**CANNABIS FOR PRIVATE PURPOSES BILL**

**Portfolio Committee on Justice and Correctional Services**

**8 - 9 March 2022**

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. 43595 of 7 August 2020) (The English text is the official text of the Bill)*

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**(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)**

**[B 19 — 2020]**

**BILL**

**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;**

**\* protect adults and children against the harms of cannabis;**

**\* provide for the expungement of criminal records of persons convicted of possession or use of cannabis;**

**\* delete and amend provisions of certain laws; and**

**\* provide for matters connected therewith.**

BE IT ENACTED by the PARLIAMENT of the Republic of South Africa as follows:—

**ARRANGEMENT OF SECTIONS**

*Sections*

1. Definitions and interpretation

2. Prescribed quantities for personal use by adult person

3. Cultivation offences

4. Cannabis offences

5. Consumption offences

6. Offences involving a child

7. Penalties

8. Expungement of criminal records of persons convicted of possession or use of cannabis

9. Regulations

10. Repeal or amendment of laws

11. Short title and commencement

**Schedule 1**

Cannabis plant equivalent

**Schedule 2**

Cannabis equivalent

**Schedule 3**

Prescribed quantity

**Schedule 4**

Trafficable and commercial quantities

**Schedule 5**

Laws repealed or amended

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**Definitions and interpretation**

**1.** (1) In this Act, unless the context indicates otherwise—

"**adult person**"means a person who is 18 years or older;

(**Comment:**

\* See the comments of Parry/ Myers, paragraph (c) on page 25 of the summary of the comments and responses thereto (the C&R); SAMRC paragraph 2.5 on page 34, paragraph 6.5 on page 55, paragraph 7.2 page 59; SAMSA paragraph 6.13 on page 6.13, of the C&R.

\* Age restriction foreign jurisdictions: Canada - 18 years or older; US States - 21 years or older; Australian Capital Territory - 18 years or older; Uruguay - 18 years or older. Age restriction comparable RSA 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); and Tobacco Products Control Act, 1993: 18 years or older (section 4)).

**Option**

"**adult person**"means a person who is **[18]**/19/21 years or older;

**Discussion:**

\* **The current definition of "adult person", legalises cannabis use for persons who are 18 years or older in accordance with the Prince Judgment.**

**\* Persons in the medical, psychiatric and drug treatment fields indicated that:**

 **- Brain development continues until the age of 25 years.**

**- Adolescents who are regular smokers of cannabis are at risk of having arrested psychosocial development.**

**- There is growing concern regarding the long-term effects of regular cannabis use on adolescent brain development.**

**- Cannabis comprises between 22% (Eastern Cape) and 40% (Limpopo and Mpumalanga) and between 24% (Eastern Cape) and 77% (Free State, North West, Northern Cape) of drug treatment demand among persons 19 years and younger.**

**- The availability of cannabis will increase the demand for mental health and substance abuse treatment.**

**\* Foreign jurisdictions set different age limitations on the use of cannabis for recreational purposes, namely:**

 **- US States: 21 years or older – (also applies to alcohol[[1]](#footnote-2));**

**- Canada (Cannabis Act), Uruguay, Australian Capital Territory - 18 years or older; and**

**- Canadian provinces – 18/19 years or older – (also applies to alcohol 18/19 years or older[[2]](#footnote-3)).**

**\* The age limitations on the use of alcohol in foreign jurisdictions vary. However, 18 years and older has been adopted by the majority of those jurisdictions as the legal age for alcohol consumption.**

**\* An article by Professor Sellman[[3]](#footnote-4) (attached as Annexure A), provides a comparison and discussion of the harms to health caused by THC (cannabis) and ethanol (alcohol), respectively. The policy decision to set the legal age for cannabis consumption *on par* with alcohol consumption is based on similar considerations, namely that the harms associated with THC consumption do not exceed that of alcohol.**

**\* Applicable South Africa legislation:**

**- Section 28 of the Constitution of the Republic of South Africa, 1996, deals with the protected rights of a child. Section 28(3), provides that "In this section 'child' means a person under the age of 18 years.".**

**- Section 17 of the Children's Act, 2005 (Act No. 38 2005), provides that "A child, whether male or female, becomes a major upon reaching the age of 18 years".**

**- Section 1 of the Child Justice Act, 2008 (Act No. 75 of 2008), defines:**

 **• An 'adult' as a person "who is 18 years or older but does not include a person referred to in section 4(2)".**

**• A "child" as "any person under the age of 18 years and, in certain circumstances, means a person who is 18 years or older but under the age of 21 years whose matter is dealt with in terms of section 4(2)[[4]](#footnote-5)".**

**- Section 4(1) of the Tobacco Products Control Act, 1993 (Act No. 83 of 1993), provides that no person shall sell or supply any tobacco product to any person under the age of 18 years.**

**- Section 10(1) of the Liquor Act, 2003 (Act No. 59 of 2003), read with the definition of "minor" prohibits the selling or supplying of liquor or methylated spirits to a "person who has not attained the age of 18 years".[[5]](#footnote-6)**

**\* The Prince Judgment legalised cannabis in respect of an adult person only, and not a child. It is submitted that -**

**- the reference throughout the judgments to "adult" and "adult person", must be construed as a reference to a person who is 18 years or older (the age of majority in accordance with SA law); and**

**- the demarcation of the legalisation of cannabis, in that it is in respect of an "adult" only, and not a "child" (see paragraph [108] of the judgment), further clarifies the meaning of "adult" as being a person who is not a "child" in accordance with SA law (under the age of 18 years).**

**\* To define an "adult person" for purposes of the Bill, as a person who is 19, 20, or 21 years of age, may amount to an unjustifiable limitation of various right entrenched in the Bill of Rights of a person who is 18 years or older.**

**Recommendation: No amendments are proposed.**

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ʺ**cannabis**ʺ means—

(*a*) 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; and

(*b*) any substance which contains THC,

and fresh cannabis, dried cannabis and cannabis concentrate, are classes of cannabis;

(**Comments:** See paragraph 2.4, pages 33 to 34 and paragraph 2.9, page 35 of the C&R.)

**Option 1:**

ʺ**cannabis**ʺ means—

(*a*) the flowering or fruiting tops **[and the leaves]1** of a cannabis plant2 that have been separated from the plant, but excludes any seed, seedling, the stalk**[ and]**, leaves and branches without any **[leaf,]** fruit or flower, and the roots of a cannabis plant; and

(*b*) any substance which contains more than 0.2% THC per volume,

and fresh cannabis, dried cannabis and cannabis concentrate, are classes of cannabis;

**Discussion:**

The Department proposes amendments to the definition:

1. See pages 2-4 of the Commentary on the Single Convention on Narcotic Drugs, 1961. On page 3, paragraph 2, it is explained that the seeds and leaves of a cannabis plant is excluded from the definition of cannabis when not accompanied by the flowering or fruiting tops. The leaves contain minimal amounts of THC.

2. See comments in respect of "cannabis plant".

3. (a) Amendments to Schedule 6 to the Medicines and Related Substances Act,1965 (Act No. 101 of 1965) (GN No. R. 586 of 22 May 2020), provide as follow:

"(-) - transdelta -9- tetrahydrocannabinol, 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 % percent** or less of tetrahydrocannabinol;

b. processed products made from cannabis **containing 0,001 percent or less** of tetrahydrocannabinol; or

c. when raw plant material is cultivated, possessed, and consumed by an adult, in private for personal consumption." . - (determination)

(b) Paragraph (b) of the determination is aimed at products for human consumption. It is submitted that the "0,001 % or less" restriction on THC is impractical in the context of the Bill. The 0.2% quantitative limitation in paragraph *(a)* of the determination may be used as a guide to determine the THC content of a substance contemplated in paragraph *(b)* of the definition "cannabis". In a relative recent amendment to Schedule I of 1961 Convent, preparations containing predominantly CBD and not more than 0.2 % THC have been excluded from international control. The THC percentage limitation must take the commercialization of Hemp into account.

**Option 2:**

ʺ**cannabis**ʺ means—

(*a*) the flowering or fruiting tops **[and the leaves]1** of a cannabis plant2 that have been separated from the plant, but excludes any seed, seedling, the stalk**[ and]**, leaves and branches without any **[leaf,]** fruit or flower, and the roots of a cannabis plant; and

(*b*) (i) any substance which contains more than 1% THC per volume, unless subparagraph (ii) or (iii), applies;

(ii) any substance concerned in any offence in terms of sections 4(3), 5(5) or 6(1)*(a)*(iv) or (v), (2)*(c)* or (3)*(c),* which contains a concentration of more than 0.2% THC per volume;

**Option subparagraph (ii):**

(ii) any substance concerned in any offence in terms of sections 4(3), 5(5) or 6(1)*(a)*(iv) or (v), (2)*(c)* or (3)*(c),* which contains a concentration of THC which exceeds the concentration prescribed in terms of any law that regulates the cultivation of hemp in the Republic; or

 (iii) any substance concerned in an offence in section (6)(5), which contains more than 0.05/0.01% THC per volume,

and fresh cannabis, dried cannabis and cannabis concentrate, are classes of cannabis;

**Further discussion:**

**Option 2, proposes the following amendments to paragraph *(b)* of the definition of "cannabis":**

**\* Paragraph *(b)*(ii): In respect of the offences in clauses 4(3) (storing of cannabis), 5(5) (possession of cannabis in a vehicle on a public road) or 6(1)*(a)*(iv) or (v) (guardian permits a child to possess or deal in cannabis), (2)*(c)*(engage a child to deal in cannabis) or (3)*(c)* (provides cannabis to a child), a concentration of 0.2% THC per volume is proposed or as an alternative the concentration of THC that may be prescribed in terms of any law that regulates the cultivation of hemp.**

**\* Paragraph *(b)*(iii): In respect of the offence in clause (6)(5) (administer cannabis to a child), the substance is clarified as containing more than 0.05% THC per volume/ alternatively 0.01% THC per volume (one hundredth per volume) may be considered. The determination in Schedule 6 to the Medicines Act of 0.001% or less THC (one thousandth per volume), will criminalise substances with trace elements of THC.**

**\* Paragraph*(b)*(i): The amendments to paragraph (b)(ii) and (iii), allows for the increase of the concentration in substances containing THC for enforcement of clause 2(1)*(c)* and *(d)*, (2) and (3)*(c)*; clause 4; and clause 5(1).**

**\* The proposed amendments to paragraph *(b)*(subparagraphs (ii) and (ii)*),* do not affect the cannabis equivalent calculations, in respect of clause 2(1)*(c)* and *(d)*, (2) and (3)*(c)* and clause 4. The cannabis equivalent calculations do not apply to clauses 4(3), 5(1) and (5) or 6(1)*(a)*(iv) and (v), (2)*(c)*, (3)*(c)* and (5).**

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"**cannabis concentrate**" means cannabis that has undergone a process to concentrate the THC content, and cannabis solid concentrates and cannabis liquid concentrates are classes of cannabis concentrate;

"**cannabis equivalent**" means a quantity referred to in Column 2 of Schedule 2, in respect of any class of cannabis referred to in Column 1 of that Schedule which is deemed to be equivalent to one gram of dried cannabis;

"**cannabis plant**" means a plant of the genus *Cannabis*, but excludes hemp,and for purposes of this Act, an immature cannabis plant and a flowering cannabis plant are classes of a cannabis plant;

(**Comments:** See paragraph 2.4 pages 33 and 34 – F Saaiman. )

**Discussion:** The flowering or fruiting tops containing THC are produced by the female plant. However, there are cannabis plants that can bear both male and female flowers.

