p 3 – 5)(c) Cannabis industrialisation will have little export opportunities as there are few international markets that would be able to legally buy what our industry would create. Most of these markets have local production in place already and are protecting their domestic industries by limiting imports. A local consumption market is the imperative if this industry is to thrive.(Tony Budden (p 5)) | 1.32(a) The comments and inputs are noted. 1.32 (b)(i) The Bill aims to remove the restriction in the Drugs Act on hemp commercial activities, subject to the enactment of legislation that will regulate such activities. Canada[[1]](#footnote-1), Australia[[2]](#footnote-2), New- Zealand[[3]](#footnote-3), the European Union[[4]](#footnote-4) and various US states, among others, that legalised the commercialisation of hemp, also enacted extensive legislation to regulate such commercialisation. The other suggestions (paragraph (b)(ii)) fall outside the ambit of the Bill.1.32(c) Noted. |
| 1.33 The initiatives pertaining to cannabis commercialisation must weigh up the costs of economic benefits against the harms associated with cannabis. (SAMSA (p15)) | 1.33 See paragraph 1.29(c) above. |
| 1.34 (a) The Bill fails to provide a regulatory framework for the commercial trade in cannabis and criminalises commercial activities. The RSA's cannabis industry is estimated to be worth approximately R100 billion and can contribute to the upliftment of underdeveloped regions and the establishment of small-scale businesses. The failure of the Bill to provide for the commercialisation of cannabis, is a missed opportunity in that a legally regulated market in commercial cannabis would provide significant economic benefits including tax revenue, and to address ongoing criminal conduct associated with the dealing in drugs.(COSATU (p 3 – 4); KZN Rasta Business Foundation)(b) Regulatory measures, similar to those applicable to alcohol and tobacco, can be used to regulate the private use of cannabis, since they:\* Maintain a balance between personal freedom and public health and in doing so they contribute directly to the economy;\* avoid criminalisation on the notion that it is necessary to protect person against his or her own conduct;\* allow small businesses easy access to the industry;\* will ensure that cannabis products are available to persons who either do not have a place to cultivate cannabis or for some other reason do not cultivate cannabis (persons who consumes alcohol do not brew their own alcohol but buy it); \* will address illicit markets in cannabis through which cannabis are distributed (sometimes mixed with other substances which may be harmful to its user);\* will contribute to job creation; and\* will generate substantial revenue through tax or licencing can be that can used to address drug addiction(COSATU (p 5 – 7); Azibuye Emasisweni Institute of Wellness and Indigenous Knowledge Systems (p 1 – 2); SACCRA 1 (p 2); Rastafari National Council (p 2); SADPI (p 3 – 4); Mpumalanga Rastafari Community (p 3 – 4); Wegerif p 5). | 1.34(a) The Bill aims to remove the restriction in the Drugs Act on hemp commercial activities, subject to the enactment of legislation that will regulate such activities. It is acknowledged that commercialisation of cannabis for recreational purposes will stimulate the economy significantly. However, the Bill, due to its limited ambit of application as discussed in paragraph 1.5 above cannot deal with this aspect. To facilitate the possibility to implement a commercial model for recreational cannabis regulation, the Bill -\* removes cannabis from the purview of the Drugs Act (South Africa's legislation that gives effect to the International Drug Control Regime); and\* provides by virtue of clause 1(2), for the promotion of legislation to implement such model of cannabis regulation.1.34(b) The promotion of a commercial model for recreational cannabis regulation, is the responsibility of the Departments of Health; Agriculture, Land Reform and Rural Development; and Trade, Industry and Competition. During the consultation process that preceded the finalisation of the Bill, the possibility to implement a commercial model for recreational cannabis regulation has been considered (see **Annexure B**), and proposed to the relevant Departments. This proposal is currently considered by an Inter-Departmental Committee.1.34(c) Various foreign jurisdictions, which are parties to the International Drug Control Regime have implemented a commercial model for recreational cannabis regulation, on the basis that: \* The policy of declaring a ‘war on drugs’ has been a failure. Despite the colossal investment made in law enforcement, more drugs are available now than ever before (see among others the 2019 World Drug Report).\* Law enforcement, courts and prisons in many countries are overburdened by drug possession and consumption offences, in particular those relating to cannabis. The resources that are used to deal with drug possession and consumption offences can be used to deal with more serious offences.\* The adulteration of substances causes more harm than the drugs themselves. Under a legal regime there could be quality control, better knowledge and education about drugs and their effects. \* Taxes could be levied to provide improved health care for problematic drug users.\* Consumption of cannabis may rise initially, but would level out to ‘moderate’ levels in most cases.\* The criminal law has no right to interfere with personal behaviour if it causes no harm to others.\* The sole beneficiaries of prohibition are criminal profiteers. Despite the “war on drugs” it was estimated that the illegal drug market in 2018 was worth approximately £236 billion per year. Legalization has the prospect of removing the profits from drug dealers, causing the cartels to collapse and putting an end to much of the violence and crime that are inherent in the illicit market. \* The combined costs to society in terms of higher crime and violence, the drain on financial resources and the sacrifice of civil liberties, are not repaid by the doubtful benefits that prohibition can bring. \* Cannabis is a soft drug and should not be subjected to the harsh control measures that the International Drug Control Regime currently imposes on it.  |
| 1.35 CDCGP:(a) The Bill is criticised for its failure to provide for the commercialisation of cannabis. It is remarked that although the Bill aims to regulate the private use of cannabis, a single law should be promoted to regulate all relevant aspects pertaining to cannabis.((p 3))(b) Commercialisation of cannabis is supported and the following should be considered:\* There should be a single law that regulates all aspects relating to cannabis.\* A regulatory agency must be established to regulate the various aspects of comercialisation of cannabis (i**ncluding cannabis for medicinal purposes**). This agency must be independent from SAPHRA and the Department of Health.\* The Department of Agriculture must deal with cannabis matters.\* Cannabis must be regarded as an agricultural crop and no permit or licence should be required for its cultivation.\* Hemp must not be described with reference to the EU standard of 0.2% THC.\* Small farmers should be included in the commercialisation of cannabis.\* Research and development relevant to cannabis must be promoted.\* Interests in and ownership of varieties of cannabis must be protected.\* Regulatory measures similar to those applicable to alcohol and tobacco, can be used as basis for the commercialisation of cannabis.( (p 5 – 9); CDCGP (p 7)) | 1.35 \* It is impossible to regulate all relevant aspect relating to cannabis in a single law. Various Departments with different administrative mandates are involved. For instance, medicinal aspect relating to cannabis must always be regulated in terms of the Medicines Act, agricultural matters must be regulated in terms of legislation that is administered by the Department of Agriculture, etc. A single regulatory agency to regulate various aspects relevant to commercialisation of cannabis is in line with legislation in foreign jurisdictions.\* The remark that hemp must not be described with reference to the EU standard of 0.2% THC, is addressed in the Bill. The Bill provide that the legislation which will regulate the cultivation of hemp must prescribe the concentration of THC (definition of hemp). The percentage of THC that has been determined varies from country to country and is directly related to a specific strain that is considered to be appropriate for the cultivation conditions of a country. Internationally 0.2% THC is regarded as the norm. Other countries: 0.2% Austria; 0.3% Czechia; 0.3% Canada; 0.3% USA; 1.0% Switzerland; some Australian Territories determined 0.5% and New South Wales determined a maximum of 1% THC.\* Intellectual property in the varieties of cannabis in South Africa should urgently be addressed in terms of the Plant Breeders' Rights Act, 1976 (Act No. 15 of 1976). |
| 1.35 The current legal framework excludes a vast number of South Africans from the cannabis sector due to the very high level of investment needed to implement regulatory specifications. Previously disadvantaged farmers can never plant what they have known about for ages to enjoy the benefits of the sector due to the discriminatory regulatory hurdles. An equitable regulatory framework that ensures participation of persons without the required capital is needed.(Cannabis Trade Association Africa (p 1); Mpumalanga Rastafari Community (p 2)) | 1.35 Cannabis cultivation for medicinal purposes is indeed strictly regulated and substantial capital is required to access this market.  |
| 1.36 In the second presentation of SACCRA 2, a more detailed explanation is provided regarding the practical implementation of a commercial model for cannabis regulation, including the various licensing regimes that may be applicable to such a model. SACCRA 2, among others, proposes that in order to assist with the commercialisation of cannabis, a Schedule 0 status must be assigned thereto in terms of the Medicines Act. | 1.36 The comments are noted. |
| 1.37 The Bill is harmful, unworkable, counterproductive, disproportionate, and discriminatory and is *contra* the spirit of the Prince Judgment. Alternative workable, non-discriminatory cannabis regulatory measure in line with global best practices, human rights, and the spirit and purpose of the Prince Judgment should be considered that will mitigate against the harms associated with criminalisation of the use and trade in cannabis in contravention of the Bill. Harms in this context are: Illegal cannabis markets; organised crime; criminal conduct associated with the dealing in drugs; the cost to police compliance with the Bill; the costs to the criminal justice system to prosecute and adjudicate offences in terms of the Bill (including legal aid); the adverse impact or consequences of enforcement through criminalisation on the accused, his or her family, and social implication thereof; the costs associated with incarceration, the effectiveness of incarceration as a corrective measure in a milieu of overcrowded prisons, exposure to hard drugs in prisons, and contact with hardened criminals; and the resultant economic exclusion of offenders on the basis of a criminal record. According to the commentator these harms are directly related to the failure in the Bill to provide for cannabis regulation through commercialisation. Cannabis regulations, similar to those applicable to alcohol and tobacco should be considered.(SADPI (p 1 – 2; Tony Budden (p 2)) | 1.37 See paragraph 1.34(c) for a discussion of the *rationale* behind the regulation of cannabis through commercialisation. It must be pointed out that the legislation of those countries, through which a commercial model of cannabis regulation is implemented, do provide for the same offences as those contemplated in the Bill, to effectively enforce compliance and to protect others against the resultant harm of legalisation of cannabis. See paragraph 1.7 for a discussion of the need for the offences contemplated in the Bill.  |

