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SUBMISSIONS ON THE PROPOSED AMENDMENTS TO

THE CANNABIS FOR PRIVATE PURPOSES BILL [19-2020]

Executive Summary

Cradlestoned Quality Solutions provides bespoke creative consulting and quality management solutions to its clients – Private Cannabis Clubs (**PCC**), and licensed Cannabis cultivation operations and food producers – and in the wake of the proposed revisions to the Cannabis for Private Purposes Bill (**the Bill**) submits that:

A. the definitions of tetrahydrocannabinol and tetrahydrocannabinolic acid must remain separate;

B. proposed new clauses 1A(1) and 1A(2) relating to commercial activities in respect of recreational Cannabis must be reconsidered in order to give effect to the intention of authorising and regulating the South African recreational Cannabis industry;

C. PCCs constitute the exercise by many people of the rights to privately cultivate, possess and consume Cannabis, will be construed as such by the courts and, while they do not need to be fully regulated in terms of the Bill, should be recognised albeit obliquely in the Bill;

D. Proposed new Clause 1B must not operate to the exclusive benefit of members of the Rastafarian faith;

E. there is a closing window of opportunity to ensure that the Bill, once enacted, will provide adequate protection from members of the South African Police Service who grossly abuse their authority, capriciously and violently invading our privacy, with relative impunity; and

F. Class D offences must be further amended in order to assist courts to impose a penalty of a fine, to the exclusion of a period of imprisonment, where reasonable.

1 Introduction

1.1 I submit these submissions on behalf of Cradlestoned Quality Solutions (Pty) Ltd (**CQS**) in response to the invitation by the Portfolio Committee on Justice and Correctional Services (**the Committee**) to interested parties and stakeholders to make written submissions on proposals to amend and extend the subject of the Cannabis for Private Purposes Bill 19 of 2020 (**the Bill**). These proposed amendments were circulated by the Committee in a revised Bill dated 23 March 2022 (**the Revised Bill**).[1]

1.2 CQS provides bespoke creative consulting and quality management solutions to its clients – Private Cannabis Clubs (**PCC**), and licensed Cannabis cultivation operations and food producers – with the objective of empowering its clients to manage and improve their own businesses.[2]

1.3 On a daily basis, CQS interacts with its clients, local entrants into and participants in the nascent South African Cannabis industries across sectors, sizes, and streams. CQS's work naturally requires it to engage with the legal, technical, and economic barriers and limitations that continue to frustrate the entrepreneurial and employment potential, and inclusive local development of our local Cannabis markets.

1.4 Additionally, CQS works closely with a number PCCs, a growing phenomenon in South Africa whereby adult Cannabis users become members of PCCs, which genuinely assist them to exercise their rights to privacy – privately cultivating, using and possessing, and consuming Cannabis – entrenched in terms section 14 of the Constitution of South Africa, 1996 (**the Constitution**) as per the principles set forth in the Constitutional Court judgment of *Minister of Justice and Constitutional Development and Others v Prince* [2018] ZACC 30 (**the Prince Privacy Judgment**).[3]

1.5 In this endeavor of assisting PCC founders to establish and manage their PCC systems, CQS works constantly and closely with lawyers to ensure that, for example, the ownership of Cannabis starts and remains with PCC members at all times; that PCCs do not engage in dealing in Cannabis,

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[1] The Revised Bill was accessed via the website of Parliamentary Monitoring Group and was accessed as at the date of submission of these submissions via https://static.pmg.org.za/CANNABIS_FOR_PRIVATE_PURPOSES_BILL_005.pdf.
[2] See https://cradlestonedquality.co.za/.
[3] *Minister of Justice and Constitutional Development and Others v Prince (Clarke and Others Intervening); National Director of Public Prosecutions and Others v Rubin; National Director of Public Prosecutions and Others v Acton* (CCT108/17) [2018] ZACC 30; 2018 (10) BCLR 1220 (CC); 2018 (6) SA 393 (CC); 2019 (1) SACR 14 (CC) handed down on 18 September 2018.

which of course is still prohibited in terms of section 5(b) of the Drugs and Drugs Trafficking Act 140 of 1992 (**the Drugs Act**).