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"**cannabis plant cultivation material**" means seeds of a cannabis plant and seedlings;

"**cannabis plant equivalent**" means a quantity referred to in Column 2 of Schedule 1, in respect of any class of cannabis plant referred to in Column 1 of that Schedule which is deemed to be equivalent of one flowering cannabis plant;

"**cannabis product**" means anything that is intended for human or animal consumption which contains THC or any other phytocannabinoid found in a cannabis plant;

"**child**" means a person who is under the age of 18 years;

(**Comments:** See paragraph 2.5, page 34 of C&R and the discussion of definition of "adult person", above.)

**Discussion:** Amendments to the definition of "adult person" will determine whether this definition must be amended.

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"**Children's Act**" means the Children's Act, 2005 (Act No. 38 of 2005);

**"commercial quantity**", for purposes of the sections referred to in Column 1 of Schedule 4, means the quantity that exceeds—

(*a*) the quantity of any flowering cannabis plant or its cannabis plant equivalent; or

(*b*) the quantity of any dried cannabis or its cannabis equivalent,

respectively, referred to in Column 3 of that Schedule;

**Option:**

**"commercial quantity**", for purposes of the sections referred to in Column 1 of Schedule 4, means**[ the quantity that exceeds}**—

(*a*) the quantity of any flowering cannabis plant or its cannabis plant equivalent; or

(*b*) the quantity of any dried cannabis or its cannabis equivalent,

respectively, referred to in Column 3 of that Schedule and any quantity in excess thereof;

**Remark:** Amendments further clarify the definition in relation to the definition of trafficable quantity.

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**"consideration"** means any form of compensation, gift, reward, favour or benefit;

**(Comments:** Paragraph 2.6, page 34 of C&R.)

\*\*\*\*\*

"**consumption**" means to smoke, eat, drink or otherwise to self-administer cannabis and "consume" has a corresponding meaning;

"**cultivate**" includes to plant, propagate, nurture, tend, grow or harvest a cannabis plant and "**cultivation**" has a corresponding meaning;

"**deal in**" means to provide for consideration, receive for consideration, sell, buy, offer for sale, offer to purchase, import, advertise for sale, export and any other conduct to facilitate selling;

(**Comment:** Paragraph 2.7, page 34 of C&R.)

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**"Director-General"** means the Director-General: Justice and Constitutional Development;

"**dried cannabis**"means the flowering or fruiting tops and the leaves of a cannabis plant that have been separated from the plant and that have been subjected to a drying process;

(**Comment:** Paragraph 2.8, page 35 of C&R.)

**Option:**

"**dried cannabis**"means the flowering or fruiting tops**[ and the leaves]** of a cannabis plant that have been separated from the plant and that have been subjected to a drying process;

**\* Discussion:**

The option is a consequential amendment as a result amendments proposed to the definition of "cannabis".

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"**dwelling**" means any part of a formal or informal structure that is occupied as a residence, or any part of a structure or outdoor living area that is accessory to, and used principally for the purposes of, a residence;

"**flowering cannabis plant**" means the gametophytic or reproductive state of a cannabis plant in which the plant produces flowers, trichomes and cannabinoids characteristic of cannabis;

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"**fresh cannabis**" means the flowering or fruiting tops and the leaves of a cannabis plant that have been separated from the plant and that has not been subjected to a drying process;

(**Comments:** Paragraph 2.9, page 35 of C&R.)

**Option:**

"**fresh cannabis**" means the flowering or fruiting tops**[ and the leaves]** of a cannabis plant that have been separated from the plant and that has not been subjected to a drying process;

**\* Discussion:** The option is a consequential amendment as a result amendments proposed to the definition of "cannabis".

\*\*\*\*\*

"**guardian**" means a guardian referred to in section 1 of the Children's Act, 2005;

"**harvest**" means to obtain and process cannabis from a cannabis plant;

"**hemp**" means a plant of the genus *Cannabis* which—

(*a*) 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

(*b*) is cultivated under authority of,

a law that regulates its cultivation;

(**Comments:** Paragraph 2.10, page 35 of C&R.)

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"**immature cannabis plant**" means a non-flowering cannabis plant that is—

*(a)* taller than 15 centimetres; or

*(b)* wider than 15 centimetres,

measured according to the criteria prescribed by regulation;

(**Comments:** Paragraph 2.11, pages 35-36 of C&R.)

**Option:**

"**immature cannabis plant**" means a non-flowering cannabis plant**[ that is—**

***(a)* taller than 15 centimetres; or**

***(b)* wider than 15 centimetres,**

**measured according to the criteria prescribed by regulation]**, but excludes a seedling;

**\* Discussion:** 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".

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"**Minister**" means the Cabinet member responsible for the administration of justice;

**"National Road Traffic Act**" means the National Road Traffic Act, 1996 (Act No. 93 of 1996);

"**personal use**" means for the exclusive use of an adult person;

"**possess in private**" for purposes of section 2(1)(*c*) and (*e*), means to keep, store, transport or be in control of cannabis or a cannabis plant, respectively, in a manner that conceals it from public view;

"**prescribed quantity**" means for purposes of the sections referred to in Column 1 of Schedule 3, the quantity that does not exceed—

(*a*) the quantity of cannabis plant cultivation material;

(*b*) the quantity of any flowering cannabis plant or its cannabis plant equivalent; or

(*c*) the quantity of any dried cannabis or its cannabis equivalent,

respectively, referred to in Column 2 of that Schedule;

(**Comments:** Paragraph 2.12, pages 36-38 of C&R.)

**\* Remarks:** The comment regarding persons who may wish to self-medicate (see paragraph 2.12(b)) is addressed in subclause (3).

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"**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;

(**Comments:** Paragraph 2.13, page 38 of C&R.)

**Remark:** No need to change definition to accommodate a religious or cultural exemption in light of subclause (3).

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"**public place**"means any place to which the public has access as of right;

"**public road**" means a "public road" as defined in section 1 of the National Road Traffic Act, 1996;

"**remuneration**" means any form of compensation, gift, reward, favour or benefit;

"**seedling**" means a non-flowering cannabis plant that is not—

(a) taller than 15 centimetres; or

(b) wider than 15 centimetres,

measured according to the criteria prescribed by regulation;

“**smoke**” means to inhale or exhale the smoke produced by ignited cannabis or holding or otherwise having control of ignited cannabis or any device or object that contains ignited cannabis;

(**Comments:** Paragraph 2.14, page 39 of C&R.)

**Option:**

“**smoke**” means to—

*(a)* inhale or exhale the smoke produced by ignited cannabis or holding or otherwise having control of ignited cannabis or any device or object that contains ignited cannabis; or

*(b)* inhale or exhale the vapor or aerosol of cannabis produced by a vaping device or holding or otherwise having control of a vaping device producing cannabis vapor or aerosol;

**Discussion:** The option caters for vaping of cannabis.

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"**THC**" means **Δ9-tetrahydrocannabinolic acid A(Δ9-THCA-A)** and (-)-trans-delta-9-tetrahydrocannabinol;

"**this Act**" includes the regulations;

"**trafficable quantity**"means for purposes of the sections referred to Column 1 of Schedule 4, the quantity that exceeds—

(*a*) the quantity of any flowering cannabis plant or its cannabis plant equivalent; or

(*b*) the quantity of any dried cannabis or its cannabis equivalent,

respectively, referred to in Column 2 of that Schedule; and

(**Comments:** Paragraph 2.15, page 39 of C&R.)

**Option:**

"**trafficable quantity**"means for purposes of the sections referred to Column 1 of Schedule 4, the quantity that exceeds—

(*a*) the quantity of any flowering cannabis plant or its cannabis plant equivalent; or

(*b*) the quantity of any dried cannabis or its cannabis equivalent,

respectively, referred to in Column 2 of that Schedule but is less than a commercial quantity; and

**Remark:** Amendments further clarify the definition in relation to the definition of "commercial quantity"

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"**vehicle**" means a “vehicle” as defined in section 1 of the National Road Traffic Act, 1996.

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**Other definitions proposed:** See paragraph 2.16, page 39 of C&R.

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**Subclause (2)**

(**Comments:** Paragraphs 1.28 – 1.37, pages 21 to 31; paragraph 3.2, page 39 of C&R.)

 (2) The provisions of this Act do not apply to any person who is permitted or authorised in terms of any other Act of Parliament to—

*(a)* deal in cannabis plant cultivation material, cannabis plants, cannabis or a cannabis product; or

*(b)* cultivate cannabis plants.

**Discussion (commercialisation):**

\* Various commentators proposed commercialisation of cannabis and hemp (see paragraphs 1.28 to 1.37 of C&R).