**2. DEFINITIONS (CLAUSE 1(1) OF THE BILL)**

|  |  |
| --- | --- |
| **Comments** | **Responses** |
| 2.1 ***Definition of "cannabis"*** |  |
| Despite the exclusion of “hemp” from the definition of “cannabis plant”, the definition for “cannabis”, refers to any substance which contains THC. Such substances can include beverages, food and medicinal products. (Western Cape Government (2) (p 2-3)). | \*The unintended width of the inclusion of "any substance containing THC", in the definition of "cannabis" is acknowledged.\* In terms of Government Notice No. 586 of 22 May 2020 (GN 586), the Minister of Health amended the Schedules to the Medicines Act to include in Schedule 6, THC, "except -(a) in raw plant material and processed products manufactured from such material, intended for industrial purposes and not for human or animal ingestion, containing 0,2 % or less of tetrahydrocannabinol;(b) processed products made from cannabis containing 0,001 % or less of tetrahydrocannabinol"\* To address the width it is proposed that THC be qualified with reference to the percentage of THC that is prescribed in paragraph (a) as "any substance containing more than 0,2 % THC.  |
| 2.2 ***Definition of "cannabis concentrate"*** |  |
| (a) To clump the types of concentrates together shows a lack of understanding of the matter. (F Saaiman page 1 and Schindlers p 23 – 24) | (a) All foreign jurisdiction legislation deal with cannabis concentrates (marijuana extractions), also see paragraph 2.3 below |
| (b) “Cannabis concentrate” and “cannabis product” should be reconsidered to provide certainty as to whether synthetic cannabinoids are included or excluded from the ambit of the Bill. (Western Cape Government (2) (p 2-3)). | (b) Synthetic cannabinoids are excluded from the ambit of the Bill and remains criminalised in terms of the Drugs Act. |
| 2.3 ***Definition of "cannabis equivalent"(Schedule 2)*** |  |
| The quantities in the Schedules are not based on science and are incorrect. (F Saaiman page 1) | These equivalents are based on the Canadian Cannabis Act, 2018 (S.C. 2018, c. 16). A problematic aspect is that cannabis liquid or solid equivalents, which may contain extremely high concentrations of THC that exceeds the 1: 0.25 equation to dried cannabis. Examples of cannabis concentrates are:\* Kief – powder which is rich in trichomes (usually sifted or scraped from the leaves and flowers of cannabis plants).\* Hashish – a cake or ball produced from pressed Kief.\* Tincture – this is usually THC dissolved in a solvent (the buds are soaked in alcohol which dissolves the THC, and is thereafter purified and concentrated).  |
| 2.4 ***Definition of "cannabis plant"*** |  |
| (a) The idea of defining each part of the cannabis plant and having a different regulation for each is outrageous. How is the SAPS going to enforce such provision. (F Saaiman page 1) | (a) Two classes of cannabis plants is provided for in the definition, namely an immature cannabis plant (mainly a non-flowering cannabis plant) and a flowering cannabis plant. This distinction is relevant for the cannabis plant equivalent provision and the prescribed quantities, where two immature cannabis plant are regarded as equivalent to one flowering cannabis plant. |
| (b) Cannabis is a variable plant, some containing predominantly CBD and others THC. The failure to make such a distinction is detrimental to the cannabis industry. (F Saaiman page 1) | (b) Hemp is excluded from the limitation of the Bill if it is cultivated under authority of a law that regulates its cultivation. If hemp is cultivated outside a law that regulates its cultivation it falls within the purview of the Bill and is subject to the same restrictions as cannabis.  |
| (c) To separate the cannabis plant genus into its respective uses for the purposes of prohibition and criminalising citizens is unconstitutional. (F Saaiman page 1) | (c) The need to regulate cannabis (high THC content), is obviously to ensure that it complies with the personal use limitations, curb dealing in cannabis and protect others against resultant harms of unregulated cultivation, distribution and use. The need to regulate the cultivation of hemp is to ensure, among others, that it is adheres to the THC limitations and is suitable for use (the same as cosmetics, food and disinfectants that are regulated by the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972)). |
| (d) The definition of a cannabis plant that attempts to exclude hemp plants is considered impractical due to the difficult in differentiating “cannabis” and “hemp” for most of the growth cycle of the plant. (Wegerif (p 9)) | (d) The growth cycle of hemp and cannabis is exactly the same (germination, followed by a so called vegetative state (grows bigger); pre-flowering stage and the flowering stage (propagation and seed development)). |
| 2.5 ***Definition "child"*** |  |
| The Bill does address the need to protect children (defined as persons under the age of 18) but does not refer specifically to adolescents and does not go far enough in protecting adolescents from access and exposure to cannabis.There is also a growing concern regarding the long-term effects of regular cannabis use on adolescent brain development. Brain development continues until the age of 25, so this is also a concern for young people in emerging adulthood.(SAMRC (p1)) | Age restriction\* Canada:- Cannabis Act: 18 years or older (section 8)- Alberta (Gaming, Liquor and Cannabis Act and Gaming, Liquor and Cannabis regulation); British Columbia (Cannabis control and licensing Act (CCLA) Cannabis distribution Act (CDA)); Manitoba (Safe and Responsible Retailing of Cannabis Act); and others: 19 years or older.\* US States: 21 years or older\* Australian Capital Territory: 18 years or older\* Uruguay: 18 years or older \* RSA applicable legislation:- Liquor Act, 2003: 18 years (section 10 read with definition of "minor") – (there was an amendment proposed to increase the age to 21 years);- Tobacco Products Control Act, 1993: 18 years or older (section 4).  |
| 2.6 ***Definition "consideration"*** |  |
| The definition of "consideration" should be restricted to "compensation involving money" (NRC refers to a definition of "remuneration" which does not appear in clause 1 of the Bill).(NRC (p 3); TRO (p 2)) | The definition of "consideration" is relevant to the definition of "deal in", and in many instances may involve other benefits. |
| 2.7 ***Definition of "deal in"*** |  |
| This is still rooted in the understanding that the cannabis industry is fuelled by drug lords and criminals instead of healers. (F Saaiman page 1) | Noted. However, in the context of the Bill it is necessary to criminalise the dealing in cannabis. |
| 2.8 ***Definition of "dried cannabis"*** |  |
| This does not make sense as the drying process begins the minute that the flowers and leaves are separated from the plant. (F Saaiman page 2)  | That is correct. The definition of "dried cannabis" is relevant to the cannabis equivalent prescribed in Schedule 2 to the Bill and calls for an objective evaluation which may involve the fact that the cannabis can be smoked or can be crumbled between a person's fingers etc. |
| 2.9 ***Definition of "fresh cannabis"*** |  |
| What part of the cannabis plant is being referring to? Leaves have a significantly lower THC content than flowers and even some species contain mainly CBD. (F Saaiman page 2) | Fresh cannabis is basically the parts of the plant as defined in the definition of "cannabis" (flowering or fruiting tops and the leaves of a cannabis plant that have been separated from the plant), that have not been subjected to a drying process. The main part of cannabis plant that is used for recreational purposes are the "buds".  |
| 2.10 ***Definition of "hemp"*** |  |
| (a) Hemp must not be determined on the basis of the EU/ North American standards of 0.2%/ 0.3% THC. (CDCSA (p 6)) | (a) In terms of the definition of "hemp", the legislation that regulates the cultivation of hemp must determine an appropriate percentage of THC. |
| (b) Growing hemp industrially cannot take place in South Africa at the current low level of THC, which level is devoid of scientific reasoning. South Africa's high levels of ultraviolet radiation can increase the amount of THC to above 0.2% which will prejudice farmers through no fault of their own and make all such farming illegal.(Cannabis Trade Association Africa (p 1)) | (b) See paragraphs (a) and 1.35, above. |
| 2.11 ***Definition of "immature cannabis plant"*** |  |
| Each strain is different and depending on your grow. It is unscientific to propose blanket measurement criteria and should this be presented in court, the evidence of expert witnesses (already available to the state) would prove this. (F Saaiman page 2) | \* The determining factor is that the cannabis plant should not be in its flowering stage of development. **\* The height and width limitation as contemplated in the definition may be removed, but in the context of the Bill is necessary to distinguish it from "seedlings".** |
| 2.12 ***Definition of "prescribed quantity"(applicable to clause 2 and Schedule 3)*** |  |
| (a) What harms are prevented by criminalising the behaviour of someone who cultivates or possesses more than a “prescribed quantity"? Does a person who grows above the “prescribed quantity” commit a crime, if it is not for consuming it for its psychoactive effects for instance a perimeter hedge, or as cattle fodder?(b) What about persons who wish to self-medicate? The "prescribed quantity" must take into account how much more cannabis is required to be grown, concentrated and consumed in order to yield beneficial medicinal outcomes for certain ailments.(Schindlers (p 17 – 19))(c) Why regulate the growing and possession of a plant, instead of the legitimate and illegitimate uses thereof (a comparator being the limitation of the quantity of poppies that may be grown in a garden why not criminalise the manufacturing and dealing in heroin)? There is no "prescribed quantity" for those who would wish to grow their own tobacco, or brew their own beer at home and why should the Bill criminalise similar conduct in respect of cannabis.(d) On what basis and under which circumstances will the SAPS be authorised to enter into a person’s private space (the very antithesis of the Judgment – as based on the section 14 right to privacy) to count their cannabis plants.(Schindlers (p 19 - 20)) | 2.12(a) \* The prescribed quantities are to restrict cannabis for private use. If there is no limitation on the prescribed quantities for personal use, it may be used as a facade to facilitate the dealing in cannabis. The prescribed quantities in Schedule 3 of the Bill are liberal if compared with the limitations in foreign jurisdictions.\* Personal use is defined in section 1(1) of the Act as "for the exclusive use of an adult person". If cannabis is used for another purpose, other than consumption, it is still for the use of the adult and covered by the Bill.  (**b) A suitable amendment will be proposed to accommodate this comment.**(c) The antecedent to offences is criminalised to curb the offence itself. The growing of the poppies (*Papaver Somniferm*), in terms of the example is already criminalised in terms of the Drugs Act and subject to international control. In terms of the Liquor Act, 2003, the manufacturing or distribution of other liquor product are strictly prohibited unless it is done in terms of a licence. (d) See paragraph 1.26(b), above. |
| (e) \*According to The Fields Of Green For All, they have been working with world renowned scientists to prove that cannabis is almost harmless to those that use it on a physical level. The users of cannabis should set their own allowable limits on cannabis. \*We are all different and regulate the personal use of each person is unconstitutional. Regulating the end product is easier than your personal use.(F Saaiman (p 1 - 2)) | (e) It is acknowledged that no person has to date died from cannabis use. However, the prescribed limitations are necessary to regulate the personal use of cannabis, to address dealing in cannabis; and protect others against harms. The personal quantities provided for in the Bill are liberal if compared with some foreign jurisdictions. An open-ended and undefined legal limitation is unenforceable.  |
| (g) According to NRC there should be no quantitative limitation on cultivation material, cannabis plants or cannabis for cultural, religious and linguistic communities and persons and spiritual leaders belonging to those communities. (NRC (p 24); CDCSA p 4 - 5); Moleboheng Semela (p 1, par 6.(i) and (ii); TRO (p 6); KZN Rasta Business Foundation) | (g) **As indicated in paragraph 1.24, a religious/cultural exemption may be considered.** |
| (h) According to DPSA:\* The prescribed quantities contemplated in clause 2(1) and (3) read with Schedule 3 are insufficient for one’s needs, among others, he needs 120 grams cannabis per week (that is 62.4 kg cannabis per year).\* The limitations are not based on rational consideration of the harms and benefits of cannabis.\* The right to privacy as interpreted in the Prince Judgment allows a person to determine their cannabis needs, cultivation cannabis for his or her needs, and the use the plant for those needs.(DPSA (p 3 – 7)) | (h) In terms of the Prince Judgment:"***there are many democratic societies based on freedom, equality and human dignity that have either legalised or decriminalised possession of cannabis in small quantities for personal consumption (reference is made to the countries)" [79]*** ***"In the jurisdictions referred to above and others included in the addendum, different amounts have been fixed as small amounts. In the present case, like the Judge in the High Court, I would leave the determination of the amount to Parliament" [80]******"Nor is there any evidence suggesting that it would be impossible to regulate the consumption of cannabis by restricting its consumption to that safe level. All that the medical evidence on record tells us is that . . . while ‘prolonged heavy use or less frequent use of a more potent preparation are associated with many different problems’, ‘one joint of dagga or even a few joints’ will not cause any harm" [81]*****\*** The Bill took into account the quantities that are provided for in foreign legislation that have legalised cannabis for personal use. |
| (i) The prescribed quantities for personal use (clause 2 read with Schedule 3) are inadequate for traditional healers who use cannabis in their work. This aspect must be addressed and amendments should also regulate the quantity which may be cultivated and transported by traditional healers.(j) The prescribed quantities in respect of the supply and receipt of cannabis as contemplated in clause 2(3), is inadequate since cannabis communities shares cannabis between themselves.(CDCSA (p 4 -5); CDCGP (p 3); Mpumalanga Rastafari Community (p 2)) | (i) The Bill aims to address personal use of cannabis. The Traditional Health Practitioners Act, 2004 (Act No. 35 of 2004), which is applicable to traditional health practitioners, traditional medicines and traditional health practices, must regulate this aspect.(j) **A suitable exemption on the basis religious/cultural purposes may be considered. However, in the context of personal use of cannabis an exemption in this context may be regarded as discrimination against others.** |
| (k) If you wish to use cannabis in oil form for health reasons, 4 cannabis plants are not sufficient to provide a year’s supply for extraction.(Cannabis Trade Association Africa (p 1)) | (k) As already indicated a provision will be considered to regulate medicinal cannabis. Health reasons must, however, be accommodated within the prescribed limitations for personal use. |
| (l) Flowering plants must be increased to 3500 per adult or to 35 000 flowering cannabis plants per household (Azibuye Emasisweni Institute of Wellness and Indigenous (Knowledge Systems (p 3)) | (l) This proposal cannot be accommodated, as the proposed quantities are more than what is needed for personal consumption.  |
| 2.13 ***Definition of "private place"*** |  |
| The definition of "private place" should be extended to include places used for cultural, religious and linguistic purposes.(NRC (p 2)) | **If a religious/cultural exemption is accommodated, the definition should be extended to a place used for religious/cultural purposes (also see paragraph 2.16(a), below)** |
| 2.14 ***Definition of "smoke"*** |  |
| The definition excludes vaporized cannabis, which does not involve the ignition of cannabis. However, cannabis must be inhaled. (F Saaiman page 2) | **An appropriate amendment will be proposed.** |
| 2.15 ***Definition of " trafficable quantity"*** |  |
| The use of this prohibitionist language is a concern. (F Saaiman page 2) | Noted |
| 2.16 ***New definitions***  |  |
| (a) A new definition of **"sacramental use"** should be inserted to provide for the "use cannabis for religious and spiritual purposes". This probably goes hand-in-hand with the inclusion of "places used for cultural, religious and linguistic purposes", under the definition of "private place".(NRC (p 3); TRO (p 2)) |  (a) **As indicated in paragraph 1.24, a religious/cultural exemption may be considered.** |
| (b) The NRC contends for the insertion of a definition of **"medical practitioner"** in the Bill, which must be defined as "any certified medical practitioner including indigenous herbalists and traditional healers who may prescribe the use of medical cannabis". (NRC (p 2); TRO page 2) | (b) The Bill cannot accommodate the proposal since it aims to regulate cannabis for personal use. The Medicines Act and Traditional Health Practitioners Act, 2004, regulate who may prescribe cannabis for medicinal purposes. |