1.6 This business and experience of CQS in the context of PCCs – a fundamental extended exercise of the constitutionally entrenched right to privacy – thus uniquely positions it to grapple with the distinction between the use of Cannabis for private purpose and commercial activities in respect of Cannabis.

1.7 CQS virtually attended the meetings and deliberations of the National Assembly's Portfolio Committee on Justice and Correctional Services (**the Committee**) on 8-9 March 2022, where amendments to the Bill were proposed and debated, and on 23 March 2022, where such proposed amendments were further debated, clarified and solidified as proposed amendments to the Bill by the Committee.

1.8 We understand that flowing from the first round of public submissions and the pursuant deliberations, the Committee identified certain subjects that the introduced Bill did not address and, received permission from the National Assembly to extend its scope, and specifically in relation to:

1.8.1 commercial activities in respect of recreational Cannabis;

1.8.2 the cultivation, possession and supply of Cannabis plants and Cannabis by cultural or religious communities or organisations for cultural or religious purposes; and

1.8.3 the use of Cannabis for palliation or medication,

which the Committee then consolidated in the Revised Bill.

1.9 We submit these submissions, on the basis of this invitation, in relation to:

1.10 The definition of THC, in section 2;

1.11 Clause 1A: Commercial activities in respect of recreational Cannabis, in section **Error! Reference source not found.**;

1.12 PCCs and the distinction between private use and commercial activities, in section **Error! Reference source not found.**;

1.13 Clause 1B - Special measures to accommodate cultural or religious communities, in section **Error! Reference source not found.**;

1.14 enforcement of prescribed quantities for personal use and cultivation by adult person, in section 6; and

1.15 Penalties, in section 7.

1.16 In these submissions, where clauses of the Revised Bill are quoted, underlined text is not used to reflect insertions to the Bill and bold text in square brackets is not used to reflect deletions from the Bill. In other words, for purposes of these submissions, we quote from the Revised Bill as if the proposed amendments in the Revised Bill have been fully incorporated into the Bill. Where we make our own proposed amendments, we reflect our proposed insertions by way of underlined text and our proposed deletions by way of bold text in square brackets.

1.17 We hereby kindly request an invitation to present these submissions orally at any public hearings convened to discuss the Revised Bill.

2 The definition of THC

2.1 While we appreciate that the Committee has researched the difference between tetrahydrocannabinol (**THC**) and tetrahydrocannabinolic acid (**THCA**), we submit that the inclusion of THCA in the definition of THC will make it impossible to prosecute the crimes, such as clause 6(5), which are based on the distinction between THC and THCA.

2.2 Moreover, this inclusion will lead to unfair application and enforcement of the offences contained in the Bill.

2.3 Accordingly, we propose that the words "*and includes THCA*" are deleted from the definition of THC.

3 Clause 1A: Commercial activities in respect of recreational Cannabis

3.1 We wholeheartedly welcome the Committee's inclusion of clause 1A in the Revised Bill, which contemplates the enactment of legislation to fully legalise and regulate commercial activities in relation to recreational Cannabis.

3.2 However, we submit that when read plainly together, clauses 1A(1) and 1A(2) neither authorise commercial activities in relation to recreational Cannabis nor oblige the enactment of legislation to authorise and regulate commercial activities in relation to recreational Cannabis. In other words, we submit that the clauses 1A(1) and 1A(2) contradict one another in an indeterminate and potentially self-defeating manner. Accordingly, we seek to assist the Committee to avoid such legislative indeterminacy.

3.3 Clauses 1A(1) and 1A(2) of the Revised Bill provide as follows:

> "(1) Subject to the enactment of national legislation contemplated in subsection (2), commercial activities in respect of recreational cannabis are hereby authorised.
> (2) National legislation may be enacted to authorise and regulate commercial activities in respect of recreational cannabis."

3.4 It is trite that where conduct is 'hereby authorised' in terms of a valid and binding legal instrument, such as legislation, then such conduct is, in principle, *without further ado*, authorised. The lawful pursuit of the authorised conduct by actors contemplated in the legal instrument might feasibly be made conditional upon meeting certain prescribed criteria or requirements. However, where a legal instrument seeks to authorise conduct, then, to the extent that such authorisation is itself made entirely conditional upon the enactment of another legal instrument, then it cannot be said that anything has been effectively authorised.