\* Professors Parry/ Myers allude us to the fact that —

 - current services that must deal with cannabis addiction and harms associated with cannabis abuse, are already chronically under-resourced and are unlikely to cope with the increase use of cannabis that result from legalisation (see paragraph 1.1(d) of C&R);

- that public education regarding the harms of cannabis is essential (see paragraph 1.1(e) of C&R);

- improved population level monitoring of use and associated harms and the reporting of these harms are essential since it will pinpoint where action is needed to address harms (see paragraph 1.1(f) of C&R); and

- South Africa does not have the required resources to enforcement the Bill.

\* Although 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 (see paragraph 1.3(c) of C&R).

\* Various commentators questioned the practical implementation of the Bill (see among others, paragraphs 1.1(f), 1.5, 1.7, 1.19 and 1.37 of C&R).

\* The provisional Cannabis Master Plan supports commercialisation of both cannabis and hemp (as per briefing to the JPC on 26 August 2021).

\* Various foreign jurisdictions, among others, Canada, Uruguay and various States in the United States who are Parties to the International Drug Control Regime, have implemented a regulated commercial recreational cultivation and retail of cannabis model (Commercial Model) inspired by the following assumptions:

(a) 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.

(b) Many persons who consume cannabis do not self-cultivate cannabis but acquire it on the “black market”, which in turn promotes –

 (i) illegal cultivation for purposes of dealing in cannabis;

 (ii) illegal black markets;

 (iii) organised crime syndicates;

 (iv) distribution to children;

 (v) the use of children to deal in drugs;

(vi) the distribution of cannabis mixed with other illicit or harmful substances; and

 (vii) criminal conduct associated with drug dealing.

(c) The proceeds of these “black market” activities enrich mainly criminal organizations, whilst placing a substantial financial and resource burden on the State to deal with the harmful effects of cannabis and criminal conduct through the health, social and criminal justice systems.

(d) The regulation of cannabis through a Commercial Model:

(i) Has the potential to ensure that many of these illegal activities are curbed through the availability of cannabis. According to a study by the Reason Foundation, “Does legalizing marijuana reduce crime?”(Julian Morris, 2018, page 9): "The evidence presented in this brief suggests that legalization … results in cannabis consumers substituting legitimate marijuana for illicit marijuana and significant reduction in crimes associated with illicit marijuana production, distribution, sale and possession.”. Also see IZA DP No. 10522;

 (ii) makes it less profitable for criminals to deal in cannabis;

(iii) ensures that a safe product is supplied to users through quality control;

(iv) ensures that the proceeds that are obtained through the illegal selling of cannabis are diverted from criminals into Government coffers;

(v) ensures that statistics of the extent of cannabis consumption are more readily available to Government to implement appropriate proportionate responses to reduce the harms associated with cannabis;

(vi) makes it easier for Government to implement measures aimed at harm reduction.

(e) Provides for job creation in the research, cultivation, processing and retail sectors and stimulates the economy.

(f) The criminal law has no right to interfere with personal behaviour if it causes no harm to others.

(g) 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 (BMJ 2018; 361 doi: https://doi.org/10.1136/bmj.k2057 (Published 10 May 2018)). Legalization has the prospect of removing the profits, causing the cartels to collapse and putting an end to much of the violence and crime that are inherent in the illicit market.

(h) 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.

(i) 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.

\* It is submitted that a Commercial Model for cannabis regulation in South Africa can be justified on similar grounds and it will have the following benefits:

(a) As indicated above the revenue obtained through tax, excise, licensing and levies through the commercialisation of cannabis in the various US States and Canada is significant and will ensure much needed revenue for the *fiscus*, which may in turn be used to administer the model itself.

 (b) Similar to tobacco and alcohol, the harmful effects associated with cannabis use will have an impact on Government resources to deal with these harmful effects, irrespective of whether it is made available through a Commercial Model or a Regulation Model. A Commercial Model ensures that revenue received through tax, excise, licensing and levies is a *quid pro quo* for addressing these harms.

(c) A Commercial Model of cannabis regulation directly influences the regulated legalisation of cannabis, notably the quantity of cannabis that an adult may possess or cultivate for personal use and ensures that the general availability of cannabis is restricted.

(d) Considering the US and Canadian tendencies, it is submitted that a Commercial Model may contribute significantly to job creation and economic growth in South Africa. The US recreational cannabis market was worth USD 11.3 billion in 2018 (Grand View Research).

\* It must be pointed out that the implementation of a Commercial Model for cannabis regulation has been criticised internationally by the international bodies because it impacts on countries’ obligations under the International Drug Control Regime. However, such a model may not necessarily be in conflict with South Africa’s obligations under the international drug control regime since it is necessary to adequately regulate cannabis and to protect persons against the harms of cannabis.

\* It is submitted that the finalisation of legislation to provide for, and to regulate, a Commercial Model of cannabis regulation may take some time and the question may well be raised whether the Bill should not, as an interim measure, provide for an enabling provision to facilitate the commercialisation of cannabis through regulations.

**Further discussion:**

**\* Clause 10 and Schedule 5 to the Bill provide for the amendment of Schedule 2 of the Drugs Act, by the deletion –**

**- in Part II of the item: "Dronabinol [(-)-transdelta-9-tetrahydrocannabinol]"; and**

**- in Part III of the items "Cannabis (dagga), the whole plant or any portion or product thereof, except dronabinol [(-)-transdelta-9-tetrahydrocannabinol]"; and "Tetrahydrocannabinol".**

**\* Subclause (2), provides for other legislation to be promoted to facilitate the commercialisation of hemp and cannabis.**

**\* Subclause (2) has been criticised by Departments responsible for initiatives to commercialise cannabis on the following grounds: The Drug Act, which gives effect to South Africa's international obligations under the international drug control regime, is administered by the DOJ. Subclause (2) cannot *per se* be interpreted as a provision that clearly authorises the commercialisation of cannabis in breach of the Republic's international obligations under the drug control regime. The Bill must specifically authorise the commercialisation of cannabis in contravention of the Republic's international obligations. [[6]](#footnote-7)**

**\* Regulations to facilitate commercialisation of cannabis are possible but not a preferred option. Any commercialisation model requires funds that are generated through levies, duties, surcharges and taxes for its effective administration. It is submitted that the Bill or any intended regulation under an empowering provision cannot provide for such measures.[[7]](#footnote-8)**

**Option- New clause:**

**Commercial activities in respect of recreational cannabis**

**...** (1) Subject to the enactment of national legislation contemplated in subsection (2), commercial activities in respect of cannabis for recreational use are hereby authorised.

 (2)National legislation may be enacted to authorise and regulate commercial activities in respect of recreational cannabis.

(3) *(a)* Without limiting the generality of national legislation contemplated in subsection (2), to authorise and regulate commercial activities in respect of recreational cannabis, such legislation*,* must—

(i) authorise and regulate commercial activities in respect of recreational cannabis under a licensing scheme;

(ii) provide for different classes or categories of licences that may be issued on application thereunder in respect of any or all commercial activities in respect of recreational cannabis;

(iii) provide for requirements or criteria to be considered for the issuing of any license in subparagraph (ii), which must include—

 *(aa)* the encouragement of local economic growth and investment;

 *(bb)* employment creation;

 *(cc)* economic empowerment and development rural communities;

 *(dd)* promotion of micro- and small businesses;

 *(ee)* available local skills and skills transfer; and

*(ff)* Broad-Based Black Economic Empowerment, in particular in relation to the Rastafarian community and other cultural and religious communities which have been prejudiced by past discrimination on the basis of their association with cannabis;;

(iv) provide for measures to—

*(aa)* prevent and minimise harms associated with recreational cannabis; and

*(bb)* reduce the demand of recreational cannabis;

(v) provide for population level monitoring of use and associated harms of recreational cannabis and the reporting thereof;

(vi) provide for public education and assistance in relation to matters of cannabis safety, harm minimisation or other matters of interest to the consumers of cannabis;

(vii) prevent access to recreational cannabis by persons under 18 years;

(viii) prohibit the advertising or promotion of recreational cannabis, cannabis accessories or cannabis activities;

(ix) provide for minimum standards and best practices that must be complied with in the cultivation, processing and handling of recreational cannabis;

(x) establish a framework for testing the quality, strength and safety of recreational cannabis;

(xi) establish effective oversight mechanisms to monitor compliance with such law and the terms and conditions of any license issued thereunder;

(xii) regulate the packaging, labelling and storage requirements for recreational cannabis;

(xiii) regulate the purchase and sale of recreational cannabis by license holders;

(xiv) regulate the purchasing and selling of cannabis cultivation material to an adult person to cultivate cannabis plants for personal use; and

(xv) provide for the establishment of a National Cannabis Advisory Council

 *(b)* . The National Cannabis Advisory Council:

\* Appropriate qualified, fit and proper persons;

- expertise in the fields of, economics, business practice and administration, development practice, finance;

- expertise in the field of drug addiction, treatment and rehabilitation;

- expertise in social welfare;

- other areas of expertise;

\* appointed in a part-time capacity for a term of two years;

\* must advise Government on the drafting and implementation of national legislation contemplated in subsection (2). – (harm reduction as objective).

 (4) For purposes of this section—

*(a)* **"cannabis accessory"** means an article that is commonly used or represented to be used in the consumption of cannabis, including rolling papers or wraps, holders, pipes, water pipes, bongs and vaporizers;

*(b)* **"cannabis activity"** means any activity done for the purposes of the provision of public premises for the smoking or consumption of cannabis;

*(c)* **"commercial activities"** means any activity relating to cannabis plant cultivation material, cannabis plants, cannabis or a cannabis products, which is authorised and regulated in terms of national legislation contemplated in subsection (2); and

*(d)* **"recreational cannabis"** means cannabis plant cultivation material, cannabis plants, cannabis or cannabis products, that is for recreational use.

\*\*\*\*\*

**Option**

**Special measures to accommodate cultural or religious communities**

 **....** (1) A representative of cultural or religious community may in the prescribed form and manner make an application to the Minister for the issuing of a permit, which may authorise such cultural or religious community to—

*(a)* possess, provide and obtain cannabis plant cultivation material;

*(b)* sell or buy cannabis plant cultivation material;

*(c)* cultivate cannabis plants in a private place;

*(d)* possess in private, cannabis plants in a public place;

*(e)* provide or obtain cannabis plants;

*(f)* sell or buy cannabis;

*(g)* provide and obtain cannabis

*(h)* possess in private, cannabis in a public place;

*(i)* possess cannabis in a private place;

*(j)* sell or buy cannabis; or

*(k)* perform any other activity in relation to anything specified in paragraphs *(a)* to *(j)*,

for cultural or religious purposes subject to such conditions, restrictions, limitations or requirement specified therein.