**3. PRESCRIBED QUANTITIES FOR PERSONAL USE BY ADULT PERSON (CLAUSE 2 AND SCHEDULE 3 OF THE BILL)**

|  |  |
| --- | --- |
| **Comments** | **Responses** |
| 3.1 Also see the comments in respect of the definition of "prescribed quantity" (paragraph 2.12 above). |  |
| 3.2 The Bill provides for stringent requirements to cultivate and consume cannabis in private, which effectively excludes many persons who lack the space to cultivate or consume cannabis in such strict conditions of privacy. The Bill therefore discriminates against the poor by imposing a *de facto* prohibition on the use and cultivation of cannabis, and may give rise to illicit markets to obtain cannabis.(COSATU (p 4); CDCSA (p3); Cannabis Trade Association Africa (p 1)) | 3.2\* A "private place" means any place, including a building, house, room, shed, hut, tent, mobile home, caravan, boat or land or any portion thereof, to which the public does not have access as of right. Regulations need to be made in terms of clause 3(2)*(b)* to regulate the cultivation in a private place. \*The definition of "private place" took into account what was said by the Court in the Prince Judgment, namely:***"The issue of the cultivation of cannabis in private by an adult for personal consumption in private should not be dealt with on the basis that the cultivation must be in a dwelling or private dwelling. It should be dealt with simply on the basis that the cultivation of cannabis by an adult must be in a private place and the cannabis so cultivated must be for that adult person’s personal consumption in private. An example of cultivation of cannabis in a private place is the garden of one’s residence. It may or may not be that it can also be grown inside an enclosure or a room under certain circumstances. It may also be that one may cultivate it in a place other than in one’s garden if that place can be said to be a private place"[85].******"This judgment does not confine the permitted use or possession or cultivation of cannabis to a home or a private dwelling. This is because there are other places other than a person’s home or a private dwelling where the prohibition of the use or possession or cultivation of cannabis would be inconsistent with the right to privacy if the use or possession or cultivation of cannabis was by an adult in private for his or her personal consumption in private. Using the term “in private” instead of “at home” or “in a private dwelling” is preferable"[108].*** |
| 3.3 Every section in the Bill is subject to every other section of the Bill. The words “subject to” are unnecessary. This comment applies equally to clause 2(2) and 2(3). (Western Cape Government (2) (p 3)). | 3.3 The phrase "Subject to this Act", in clause 2(1),(2) and (3), is required by necessary impaction, to indicate that the provisions in question are further regulated elsewhere in the Bill and are subject to such other provisions. It is sound legislative drafting and also used in other laws. |
| 3.4 In terms of the definition of "personal use" and clause 2(1) and (2), it is understood that cannabis consumption and possession remain criminalised for children. (Western Cape Government (2) (p 4); (CDCSA (p 4)). | 3.4 In LM and 3 Others (Case No's 97/18, 98/18, 99/18 and 100/98 Gauteng Local Division of the High Court) (the LM Judgments), it was decided that the continued criminalisation of cannabis use and possession by children in terms of section 4*(b)* of the Drugs Act, amounts to a status offence which resulted from the Prince Judgment's exclusion of children from the legalisation of cannabis (paragraph [108]). The court, among other, therefore declared section 4*(b)* of the Drugs Act that criminalises the use and possession of cannabis by children inconsistent with the Constitution and invalid.\* Clause 2 only applies to an adult person and not a child. \* The offences provided for in clause 3(6), (7) (9) (deals in cannabis plants or possess in a public place); clause 4(1) (possession above the prescribe amount of cannabis in a public place), (5) (dealing in cannabis) (7) possess cannabis in a public place that is not concealed from public view); clause 5 and clause 6(2) (3) and (4), are also applicable to a child.\* In Schedule 5 to the Bill Schedule I to the Child Justice Act, is amended by the addition of item 19, to ensure that the offences contemplated in clauses 3(6), (7) and (9), 4(7) and 5 of the Bill are included in the Schedule. This amendment aims to ensure that the offences in question are subject to a level one diversion as contemplated in section 53(2)(a) of that Act and that the child offender may, unless exceptional circumstances are present, not be arrested or be detained for these offences.  |
| 3.5 The Bill allows for the legal possession, without penalty, of cannabis and does so in relation to greater quantities of cannabis than many other jurisdictionsworldwide.(Wegerif (p 3)) | 3.5 Noted |
| 3.6 The Bill should allow for and enable Cannabis Private Members Clubs for the safe use and exchange of home-grown cannabis in a private adult-only space. This will decrease the criminalisation of citizens who would like to use cannabis but cannot grow themselves and do not have a safe space to use it in, essentially collectivising their private space. Regulations should be put in place to ensure testing of products and the health and safety of the members, and to prevent diversion to the black market. This is a system that has worked well in places like Spain and the Netherlands.(Tony Budden (p 5); Wegerif (p 5)) | 3.6 Cannabis clubs requires extensive regulatory measures, among other, licensing, inspection to ensure compliance and funding for such measures. Cannabis clubs may provide an appropriate solution to perceived problems where a person does not have a place to cultivate cannabis or a place to consume cannabis. Cannabis clubs is provided for by foreign jurisdictions that have a commercial regulatory framework for recreational use of cannabis. In the context of the Bill, it will be impractical to provide for cannabis clubs mainly due to oversight requirements and funding.  |
| 3.7 Wonderlife Cannabis Institute:(a) Clause 2(1)(*a)* and Schedule 3: The prescribed quantity of cultivation material cannot be supported (this is possibly based on the fact that the commentator recommends commercialisation of cannabis (p2, par 1.1).(b) Clause 2(1)*(b)* and Schedule 3: The prescribed quantity of cannabis plants that can be cultivated is not supported. It is proposed that the limit should be 2000 flowering cannabis plants per person and 20 000 flowering cannabis plants (p2, par 1.2).(c) Clause 2(1)*(c)* to *(e)* and Schedule 3: There should be no restriction on the amount of cannabis regarding the possession of cannabis in private in a public place/ possession of cannabis in a private place/ possession of cannabis plants in a public place (p2 - 5, par 1.3).(Also Azibuye Emasisweni Institute of Wellness and Indigenous Knowledge Systems (p 4)) | 3.7 (a) – (c) The prescribed quantities are to restrict cannabis for private use. If there is no limitation on the prescribed quantities for personal use, it may be used as a facade to facilitate the dealing in cannabis. The prescribed quantities in Schedule 3 of the Bill are liberal if compared with the limitations in foreign jurisdictions and gives effect to the Prince Judgment (see paragraph 2.12(h), above). |
| 3.8 Clarity is required on how the threshold quantities contemplated in clause 2(1)*(a)* to *(e)* were determined. (Western Cape Government (2) (p 3)). | 3.8 The prescribed quantities are based on legislation in foreign jurisdictions, which have implemented a commercial model for recreational cannabis regulation. Most of those jurisdictions also made allowance for the cultivation and possession of determined quantities. |
| 3.9 Clause 2(1)*(c)* provides that an adult person may for personal use possess in private, the prescribed quantity of cannabis, in a public place. Clause 2(1)*(d)* provides that an adult person may for personal use possess the prescribed quantity of cannabis in a private place. Clarity is required on why there is a distinction made in the prescribed quantity for possession of cannabis, in private, in a public place and possession in a public place. (Western Cape Government (2) (p 3-4)). | 3.9 Possession of cannabis in a public space is associated with dealing in cannabis. To curb possible conduct of dealing the amount that may be possessed in a public place is limited to address possible dealing in cannabis. |
| 3.10 The following questions are raised, namely:(a) Why can't a person who is not in a position to cultivate their own cannabis plants request another to cultivate cannabis on his or her behalf in private for his or her use in private?(b) What harms are prevented by criminalising the behaviour of someone who cultivates or possesses more than a "prescribed quantity"? If there is no good (science-based) answer for this, it is irrational and arbitrary to limit the quantity of cannabis that anyone may cultivate and possess in private. (c) Is the prescribed quantity limitation not something similar to presumption of "dealing in drugs", which has been declared unconstitutional?(d) Does the prescribe quantity limitation apply to a person who self-medicates? (The Bill must address this, as well as instances where a quantity that exceeds the prescribed quantity is needed for self-medication).(Schindlers (p 16 - 19) | 3.10(a) \* In terms of the Prince Judgment, the read in in paragraph [129]13(b) excludes “the cultivation of cannabis by an adult in a private place for his or her personal consumption in private” from the definition of "deal in" in section 1 of the Drugs Act. In paragraph [85] this is further explained that "the cultivation of cannabis by an adult must be in a private place and the cannabis so cultivated must be for that adult person’s personal consumption in private". \* Some foreign jurisdictions do allow for cultivation on behalf of another, but the majority do not allow for this.\* The obvious reason for not allowing cultivation on behalf of another, is that it can be used to facilitate dealing in cannabis among others: Given another a 1 Kg of cannabis can justified that it the proceeds of his or her cannabis seed. The 4 Kg of cannabis that is stored is those of other persons of whose behalf the possessor cultivated.3.10(b) See paragraphs 3.7 and 2.12(h), above. 3.10(c) No, see paragraph 3.7 and 2.12(h), above.3.10(d) **Yes the prescribed quantities do apply to a person who self-medicates. However, as indicated in 2.12(b), above a suitable amendment will be proposed to accommodate this aspect.**  |
| 3.11 (a) There should not be a restriction of the number of cannabis plant for persons and spiritual leaders belonging to religious and cultural communities. (Although not specifically discussed in its representation, the commentator intended that this exemption should apply to clause 2(1) and (3) and clauses 3 and 4).(NRC (p 3)) (b) There should not be quantitative limitations on cultivation material, cannabis plants or cannabis for cultural, religious and linguistic communities and persons and spiritual leaders belonging to those communities. (NRC (p 24)) | 3.11 (a) and (b) **As indicated in paragraph 1.24, a religious exemption may be considered.** |
| 3.12 Clause 2(2): No restrictions should be imposed on how much an adult person consumes as long as it is done in a private place. Pharmacies and GPs should be allowed to prescribe cannabis-based medications for all patients. Consumption of cannabis and cannabis products should be encouraged by the legislation due to its nutritional value. (Wonderlife Cannabis Institute (p2 - 5, par 1.4)). | 3.12 There is no restriction on the quantity of cannabis that may be consumed in private. The Bill only deals with aspects relevant to the private use of cannabis. The Medicines Act already allows for the medicinal use of cannabis.  |
| 3.13 Clause 2(3)*(a)*: There should be no restriction of sharing cannabis cultivation materials, cannabis plants or cannabis between adults.(Wonderlife Cannabis Institute (p2-5, par 1.4)) | 3.13 See paragraph 3.7 and 2.12(h), above |
| 3.14 Clause 2(3), should further be clarified to provide a time limit per exchange. The current provision is unclear since it may be interpreted as a once-off exchange.(Wegerif (p 8 - 9) | 3.14 **Clause 2(3), should be interpreted as per occasion since it does not restrict it to a once-off exchange. However the clause will be clarified.** |
| 3.15 Clause 2(3)*(a),* allows that adult persons to give an receive cannabis plant cultivation material, *inter se*, as long as no remuneration is involved. Clause 3(7) of the Bill criminalises the dealing in cannabis plant cultivation material. According to the commentator, the Prince Judgment by implication authorises the selling and buying of cannabis seeds and requests that the Bill be amended to facilitate the trading in cannabis seeds. (GSR (p 2 – 7); Tony Budden (p 1); Schindlers (p 16 - 17)) | 3.15 The clause aims to regulate sharing without compensation between adults. Clause 1(2), allows for an option that legislation may be promoted, among others, to regulate the dealing in cannabis cultivation material. (This aspect is discussed in broader detail in paragraph 4.19, below) |