3.5 The very authorisation – of commercial activities in respect of recreational Cannabis – in clause 1A(1) of the Revised Bill is made entirely conditional upon the enactment of legislation "<u>to authorise</u> and regulate commercial activities in respect of recreational cannabis" (underlined emphasis added), contemplated in clause 1A(2) of the Revised Bill. That is, clause 1A(2) of the Revised Bill contemplates national legislation in order to both *authorise* and regulate the precise activities already authorised under clause 1A(1), i.e. commercial activities in respect of recreational

cannabis. Therefore, it cannot be said that such activities have, even to only a theoretical extent, been authorised. This renders an ineffectual and empty authorisation, in conflict with the presumption against legislative futility, a result that we submit the Committee should not countenance.

3.6 This futility is significantly amplified when one considers the fact that clause 1A(2) does nothing to oblige the enactment of the contemplated national legislation. It does not provide that the national legislation contemplated must be enacted. To the contrary, clause 1A(2) is couched in permissive language; it does not create any obligation upon Parliament to enact the national legislation contemplated. Indeed, in any event, legislation can only be enacted in accordance with the Constitution, including passage in both Houses by a vote of the majority of parliamentary members present.

3.7 We could source no national legislation mandating the enactment of other national legislation. While the Constitution does oblige the passage of national legislation to, for example, give effect to rights contained in the Bill of Rights,[4] the Constitution is not national legislation; it is the supreme law of South Africa that binds all arms and spheres of Government. While the Constitution does not expressly prohibit Parliament from compelling itself, in terms of national legislation, to enact other national legislation, such an assignment would, in our submission, be constitutionally awkward.

3.8 The submission, simply put, is that to the extent that the clauses 1A(1) and 1A(2) of the Revised Bill are supposed to reflect intentions of:

3.8.1 authorising commercial activities in respect of recreational Cannabis, on the one hand; or

3.8.2 compelling the enactment of national legislation to authorise or regulate commercial activities in respect of recreational Cannabis, on the other hand,

that the wording of clauses 1A(1) and 1A(2) adds nothing to the achievement of such worthwhile objectives.

[4] See for example the rights to: access to information (section 32 of the Constitution) and the corresponding Promotion of Access to Information Act 2 of 2000; just administrative action (section 33 of the Constitution) and the corresponding Promotion of Administrative Justice Act 3 of 2000; and equality (section 9(3) of the Constitution) and the corresponding Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

3.9 However, we fully support the Committee's drive to ensure that the long-overdue commercial recreational Cannabis sector is fully and finally authorised, and that it is regulated in terms of national legislation that has been initiated and prepared by appropriately qualified officials of government departments that are relevant to that sector, and not via delegated legislation in the form of regulations made by the Minister of Justice and Correctional Services.[5]

3.10 Moreover, we submit that clause 1A can still achieve its intended results if worded slightly differently, in a manner that, broadly speaking, obliges the Minister of Trade, Industry and Competition to introduce a Bill, for the authorisation and regulation of commercial activities in respect of recreational Cannabis, in the National Assembly. This is directly in line with the first pillar of the Draft National Cannabis Master Plan for South Africa (**the Cannabis Master Plan**), in terms of which the Department of Trade, Industry and Competition is made responsible for the "[d]evelopment of a new policy and legislation for commercialisation of cannabis".[6]

3.11 To these ends, we propose that clauses 1A(1) and 1A(2) of the Revised Bill are deleted and wholesale replaced with the following suggested clause 1A(1):

> (a) The National Assembly's Portfolio Committee on Trade, Industry and Competition must, within 2 months of the date on which this Act comes into operation, initiate and begin preparing a Bill in the form of national legislation, which authorises and regulates commercial activities in respect of recreational cannabis.
> (b) The Minister of Trade, Industry and Competition must, within 20 months of the date on which this Act comes into operation, officially introduce the Bill contemplated in paragraph (a) in the National Assembly.

