**CANNABIS FOR PRIVATE PURPOSES BILL**

**(Published on 14 April 2022, inviting written comments on proposals to extend the subject of the Bill to provide for: Commercial activities in respect of recreational cannabis; the cultivation, possession and supply cannabis plants and cannabis by cultural or religious communities or organisations for cultural or religious purposes; and the use of cannabis for palliation or medication)**

**Portfolio Committee on Justice and Correctional Services**

**(JUNE 2022)**

**Comments received:**

**1. Afristar Cannabis Lobby Group (Afristar)**

**2. Ras Tafari Community of South Africa (Submissions 1 and 2) (RCSA)**

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

**4. South African Drug Policy Initiative (Dr Keith Scott) (e-mail 6 May 2022) (SADPI)**

**5. Rastafari National Council of South Africa (including the submission of the Office of the Secretary General and Marijuana Board of South Africa) (RNCSA)**

**6. Ras Tafari Appreciation Society (RAS)**

**7. Country Woman in Cannabis (CWC)**

**8. Abalimi BoMya Association (Abalimi)**

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

**10. Cannabis Research Institute SA (CRISA)**

**11. Cannabis Development Council Free State (CDCFS)**

**12. Centre for Child Law (CCL)**

**13.**  **Cullinan and Associates ‘Earth Medicine’ Practice (Cullinan)**

**14. Concerned Young People of South Africa (CYPSA)**

**15. Department of Defence (DOD)**

**16. Cradlestoned Quality Solutions (Cradlestoned)**

**17. Fields of Green for All (FGA)**

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

**19. Free Market Foundation (FMF)**

**20. Growers Club**

**21. Theocracy Reign Order of Nyahbinghi (including the comments of Ras Madoda Biyana) (TRON)**

**22. Theocracy Reign Ancient Order of the Nyahbinghi (TROAN)**

**23. SDLD Trading (SDLD)**

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

**25. Southern African Agri Initiative (SAAI)**

**1. General comments**

|  |  |
| --- | --- |
| **Comments** | **Responses** |
| 1.1 (a) The lack of adequate public consultation in the finalisation of the Bill is criticised.  (b) An equitable human rights based approach to regulate cannabis would seek to ensure that cannabis is accessible to all; indigenous customs are recognised; and limitations, if required at all, are proportional.    (c) The Bill should have been dealt with in accordance with the procedure established by section 76 of the Constitution of the Republic of South Africa (the Constitution) and not section 75 of the Constitution, which would have ensured adequate and sufficient public participation.  (d) The Bill has numerous unforeseen and unintended consequences when interpreted with other legislation.  (e) The Bill –  (i) reflects a lack of understanding of cannabis in general and its social economic potential for the people of South Africa;  (ii) prefers criminalisation over commercialisation without any consultation on the matter; and  (iii) regulates cannabis as a criminal issue rather than a social issue and favours alcohol and tobacco which are more harmful than cannabis.  (Afristar, page 3, paragraph 4.1) | (a) It is acknowledged that the Bill was not made available for public comment before its introduction into Parliament. Although preferable, it is not an absolute requirement, to subject a Bill to public consultation process before its introduction into Parliament.  (b) The Bill gives effect to the judgment of the Constitutional Court in **Minister of Justice and Constitutional Development and Others v Prince** 2018 (6) SA 393 (CC) (Prince Judgment) and seeks to address the impermissible limitation in sections 4*(b)* and 5*(b)* of the Drugs Act on an adult person's right of privacy to use or be in possession of cannabis in private for his or her personal consumption in private, and to cultivate cannabis in a private place for personal consumption in private, in the following context that:  \* Parliament must determine an appropriate amount of cannabis for personal use (paragraphs [79] to [81]);  \* any activity in connection with the cultivation of cannabis by an adult in private for his or her personal consumption in private must not be criminalised (paragraphs [85], [86]);  \* the permitted use or possession of cannabis or cultivation of cannabis plants is not confined to a home or a private dwelling since there are other places other than a person’s home or a private dwelling where the prohibition of the use or possession or cultivation of cannabis would be inconsistent with the right to privacy if the use or possession or cultivation of cannabis was by an adult in private for his or her personal consumption in private (the term “in private” instead of “at home” or “in a private dwelling” is preferable) (paragraph [108]);  \* the use, including smoking, of cannabis in public or in the presence of children or in the presence of non-consenting adult persons is not permitted (paragraph [109](b)]);  \* dealing-in cannabis is a justifiable limitation of the right to privacy (paragraph [88]); and  \* the use or possession of cannabis in private other than by an adult for his or her personal consumption is not permitted (paragraph [109](c)).  Amendments to the Bill seek to accommodate cultural or religious communities, person who requires palliation; and persons who self-medicate.  (c) Noted.    (d) The "unforeseen and unintended consequences when interpreted with other legislation" are not discussed. Cannabis is currently regulated in terms of the Drugs Act (as amended by the reading-in in terms of the Prince Judgment) and the Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965) (the Medicines Act). The Drugs Act criminalises the use and possession of cannabis not covered by the reading-in in terms of the Prince Judgment and the dealing in cannabis. The Medicines Act, among others, regulates the acquiring, use, possession, manufacturing, supply and administering of medicines and related substances intended for human and for animal use.  (e)(i) It is acknowledged that commercialisation of cannabis for recreational purposes will stimulate the economy significantly. The ambit of the Bill is discussed in paragraph (c) above, and other legislation must be promoted to give effect to the intended commercialisation of cannabis as contemplated clause 1A. 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).  (ii) The offences contemplated in clauses 3, 4, 5 and 6 of the Bill aim to address the possible dealing in cannabis and protect others against the harms associated with cannabis use. Many countries that opted for commercialisation of cannabis have similar provisions as those contemplated in clauses 3, 4, 5 and 6 of the Bill to protect others against the resultant harm of cannabis in a controlled legalisation environment. It is submitted that criminalisation would be used in a commercial environment to enforce compliance with the regulatory measures. The Tobacco Products Control Act, 1993 (Act No. 83 of 1993) and the Liquor Act, 2003 (Act No. 59 of 2003) (and provincial legislation giving effect thereto) **(Liquor Legislation)**, regulate aspects relating to commercial activities of tobacco or liquor, restrict the use of a tobacco or liquor to certain places, prohibit the selling or providing of tobacco or liquor to underage persons etc, and uses criminal sanctions to enforce compliance.  (e)(iii) It is correct that criminalisation is inappropriate to deal with drug abuse. However, the offences contemplated in clauses 3, 4, 5 and 6 of the Bill aim to address dealing in cannabis and protect others against the harms associated with cannabis use. As indicated in paragraph (e)(ii), regulatory measures applicable to tobacco and alcohol are enforced through criminal sanctions. |
| 1.2 Cannabis must be available to all, without any restriction, regulation or limitation. The Bill in its current form is rejected.  (RCSA , page 1, paragraphs 1 and 2.1.1)) | 1.2 Cannabis regulation is necessary to protect others against the harms associated with cannabis. |
| 1.3 Transform Drug Policy Foundation is a world leader in drug law reform policy and its publications have been used extensively in many countries that are progressively reforming their drug policies. One such publication is a guide that deals with regulatory frameworks for cannabis and may be of use in the finalisation of the Bill.  (SADPI, e-mail and attachment, Dr Scott) | 1.3 The third edition of the guide of the Transform Drug Policy Foundation evaluates models of cannabis regulation.  It is indicated that cannabis policy, which in turn informs cannabis regulation, should have the following key aims: Respect, protect and promote human rights; protect and promote public health; promote social equity, improve development opportunities and ensure communities most impacted by prohibition are included in policy development; reduce crime, corruption and violence associated with drug supply; protect against excessive corporate influence on policy making; limit the incentives for profit-making driven by problematic use; protect the young and vulnerable from potential harms; incorporate clear outcome indicators, measures of success and evaluation processes.( How do we know regulations are fit for purpose? - discussed from pages 23 to 30). It is submitted that the Bill give effect to most of these policy aims.  A summary of the different regulatory models is provided from pages 37 to 46. The Bill provides for the implementation of a combination of Model 3, page 40, (Prohibition of production and supply, with decriminalisation of possession for personal use) and Model 5, page 42, (Prohibition of production and supply, with decriminalisation of small-scale personal cultivation), without cannabis social clubs. It is indicated that these models may contribute to the illegal productions and trade in cannabis and place a huge burden on law enforcement agencies to enforce.  Model 8, on page 45, (Regulated legal production and supply by licensed producers and/or licensed vendors) is similar to the regulatory regime applicable to alcohol and tobacco is South Africa.  Section 3 of the guide makes recommendations in respect of expungment of criminal records; cannabis impaired driving and synthetic cannabinoid:  \* The Bill provide for the expungment of criminal records as is proposed in the guide.  \* The guide make the following recommendations regarding cannabis impaired driving:  - Impaired driving laws should require establishing actual impairment as a separate requirement to establishing recent cannabis use;  - there is no scientific consensus regarding a blood THC  concentration that correlates with an unacceptable level of impairment and limits that automatically trigger a legal sanction when exceeded are inadvisable;  - establishing a threshold THC level beyond which it can reasonably be assume that a driver recently used cannabis is problematic, but a blood serum THC concentration in the range 7-10ng/ml appears to be a sensible point at which such a threshold might be set; and  - driving while under the influence of both alcohol and cannabis simultaneously means that in such cases prosecutors should consider lower blood THC and alcohol levels as sufficient evidence of recent use.  (Paragraph 11 of the first comment and responses document deals with this aspect.)  \* Under a cannabis regulatory framework, the default position should be that synthetic cannabinoids would not be made legally available for non-medical use. Synthetic cannabinoids are excluded from the ambit of the Bill and remains criminalised in terms of the Drugs Act. |