**4. CULTIVATION OFFENCES (CLAUSE 3 AND SCHEDULE 4 OF THE BILL)**

|  |  |
| --- | --- |
| **Comments** | **Responses** |
| 4.1 It is a right of the Rastafari community to cultivate cannabis plants without any restriction.(Mpumalanga Rastafari Community (p 3)) | 4.1 The Drugs Act and the Medicines Act have always restricted the cultivation of cannabis plants. Although the religious use of cannabis by the Rastafari was acknowledged in the Prince 1 Judgment, the Court held that the prohibitions of the Drugs Act and Medicines Act are justifiable limitation thereon. The limited exemption that legalise the cultivation of cannabis plants for personal use cannot be regarded as allowing the Rastafari community to cultivate cannabis plants without any restriction. The Bill, which aims to give effect to the Prince Judgment regulates and imposes justifiable restrictions on the cultivation of cannabis plants.  |
| 4.2 Clarity is required on how the prescribed quantities in this clause have been determined. (Western Cape Government (2) (p 5)). | 4.2 Foreign legislation were initially used as the basis to determine the prescribe quantities of cannabis plants that constitute the offences in section 3(1). However, to strictly regulate compliance with the Bill, to ensure that cannabis is not cultivated for purposes of dealing, the quantities were reduced and increased penalties have been provided for in the Bill. **As already indicated this may be reconsidered in the finalisation of the Bill. Most foreign jurisdictions make provision for an extended list of quantities of cannabis plants that are subject to different penalties.** |
| 4.3 It is proposed that clause 3 be amended to put it beyond doubt that the offences in the clause do not apply to a person who cultivates cannabis plants under authority of a license obtained from SAHPRA (medical cannabis) or the Department of Agriculture Land Reform and Rural Development (hemp with a THC content of not more that 0.2%).(Jeff Verlinden) | 4.3 This is noted it is not necessary. Clause 1(2) of the Bill already provides for this. |
| 4.4 There should not be a restriction of the number of cannabis plant for persons and spiritual leaders belonging to religious and cultural communities and cultural, religious and linguistic communities should be exempted from the offences in clause 3.(NRC (p 3); TRO (p 2)) | 4.4 **As indicated in paragraph 1.24, a religious/cultural exemption may be considered.** |
| 4.5 It is proposed that the quantities in Schedule 4, which are regarded as trafficable quantities and commercial quantities, respectively, be increased to allow more leeway for limited and safe personal use.(Wegerif (p 5 - 6)) | 4.5 See paragraph 4.2, above.  |
| 4.6 The cultivation, having in a public place, and the exchange of the very same plants could, in terms of the Bill, result in a number of different offences all subject to their own penalties, but all arising from the same plants. To be punished multiple times for different offences that all relate to the same plants would be an injustice and could result in extreme sentences for relatively small offenses.(Wegerif (p 6)) | 4.6 The so called "splitting of charges" or sometimes called "duplication of convictions" principle prevent a person from being convicted and sentenced twice on the basis of the same culpable fact see ***S v Radebe***  2006 (2) SACR 604 (O) at paragraph [5]: "The rule against a duplication of convictions is a rule primarily aimed at fairness. Its main aim and purpose is to avoid prejudice to an accused person in the form of double jeopardy, that is, being convicted and punished twice for the same offence when in fact he or she has only committed one offence". |
| 4.7 (a) Clause 3(1)*(b)* and *(c)*: There should be no restriction in respect of cultivation of cannabis plants in a private place, alternatively, the quantities in Schedule 4 applicable to the cultivation of cannabis plants must specify -\* 2000 cannabis plants or cannabis plant equivalent per adult person and 20 000 cannabis plants or cannabis plant equivalent, as a trafficable quantity; and\* 20 000 flowering cannabis plants or cannabis plant equivalent per adult person, or 100 000 flowering cannabis plants or cannabis plant equivalent per dwelling which is occupied by two or more adult persons as a commercial quantity. (Wonderlife Cannabis Institute (p 4)) | 4.7 This cannot be accommodated, since it extends the allowable quantities beyond small quantities for personal consumption as contemplated in the Prince Judgment. See paragraph [127] of the Prince Judgment:***"In regard to cultivation the question also arises as to how a police officer who comes across cannabis that is being grown in a garden or in a private place will know whether the adult person growing it is growing it for his or her personal consumption. In my view all the considerations I have discussed above in relation to how a police officer will determine whether cannabis is possessed for personal consumption apply with equal force to the cultivation of cannabis in a private place for personal consumption and they need not be repeated here".*** |
| 4.8 Section 3(1)*(a)* and *(b)* read with Schedule 4: These provisions discriminates against large families or households, which are often poorer households, in that the combined amount allowed per dwelling is only is limited to two adults per dwelling. It is proposed that the amounts should be determined per adult and not per dwelling. (Wegerif (p 7 - 8) | 4.8 Most foreign jurisdictions provides for this household limitation. If this limitation is to be calculated on an adult- per-household basis it will negatively impact on enforcement measures to limit cannabis for personal use and may be used as a facade for dealing in cannabis. The aims are not only to limit the plants but also cannabis that is derived from such plants. |
| 4.9 Clarity is required in whether the South African context as it relates to human settlements was considered.(Western Cape Government (2) (p 6)) | 4.9 Yes, the impact of measures to ensure that a cannabis plant is inaccessible to a child has been considered in the context of human settlements in South Africa. The need to ensure that cannabis is not accessible to children surely trumps an adult person's need to cultivate cannabis for recreational purposes. Similarities exist in the Tobacco Products Control Act and legislation regulating alcohol that limit access thereto by children.  |
| 4.10 The expression “reasonable measures” in clause 3(2)*(a)*, is vague. It is preferable to include accurate standards in clause 3(2)(*b)* regarding the cultivation of cannabis, for example, the regulations should deal with the following topics: Isolation of the cannabis plant area, area must be safe and secure, sizes of growth rooms etc. (Western Cape Government (2) (p 5 - 6)). | 4.10 **An amendment may be considered in respect of the provision to provide for requirements and standards as contemplated in paragraph *(b)*, only, which requirements or standards will be prescribed by regulation.**  |
| 4.11 Millions of South Africans live in crowded shacks in densely populated communities and do not have a private space to grow or store cannabis (clause 3(2) and (3)). (COSATU (p 5); Cannabis Trade Association Africa (p 1); SADPI (p 3)) | 4.11 See paragraph 4.9 above. |
| 4.12 If a person does not live in a house with a private garden, he or she cannot cultivate cannabis plants (clause 3(3)). What happens if a person lives in a flat or dwelling that has no garden or a number of persons using the garden, including children? A person that cannot cultivate cannabis plants as a result of the afore-mentioned circumstances can only purchase cannabis from another, which is criminalised in terms of the Bill (see clause 4(5)).(Cannabis Trade Association Africa (p 1); Tony Budden (p 1)) | 4.12 \* A ‘‘private place’’ is defined in section 1(1) of the Bill as "any place, including a building, house, room, shed, hut, tent, mobile home, caravan, boat or land or any portion thereof, to which the public does not have access as of right. This must further be interpreted in line with paragraph [85] of the Prince Judgement where it was explained that: ***"The issue of the cultivation of cannabis in private by an adult for personal consumption in private should not be dealt with on the basis that the cultivation must be in a dwelling or private dwelling. It should be dealt with simply on the basis that the cultivation of cannabis by an adult must be in a private place and the cannabis so cultivated must be for that adult person’s personal consumption in private. An example of cultivation of cannabis in a private place is the garden of one’s residence. It may or may not be that it can also be grown inside an enclosure or a room under certain circumstances. It may also be that one may cultivate it in a place other than in one’s garden if that place can be said to be a private place".***\* It is acknowledged that there may well be instances where a person may not be able to cultivate his or her own cannabis plants due to the provisions of the Bill. Clause 2(3), aim to make provision for the exchange of cannabis without remuneration which is aimed at addressing this aspect. The Bill is based on legislation in other jurisdictions where a commercial model for the recreation use of cannabis was adopted, which caters for persons who do not cultivate their own cannabis as well as self-cultivation of cannabis. Cannabis clubs may well be an appropriate solution to cater for excluded persons to cultivate cannabis for personal consumption, but as pointed out in paragraph 3.6 requires substantial oversight mechanisms and funding for such mechanisms.  |
| 4.13 Clause 3(5): There should not be a restriction on possession of cannabis plants in a public place.(Wonderlife Cannabis Institute (p 4)) | 4.13 The aim of the provision is to curb dealing in cannabis. |
| 4.14 Clause 3(6) and (7): The Bill does not fully consider the commercial realities when providing for the prohibition against the exchange of consideration. (Western Cape Government (2) (p 5)) | 4.14 The advantages of a commercial model for recreational cannabis regulation to address harms are fully acknowledged (see paragraphs 1.28 and 1.34 above). The Bill only regulates the cultivation and use of cannabis within the ambit of the Prince Judgment. Clause 1(2) of the Bill does provide for the promotion of other legislation that may deal with commercialisation of cannabis for recreational purposes.  |
| 4.15 (a) In terms of clause 2(3), an adult person may without the exchange of consideration obtain the prescribed quantity of cannabis plant cultivation material from any other adult person. Clause 3(7), however criminalises the dealing in cannabis plant cultivation material. The question is raised how cannabis plant cultivation material can be obtained since no other law provides for this. (Western Cape Government (2) (p 4- 5))(b) GSR:\* The Prince Judgment by implication authorises the selling and buying of cannabis seeds.\* The Bill prohibits the commercial sale and purchase of all forms of cannabis, including cannabis seeds (clause 3(7) and (8) read with the definition of "cannabis plant cultivation material"). The Bill enables adults to provide or obtain cannabis seeds to or from another adult, provided that this exchange does not involve the exchange of remuneration (clause 2(3)). These provisions discriminate against persons who do not know a person who is willing to provide cannabis seeds to him or her without remuneration.\* A large proportion of the cannabis seeds circulating in the South African cannabis market originate from foreign suppliers. The importance of regulating cannabis seed must be evaluated in the context of cannabis genetics. These genetics are currently at risk of dilution, through irresponsible and unregulated breeding out and cross breeding. \* The Bill must make provision for the commercial sale and purchase of a prescribed quantity of cannabis seeds by adults. Such initiative will eliminate the prior discussed complications and ensure greater regulation and control of cannabis seeds through an authorised dealer. Such initiative places the relevant Government agencies in a position to monitor the quality of seeds and implement limitations concerning the supply of cannabis seeds. Furthermore, the licensing of authorised sellers, selling of cannabis seeds coupled with an appropriate tax dispensation, may generate significant income for the State.\* The failure to provide for the buying and selling of seeds will force private home growers to obtain seeds on the black market. (GSR (p 2 – 7); Tony Budden (p 1); Schindlers (p 16 - 17); F Saaiman (page 2)) | 4.15 (a) –(b) \* Within the context of personal use as provided for in the Bill, exchange of cannabis cultivation material must take place as provided for in clause 2(3)*(a)* of the Bill. The Plant Breeders' Rights Act, 1976 and Plant Improvement Act, 1976 (Act No. 53 of 1976) (see section 13), among others, regulate trading in propagating material. Clause 1(2), specifically provides that other legislation apply in addition to the Bill. The Bill can therefore not regulate commercial activities in respect of cannabis cultivation material.\* The obligations of the RSA in terms of the International Drug Control Regime must also be considered regarding legalisation of cannabis cultivation material. Legalisation of commercial activities relating to cannabis cultivation material for personal use is likely to contravene those obligations. \* It is acknowledged that the failure to provide for trade in cannabis cultivation material will give rise to an illegal market.  |
| 4.16 What harms are prevented by criminalising the behaviour of someone who cultivates or possesses more than a “prescribed quantity".(Schindlers (p 17 – 18)) | 4.16 See paragraph 2.12. |
| 4.17 (a) A cultural, religious and linguistic community which uses cannabis as a sacrament must be permitted to cultivate, store and transport cannabis for sacramental purposes.(NRC (p 7 – 8))(b) NRC proposes a license/ permit regime to ensure that cultural, religious and linguistic communities are exempted from the cultivation offences in clause 3, which should also serve as authorisation for students to receive education in the growing of cannabis.(NRC (p 11); TRO (p 2 – 7))(c) An amendment to the Bill is proposed to regulate the dispensing of cannabis through a sacramental dispensary.(NRC (p 9); TRO (p 2 -7))(d) An amendment to the Bill is proposed to give the Cabinet member responsible for the administration of justice the powers to exempt an event by a cultural, religious or linguistic community from the provisions of the Bill.(NRC (p 9 - 10) ; TRO (p 2 -7)) | 4.17 **As indicated in paragraph 1.24, a religious/cultural exemption may be considered.** |