3.12 Clauses 1A(3) and 1A(4) of the Revised Bill should then be renumbered as clauses 1A(2) and 1A(3), respectively, and amended as follows:

> **[(3)]**(2) Without limiting the scope of **[national legislation]** the Bill contemplated in subsection **[(2)]** (1), any national legislation subsequently enacted to authorise and regulate commercial activities in respect of recreational cannabis**[,]** should give due consideration **[should be given]** to—
> (a) harm reduction;

[5] In a Comments and Responses document that tabulates the submissions made on the Bill and the Committee's responses thereto, circulated by the Committee in November 2021 (**the Comments and Responses Document**), the Committee indicated that "the DOJ&CD cannot promote legislation that provides for commercial activities relating to Cannabis, since such initiative falls within the mandate of other Departments (Departments of Health; Agriculture, Land Reform and Rural Development; and Trade, Industry and Competition)".

[6] See page 37 of version 5, the most recent version of the Cannabis Master Plan.

(b) demand reduction;
(c) public education and awareness campaigns in respect of the harms associated with recreational cannabis;
(d) the prevention of persons under the age of 18 years to access recreational cannabis;
(e) the prohibition of advertising or promotion of recreational cannabis; and
(f) population level monitoring of use and associated harms of recreational cannabis.

[(4)](3) For purposes of this section—
(a) "commercial activities" means any activity relating to cannabis plant cultivation material, cannabis plants, cannabis or cannabis products, which is authorised and regulated in terms of national legislation contemplated in subsection (2); and
(b) "recreational cannabis" means cannabis plant cultivation material, cannabis plants, cannabis or cannabis products that is for recreational use.

4 Private Cannabis Clubs and the distinction between private use and commercial activities

4.1 We understand that the Committee has already responded to submissions in favour of the regulation of Private Cannabis Clubs (**PCC**) under the Bill. These arguments were, broadly, that such regulation—

4.1.1 would assist to decriminalise Cannabis users across the socio-economic divide who cannot or do not have the resources or knowledge required in order to grow Cannabis by and for themselves and who do not have a safe and private space in which to consume Cannabis away from children;

4.1.2 works well in other countries;

4.1.3 would ensure the testing of products and the health and safety of the members;

4.1.4 would prevent diversion of Cannabis to the illicit and/or organized criminal markets.[7]

4.2 To summarise the Committee's response, it expressly acknowledged that PCCs "may provide an appropriate solution to perceived problems where a person does not have a place to cultivate Cannabis or a place to consume Cannabis" but retorted that such regulation—

4.2.1 would be impractical given the extensive regulatory measures, and associated oversight and

[7] See items 3.6, 3.10(a) and 6.3 of the Comments and Responses Document.

funding implications of regulating PCCs in terms of the Bill; and

4.2.2 is not viable if effected independently or outside of the regulation of commercial activities in relation to the recreational use of Cannabis.[8]

4.3 While we appreciate that the Committee has only invited responses on the expanded scope of the Bill as per the Revised Bill, that it has declined the significant opportunity to expressly regulate PCCs in terms of the Bill, we respectfully submit that:

4.3.1 the phenomenon and purpose of legitimate PCCs lie at the heart of the distinction between private Cannabis use and commercial activities in respect of recreational Cannabis; and

4.3.2 regardless of the Committee's present intentions, our courts will inevitably be tasked with applying the provisions of the Cannabis for Private Purposes Act (i.e. the Bill, once enacted) when determining the legitimacy of PCCs.

4.4 With the aim of assisting the Committee to finalise the manner in which the Bill applies to PCCs, we would therefore like to make some salient submissions and proposals.

4.5 The phenomenon of PCCs is already widespread in South Africa and there are countless establishments, with various levels of judicially untested legitimacy, distributing Cannabis among their members.

4.6 In our submission, at its core, a legitimate PCC is an entity specifically established to assist adult Cannabis users (who do not *alone or by themselves* have the time, space, knowledge and other resources required) to exercise their rights to cultivate, possess and/or consume Cannabis in private. Owing to the Prince Privacy Judgment, these rights are constitutionally protected under the right to privacy enshrined in section 14 of the Constitution.

4.7 That is, in our submission, it would be arbitrary and irrational, in conflict with the rule of law, on the one hand, and likely constitute unfair discrimination, on the other hand, if the only Cannabis users who benefitted from the rights and decriminalised status conferred in terms of the Prince Privacy Judgment (and indeed the Bill) were those who had the resources required in order to privately

[8] Ibid.

cultivate Cannabis *by and for themselves*.

4.8 Accordingly, any law that regulates the private use of Cannabis cannot feasibly differentiate or discriminate between such groups of people, especially when considering the vast socio-economic disparities and inequalities that exist between people in these respective groups.