 (2) The Minister may require the applicant to furnish such further information as he or she deems necessary to enable him or her to consider the application.

 (3) The Minister must, if is satisfied from the application that the community complies with the criteria specified in subsection ............. for the issuing of such permit, he or she must table—

*(a)* the permit;

*(b)* the applications; and

*(c)* a written motivation substantiating the reasons why the permit should be approved,

in Parliament for consideration.

 (4) Parliament, after considering the documents in subsection (3), must —

*(a)* approve the permit without any changes thereto; or

*(b)* disapprove the permit.

 (5) *(a)* The Minister must publish the permit that has been approved by Parliament in terms of subsection (4), in the *Gazette*.

 *(b)* The permit is, subject to earlier termination in terms of subsection (7), valid for a period of three years from the date of publication in the *Gazette* and shall be renewable.

 (6) *(a)* The Minister must, if he or she is not satisfied from the application and such further information furnished in terms of subsection (2), that the community complies with the criteria specified in subsection ............., refuse the applications.

 *(b)* The Minister must—

(i) inform an applicant in writing of the decision in terms of paragraph *(a)*; and

(ii) must provide written reasons for that decision.

(7) *(a)* The Minister may terminate the permit in the event of a serious or repeated or continued failure to comply with any conditions, restrictions, limitations or requirement specified therein.

 *(b)* *Audi alterem partem* principle.

(8) Criteria/requirements:

*(a)* Is a cultural/ religious community;[[8]](#footnote-9)

*(b)* cannabis plants and cannabis are used in cultural/religious practices;[[9]](#footnote-10)

*(c)* prescribed quantities for personal use in terms of section 2(1) or (3) are insufficient for the cultural/ religious practices of persons of that community;[[10]](#footnote-11)

*(d)* estimated requirements of community per cultivation season;

*(e)* demarked private place to cultivate cannabis plant/and infrastructure to securely store cannabis;[[11]](#footnote-12)

*(f)* appropriate measures exist for the supply of cannabis plants/cannabis to members of the community;

?????????

\*\*\*\*\*

**Prescribed quantities for personal use by adult person**

(**Comments:** Paragraph 3, pages 39 to 45 of C&R.)

 **2.** (1)Subject to this Act, an adult person may for personal use—

(*a*) possess the prescribed quantity of cannabis plant cultivation material;

(*b*) cultivate the prescribed quantity of cannabis plants in a private place;

(*c*) possess in private, the prescribed quantity of cannabis in a public place;

(*d*) possess the prescribed quantity of cannabis in a private place; and

(*e*) possess in private, the prescribed quantity of cannabis plants in a public place.

 (2) Subject to this Act, an adult person may consume cannabis in a private place.

 (3) Subject to this Act, an adult personmay without the exchange of remuneration provide to, or obtain from, another adult person, for personal use, the prescribed quantity of —

(*a*) cannabis plant cultivation material;

(*b*) cannabis plants; and

(*c*) cannabis.

(Comments in respect of subclause (3): Paragraph 3.14)

**Option:**

(3) Subject to this Act, an adult personmay without the exchange of remuneration per occasion provide to, or obtain from, another adult person, for personal use, the prescribed quantity of —

(*a*) cannabis plant cultivation material;

(*b*) cannabis plants; and

(*c*) cannabis.

(Comments in respect of subclause (3): Paragraph 3.14)

**Remarks:**

\* According to the comment a time period per exchange should be determined. This seems to be impractical, if stricter conditions are to apply it is more workable to restrict the prescribed quantities in terms of clause 3(4) and (8) and clause 4(4).

\* In respect of subclause (3)*(b),* an amendment to paragraph *(e)* of Schedule 3 is proposed, to restrict prescribed quantity to two immature cannabis plants – (no flower cannabis plant allowed).

\*\*\*\*\*

**Self-medication requirements in excess of prescribed quantities:**

**(Comments: Paragraph 2.12(b), (k) page 36 and 38; paragraph 3.10(d), page 43 of C&R.)**

**Option:**

(4) *(a)* An adult person who has been issued with a certificate by an authorised person, in which it is certified that he or she—

(i) is a person who requires palliation; or

(ii) suffers from moderate to severe chronic debilitating physical or mental health condition,

 and who intends to self-medicate, may for personal use—

*(aa)* cultivate the prescribed quantity of cannabis plants in a private place;

*(bb)* possess in private, the prescribed quantity of cannabis in a public place;

*(cc)* possess the prescribed quantity of cannabis in a private place; and

*(dd)* possess in private, the prescribed quantity of cannabis plants in a public place.

*(b)* Notwithstanding subsection (3), any adult person may provide to an adult person in paragraph *(a)*, who may obtain from any adult person, without the exchange of consideration, for personal use, the prescribed quantity of—

(i) cannabis plants; and

(ii) cannabis.

 *(c)* An adult person in paragraph *(a)*, may in private use cannabis in a public place.

*(d)* The certificate contemplated in paragraph *(a),* must be in the form and must contain the information, prescribed by regulation.

 *(e)* For purposes of subsection (4)—

(i) **"authorised person"** means—

*(aa)* a psychiatrist, medical practitioner and dentist registered under the Health Professions Act, 1974 (Act 56 of 1974); and

*(bb)* any category of persons designated by the Minister in consultation with the cabinet member responsible for health, by notice in the *Gazette*;

(ii) **"in private use "** means to—

 *(aa)* consume cannabis in a manner that conceals it from public view; or

*(bb)* smoke cannabis, in a public place in contravention of section 5(1), in a manner that conceals it from public view and without contravening the provisions of section (5)(2) to (5);

(iii) **"person who requires palliation"** means a person who in the opinion of an authorised person has an advanced progressive life-limiting health condition and is nearing the end of his or her life; and

(iv) **"self-medicate"** means to consume or smoke cannabis, any part of a cannabis plant or any extraction therefrom—

(aa) by a person contemplated in subsection (4)*(a)*(i) in order to palliate pain or suffering, whether physical or mental; or

(bb) by a person contemplated in subsection (4)*(a)*(ii) in order treat or mitigate the physical or mental health condition or the symptoms thereof.

**Remarks:**

**\*** Subclause (4) gives effect to the comments regarding persons who may wish to self-medicate and who may needs quantities exceeding the prescribed quantities.

\* A provision that authorises another adult person to cultivate, possess, transport and provide cannabis plants or cannabis to a person in subclause (4)*(a)*(i) and (ii) (especially in respect of a person who requires palliation), should be considered.

\* A special defence available to persons in subclause (4)*(a)*(i) and (ii) (especially in respect of a person who requires palliation), should be considered in respect of a contravention of clause 3(6) – (offence of dealing in cannabis plants) and clause 4(5) – (offence of dealing in cannabis), where the person in question receive for consideration, buy or offer to purchase a limited quantity of cannabis plants or cannabis to self-medicate.

**Consequential amendments required:**

\* Schedule 3 (prescribed quantities), need to be amended to provide for increased quantities in respect of subclause (4)*(a)* and *(b)*:

- Paragraph*(a)(aa)* - cultivate eight flowering cannabis plants in a private place;

- paragraph*(a)(bb)* – possess in private, 200 grams of cannabis in a public place;

 - paragraph*(a)(cc) -* possess 1200 grams of cannabis in a private place;

- paragraph*(b)*(i) – provide and obtain four immature cannabis plants; and

- paragraph*(b)*(ii) - provide and obtain 200 grams of cannabis in a public place.

\* Clauses 3(1), (4) and (8).

**\*** Clause 4(1), (2) and (4).

**\*** Clause 5.

\* Clause 9: The Minister must, in consultation with the cabinet member responsible for health, make regulations to prescribe the form of the certificate and the information it must contain as contemplated in section 2(4)*(d).*

\*\*\*\*\*

**Cultivation offences**

**(Comments: Paragraph 4, pages 45 to 51 of C&R.)**

 **3.** (1) An adult person who in a private place, cultivates―

(*a*) more than the prescribed quantity, contemplated in section 2(1)(*b*), but less than a trafficable quantity of cannabis plants, is guilty of a Class C offence;

(*b*) a trafficable quantity of cannabis plants, is guilty of a Class B offence; or

(*c*) a commercial quantity of cannabis plants, is guilty of a Class A offence.

**Option:**

(1) An adult person who in a private place, cultivates―

(*a*) more than the prescribed quantity, contemplated in section 2(1)(*b*), but less than a trafficable quantity of cannabis plants, is guilty of a **[Class C]** Class D offence;

(*b*) a trafficable quantity of cannabis plants, is guilty of a **[Class B]** Class C offence; or

(*c*) a commercial quantity of cannabis plants, is guilty of a Class A offence.

**Discussion:**

\* The amendments aim to address the criticism against the harsh penalties that may be imposed for certain contraventions of the Bill (See paragraph 8, pages 63 to 66 of C&R).

\* To further regulate this aspect, an amendment to paragraph *(e)* of Schedule 3 is proposed, to restrict prescribed quantity In terms of clause 2(3)*(b)*, to two immature cannabis plants and not allowing the exchange of a flowering cannabis plant.

\*\*\*\*\*

 (2) An adult person who cultivates a cannabis plant at any place and who fails to—

(*a*) take reasonable measures to ensure that the cannabis plant is inaccessible to a child; or

(*b*) comply with any requirement or standard regarding the cultivation of cannabis plants in a private place for personal use as prescribed by regulation,

is guilty of a Class C offence.

(**Comment:** See paragraph 4.10, page 47 of C&R)

**Option:**

(2) An adult person who cultivates a cannabis plant at any place and who fails to**[—**

**(*a*) take reasonable measures to ensure that the cannabis plant is inaccessible to a child; or**

**(*b*) ]**comply with any requirement or standard regarding the cultivation of cannabis plants in a private place for personal use as prescribed by regulation, is guilty of a Class C offence.

\*\*\*\*\*

 (3) An adult person who cultivates a cannabis plant in a public place, is guilty of a Class B offence.