**5. CANNABIS OFFENCES (CLAUSE 4 AND SCHEDULE 4 OF THE BILL)**

|  |  |
| --- | --- |
| **Comments** | **Responses** |
| 5.1 The cannabis offences in effect ensure that no commercial activities are allowed in respect of cannabis.(Wonderlife Cannabis Institute (p 6)). | 5.1 It is correct that the Bill criminalises all cannabis commercial activities. |
| 5.2 What harms are prevented by criminalising the behaviour of someone who possesses more than a “prescribed quantity".(Schindlers (p 17 – 18)) | 5.2 The criminalisation aims to address dealing in cannabis and protect others against the harms associated with cannabis use. If no restrictions are placed on the quantity of cannabis that may be possessed, it would be near impossible to address dealing in cannabis and the criminal activities associated therewith. |
| 5.3 There should not be a restriction on cannabis for persons and spiritual leaders belonging to religious and cultural communities. (NRC (p 3); TRO (p 2))  | 5.3 **As indicated in paragraph 1.24, a religious/cultural exemption may be considered.** |
| 5.4 Clause 4 must be amended to clarify its application, namely that the offences do not apply to a person who performs any activity under authority of a license obtained from SAHPRA (medical cannabis) or the Department of Agriculture Land Reform and Rural Development (hemp with a THC content of not more that 0.2%), which may be an offence in terms of the Bill.(Jeff Verlinden) | 5.4 This is noted it is not necessary. Clause 1(2) of the Bill already provides for this. |
| 5.5 The quantity of cannabis that can be possessed by any adult person in a public place at a given time in South Africa should be unrestricted (clause 4(1)).(Azibuye Emasisweni Institute of Wellness and Indigenous Knowledge Systems (p 3)) | 5.5 This cannot be accommodated. The quantity of cannabis possessed in a public place must be restricted to curb dealing therein.  |
| 5.6 Clause 4(3) imposes obligations to store cannabis in "a secure space". However the Bill fails to provide guidance what is to be considered a "secure place".(Wegerif (p 9)) | 5.6 **An amendment may be considered in respect of the provision to provide for requirements and standards as contemplated in paragraph *(b)*, only, which requirements or standards will be prescribed by regulation.**  |
| 5.7 The Fields Of Green For All have been working with world renowned scientists to prove that cannabis is almost harmless to those that use it on a physical level. The offence of dealing in and buying in clause 4(5) does not have a victim other than the accused. (F Saaiman page 2) | 5.7 Dealing in cannabis falls outside the constitutional exemption provided for in the Prince Judgment and the obligations of the RSA in terms of the International Drug Control Regime. In terms of the definition of "deal in" the conduct of the buyer will be regarded as dealing in cannabis. However, in criminal proceedings such person will be regarded as a drug user and not be subjected to the same punishment as the person who actually sells the cannabis. The criminalisation of the buyer is to ensure that there is no market to deal in cannabis (see paragraph [88] of the Prince Judgment).  |
| 5.8 It is irrational to require that cannabis must be concealed from public view, especially since alcohol, can be both displayed and consumed in public areas.(COSATU (p 5); SADPI (p3)) | 5.8 The aim is to address dealing in cannabis and to curb promotion or enticement of others to use cannabis (especially children). Foreign jurisdictions have similar measures in place and even criminalise the display of paraphernalia that is used with cannabis, such as bongs, etc.  |
| 5.9 (a) A cultural, religious and linguistic community which use cannabis as a sacrament must be permitted to cultivate, store and transport cannabis for sacramental purposes.(NRC (p 7 – 8))(b) A license/ permit regime is proposed to ensure that cultural, religious and linguistic communities are exempted from the cannabis offences.(NRC (p 11); TRO (p 2 – 7))(c) An amendment to the Bill is proposed to regulate the dispensing of cannabis through a sacramental dispensary.(NRC (p 9); TRO (p 2 -7))(d) An amendment to the Bill is proposed to give the Cabinet member responsible for the administration of justice the powers to exempt an event by a cultural, religious or linguistic community from the provisions of the Bill.(NRC (p 9 - 10) ; TRO (p 2 -7))(e) Proposed text :***Special Licenses for Rastafari community******....*** *(1)* *The following are the special license type exempted to Rastafari community:*1. *A cultivator license which shall be issued to allow for the growing, harvesting, drying, trimming, curing or packaging of cannabis;*
2. *a dispensary license which shall be issued to allow for the storage and dispensing of cannabis;*
3. *an import license which shall be issued to allow for the importation of cannabis from any country where it is legal to do so;*
4. *an export license which shall be issued to allow for the exportation of cannabis to any country in keeping with the laws of such country; and*
5. *a transport license which shall be issued to allow for the transport of cannabis.*

*(2) The designated leadership of the Rastafari community may, on behalf of that said community, apply for a license where:*1. *The Rastafari community registered under the Non-Profit Organization Act; and*

*(b) the constituent documents of the Rastafari community state that cannabis is required for Rastafari purposes as a sacrament in adherence to a practice of the Rastafari community.*(TRO (p 3 – 4)) | 5.9 **As indicated in paragraph 1.24, a religious/cultural exemption may be considered.** |