| 1.4 The Bill should be renamed the as the Cannabis for Private, Religious and Commercial Purposes Bill.  (RNCSA, page 2, paragraph 3.1) | 1.4 There is no need to rename the Bill. |
| 1.5 (a) Government should apologise to the victims of the criminalisation of cannabis, which is now considered as useful.  (b) The Bill is rejected for the following reasons:  (i) Lack of participation and consultation with interested parties; and  (ii) the legislative process does not allow for meaningful participation of the poor and uneducated who are the primary users of cannabis and who will mostly be effected by the Bill. - (Also see *CDCSA page 1)*  (c) Activities regarding cannabis should not be restricted.  (CWC, pages 1 to 2) | 1.5 (a) The change in policy resulted from a declaration of rights by the Constitutional Court and developments in foreign jurisdictions.  (b) Although the Bill was not made available for comments before its introduction in Parliament, ample opportunity has been afforded for public participation during the Parliamentary process. Public participation is provided for in the Rules of the NA and NCOP. In terms of the Parliamentary process the Bill must also be considered by the NCOP which allow for public participation on a provincial level.  (c) Food that is intended for human consumption, cosmetics, cleansing materials including deodorants; tobacco; alcohol; and all kinds of medicines are controlled (See the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act 54 of 1972); Tobacco Products Control Act; Liquor Legislation; and the Medicines Act). |
| 1.6 The recommendation that Department received from Judge Gordon as well as others members from civil society was that cannabis has to be regulated the same as alcohol and or tobacco. We do not sense the impact of that recommendation in the proposed amendments. Cannabis is regulated differently from the manner in which tobacco and alcohol are regulated and the stricter regulation of cannabis amounts to unfair discrimination against users of cannabis.  (CDCSA page 1) | 1.6 The activities that are regulated in terms of the Bill in respect of cannabis are substantially similar to those regulated by Liquor Legislation in respect of alcohol and the Tobacco Products Control Act in respect of tobacco. The difference between the Bill and the Tobacco Products Control Act and the Liquor Legislation relates to the penalties that may be imposed. Since this issue is relevant to various other comments a comparison of the offences and penalties in terms of the Bill, Liquor Legislation and the Tobacco Products Control Act are provided in **Annexure A.** |
| 1.7 Bill entitles individuals to use and cultivate recreational cannabis, yet it does not make provision for individuals to legally obtain recreational cannabis and recreational cannabis products. The continued criminalisation of the sale of recreational cannabis will serve only to fuel the existing and growing illicit market thereby putting ordinary law-abiding adults at risk of contravening the law or worse, using illegal and risky substances in an attempt to exercise their legal rights to use cannabis for recreational personal use (which are in fact already readily available in South Africa).  (CRISA. Also see SAAAI **discussed in paragraph ......**) | 1.7 The right of an adult to cultivate and use cannabis is as a result of the right of privacy interpretation in the Prince Judgment. The aims of the Bill are discussed in paragraph 1.1(b), above. 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). The proposed clause 1A provides for recreational cannabis commercial activities subject to the enactment of legislation. The significance of clause 1A is discussed in **paragraph ..........** |
| 1.8 The provisions in the Bill that regulate the use of cannabis for private purposes by adults, and, in particular, the duties placed on adults as it relates to children are welcomed and supported. (CCL, page 3, paragraph 2). The Bill aims to give effect to the Prince Judgment. However, the subsequent judgment in S v LM must be taken into account in the finalisation of the Bill. According to the judgment, the constitutionally correct approach to the issue of cannabis use or abuse by children involves treatment, awareness and education to equip communities and individuals with the relevant tools to deal with cannabis abuse. (CCL, pages 13 to 14, paragraph 5) | 1.8 In LM and 3 Others (Case No's 97/18, 98/18, 99/18 and 100/98 Gauteng Local Division of the High Court) (the LM Judgments), it was decided that the continued criminalisation of cannabis use and possession by children in terms of section 4*(b)* of the Drugs Act, amounts to a status offence which resulted from the Prince Judgment's exclusion of children from the legalisation of cannabis (paragraph [108]). The court therefore declared section 4*(b)* of the Drugs Act that criminalises the use and possession of cannabis by children inconsistent with the Constitution and invalid. The submission is discussed below in the context of other clause of the Bill. |