 (4) An adult person who provides to, or obtains from, an adult person without the exchange of remuneration―

(*a*) a quantity that exceeds the prescribed quantity contemplated in section 2(3)(*b*), but which is less than a trafficable quantity of cannabis plants, is guilty of a Class C offence;

(*b*) a trafficable quantity of cannabis plants, is guilty of a Class B offence; or

(*c*) a commercial quantity of cannabis plants, is guilty of a Class A offence.

**Option:**

(4) An adult person who provides to, or obtains from, an adult person without the exchange of remuneration―

(*a*) a quantity that exceeds the prescribed quantity contemplated in section 2(3)(*b*), but which is less than a trafficable quantity of cannabis plants, is guilty of a **[Class C]** Class D offence;

(*b*) a trafficable quantity of cannabis plants, is guilty of a **[Class B]** Class C offence; or

(*c*) a commercial quantity of cannabis plants, is guilty of a Class A offence.

**Remark:** See discussion under subclause (1)

\*\*\*\*\*

 (5) An adult person who is in possession in a public place of―

(*a*) a quantity that exceeds the prescribed quantity, contemplated in section 2(1)(*e*), but which is less than a trafficable quantity of cannabis plants, is guilty of a Class C offence;

(*b*) a trafficable quantity of cannabis plants, is guilty of a Class B offence; or

(*c*) a commercial quantity of cannabis plants, is guilty of a Class A offence.

**Option:**

(5) An adult person who is in possession in a public place of―

(*a*) a quantity that exceeds the prescribed quantity, contemplated in section 2(1)(*e*), but which is less than a trafficable quantity of immature cannabis plants, is guilty of a **[Class C]** Class D offence;

(*b*) a trafficable quantity of immature cannabis plants, is guilty of a **[Class B]** Class C offence; or

(*c*) a commercial quantity of immature cannabis plants, is guilty of a Class A offence.

**Remark:** See discussion under subclause (1)

\*\*\*\*\*

 (6) (*a*) Any person who deals in an immature cannabis plant, is guilty of a Class C offence.

 (*b*) Any person who deals in a flowering cannabis plant, is guilty of a Class A offence.

**Option:**

(6) (*a*) Any person who deals in—

(i) an immature cannabis plant, is guilty of a **[Class C]** Class D offence;

(ii) a trafficable quantity of immature cannabis plants, is guilty of a **[Class B]** Class C offence; or

(iii) a commercial quantity of immature cannabis plants, is guilty of a Class A offence.

 (*b*) Any person who deals in a flowering cannabis plant, is guilty of a Class A offence.

**Remarks:**

\* See discussion under subclause (1).

\* Amendments to Schedule 4 are required.

\*\*\*\*\*

 (7) Any person who deals in cannabis plant cultivation material, is guilty of a Class D offence.

 (8) An adult person who provides to, or obtains from, an adult person without the exchange of remuneration a quantity that exceeds the prescribed quantity of cannabis plant cultivation material contemplated in section 2(3)(*a*), is guilty of a Class D offence.

 (9) Any person who is in possession in a public place of cannabis plant cultivation material or a cannabis plant that is not concealed from public view, is guilty of a Class D offence.

\*\*\*\*\*

**Cannabis offences**

**(Comments: See paragraph 5, pages 51 to 54 of C&R)**

 **4.** (1) Any person who is in possession in a public place of―

(*a*) a quantity that exceeds the prescribed quantity, contemplated in section 2(1)(*c*), but which is less than a trafficable quantity of cannabis, is guilty of a Class C offence;

(*b*) a trafficable quantity of cannabis, is guilty of a Class B offence; or

(c) a commercial quantity of cannabis, is guilty of a Class A offence.

 (2) An adult person who is in possession in a private place of―

(*a*) a quantity that exceeds the prescribed quantity, contemplated in section 2(1)(*d*), but which is less than a trafficable quantity of cannabis, is guilty of a Class C offence;

(*b*) a trafficable quantity of cannabis, is guilty of a Class B offence; or

(*c*) a commercial quantity of cannabis, is guilty of a Class A offence.

 (3) An adult person who is in possession of cannabis at any place and who—

(*a*) fails to store such cannabis in a secure space that is inaccessible to a child; or

(*b*) stores such cannabis in a manner that does not comply with any requirement or standard regarding the storing of cannabis prescribed by regulation,

is guilty of a Class C offence.

(**Comment:** See paragraph 5.6, page 52 of C&R)

**Option:**

(3) An adult person who is in possession of cannabis at any place and who**[—**

**(*a*) fails to store such cannabis in a secure space that is inaccessible to a child; or**

**(*b*) ]**stores such cannabis in a manner that does not comply with any requirement or standard regarding the storing of cannabis prescribed by regulation, is guilty of a Class C offence.

\*\*\*\*\*

 (4) An adult person who provides to or obtains from an adult person without the exchange of remuneration―

(*a*) a quantity that exceeds the prescribed quantity, contemplated in section 2(3)(*c*), but which is less than a trafficable quantity of cannabis, is guilty of a Class C offence;

(*b*) a trafficable quantity of cannabis, is guilty of a Class B offence; or

(*c*) a commercial quantity of cannabis, is guilty of a Class A offence.

 (5) Any person who deals in cannabis, is guilty of a Class A offence.

 (6) An adult person who transports cannabis in a vehicle on a public road in a manner that does not comply with any requirement or standard regarding the transportation of cannabis that may be prescribed by regulation, is guilty of a Class C offence.

 (7) Any person who is in possession in a public place of cannabis that is not concealed from public view, is guilty of a Class C offence.

**Smoking and consumption offences**

**(Comments: See paragraph 6, pages 54 to 59 of C&R)**

 **5.** (1) Any person who smokes or consumes cannabis in a public place, is guilty of a Class D offence.

(**Comment:** See paragraph 6.6, page 56 of C&R)

**Remark:** The amendment proposed to the definition of "cannabis" addresses the concerns raised by the commentator in respect of consumption of a substance containing THC.

\*\*\*\*\*

 (2) Any person who smokes cannabis in a public or private place in the immediate presence of any non-consenting adult person, is guilty of a Class D offence.

 (3) Any person who smokes cannabis in a public or private place in the immediate presence of a child, is guilty of a Class C offence.

(4) Any person who smokes cannabis in a private place—

(*a*) within a distance prescribed by regulation from a window of, ventilation inlet of, doorway to or entrance into another place; or

(*b*) 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 person at that place,

is guilty of a Class D offence.

 (5) Any person who smokes or consumes cannabis in a vehicle on a public road, is guilty of a Class C offence.

**Offences involving a child**

**(Comments: See paragraph 7, pages 59 to 62 of C&R)**

 **6.** (1) (*a*) The guardian of a child who permits a child—

(i) to possess cannabis plant cultivation material or a cannabis plant;

(ii) to deal in cannabis plant cultivation material or a cannabis plant;

(iii) subject to paragraph (*b*), to cultivate a cannabis plant;

(iv) to possess cannabis;

(v) to deal in cannabis; or

(vi) to smoke or consume cannabis,

is guilty of a Class D offence.

 (*b*) The prohibition referred to in paragraph (*a*)(iii), does not apply where the child assists with the cultivation of cannabis plants which the guardian of the child may lawfully possess for his or her personal use in a private place, in the presence and under the supervision of that guardian.

**Option:**

(*b*) The prohibition referred to in paragraph (*a*)(iii), does not apply where the child assists with the cultivation of cannabis plants which the guardian of the child may lawfully **[possess]** cultivate for his or her personal use in a private place, in the presence and under the supervision of that guardian.

**Remarks:**

\* The expression "cultivate" is more appropriate in the context of the provision.

\* The question may be raised as to whether the provision should not be amended to provide for the unsupervised cultivation of cannabis plants by a child on behalf of a guardian of the child, where the guardian is a person contemplated in clause 2(4)*(a)*(i) and (ii) (especially in respect of a person who requires palliation).

\*\*\*\*\*

 (2) Any person who engages a child, whether for consideration to the child or a third person or not, to deal in—

(*a*) cannabis plant cultivation material;

(*b*) a cannabis plant; or

(*c*) cannabis,

is guilty of a Class A offence.

 (3) Any person who provides to a child, whether for consideration or not—

(*a*) cannabis plant cultivation material;

(*b*) a cannabis plant; or

(*c*) cannabis,

is guilty of a Class A offence.

 (4) Subject to subsection (1)(*b*), an adult person who engages a child, whether for consideration to the child or a third person or not, in the cultivation of a cannabis plant, is guilty of a Class A offence.

 (5) Any person who administers cannabis to a child, is guilty of a Class A offence.

 (6) For the purposes of this section, the reference to "cannabis" must be construed paragraph (b) o.1—

(a) in subsection (1)(a)(iv) means 'owner' means

**Penalties**

**(Comments: See paragraph 8, pages 63 to 66 of C&R)**

 **7. [(1) ]**A person who is convicted of—

(*a*) a Class A offence is liable on conviction to a fine or to imprisonment for a period not exceeding 15 years or to both a fine and such imprisonment;

(*b*) a Class B offence is liable on conviction to a fine or to imprisonment for a period not exceeding six years or to both a fine and such imprisonment;

(*c*) a Class C offence is liable on conviction to a fine or to imprisonment for a period not exceeding four years or to both a fine and such imprisonment; or

(*d*) a Class D offence is liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

**Option:**

**7. [(1) ]**A person who is convicted of—

(*a*) a Class A offence is liable on conviction to a fine or to imprisonment for a period not exceeding **[15 years]** 10 years or to both a fine and such imprisonment;

(*b*) a Class B offence is liable on conviction to a fine or to imprisonment for a period not exceeding **[six years]** five years or to both a fine and such imprisonment;

(*c*) a Class C offence is liable on conviction to a fine or to imprisonment for a period not exceeding **[four years]** two years or to both a fine and such imprisonment; or

(*d*) a Class D offence is liable on conviction to a fine or to imprisonment for a period not exceeding **[two years]** 12 months or to both a fine and such imprisonment.

(**Comments:** See paragraphs 8.1, page 63; 8.5, pages 64; 8.6 and 8.7, page 65 to 66 of C&R of the comments that raise concerns that the penalties are unreasonable, irrational, disproportionate and extremely harsh.)