**6. SMOKING AND CONSUMPTION OFFENCES (CLAUSE 5 OF THE BILL)**

|  |  |
| --- | --- |
| **Comments** | **Responses** |
| 6.1 The LM Judgments excludes children from the provisions of the Bill.(CDCSA (p 4)) | 6.1 See paragraph 3.4. The offences in clause 5 also apply to children. But due to an amendment to the Child Justice Act, the offences in question are subject to a level one diversion as contemplated in section 53(2)(a) of that Act, and that the child offender may, unless exceptional circumstances are present, not be arrested or be detained for these offences. |
| 6.2 There is also the very real risk of substantial exposure of people who do not use cannabis to second-hand cannabis smoke. It is unlikely that the provisions of the Bill are sufficient to prevent this risk from occurring. The Bill does take this into account to some extent by making it a Class D offence to smoke cannabis in the immediate presence of a non-consenting adult and to make it a Class C offence to smoke cannabis in the immediate presence of a child. It might be helpful to specify a distance, whether inside or outside. These offenses should be increased to Class C and B offences respectively. The purpose of the Bill is “private” use, and smoking in the presence of children and adolescents or non-consenting adults cannot be deemed private.(SAMRC (p 2)) | 6.2 Noted. As indicated in paragraph 2.5, above, the US States provided for a 21 years age restriction on the legal use of cannabis but apply their relevant tobacco legislation to the smoking of cannabis.  |
| 6.3 Millions of South Africans live in crowded shacks in densely populated communities and the prohibitions imposed by clause 5 are therefore unfair and illogical. The effect of clause 5 is that, if there are children in their one-roomed shack, or adults who object to their use of cannabis, in terms of the Bill, their only alternative is to leave the dwelling and enter a pubic area where they are not permitted to use cannabis. This is in stark contrast to those who reside in more spacious accommodation with yards or gardens and who are not faced with this dilemma.(COSATU (p 5); SADPI (p 3)) | 6.3 It is submitted that clause 5 gives direct effect to the Prince Judgment, where it is explained, in paragraph [109], the legalisation of personal use of cannabis is subject to the qualification that "the use, including smoking, of cannabis in public or in the presence of children or in the presence of non-consenting adult persons is not permitted" – paragraph [109](b).In terms of the Bill cannabis may be consumed at other places that can be regarded as a "private place" as explained in paragraph [85] of the Prince Judgment (paragraph 4.12, above), for instances a friend's house. \* Cannabis clubs may provide an appropriate solution to the problem, but is not a viable option outside a commercial regulatory framework for recreational use of cannabis, where the income may be used to fund oversight and compliance aspects (same as places at which alcohol may be consumed as provided for in terms of liquor laws).  |
| 6.4 The widespread use of cannabis for cultural and religious purposes, some of them with long traditional and historic roots, take place in more public spaces or involving gathering of persons are not accommodated in Bill and amounts to discrimination against certain groups of people.(Wegerif (p 8) | 6.4 **As indicated in paragraph 1.24, a religious/cultural exemption may be considered. Such exemption will by necessary implication address this aspect.** |
| 6.5 Clause 5(1): How is it envisaged that the prohibition against the eating of cannabis in a public place will be enforced? (Western Cape Government (2) (p 6))  | 6.5 An oral fluid drug screener may be used to detect the presence of THC. |
| 6.6 Clause 5(1): The prohibition against consumption would seemingly extend to food products, beverages, medicines, as well as products containing CBD oil which may contain trace amounts of THC. The prohibition appears to be overly broad. It is submitted that it should be restricted by referring to a threshold amount of THC and/or by expressly providing detailed parameters in this regard in the Bill. (Western Cape Government (2) (p 6)) | 6.6 **See paragraph 2.1, above. The amendment of the definition of cannabis to refer to any substance which contains more that 0.2% THC accommodates this concern.**  |
| 6.7 To oblige a person to consume cannabis within their own homes is an unjustifiable infringement of the right to privacy and dignity.(Azibuye Emasisweni Institute of Wellness and Indigenous Knowledge Systems (p 3)) | 6.7 This restriction emanates from the Prince Judgment. |
| 6.8 Clause 5(2) must be amended to provide that any person who smokes cannabis in the immediate presence of any non-consenting adult person is guilty of a class D offence, unless this conduct takes place in an area designated for smoking cannabis / unless participating in a sacramental church ceremony (the latter exemption is based on religious and cultural considerations).(NRC (p 14); TRO (p 4)) | 6.8 If a hotel designate a specific place for cannabis smoking and such place is restricted for that purposes only, is concealed from others, and the cannabis smoke does not cause a hindrance to others, it may be regarded as a private place within the ambit of the Bill. As indicated in paragraph 1.24, a religious/cultural exemption may be considered.  |
| 6.9 Many people in South Africa live in rented places, or with children or their parents who may not consent to their cannabis use. This will mean that they do not have a private space in which to consume cannabis and will continue to be criminalized if they use cannabis in public.(Cannabis Trade Association Africa (p 1)) | 6.9 See paragraph 6.3 and 6.7, above. |
| 6.10 Clause 5(3) must be amended to allow for the smoking of cannabis by adults in the presence of a child who participates in certain cultural, religious and linguistic activities.(NRC (p 13 – 14)) | 6.10 **As indicated in paragraph 1.24, a religious/cultural exemption may be considered.** |
| 6.11 The provision which criminalises the smoking of cannabis within a certain distance from a window or other place is inconsistent with applicable legislation regulating tobacco products. It is further recommended that more stringent measures should apply to cannabis than those applicable to tobacco (clause 5(4)).(Wegerif (p 9)) | 6.11 The Tobacco Products Control Act, 1993 (Act 83 of 1993), provides as follows: ***"2(1) (a) No person may smoke any tobacco product in—******(i) a public place;******(ii) any area within a prescribed distance from a window of, ventilation inlet of, doorway to or entrance into a public place;******(iii) any motor vehicle when a child under the age of 12 years is present in that vehicle; or******(iv) any place contemplated in subsection (3) (the Minister may prohibit the smoking of any tobacco product in any prescribed outdoor public place, or such portion of an outdoor public place as may be prescribed, where persons are likely to congregate within close proximity of one another or where smoking may pose a fire or other hazard).***\* The Bill prohibits the smoking of cannabis: In a public place (clause 5(1)); in the immediate presence of any non-consenting adult person (clause 5(2), in the immediate presence of a child (clause 5(3); in a private place within a distance prescribed by regulation from a window of, ventilation inlet of, doorway to or entrance into another place, or forming part of any place where persons congregate within close proximity of one another and where the smoke is likely to cause a hindrance to any personat that place (clause 5(4); and in a vehicle on a public road (clause 5(5)). It is submitted that clause 5 imposes stricter conditions on the smoking of cannabis as those provided for in the Tobacco Products Control Act. |
| 6.12 The provision is not sensitive to the current reality of the households in various communities as it relates to infrastructure, such as land, or any portion thereof which is included in the definition of "private place". In most communities, if a neighbour would consume cannabis in his or her private space, e.g. in his or her backyard, there is the likelihood that the smoke would be noticeable by neighbours. It is furthermore proposed that the envisaged regulations could perhaps be aligned with standards applied to tobacco smoke (clause 5(4)). (Western Cape Government (2) (p 6)) | 6.12 The regulations in terms of the Tobacco Products Control Act, will be considered in the drafting of regulations for purposes of clause 5(4)*(a)*.  |
| 6.13 The Bill does not have the same strict regulatory controls as for tobacco and alcohol use: \* The Bill’s definition for a child is under 18 years whereas the Liquor Amendment Bill proposed a minimum drinking age of 21 years. SAMA made a submission on the Liquor Bill expressing support for the higher limit of 21 years. \* Tobacco control legislation aims to combat second hand smoke by proposing "smoke free spaces" and imposing proximity limits for a smoker, the enforceability of controls on exposing family members (including minors) during private / home consumption of cannabis is elusive. \* The Bill does not provide for protective mechanisms similar to tobacco, such as plain packaging and prohibition of advertisement found in tobacco control laws will present a hiatus in South Africa’s consistent program of tightening regulation of harmful substances. (SAMSA P 14 -15) | 6.13 See paragraph 6.11. If compared to the Tobacco Products Control Act, the provisions of the Bill are stricter in its regulation of smoking of cannabis. The proposed amendment to the Liquor Act to increase the age to 21 years was not adopted by Parliament. The various harm reduction measures referred to by the commentator are inherent to commercialisation of liquor and tobacco. A commercial framework for the recreational use of cannabis can obviously serve such purposes as indicated in paragraphs 1.21 and1.34, above. |
| 6.14 Similarly to smoking tobacco and consuming alcohol in public places, it is a right of the Rastafari community to consume cannabis in a public place.(Mpumalanga Rastafari Community (p 3)) | 6.14 The restriction against consuming cannabis in public places emanates from the Prince Judgment and similar restrictions are imposed on tobacco and alcohol. |

**7. OFFENCES INVOLVING CHILD (CLAUSE 6 OF THE BILL)**

|  |  |
| --- | --- |
| **Comments** | **Responses** |
| 7.1 This clause is fully supported.(Wonderlife Cannabis Institute (p6)) | 7.1 Noted. |
| 7.2 The Bill does address the need to protect children (defined as persons under the age of 18) but does not refer specifically to adolescents and does not go far enough in protecting adolescents from access and exposure to cannabis. Among other things, it needs to specify that anyone giving or selling cannabis to a person under 18 or failing to protect a child or adolescent from accessing cannabis should be charged with having committed a Class A offence. This is not something that should be viewed as a minor offence/infringement.(SAMRC (p 1 – 2)) | 7.2 See paragraph 2.5, above. Almost all US States set 21 years as the age for legal consumption of cannabis. Other jurisdictions set the age at 18 years.  |
| 7.3 (a) Clarity is required about cases where a guardian does not know about a child’s use and possession of cannabis. This issue should be considered and expressly provided for.(b) Where an adult is convicted of certain offences against a child, the child is at risk and social support services need to intervene to ensure the wellbeing of the child.(c) The offences in subsection (1) should be punishable at least as a Class C offence.(d) Clause 6(1)*(b)* contradicts clause 3(2)*(a)* by affording a child access to cannabis plants by a guardian under the supervision of the guardian.(Western Cape Government (2) (p 6 -7)) | 7.3(a) The word "permits" in the context of clause 6(1)*(a)*, has the meaning of allowing or tolerating the conduct in subparagraphs (i) to (vi). Where there is no knowledge about a child’s use or possession of cannabis, how can a guardian be held responsible.(b) The Children's Act deals with this aspect. (c) It is submitted that an increased penalty will not per se ensure compliance or act as deterrence. (d) There is no contradiction. Clause 6(1)(b), qualifies clause 3(2)*(a),* (criminalises the failure take reasonable measures to ensure that the cannabis plant is inaccessible to a child).  |
| 7.4 It is proposed that the following additional subclauses be inserted in clause 6:\* A parent or a guardian of, or a person with responsibility for, a patient who is a child shall obtain a certificate in writing from a certified medical practitioner or **designated caregiver** certifying that the use of medical cannabis is necessary in the case of that child, and the parent or guardian shall consent in writing to the use of medical cannabis by the child.\* A medical practitioner must keep record of every patient to whom he or she has prescribed medical cannabis, and where that patient has **a caregiver** the medical practitioner must also enter into the record the name and contact information of the caregiver.(NRC (p 10 – 11); TRO (p 4))\* Other countries such as Trinidad, Tobago and Jamaica where there is a considerable concentration of cultural, religious and linguistic adherents have introduced legislation in a manner compliant with the United Nations 1961 Convention on Narcotics, and the AU commitment to guiding States on cannabis policy considerations. (NRC (p 11); TRO (p 4)) | 7.4 The Medicines Act regulates the medicinal use of cannabis (section 22A) and the Bill cannot deal with these aspects.  |
| 7.5 Children must have access of the cannabis for all purposes excluding smoking; and receive training in respect of the cultivation and use of cannabis. (Rastafari National Council (p 2)) | 7.5 **As indicated in paragraph 1.24, a religious/cultural exemption may be considered.** |
| 7.6 Children of the Rastafari community have a right to cultivate, possess and consume cannabis.(Mpumalanga Rastafari Community (p 3)) | 7.6 **As indicated in paragraph 1.24, a religious/cultural exemption may be considered.** |
| 7.7 NRC proposes that:(a) Clause 6(3) (also clause 5) be amended to provide for a justification where cultivation material/ a cannabis plant or cannabis is provided for medical or sacramental purposes.(NRC (p16); Rastafari National Council (p 2))(b) That clause 6(5) be amended to provide that: "Any person who administers cannabis to a child without a prescription by a certified medical practitioner, is guilty of a Class A offence". It is pointed out that in many cultural, religious and linguistic communities, cannabis may be administered to children patients, upon recommendation by CRL Rights herbalists or registered traditional healers, as an indigenous and African Traditional Medicine, and this would be done in compliance with other relevant pieces of legislations.(NRC (p15)) | 7.7 (a) **As indicated in paragraph 1.24, a religious/cultural exemption may be considered.**(b) The Medicines Act and the Traditional Health Practitioners Act, are the appropriate legislation to deal with medicinal use of cannabis and not the Bill. |
| 7.8 The Bill must criminalise the conduct of an adult person that causes or permits a child to use cannabis at a place of worship, a sacramental dispensary or an exempt event.(NRC (p 10) | 7.8 Noted |
| 7.9 Canada, legalized recreational cannabis in 2018, becoming the second country to do so after Uruguay. Before the Canadian Government finalised the legalisation, the medical authority in that country – the Canadian Medical Association – raised its longstanding concerns with the Canadian Government about the health risks associated with consuming marijuana, particularly in its smoked form. The Canadian Paediatric Society also has misgivings about cannabis, it’s Position on Cannabis and Canada’s Children and Youth references harms and risks in the youth age group, including cannabis dependence and other substance use disorders; the initiation and maintenance of tobacco smoking; an increased presence of mental illness, including depression, anxiety and psychosis; impaired neurological development and cognitive decline; and diminished school performance and lifetime achievement (C. P. Society, “Cannabis and Canada’s children and youth,” 3 May 2017https://www.cps.ca/en/documents/position/cannabis-children-and-youth.) (SAMSA (p 8)) | 7.9 Noted. Clause 6 and other provisions of the Bill aim to protect children against the harms associated with cannabis. |