4.9 However, until such time as the recreational Cannabis sector is authorised and regulated, commercial activities in respect of recreational Cannabis will remain illegal. Indeed, for now, in terms of section 5(b) of the Drugs Act, dealing in Cannabis is still illegal except where sanctioned in terms of medicinal laws.

4.10 Accordingly, in our submission, to be legitimate, a PCC must first and foremost be able to demonstrate that no dealing (or transfer of ownership) in Cannabis takes place, that the members of the PCC, either individually or collectively, at all times own the Cannabis cultivated via the PCC-ecosystem, and that the PCC produces only the quantities needed to satisfy the private use demands of its members, as either individuals or as a collective.

4.11 CQS recently published a framework manual for the establishment and management of PCCs,[9] which argues for the present legitimacy of primarily two models of PCC, namely:

4.11.1 a personal/private model of PCC, whereby members individualistically contract with and reimburse the PCC for assisting them to personally and privately cultivate their own plant, a model which is exclusively grounded in the right to privacy entrenched in section 14 of the Constitution, as per the Prince Privacy Judgement; and

4.11.2 a shared/collective model of PCC, grounded on both the rights to freedom of association, entrenched in section 18 of the Constitution, and the right to privacy, entrenched in section 14 of the Constitution as per the Prince Privacy Judgment, appropriately captured by the widespread *Stokvel* concept. Under this model, individuals come together, sharing resources, knowledge, activities, achieving a common (often public/social) purpose – co-operatives or non-profit associations – in order to exercise their rights to privately cultivate and consume Cannabis.[10]

[9] Theunissen, M & Pollack B *Private Cannabis Club – Framework Manual for Set-Up & Management* (2022) Cradlestoned Quality Solutions. Available at https://cradlestonedquality.co.za/product/pcc-manual/

[10] This model, which is inspired by the European Guidelines for Cannabis Social Clubs, is based on the argument that cultivation and consumption in private does not preclude shared or collective cultivation and consumption in private. See ENCOD (2020) Guidelines for European Social Clubs, available at https://encod.org/the-european-guidelines-for-cannabis-social-clubs/.

4.12 A vast array of PCCs follow similar and other models in South Africa. Moreover, many of these PCCs have already taken it upon themselves to implement harm reduction practices such as:

4.12.1 orientation and education on rights relating to Cannabis in South Africa;
4.12.2 limiting the quantity of Cannabis that members may access within 30 days to less than 100g, following indications the Committee has made in this Bill;
4.12.3 providing access to counselling, product education, testing practices, and responsible use information;
4.12.4 not allowing persons under the age of 18 years membership and access to any Cannabis or Cannabis cultivation or consumption areas;
4.12.5 monitoring usage of its members on a monthly basis; and
4.12.6 consumption of Cannabis in private areas, away from the public, inaccessible to children and any possible non-consenting adults;

4.13 In any event, we are of the view that the aforementioned model, namely a shared/collective model of PCC will be pursued as a non-commercial means to safely access safe Cannabis for private use by a vast number of Cannabis consuming South Africans who make regular use of *stokvels*, and who do not have the means or resources required in order to cultivate and consume Cannabis by and for themselves, away from children, or to track and trace individual ownership of individual Cannabis plants by individual members.

4.14 While we eagerly await the finalisation of pending litigation in the High Court, which has been tasked with determining the extent to which a certain model of PCC conforms to the precepts outlined in the Prince Privacy Judgment, the Committee would do well to consider section 39(2) of the Constitution which provides that: "When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights." (Emphasis added)

4.15 In our submission, a court tasked with determining the legitimacy of a personal/private model of PCC or a shared/collective model of PCC will promote the spirit, purport and object of the Bill of Rights and interpret clauses 2(1) and 2(2) of the Bill (assuming it was enacted as the Revised Bill) in line with the equality-based imperatives – not to irrationally differentiate between people or to unfairly discriminate against people – to cover and sanction PCCs with either model. In other words,

there is nothing about the wording or indeed context of clauses 2(1) and 2(2) of the Revised Bill that prohibits an adult person from performing the permitted personal use activities by enlisting the assistance and/or community of a PCC designed and established to those ends.