**Expungement of criminal records of persons convicted of possession or use of cannabis**

**(Comments: See paragraph 8, page 66 to 67 of C&R)**

 **8.** (1) Where a court has convicted a person of a contravention of —

(*a*) section 2(*b*) of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act No. 41 of 1971), in that the person used or possessed the dependence-producing drug or plant of cannabis (dagga);

(*b*) section 4(*b*) of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992), in that the person used or possessed the undesirable dependence-producing substance of cannabis (dagga); or

(*c*) any law of the former Republics of Transkei, Bophuthatswana, Ciskei or Venda, or of any former self-governing territory, as provided for in the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), before the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), that criminalised the use or possession of cannabis (dagga),

the criminal record, containing the conviction and sentence in question, of that person in respect of that offence must be expunged automatically by the Criminal Record Centre of the South African Police Service.

 (2) Where the criminal record of a person referred to in subsection (1) has not been expunged automatically as provided for in that subsection, the criminal record of that person must, on his or her written application to the Director-General: Justice and Constitutional Development, in the prescribed form and manner, be expunged.

 (3) The Director-General: Justice and Constitutional Development must, on receipt of the written application of an applicant referred to in subsection (2), issue a prescribed certificate of expungement, directing that the conviction and sentence of the person be expunged, if the Director-General is satisfied that the person complies with the criteria set out in subsection (1).

 (4) An applicant to whom a certificate of expungement has been issued as provided for in subsection (3) must, in the prescribed manner, submit the certificate to the head of the Criminal Record Centre of the South African Police Service, to be dealt with in accordance with subsection (5).

 (5) (*a*) The head of the Criminal Record Centre of the South African Police Service or a senior person or person at the rank of Director or above, employed at the Centre, who has been authorised, in writing, by the head of the Centre to do so, must expunge the criminal record of a person if he or she is furnished by the applicant with a certificate of expungement as provided for in subsection (3).

 (*b*) The head of the Criminal Record Centre of the South African Police Service must, on the written request of an applicant, in writing, confirm that the criminal record of the person has been expunged.

 (6) Where the Director-General: Justice and Constitutional Development, in terms of subsection (3), has issued a certificate of expungement, and it subsequently appears that the applicant did not qualify for the expungement of his or her criminal record, the Director-General must—

(*a*) inform the applicant in writing of the information that has come to his or her attention and that he or she intends to revoke the certificate of expungement;

(*b*) afford the applicant an opportunity to furnish compelling written reasons to him or her within 90 working days after he or she is informed of the intention to revoke, why his or her record should remain expunged;

(*c*) inform the applicant in writing within 30 working days after a decision is made of—

 (i) his or her decision; and

 (ii) the reasons for revoking the certificate of expungement; and

(*d*) inform the head of the Criminal Record Centre of the South African Police Service, in writing within 14 working days after the decision was made, to revoke the certificate of expungement and to reinstate the convictions and sentences in question.

 (7) If the applicant fails to furnish compelling reasons contemplated in subsection (6)(*b*), the Director-General may, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 2 of 2000), revoke the certificate of expungement.

 (8) (*a*) The Director-General: Justice and Constitutional Development may delegate any power or assign any duty conferred upon or assigned to him or her in terms of subsection (3) or (6) to an appropriately qualified official in the employ of the Department of Justice and Constitutional Development at the rank of Deputy Director-General.

 (*b*) A delegation or assignment in terms of paragraph (*a*)—

(i) is subject to any limitation, condition and direction which the Director-General may impose;

(ii) must be in writing; and

(iii) does not divest the Director-General of the responsibility concerning the exercise of the power or the performance of the duty.

(*c*) The Director-General may—

(i) confirm, vary or revoke any decision taken in consequence of a delegation or assignment in terms of this subsection, subject to any rights that may have accrued to a person as a result of the decision; and

(ii) at any time withdraw a delegation or assignment.

**Option:**

**Expungement of criminal records of persons convicted of possession or use of cannabis or dealing in cannabis on the basis of a presumption**

**(Comments: See paragraph 8, page 66 to 67 of C&R)**

 **8.** (1) *(a)* Where a court has convicted a person of a contravention of —

**[(*a*)]**(i) section 2(*b*) of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act No. 41 of 1971), in that the person used or possessed the dependence-producing drug or plant of cannabis (dagga);

**[(*b*)]**(ii)section 4(*b*) of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992), in that the person used or possessed the undesirable dependence-producing substance of cannabis (dagga); or

**[(*c*)]**(iii)any law of the former Republics of Transkei, Bophuthatswana, Ciskei or Venda, or of any former self-governing territory, as provided for in the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), before the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), that criminalised the use or possession of cannabis (dagga),

the criminal record, containing the conviction and sentence in question, of that person in respect of that offence must be expunged automatically by the Criminal Record Centre of the South African Police Service.

 **[(2)]** *(b)* Where the criminal record of a person referred to in **[subsection (1)]** paragraph *(a)* has not been expunged automatically as provided for in that **[subsection]** paragraph, the criminal record of that person must, on his or her written application to the Director-General: Justice and Constitutional Development, in the prescribed form and manner, be expunged.

 **[(3)]** *(c)* The Director-General: Justice and Constitutional Development must, on receipt of the written application of **[an applicant]** a person referred to in **[subsection (2)]** paragraph *(b)*, issue a prescribed certificate of expungement, directing that the conviction and sentence of the person be expunged, if the Director-General is satisfied that the person complies with the criteria set out in **[subsection (1)]** paragraph *(a)*.

 **[(4)]** *(d)* An applicant to whom a certificate of expungement has been issued as provided for in **[subsection (3)]** paragraph *(c)* must, in the prescribed manner, submit the certificate to the head of the Criminal Record Centre of the South African Police Service, to be dealt with in accordance with subsection **[(5)]**(3).

 (2) *(a)* Where a court has convicted a person of a contravention of —

(i) section 2(*a*) of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971, on the basis of the operation of any presumption in section 21(1)*(a)*(i)*, (b), (d)* or *(e)* of that Act, in terms of which it is presumed that the person dealt in the dependence-producing drug or plant of cannabis (dagga);

(ii) section 5(*b*) of the Drugs and Drug Trafficking Act, 1992, on the basis of the operation of any presumption in section 21(1)*(a)*(i), *(b)*, *(c)* or *(d)* of that Act, in terms of which it is presumed that the person dealt in the undesirable dependence-producing substance of cannabis (dagga); or

(iii) any law of the former Republics of Transkei, Bophuthatswana, Ciskei or Venda, or of any former self-governing territory, as provided for in the Self-governing Territories Constitution Act, 1971, before the commencement of the Constitution of the Republic of South Africa, 1993, on the basis of the operation of any presumption similar to the laws in subparagraph (i) and (ii), in terms of which it is presumed that the person dealt in cannabis (dagga),

the criminal record, containing the conviction and sentence in question, of that person in respect of that offence must, subject to paragraphs *(b),* on the person's written application, be expunged.

 *(b)* The Director-General: Justice and Constitutional Development must, on receipt of the written application, in the prescribed form, of a person referred to in paragraph *(a)*, issue a prescribed certificate of expungement, directing that the criminal record of the person be expunged, if the Director-General is satisfied from the application that the person applying for expungement was convicted of the offence of dealing in the undesirable dependence-producing substance of cannabis (dagga), on the basis of the operation of any presumption referred to in paragraph *(a)*.

*(c)* The Director-General: Justice and Constitutional Development must, in the prescribed manner, submit every certificate of expungement that has been issued as provided for in paragraph *(b),* to the head of the Criminal Record Centre of the South African Police Service to be dealt with in accordance with subsection (3).

 **[(5)]**(3) (*a*) The head of the Criminal Record Centre of the South African Police Service or a senior person or person at the rank of Director or above, employed at the Centre, who has been authorised, in writing, by the head of the Centre to do so, must expunge the criminal record of a person if he or she is furnished **[by the applicant]** with a certificate of expungement as provided for in subsection **[(3)]**(1)*(d)* or (2)*(c)*.

 (*b*) The head of the Criminal Record Centre of the South African Police Service must, on the written request of an applicant, in writing, confirm that the criminal record of the person has been expunged.

 **[(6)]**(4) Where the Director-General: Justice and Constitutional Development has, in terms of subsection **[(3)]**(2)*(c)*, **[has ]**issued a certificate of expungement, and it subsequently appears that the applicant did not qualify for the expungement of his or her criminal record, the Director-General must—

(*a*) inform the applicant in writing of the information that has come to his or her attention and that he or she intends to revoke the certificate of expungement;

(*b*) afford the applicant an opportunity to furnish compelling written reasons to him or her within 90 working days after he or she is informed of the intention to revoke, why his or her record should remain expunged;

(*c*) inform the applicant in writing within 30 working days after a decision is made of—

 (i) his or her decision; and

 (ii) the reasons for revoking the certificate of expungement; and

(*d*) inform the head of the Criminal Record Centre of the South African Police Service, in writing within 14 working days after the decision was made, to revoke the certificate of expungement and to reinstate the convictions and sentences in question.

 **[(7)]**(5)If the applicant fails to furnish compelling reasons contemplated in subsection **[(6)(*b*)]**(4)*(b)*, the Director-General may, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 2 of 2000), revoke the certificate of expungement.

 **[(8)]**(6) (*a*) The Director-General: Justice and Constitutional Development may delegate any power or assign any duty conferred upon or assigned to him or her in terms of **[subsection (3) or (6)]** subsection (1)*(c)*, (2)(c) or (4), to an appropriately qualified official in the employ of the Department of Justice and Constitutional Development at the rank of Deputy Director-General.

 (*b*) A delegation or assignment in terms of paragraph (*a*)—

(i) is subject to any limitation, condition and direction which the Director-General may impose;

(ii) must be in writing; and

(iii) does not divest the Director-General of the responsibility concerning the exercise of the power or the performance of the duty.

(*c*) The Director-General may—

(i) confirm, vary or revoke any decision taken in consequence of a delegation or assignment in terms of this subsection, subject to any rights that may have accrued to a person as a result of the decision; and

(ii) at any time withdraw a delegation or assignment.