**8. PENALTIES (CLAUSE 7 OF THE BILL)**

|  |  |
| --- | --- |
| **Comments** | **Responses** |
| 8.1 The penalties are unacceptable because the perceived harms of cannabis have never been proved and there’s a marked absence of a victim in these supposed ‘crimes’. (F Saaiman (p 2 - 3); (Cannabis Trade Association Africa (p 1); Tony Budden (p 2)) | 8.1 Many foreign jurisdictions that legalised cannabis penalise dealing in cannabis with the same penalties that applied thereto in terms of their Drug legislation. In terms of the Drugs Act, dealing in cannabis is punishable with imprisonment for a period not exceeding 25 years, or to both such imprisonment and such fine as the court may deem fit to impose. The Bill, however, opted for a lesser penalty when it comes to the offence of dealing in cannabis and offences involving a commercial quantity of cannabis plant or cannabis, namely a fine or imprisonment for a period not exceeding 15 years or to both a fine and such imprisonment. The fact that the possession of 300 grams dried cannabis or a cannabis equivalent in a public place is regarded as a commercial quantity offence does not mean that a court will impose 15 years' imprisonment. This is discussed in paragraph 4.5, above.   |
| 8.2 The cannabis offences and penalties in effect ensure that no commercial activities are allowed in respect of cannabis (Wonderlife Cannabis Institute (p 6)). | 8.2 This is correct, commercial activities are criminalised. |
| 8.3 Only criminal punishment is considered which gives rise to criminal records. Decriminalisation, mandatory treatment and community services are alternative that may be considered.(Western Cape Government (2) (p 8)) | 8.3 Civil penalties, shortened periods for expungement of criminal records for relatively minor offences are receiving urgent attention. Section 255 of the CPA provides that a court may, in appropriate circumstances, stop a trial of an accused who is dependent on any substance and order an enquiry in terms of the Prevention of and Treatment for Substance Abuse Act. This does not give rise to a criminal record. In terms of section 296 of the CPA, a court which convicts a person of any offence may, if the person is dependent on any substance, commit the person to a treatment centre which must is in terms of section 276(1)(e) of the CPA, be regarded as a sentence. The penalties are however necessary to regulate the right to use cannabis in private especially to ensure that it is not used as a cover to facilitate dealing in cannabis and to protect others against harm associated therewith. |
| 8.4 The focus of the Bill is enforcement of compliance through criminal sanctions. Drug abuse is a complex social issue dependent on various personal, community and economic factors. Accordingly, we submit that legislation in respect of cannabis ought to be considered in cooperation with the Departments of Health, Agriculture and the Treasury, as well as in consultation with stakeholders in sectors such as public health, etc. The international community as well as domestic drug policy favour a multi-disciplinary and harm reduction approach; legislation should reflect this accordingly. In addition, we submit that this must be augmented by adopting the position that drug policy ought to be a matter of public health instead of a criminal justice matter.(COSATU (p 4 – 5); SADPI (p 2 -3)) | 8.4 It is correct that criminalisation is inappropriate to deal with drug abuse. However, the offences contemplated in clauses 3, 4, 5 and 6 of the Bill aim to address dealing in cannabis and protect others against the harms associated with cannabis use. If no restrictions are placed on cannabis cultivation material, the number of cannabis plants that may be cultivated or the quantity of cannabis that may be possessed in a private place or a public place, it would be near impossible to address dealing in cannabis and the criminal activities associated therewith. The Prevention of and Treatment for Substance Abuse Act provides, among others, for  a comprehensive national response for combating substance abuse; mechanisms aimed at demand and harm reduction in relation to substance abuse through prevention, early intervention, treatment and re-integration programmes; and other related aspects. |
| 8.5 The sentences that may be imposed for certain offences contemplated in the Bill are unreasonably, irrationally and arbitrarily harsh, accounting for the fact that:- most of the statutory crimes are genuinely victimless (and, thus, there is no societal need for retribution or restoration);- true criminals are liable to do less time for more heinous crimes (i.e. it appears that the drafter have not conducted a proportionality enquiry/exercise);- the National Drug Master Plan aims to move towards rehabilitation instead of punishment; and- in the Judgment (paragraph [101]), the Constitutional Court found that the limitation in so far as the Drugs and Drug Trafficking Act, criminalises the use or possession of cannabis in private by an adult person for his or her personal consumption, is not reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.(Schindlers (p 7 - 15); CDCGP (p 7); TRO (p 4); SADPI (p 2) ) | 8.5 \* See paragraph 8.1, although maximum penalties are determined, the court must in the circumstances impose an appropriate sentence that fits the crime, the offender and the interest of society.\* Criminalisation of small quantities of drugs for personal use is not an appropriate measure to deal with drug abuse due to the fact that the accused is the victim and there is no harm to others. However, the offences contemplated in clauses 3, 4, 5 and 6 of the Bill aim to address the possible dealing in cannabis and protect others against the harms associated with cannabis use. Many countries that opted for commercialisation of cannabis have similar provisions as those contemplated in clauses 3, 4, 5 and 6 of the Bill to protect others against the resultant harm of cannabis.\* It is submitted that the statement of the Constitutional Court in paragraph [101] must be read with the other parts of the judgment, among others, that small quantities for personal use may not be harmful, other jurisdictions have measures in place to deal with this aspect, the State must prescribe an appropriate small quantity for personal use, the Court cannot decriminalise dealing in cannabis since it is a serious problem in South Africa, and the read in leaves the offence of dealing in cannabis in the Drugs Act intact with the exemption of cultivation in private for private use of cannabis (which is further in paragraph [111], that personal use quantities are small quantities). |
| 8.6 There is no proportionality between the punishment and the various crimes for possession, production, and exchange stipulated in the Bill. While individuals are legally allowed to be in possession of and to grow and exchange certain minimum quantities of cannabis, being in possession of more than the legal amount leads to severe legal consequences. It is recommended that the quantities in the schedule be increased and that the possible sentences for all the listed offences be reduced or that a further category, with high penalty, for wholesale production and distribution of substantially larger quantities be introduced.(Wegerif (p 6 -7); SADPI (p 2)) | 8.6 See paragraph 4.5. This may be considered. |
| 8.7 The penalties that may be imposed for a contravention of the Bill are severe and arbitrary, for example, if a person is found with more than 1kg of dried cannabis or nine flowering plants they could be jailed for up to 15 years, and a person who smokes in public may be jailed for up to two years. Furthermore, the quantitative limitations that are coupled with the penalties are arbitrary and grossly disproportionate as compared to, for example, violent offences.(COSATU (p 4)) | 8.7 See paragraphs 8.5 and 4.5. |

**9. EXPUNGEMENT OF CRIMINAL RECORDS OF PERSONS CONVICTED OF POSSESSION OR USE OF CANNABIS (CLAUSE 8 OF THE BILL)**

| **Comments** | **Responses** |
| --- | --- |
| 9.1 Consideration should be given to a redress mechanism that goes hand in hand with expungement. (Western Cape Government (1) (p 2); OAU; F Saaiman p 3) | 9.1 It is submitted that the limited exception based on the right to privacy cannot be regarded as a basis for redress due to a gross violation of human rights. In terms of the RSA's obligations under the International Drug Control Regime, cannabis must still be criminalised. Most foreign jurisdictions also criminalise the use and possession of and dealing in cannabis.  |
| 9.2 (a) Previous convictions for cultivation of cannabis should be included as offences which may be expunged.(b) The reference in section 8(3) to "applicant referred to in subsection (2)" should be substituted with "applicant contemplated in subsection (2)", since subsection (2) does not refer to an "applicant".(c) Clause 8(6) must be redrafted in order to limit the powers of the Director-General to revisit erroneous decisions based on errors of fact where facts pertaining to the correct factual context were not available at the time of the erroneous decision.(Western Cape Government (2) (p 8 - 9)) | 9.2(a) **Cultivation of cannabis may be considered as a ground for expungement, if small quantities are involved and the person was convicted of dealing in cannabis on this basis.**(b) **Noted and the proposal will be considered.**(c) It is submitted the powers of the Director-General to revisit erroneous decisions as contemplated in clause 8(6), cannot be interpreted otherwise than errors of fact at the time of the decision. |
| 9.3 The expungement of criminal records in respect of use and possession of cannabis is supported. However, some of the offences provided for in the Bill may in the further development of an applicable legal regime relating to the regulation of cannabis give rise to a need for further expungement of criminal records.(Schindlers p 22 – 23)) | 9.3 Noted. |
| 9.4 The expungement of criminal records is supported.(COSATU (p 3) | 9.4 Noted. |
| 9.5 According to the CDCSA:(a) All criminal records for the use, possession and dealing in cannabis must be expunged;(b) all persons who are serving a period of imprisonment as a result of a cannabis-related offences must be released; and(c) pending criminal proceedings in respect of cannabis-related offences must be stopped.(CDCSA (p 4); TRO (p 2)) | 9.5 The legalisation resulting from the Prince Judgment only relates to use and possession of small quantities of cannabis. It is submitted that expungement cannot be extended to the dealing in cannabis unless the person was convicted of dealing in cannabis on this basis of cultivating a small quantity of cannabis plants. |
| 9.6 CDCSA proposes that the Bill must also allow for the expungement of criminal records of dealing in cannabis which resulted from the unconstitutional presumption in terms of section 21(1)*(a)*(i) of the Drugs Act. According to this presumption, if it is proved that the accused was found in possession of dagga exceeding 115 grams, it shall be presumed until the contrary is proved, that the accused dealt in such dagga. (CDCSA (p 4)) | 9.6 **Agree in principle with the submission.**  |
| 9.7 The expungement of the criminal record of persons convicted of cannabis-related offences are supported and is a progressive step towards redressing the stigmatisation and marginalisation of drug users.(SADPI (p 1)) | 9.7 Noted. |

**10. REGULATIONS (CLAUSE 9 OF THE BILL)**

| **Comments** | **Responses** |
| --- | --- |
| 10.1 Clause 9 should be redrafted to provide for additional aspects which may be regulated through regulation, among others, regarding hemp, chemicals used in cultivation of cannabis at home, THC found in value added products consumed in both private and public, research and development, awareness raising and education regarding cannabis plants.(Western Cape Government (2) (p 10)) | 10.1 The aim of the Bill is to regulate personal use of cannabis within the context of the legal position that resulted from the Prince Judgment. \* The Department of Agriculture, Land Reform and Rural Development must promote legislation for the industrialisation of hemp.\* The chemicals used in the cultivation of cannabis do not need regulation. The Bill does not regulate the extraction of THC (which is regulated by some foreign jurisdictions), which involves the use of solvents.\* Research and development, awareness raising and education fall outside the ambit of the Bill and other Departments are responsible for such initiatives. |