4.16 This likelihood is amplified especially when one considers and construes the right to freedom of association (entrenched in section 18 of the Constitution) as a corollary to the right to privacy (entrenched in section 14 of the Constitution), in either establishing or joining freely formed associations in order to practise our privacy-personal-use Cannabis rights granted in terms of clauses 2(1) and 2(2) of the Revised Bill.

4.17 Constitutional law expert Stuart Woolman, in his exposition concerning the freedom of association contained in the Constitutional Law of South Africa compendium, argues that:[11]

4.17.1 "[a]ssociational freedom is often justified on the ground that it enables individuals to exercise relatively unfettered control over the various relationships and practices deemed critical to their self- understanding"; but

4.17.2 "autonomy as the basis for associational freedom overemphasizes dramatically the actual space for self-defining choices. In truth, our experience of personhood, of self-consciousness, is a function of a complex set of narratives over which we exercise little in the way of (self) control"; and

4.17.3 "If we were to shift our constitutional analysis to one in which we see associations as constitutive of the self, then we might be willing to treat individuals who participate in non-dominant forms of behaviour [including the marginal, but not especially dangerous consumption of Cannabis] with greater respect."

4.18 The result, according to Woolman, would be that:

4.18.1 Our "desire to sanction non-conformist or non-dominant forms of behaviour" is supplanted by a greater respect for these "other harmful ways of being in the world"; and

4.18.2 "the recognition of associations as constitutive of the self does not mean that we eschew hard constitutional choices. It means, rather, that we ought to think twice before we differentiate invidiously between our preferred way of being in the world and that way of being preferred by others."

[11] Woolman, S. (2018) *Constitutional Law of South Africa* at Chapter 44. See https://constitutionallawofsouthafrica.co.za.

4.19 One could argue that this result applies with even greater force where the marginalised form of behaviour has been decriminalised, as is the case with the privacy-based Cannabis rights contained in clauses 2(1) and 2(2) of the Revised Bill.

4.20 Woolman continues to argue that where "small social associations" "serve the 'purely' local and social ends of its members, the state's interest in opening up the member- ship is 'purely' ideological. Unless we wish to grant the state the power to enforce its ideology at every turn – thus truly raising the spectre of totalitarianism – such purely ideological grounds for interfering in an association's affairs should be rejected."

4.21 So, the argument goes, a court would take cognisance of the corollary nature and indivisibility of the rights to privacy and the freedom of association when interpreting clauses 2(1) and 2(2) of the Bill, as it would be required to do in terms of section 39(2) of the Constitution, and likely hold that these provisions permit Cannabis enthusiasts to form and join PCCs. This argument would apply *mutatis mutandis* to a shared/collective model of PCC that is pursued as a non-commercial means to safely access safe Cannabis for private use by a vast number of Cannabis consuming South Africans who make regular use of *stokvels*, and who do not have the means or resources required in order to cultivate and consume Cannabis by and for themselves, away from children, or to track and trace individual ownership of individual Cannabis plants by individual members.

4.21.1 Given the above, we suggest that the Committee takes cognizance of this constitutionally inevitable result and amends only the lead-in to clause 2(1) of the Revised Bill with a very simple insertion, as follows:

"2.(1) Subject to this Act, an adult person may, acting either alone or as a member of an association or co-operative, 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."

5 Clause 1B - Special measures to accommodate cultural or religious communities

5.1 We wholeheartedly welcome the inclusion of clause 1B of the Revised Bill, and the express inclusion of the Rastafarian faith in the definition of a cultural or religious community in clause 1B(11)(c) of the Revised Bill.

5.2 The only submission that we make is a cautionary one; to ensure that clause 1B the Revised Bill, once enacted, does not operate to the exclusive benefit of members and communities of the Rastafarian faith.

5.3 In order to ensure that all communities – that can demonstrate that their cultural or religious practices involve the use of Cannabis – benefit from this clause, we make the following simple suggestions.

5.3.1 Firstly, the relevant wording of the preamble to the Revised Bill must be amended. We propose the following insertions and deletions:

"To provide for cultivation, possession and supply cannabis plants and cannabis by cultural or religious communities **[organisations]** for cultural or religious purposes **[in adherence to the Rastafarian faith**, on behalf of their **[its]** members;".