**Discussion:**

**\*** The proposed subclause (1)*(c)*, corrects substitutes the expression "applicant" for "person" – see paragraph 9.3, page 66 of C&R.

\* The renumbering of the clause is to accommodate conviction for dealing as a result of presumptions. The commentator (see paragraph 9.6, page 67 of the C&R), refers to the presumption of dealing in cannabis if a person possesses more than 115 grams of cannabis. Section 21 of the Drugs and Drug Trafficking Act, 1992, provides for various presumptions relating to dealing in drugs. In S v Bhulwana; S v Gwadiso 1996 (1) SA 388 (CC) (section 21(1)(a)(i)), S v Julies 1996 (4) SA 313 (CC) (section 21(1)(a)(iii)), S v Mjezu 1996 (2) SACR 594 (NC) (section 21(1)*(b)* and *(c)*) and S v Manyonyo 1999 (12) BCLR 1438 (CC) (section 21(1)(*c*) and (*d)*), most of these presumptions were declared unconstitutional and invalid.

**Regulations**

**(Comments: Paragraph 10, on page 68 of the C&R)**

 **9.** (1)The Minister must make regulations to prescribe—

(*a*) the manner of measuring immature cannabis plants and seedlings as contemplated in section 1;

(*b*) the requirements or standards regarding the cultivation of cannabis plants in a private place for personal use as contemplated in section 3(2)(*b*);

(*c*) the requirements or standards regarding the storing of cannabis as contemplated in section 4(3)(*b*);

(*d*) the requirements or standards regarding the transportation of cannabis as contemplated in section 4(6);

(*e*) the distance from a window of, ventilation inlet of, doorway to or entrance into another place as contemplated in section 5(4)(*a*);

(*f*) the form on which a person's written application for the expungement of his or her criminal record must be made, as provided for in **[section 8(2)]** section 8(1)*(b)* and (2)*(a)*;

(*g*) the certificate of expungement to be issued by the Director-General: Justice and Constitutional Development as provided for in **[section 8(3)]** section 8(1)*(c)* and (2)*(b)*; and

(*h*) the manner in which the Director-General must submit certificates of expungement that have been issued, to the head of the Criminal Record Centre of the South African Police Service, as provided for in [section 8(4)] sections 8(1)*(d)* and (2)*(c).*

 (2) The Minister may make regulations to prescribe—

(a) the manner in which cannabis plants or cannabis in excess of the prescribed quantity must be disposed of; and

(*b*) any other matter which is necessary or expedient to achieve the objects of this Act.

 (3) Regulations made in terms of subsection (2)(*b*) and (*c*), may prescribe penalties for any contravention thereof or failure to comply therewith, not exceeding a fine or imprisonment for a period of six months or both a fine and such imprisonment.

 (4) The Minister, in consultation with the cabinet member responsible for health, must, make regulations to prescribe the form and content of a certificate, contemplated in section 2(4)*(d).*

**Repeal or amendment of laws**

**(Comments: Paragraph 11, on page 69 to 74 of the C&R)**

**10.** The laws mentioned in Schedule 5 are hereby repealed or amended to the extent reflected in the third Column of the Schedule.

**Short title and commencement**

**11.** This Act is called the Cannabis for Private Purposes Act, 2020, and comes into operation on a date fixed by the President by Proclamation in the *Gazette*.

**Schedule 1**

*(Section 1)*

**CANNABIS PLANT EQUIVALENT**

|  |  |
| --- | --- |
| **Column 1****Class of cannabis plant** | **Column 2****Quantity that is equivalent to one flowering cannabis plant** |
| Immature cannabis plant | Two plants |

**Schedule 2**

*(Section 1)*

**CANNABIS EQUIVALENT**

|  |  |
| --- | --- |
| **Column 1****Class of cannabis** | **Column 2****Quantity that is equivalent to 1 gram of dried cannabis** |
| (*a*) Fresh cannabis | Five grams |
| (*b*) Cannabis solid concentrates | 0, 25 gram |
| (*c*) Cannabis liquid concentrates | 0, 25 gram |

**(Continue from here)**

**Schedule 3**

*(Sections 1 and 2)*

**PRESCRIBED QUANTITY**

|  |  |
| --- | --- |
| **Column 1****Sections**  | **Column 2****Quantity of class** |
| (*a*) Section 2(1)(*a*) | Unlimited seeds and seedlings |
| (*b*) Section 2(1)(*b*) | (i) Four flowering cannabis plants or cannabis plant equivalent per adult person; or(ii) eight flowering cannabis plants or cannabis plant equivalent per dwelling which is occupied by two or more adult persons |
| (*c*) Section 2(1)(*c*) | 100 grams dried cannabis or cannabis equivalent |
| (*d*) Section 2(1)(*d*) | (i) 600 grams dried cannabis or cannabis equivalent per adult; or(ii) 1200 grams dried cannabis or cannabis equivalent per dwelling which is occupied by two or more adult persons |
| (*e*) Section 2(1)(*e*) | One flowering cannabis plant or cannabis plant equivalent**Option:****[One flowering cannabis plant or cannabis plant equivalent]**Two immature cannabis plants |
| (*f*) Section 2(3)(*a*) | 30 seeds or seedlings or any combination thereof |
| (*g*) Section 2(3)(*b*) | One flowering cannabis plant or cannabis plant equivalent**Option:****[One flowering cannabis plant or cannabis plant equivalent]**Two immature cannabis plants |
| (*h*) Section 2(3)(*c*) | 100 grams dried cannabis or cannabis equivalent |

**Schedule 4**

*(Sections 1, 3 and 4)*

**TRAFFICABLE AND COMMERCIAL QUANTITIES**

| **Column 1****Sections** | **Column 2****Trafficable quantity of class** | **Column 3****Commercial quantity of class** |
| --- | --- | --- |
| (*a*) Section 3(1)(*b*) | (i) Six flowering cannabis plants or cannabis plant equivalent per adult person; or(ii) twelve flowering cannabis plants or cannabis plant equivalent per dwelling which is occupied by two or more adult persons |  |
| (*b*) Section 3(1)(*c*) |  | (i) Nine flowering cannabis plants or cannabis plant equivalent per adult person; or(ii) Eighteen flowering cannabis plants or cannabis plant equivalent per dwelling which is occupied by two or more adult persons**Option:**(i) **[Nine]** Ten flowering cannabis plants or cannabis plant equivalent per adult person; or(ii) **[Eighteen]** Twenty flowering cannabis plants or cannabis plant equivalent per dwelling which is occupied by two or more adult persons |
| (*c*) Section 3(4)(*b*) | Two flowering cannabis plants or cannabis plant equivalent**Option:****[Two flowering cannabis plants or cannabis plant equivalent]**Six immature cannabis plants |  |
| (*d*) Section 3(4)(*c*) |  | Four flowering cannabis plants or cannabis plant equivalent**Option:****[Four flowering cannabis plants or cannabis plant equivalent]**Fifteen immature cannabis plants |
| (*e*) Section 3(5)(*b*) | Two flowering cannabis plants or cannabis plant equivalent**Option:****[Two flowering cannabis plants or cannabis plant equivalent]**Six immature cannabis plants |  |
| (*f*) Section 3(5)(*c*) |  | Four flowering cannabis plants or cannabis plant equivalent**Option:****[Four flowering cannabis plants or cannabis plant equivalent]**Fifteen immature cannabis plants |
| ()Section 3(6)*(a)*(ii) | Six immature cannabis plants |  |
| () Section 3(6)*(a)*(iii) |  | Fifteen immature cannabis plants |
| (*g*) Section 4(1)(*b*) | 200 grams dried cannabis or cannabis equivalent |  |
| (*h*) Section 4(1)(*c*) |  | 300 grams dried cannabis or cannabis equivalent |
| (*i*) Section 4(2)(*b*) | (i) 800 grams dried cannabis or cannabis equivalent per adult; or(ii) 1500 grams dried cannabis or cannabis equivalent per dwelling which is occupied by two or more adult persons |  |
| (*j*) Section 4(2)(*c*) |  | (i) 1000 grams dried cannabis or cannabis equivalent per adult; or(ii) 2000 grams dried cannabis or cannabis equivalent per dwelling which is occupied by two or more adult persons |
| (*k*) Section 4(4)(*b*) | 200 grams dried cannabis or cannabis equivalent |  |
| (*l*) Section 4(4)(*c*) |  | 300 grams dried cannabis or cannabis equivalent |