**11. REPEAL OR AMENDMENT OF LAWS (CLAUSE 10 AND SCHEDULE 5 OF THE BILL)**

| **Comments** | **Responses** |
| --- | --- |
| 11.1 Western Cape Government (2):It is remarked that cannabis is a substance that remains in the bloodstream longer than alcohol. A person might test positive, but may no longer be intoxicated.(a) It is unclear how the limit of THC in the bloodstream has been established to determine intoxication.(b) It is unclear how drivers are to be tested at roadblocks. Rapid testing at roadblocks will need to be rolled out. (p 1-2)(c) The legal limit whilst driving a motor vehicle for any substance should be zero. (p 10)) | 11.1 (a) "The metabolism of Δ9-THC has been studied extensively. The primary site of Δ9-THC metabolism is the liver where Δ9-THC is converted to two major metabolites: 11-hydroxy-THC (11-OH-THC) and 11-carboxy-THC (11-COOH-THC). These metabolites undergo further processing, which make them more water soluble to facilitate excretion by urine and feces.11-OH-THC possesses psychotropic properties that are the same as Δ9-THC. Elimination of compounds is often measured in terms of half-life, the amount of time required to eliminate one half of the total amount of a given compound that has been absorbed. Elimination of Δ9-THC occurs in two distinct phases. There is an initial rapid elimination phase with a half-life of approximately 6 minutes followed by a long terminal elimination phase with a half-life of approximately 22 hours. This long terminal elimination phase is primarily due to rapid absorption of Δ9-THC in fat tissue followed by its slow release over time back into circulation. In chronic users blood-plasma concentrations of Δ9-THC can remain above measurable levels (i.e. 1 ng/ml) for 48-72 hours after administration.""Due to the initial rapid elimination phase of Δ9-THC followed by the long terminal elimination phase, blood-plasma concentrations of Δ9-THC are indicative of exposure, but are not a reliable indicator of whether an individual is impaired."(Report from the Impaired Driving Safety Commission (Michigan) (March 2019) p 6)"Due to the above the Impaired Driving Safety Commission has recommended that "because there is a poor correlation between Δ9-THC bodily content and driving impairment, the Commission recommends against the establishment of a threshold of Δ9-THC bodily content for determining driving impairment and instead recommends the use of a roadside sobriety test(s) to determine whether a driver is impaired.(Report from the Impaired Driving Safety Commission (Michigan) (March 2019) p 15)Limit of THC in blood to determine intoxicationThe amendments to the National Road Traffic Act to prescribe a level of THC in the blood of a person to determine intoxication is based on legislation of foreign jurisdictions, as referred to below:(i) Canada (Blood Drug Concentration Regulations: SOR/2018-148): The prohibited blood drug concentrations for THC are:\* more than 2ng but less than 5ng THC per ml of blood for summary conviction offences;\* at or over 5 ng THC per ml of blood for the drug-alone offence; and\* at or over 2.5 ng of THC per ml of blood combined with 50 mg of alcohol per 100 ml of blood for the drugs-with-alcohol hybrid offence.(Any detectable level for the hybrid offence iro Cocaine, LSD, 6-MAM (a metabolite of heroin), Ketamine, Phencyclidine (PCP), Psilocybin, Psilocin (magic mushrooms), and Methamphetamine). (ii) US: \* 5 nanogram threshold of THC:Colorado (Rev. Stat. §42-4-1301); Illinois (Ill. Comp Stat. § 625 ILCS 5/11-501.2); Montana (2013 MT House Bill 168); Washington (Initiative 502).\* 2 nanogram or less threshold of THC:Nevada 2 ng/ml; Ohio 2 ng/ml; Pennsylvania: 1 ng/ml.\* Any amount of Drug or Metabolite: Arizona (Rev. Stat. § 28-1381); Delaware (21 Del. Code § 4177); Georgia (Ga. Code Ann. § 40-6-391); Illinois (Ill. Comp. Stat. § 625 ILCS 5/11-501) – see above THC; Indiana (Ind. Code Ann. § 9-30-5-1); Utah (Utah Code §41-6a-517); Wisconsin (Wis. Stat. Ann. § 346.63).\* Impaired DrivingIowa (Iowa Code § 321J.2); Michigan (Michigan Vehicle Code § 257.625) - Supreme Court ruled that “medical” marijuana users were not subject to the per se standard. In cases of drugged driving by an approved medical marijuana user, the state must prove the driver was impaired by marijuana at the time of the arrest; Minnesota (Minn. Stat. Ann. §169A.20) – exlude THC from per se standard; North Carolina (N.C. Gen. Stat. §§ 20-138.1, 20- 138.3); all other States.(b) In Canada and other jurisdictions, an oral fluid drug screener is used to detect the presence of some drugs in oral fluid, including THC. A positive result on an oral fluid drug screener may provide enough information to move the investigation forward either by making a demand for a drug recognition evaluation or the taking of a blood sample. In addition objectively discernable facts, such as red eyes, muscle tremors, agitation, or speech patterns, body control etc, may also be indicative of the fact that a person consumed drugs.(c) 0%This may be considered.  |
| 11.2 Cannabis use affects perceptual motor functioning and increases the risk of motor vehicle accidents. The Bill does take this into account to some extent by amending the National Road Traffic Act. The question is raised as to whether sufficient attention and resources are given to training and equipping law enforcement agencies to detect cannabis-impaired driving and prosecuting impaired drivers? To what extent will financial and other resources be made available to do this?(SAMRC (p 2)) | \* Also see the discussion in paragraph 11.3 regarding the THC and impaired driving skills. Section 65(1) of the National Road Traffic Act, already criminalises the driving of a vehicle or to occupy the driver's seat of a motor vehicle whose engine is running, while under the influence of a drug having a narcotic effect. The proposed amendments to the National Road Traffic Act, are necessary to cater for the increased use of cannabis and aim to complement the offence in clause 5(5) which criminalises the smoking or consuming of cannabis in a vehicle on a public road. Perceived obstacles in the practical implementation of legislation (unless there is a better alternative solution to deal with the matter), must never be regarded as a bar to promote legislation that is needed to protect society against harmful conduct. \* Commercialisation of cannabis will, as is the position in foreign jurisdictions, give rise to an escalation of motor vehicle accidents. However, a commercial model of cannabis regulation will at least ensure the availability of funds for training, equipment and other aspects necessary to address the harms associated with the use of cannabis.  |
| 11.3 The limits proposed in respect of the National Road Traffic Act have no scientific basis.(Schindlers p23 – 24) | \* "The relationship between ingesting cannabis and impairment in driving skills has been established in a number of studies, which are summarized in this section. These include laboratory studies of how Δ9-THC, the main active ingredient in cannabis, influences cognitive and motor skills, as well as analyses of crash data linking Δ9-THC detected in blood tests and crash risk and injury outcome.In laboratory studies, including those using driving simulators and instrumented vehicles, Δ9-THC affects areas of the brain that control movement, balance, coordination, memory, and judgment. Cannabis has been shown to impair critical driving-related skills including psychomotor abilities like reaction time, tracking ability, and target detection, cognitive skills like judgment, anticipation and divided attention, and executive functions like route planning and risk taking.Interestingly, in most of the simulator and vehicle studies, cannabis-impaired subjects typically drive slower, keep greater following distances, and take fewer risks than when sober. These effects appear to suggest that the drivers are attempting to compensate for the subjective effects of using cannabis. This is contrasted with alcohol-impaired subjects, who typically drive faster, follow more closely, and take more risks than when sober. That said, cannabis-impaired drivers attempting to compensate for the effects of cannabis are not likely to fully mitigate the effects of the drug on driving skills. Moreover, at least one study indicated that acute cannabis intoxication can result in more risk taking rather than risk compensation." (Report from the Impaired Driving Safety Commission (Michigan) (March 2019) p 7 - 8)\* The rationale for the prescribed limits is discussed in paragraph 11.1, above. |
| 11.4 (a) Recent proposed amendments to the National Road Traffic Act proposed a zero % blood alcohol limit for drivers to curb alcohol-related motor accidents. The Bill, however, deviates from this initiative since it proposes an allowable legal limit for driving under the influence of THC.(b) The limit of 500 ng / 100 ml of blood appear consistent with evidence (B. J. R, “Cannabis use as a risk factor for causing motor vehicle crashes: A prospective study,” Addiction, vol. 114, no. 9, pp. 1616-1626, 2019). (c) In Australia, it is illegal to drive with any detectable percentage of THC in a person's blood (M. Boorman, The Victorian legislative framework for the random testing drivers at the roadside for the presence of illicit drugs: an evaluation of the characteristics of drivers detected from 2004 to 2006,” Traffic Inj Prev, vol. 10, pp. 16-22, 2009).(d) It will be difficult to enforce the Bill in respect of THC intoxication, since it is fat soluble and has a different metabolism to alcohol. Unlike alcohol, THC has a long half-life in the human body. Studies have detected THC in the human body and blood plasma for up to 28 or 33 days after consumption.(SAMSA (P 13 – 14)). | \* The amendment to the National Road Traffic Act to provide for a 0 % blood alcohol limit has not been promoted. As pointed out in paragraph 11.1, three options are available to regulate THC intoxication to address impaired driving, namely:(i) A blood alcohol limit of 0%. Various countries followed this approach. As indicated in paragraph 11.1, a consumer may have THC in his or her blood without being impaired.(ii) The proposed limitations as provided for in the amendments to the National Road Traffic Act. As indicated in paragraph 11.1, some countries do follow this approach, obviously in conjunction with prior evaluation of possible consumption of drugs.(iii) The current legal position in terms of the National Road Traffic Act and which is also the position in some countries, namely, that the State must prove that the person is under the influence of a drug having a narcotic effect, in the sense that his or her mental or physical abilities are impaired to the extent that he or she cannot adequately control his or her actions. |
| 11.6 According to DPSA, the amendments to the National Road Traffic Act, 1996, to cater for breathalyser tests for cannabis was not required to date. There is no scientific evidence that THC intoxication exceeding the prescribed limitations in effect causes driving impairment. (DPSA (p 2)) | \* The current section 65(5) criminalises the driving of a vehicle or the occupation of the driver's seat of a motor vehicle whose engine is running, while the concentration of alcohol in any specimen of breath exhaled by such person is not less than a prescribed quantitative determination. The amendments to the National Road Traffic Act (proposed section 65(11), do not provide for a breathalyser tests in respect of THC but prescribe a blood THC limitation in conjunction with a breath alcohol limitation. \* THC has an impairing effect on a person's driving abilities (see paragraph 11.3).  |

1. Industrial Hemp Regulations made in terms of section 139(1) of the Cannabis Act S.C. 2018, c. 16. [↑](#footnote-ref-1)
2. Western Australia - Industrial Hemp Act 2004; South Australia - Industrial Hemp Act 2017, among others. [↑](#footnote-ref-2)
3. Misuse of Drugs (Industrial Hemp) Regulations 2006, made in terms of section 37 of the Misuse of Drugs Act 1975. [↑](#footnote-ref-3)
4. EU Regulation 1307/2013, 1308/2013. [↑](#footnote-ref-4)