5.3.2 Secondly, we propose that the header to clause 1B, in the index – the portion entitled 'ARRANGEMENT OF SECTIONS' – must be corrected as follows:

"Special measures to accommodate cultural or religious communities **[the Rastafarian faith]**"

6 Enforcement of prescribed quantities for personal use and cultivation by adult person

6.1 Although the era of Cannabis prohibition in South Africa is finally in a state of rapid decay, it still persists under the anachronistic language of the Drugs Act and the continued oppressive police action against any person with any connection to Cannabis.

6.2 The Prince Privacy Judgment signalled a new era for the average Cannabis consumer but, in reality, members of the South African Police Services (**SAPS**) are deploying the inevitable legal

lacunas engendered by the Prince Privacy Judgment as a blunt and abusive tool against innocent (and often the most vulnerable) Cannabis consumers who are legitimately exercising their constitutionally protected rights to cultivate, possess and consume Cannabis in private.

6.3 The police continue to unlawfully and often violently abuse their investigatory, search and seizure, and detention and arrest powers granted in terms of the Criminal Procedure Act 51 of 1977 in gross violation of the constitutional rights to, among others, human dignity and the freedom and security of the person, in addition to the right to privacy.

6.4 While we appreciate that the SAPS clearly has a legitimate and constitutionally mandated role in fighting crime, we implore the Committee to seize the opportunity to ensure that the Bill takes extra care to mitigate the often-criminal conduct of the police, wasting billions of rands in tax money each year, in enforcing trivial Cannabis crimes in the context of a society plagued by violence, murder, rape, domestic abuse and other such evils. The corrupt, unwarranted, unjust and unlawful intimidation, arrests, detention without just cause, harassment, assault, threats of rape, and robbery by the SAPS in enforcing Cannabis crimes need to stop.

6.5 Although we appreciate the limitations of the Committee in this regard, the gravity and graveness of the situation compels us to bring this problem to the Committee's attention. It is our undying hope and prayer that the Committee takes the opportunity, before it is too late, to ensure that the Bill, once enacted, will provide sufficient protection from criminal members of SAPS who grossly abuse their authority with relative impunity, capriciously and violently invading our privacy without any regard to the Prince Privacy Judgment, which confirms that ultimately, when it comes to the cultivation and possession of Cannabis for purposes of private use, "the right to privacy is a right to be left alone."[12]

7 Penalties

7.1 In defining penalties for the identified offences, it is always good practice to consider the harm done by the offender and to identify the victim of such offence. When cultivating more plants than what is prescribed by legislation, there is no victim and no individual or entity has been harmed.

[12] Prince Privacy Judgment at paragraph 45.

7.2 However, we do appreciate that criminal laws are enforced through the imposition of penalties for contraventions of such laws. However, such penalty should not be out of step with the consequences of the offence, especially considering the significant tax money required in order to prosecute such menial contraventions.

7.3 We gladly note the Revised Bill's proposed reductions in imprisonment sentences and would appeal to the Committee to further reduce these penalties.

7.4 Legislation also allows for punishments such as community services, which would serve much greater use compared to adding another mouth to feed and body to house in an already overcrowded prison system.

7.5 Accordingly, we submit the following proposal in relation to clause 7(1)(d) of the Revised Bill, which we believe will assist and urge our courts to impose more proportionate, germane and humane sentences in the context of contraventions of Class D offences under the Bill:

"7. (1) A person who is convicted of—

…

(d) a Class D offence is liable on conviction to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment, where a court should reasonably impose a fine to the exclusion of a period of imprisonment."

8 Conclusion

8.1 The Cannabis community welcomes the progression of a Cannabis industry in South Africa, however slow and obstacle-ridden it may be, and the extent to which the Committee is genuinely engaging with and earnestly considering comments from the public and stakeholders in relation to the Bill.

8.2 We are excited by the prospect of fair and reasonable laws to govern our private Cannabis use and are grateful for the opportunity to submit these submissions.

8.3 To the extent that the Committee convenes public hearings for the purposes of discussing issues arising from the submissions made, we hereby request an invitation to present our submissions orally at such public hearings.

8.4 We thank the Committee for applying its collective mind to considering our submissions.

Marleen Theunissen

Director

Cradlestoned Quality Solutions (Pty) Ltd