**Schedule 5**

*(Section 10)*

**LAWS REPEALED OR AMENDED**

| **Number and year of law** | **Short title** | **Extent of repeal or amendment** |
| --- | --- | --- |
| Act No. 140 of 1992 | Drugs and Drug Trafficking Act, 1992 | (*a*) Part II of Schedule 2 is amended by the deletion of the item: "Dronabinol [(-)-transdelta-9-tetrahydrocannabinol]." (*b*) Part III of Schedule 2 is amended by the deletion of the items:(i) "Cannabis (dagga), the whole plant or any portion or product thereof, except dronabinol [(-)-transdelta-9-tetrahydrocannabinol]"; and(ii) "Tetrahydrocannabinol". |
| Act No. 93 of 1996 | National Road Traffic Act, 1996 | (*a*) The Index to the Act is amended by—(i) the substitutionfor the heading to Chapter XI of the following heading: "**RECKLESS OR NEGLIGENT DRIVING, INCONSIDERATE DRIVING, DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR, THC OR A DRUG HAVING A NARCOTIC EFFECT, AND MISCELLANEOUS OFFENCES**"; and(ii) the substitution for item 65 of Chapter XI of the following item:"**Driving or occupying driver's seat while under the influence of intoxicating liquor[ or], a drug having narcotic effect or THC, or with excessive amount of alcohol or THC or a drug having a narcotic effect in blood or breath**";(*b*) The insertion in section 1—(i) after the definition of "**driving licence testing centre**" of the following definition: "**'drug having a narcotic effect**' means any substance or a combination of substances that have an impairing effect on a person's ability to control his or her actions, but excludes THC;"; and (ii) after the definition of "**testing station**" of the following definition: "'**THC**' means any substance containing (-)-trans-delta-9-tetrahydrocannabinol;".(*c*) The amendment of section 15 by the substitution in subsection (1) for paragraph (*g*) of the following paragraph:"(*g*) if he or she is addicted to the use of any drug having a narcotic effect, or the excessive use of intoxicating liquor or THC; or".(*d*) The amendment of section 61 by the substitution in subsection (1) for paragraph (*g*) of the following paragraph:"(*g*) not, except on the instructions of or when administered by a medical practitioner in the case of injury or shock, take any intoxicating liquor, THC, or drug having a narcotic effect unless he or she has complied with the provisions of paragraph (*f*), where it is his or her duty to do so, and has been examined by a medical practitioner if such examination is required by a traffic officer.".  (*e*) The amendment of section 65 by—(i) the substitution for the heading to that section of the following heading: "**Driving or occupying driver's seat while under the influence of intoxicating liquor[ or], a drug having narcotic effect or THC, or with excessive amount of alcohol or THC or a drug having a narcotic effect in blood or breath**"; (ii) the substitution for subsections (1), (2) and (3) of the following subsections, respectively: "(1) No person shall on a public road— (*a*) drive a vehicle; or(*b*) occupy the driver's seat of a motor vehicle the engine of which is running,while under the influence of intoxicating liquor, THC or adrug having a narcotic effect or any combination thereof. (2) No person shall on a public road—(*a*) drive a vehicle; or(*b*) occupy the driver's seat of a motor vehicle the engine of which is running,while the concentration of— (i) alcohol;(ii) THC; (iii) a drug having a narcotic effect; or(iv) any combination of (i), (ii) and (iii), in any specimen of blood taken from any part of his or her body is not lessthan [**0,05 gram per 100 millilitres, or in the case of a professional driver referred to in section 32, not less than 0,02 gram per 100 millilitres]** the concentration of alcohol, THC or a drug having a narcotic effect or a combination thereof specified in subsection (10). (3) For purposes of subsection (2) or subsection (5)(*a*) or (*b*)(ii), **[I]**if, in any prosecution for an alleged contravention of a provision of **[subsection (2)]** those subsections, it is proved that the concentration of alcohol, THC or other drug having a narcotic effect or a combination thereof, in any specimen of blood taken from any part of the body of the person concerned was not less than **[0,05 gram per 100 millilitres]** the concentration specified in subsection (10) or (11), respectively, at any time within two hours after the alleged contravention, it shall be presumed, in the absence of evidence to the contrary, that such concentration was not less than **[0,05 gram per 100 millilitres at the time of the alleged contravention, or in the case of a professional driver referred to in section 32, not less than 0,02 gram per 100 millilitres it shall be presumed, in the absence of evidence to the contrary, that such concentration was not less than 0,02 gram per 100 millilitres]** the concentrations specified in those subsections, respectively, at the time of the alleged contravention."; (iii) the substitution for subsections (5) and (6) of the following subsections respectively: "(5) No person shall on a public road— (*a*) drive a vehicle; or(*b*) occupy the driver's seat of a motor vehicle, the engine of which is running,while the concentration—(i) of alcohol in any specimen of breath exhaled by such person is not less than **[0,24 milligrams per 1 000 millilitres, or in the case of a professional driver referred to in section 32, not less than 0,10 milligrams per 1000 millilitres]** the concentration specified in subsection (11); or(ii) of alcohol in any specimen of breath exhaled by such person in combination with THC or drug having a narcotic effect in any specimen of blood taken from any part of the body of the person is not less than the concentration specified in subsection (11).  (6) If, in any prosecution for a contravention of a provision of subsection (5), it is proved that the concentration of alcohol in any specimen of breath of the person concerned **[was not less than 0,24 milligrams per 1 000 millilitres of breath]** taken at any time within two hours after the alleged contravention was not less than the concentration specified in subsection (11), it shall be presumed, in the absence of evidence to the contrary, that such concentration was not less than **[0,24 milligrams per 1 000 millilitres at the time of the alleged contravention, or in the case of a professional driver referred to in section 32, not less than 0,10 milligrams per 1000 millilitres, it shall be presumed, in the absence of evidence to the contrary, that such concentration was not less than 0,10 milligrams per 1 000 millilitres]** the concentration specified in subsection (11) at the time of the alleged contravention.";(iv) the substitution for subsection (8) of the following subsection: "(8) Except on the instruction of or when administered by a medical practitioner, no person detained for an alleged contravention of any provision of this section shall during his or her detention consume any alcohol, THC or a drug having a narcotic effect, nicotine, or any medication until the specimen referred to in subsection (3) or (6) has been taken."; and(v) the addition of the following subsection after subsection (9):"(10) *(a)* Where a person is a professional driver referred to in section 32—(i) a concentration of less than a concentration of a drug having a narcotic effect, as may be prescribed, per 100 millilitres of blood;(ii) a concentration of less than—(*aa*) 0,02 gram alcohol per 100 millilitres of blood;(*bb*) 200 nanograms THC per 100 milliliters of blood; or(*cc*) 0,01 gram alcohol and 100 nanograms THC per 100 millilitres of blood,without any detectable concentration of a drug having a narcotic effect, as may be prescribed; or(iii) a concentration of less than—(*aa*) 0,01 gram alcohol and any concentration of a drug having a narcotic effect, as may be prescribed, per 100 milliliers of blood; or(*bb)* 100 nanograms THC and any concentration of a drug having a narcotic effect, as may be prescribed, per 100 millilitres of blood. (*b*) Where a person is not a professional driver—(i) a concentration of less than a concentration of a drug having a narcotic effect, as may be prescribed, per 100 millilitres of blood;(ii) a concentration of less than—(*aa*) 0,05 gram alcohol per 100 millilitres of blood;(*bb*) 500 nanograms THC per 100 milliliters of blood; or(*cc*) 0,025 gram alcohol and 250 nanograms THC per 100 millilitres of blood,without any detectable concentration of a drug having a narcotic effect, as may be prescribed; or(iii) a concentration of less than—(*aa*) 0,025 gram alcohol and any concentration of a drug having a narcotic effect, as may be prescribed, per 100 millilitres of blood; or(*bb)* 250 nanograms THC and any concentration of a drug having a narcotic effect, as may be prescribed, per 100 millilitres of blood. (11) *(a)* Where a person is a professional driver referred to in section 32—(i) a concentration of less than— (*aa*) 0,10 milligrams alcohol per 1000 millilitres of breath; or(*bb*) 0,5 milligrams alcohol per 1000 millilitres of breath and 100 nanograms THC per 100 millilitres of blood,without any detectable concentration of a drug having a narcotic effect, as may be prescribed; or(ii) a concentration of less than 0,5 milligrams alcohol per 1000 millilitres of breath and any concentration of a drug having a narcotic effect, as may be prescribed, per 100 millilitres of blood. (*b*) Where a person is not a professional driver—(i) a concentration of less than— (*aa*) 0,24 milligrams alcohol per 1000 millilitres of breath; or(*bb*) 0,12 milligrams alcohol per 1000 millilitres of breath and 250 nanograms THC per 100 millilitres of blood,without any detectable concentration of a drug having a narcotic effect, as may be prescribed; or(ii) a concentration of less than 0,12 milligrams alcohol per 1000 millilitres of breath and any concentration of a drug having a narcotic effect, as may be prescribed, per 100 millilitres of blood.(*f*) The amendment of section 75 by the insertion after subsection (1) of the following subsection:"(1A) The Minister may, in consultation with the Cabinet member responsible for health, prescribe any drug or category or class of such drugs having a narcotic effect and the concentration thereof for purposes of section 65(10) or (11).". |
| Act No. 75 of 2008 | Child Justice Act, 2008 | Amendment of Schedule I to the Act, by the addition of the following item, after item 18: "19. An offence provided for in sections 3(6), (7) and (9), 4(7) and 5 of the Cannabis for Private Purposes Act." |

1. 1984 National Minimum Drinking Age Act, [23 U.S.C. § 158]. [↑](#footnote-ref-2)
2. Minimum Drinking Age Act. [↑](#footnote-ref-3)
3. Professor of Psychiatry & Addiction Medicine, University of Otago. URL: [www.nzma.org.nz/journal-articles/alcohol-is-more-harmful-than-cannabis](http://www.nzma.org.nz/journal-articles/alcohol-is-more-harmful-than-cannabis). [↑](#footnote-ref-4)
4. Section 4(2) of the Child Justice Act, among others provides that a "Director of Public Prosecutions having jurisdiction may, in accordance with directives issued by the National Director of Public Prosecutions in terms of section 97(4)*(a)*(i)*(aa)*, in the case of a person who—

..........;

*(b)* is 18 years or older but under the age of 21 years, at the time referred to in subsection (1)(b),

 direct that the matter be dealt with in terms of section 5(2) to (4) - (which, among other, provides for diversion by the prosecutor ito Chapter 6 iro minor offences; preliminary enquiries ito Chapter 7 (among others to determine, whether matter should be diverted, a suitable diversion option; and whether the matter should be referred to a children's court) ".

The directives ito section 97(4)(a)(i)(aa), must provide for:

*"(aa)* The diversion of matters in the case of accused persons who, at the time referred to in section 4(1)*(b)*, were 18 years or older but under the age of 21 years, as provided for in section 4(2); and

*(bb)* the diversion of matters by a prosecutor in respect of minor offences before a preliminary inquiry in terms of Chapter 6". [↑](#footnote-ref-5)
5. Section 10(2) of the Liquor Act provides that notwithstanding section 10(1), the parent, adult guardian of a minor or a person responsible for administering a religious sacrament, may on occasion supply to that minor a moderate quantity of liquor to be consumed by the minor in the presence and under the supervision of that parent, guardian or other person. [↑](#footnote-ref-6)
6. Grounds of justification for implementing a commercial model of cannabis regulation are discussed in Annexure B1. [↑](#footnote-ref-7)
7. See section 77 of the Constitution and *South African Reserve Bank and Another v Shuttleworth and Another* 2015 (5) SA 146 (CC). [↑](#footnote-ref-8)
8. Number of members and location. [↑](#footnote-ref-9)
9. Must specify the cultural/religious practices and the use of cannabis plants/cannabis in such practices. [↑](#footnote-ref-10)
10. Estimated required quantity per member per cultivation season (yearly). [↑](#footnote-ref-11)
11. Verified by the SAPS [↑](#footnote-ref-12)