| 1.9(a) Do away with the unenforceable distinctions and definitions of different components of cannabis on the basis of height, maturity, concentration. It is more viable to intervene from a legislative perspective at the level of differentiating what cannabis will be used for, with harm as the core focus.( Cullinan, page 5, paragraph 5.3)  (b) The Bill is fatally flawed, steeped in out-dated assumptions, apartheid-era thinking, and an un-checked obsession with criminal prohibition that tries to fix societal and medical problems through the criminal justice system. (Cullinan, page 3, paragraph 4.2; and page 6 , paragraph 6) | 1.9 (a) The Bill seeks to further regulate the legal position that resulted from the Prince Judgment. Clause 2 respects the right of privacy of an adult person to use and possess cannabis and to cultivate cannabis plants as reflected in the Prince Judgment. The clause is however subject to clauses 3, 4, 5 and 6, which impose limitation on this right, to protect other persons, including children, against the harms of cannabis. Clause 3 (cultivation offences), restricts cultivation of cannabis to a private place and put limitations on the quantity of cannabis plants that may be cultivated to curb dealing in cannabis. Clause 4 (cannabis offences), among other, limits the amount of cannabis that may be possessed for personal use and criminalise conduct that is typically associated with dealing in cannabis. Clause 5 seeks to limit the use of cannabis to a private place. The definitions in clause 1(1) of the Bill are required to facilitate the interpretation of other provisions of the Bill and can therefore not be omitted.  (b) The aims of the Bill are discussed in paragraph (a), above. Clause 2 respects the right of privacy of an adult person to use and possess cannabis and to cultivate cannabis plants as reflected in the Prince Judgment. The proposed clause 2(4), relates to the afore-mention and allows increased prescribed quantities for purposes of palliation or self-medication. The offences provided in, clauses 3, 4, 5 and 6, limit the rights afforded by clause 2 and serve as a mechanism to enforce compliance. Most legislation on the statute book enforces compliance through offences that criminalises failures to comply with their provisions (see, among others, Annexure A). It is acknowledged that some laws do provide for non-criminal enforcement mechanisms. However, in the context of the objects of the Bill, civil or administrative enforcement mechanisms cannot readily be used to ensure compliance. |
| 1.10 (a) The Bill does not take into account the practical ramifications of cannabis decriminalisation on the South African education system. Specific provisions must be incorporated into the Bill to deal with school going learners over the age of 18 years, and the decriminalisation of cannabis in relation to the school system in general, in order to protect the right to a quality education of South Africa’s youth. To regulate cannabis in the manner provided in the Bill, will similar to other well-resourced countries such as the United States, be unsuccessful. Specific aspects not regulated in terms of Bill, are the following:  (i) Persons over the age of 18 years who is under the influence of cannabis on school premises.  (ii) School staff and members of the public can smoke cannabis legally and may do so on or near school property.  (iii) The public will be entitled to sell and smoke cannabis near schools and will do so in the presence of school-going minors.  (iv) Decriminalisation of cannabis will increase its availability and use by leaners.  (iv) Liability for injury or damage to property resulting from cannabis intoxication.  (v) Dealing in cannabis in schools.  (vi) The possession of cannabis by a person 18 years or older including teachers on school grounds who can claim that the cannabis in their possession is intended for personal use.  (CYPSA, pages 2 to 5)  (b) Having worked with over 18,500 drug users over the past nine years, CYPSA is all too well aware of the link between cannabis use and a progression to the use of harder drugs, more specifically heroin (whoonga / nyaope) amongst South African youth of school going age. The link between cannabis and heroin is especially strong within the South African context, where cannabis is used as a medium to smoke cheap powdered heroin. Increasing the availability of cannabis and removing penalties for the possession and use of cannabis, will ultimately fuel an increase in harder drug use and will place an increased demand on the SAPS and the criminal justice system of South Africa.  (CYPSA, page 8 to 9)  (c) South African teachers' unions have not been consulted in the preparation of this Bill and that the provisions of the Bill will only serve to add to the already almost impossible situation that South African teachers face in our nation’s schools. (CYPSA, page 9)  (d) Cannabis will increase motor vehicle accidents. Road traffic enforcement agencies are not adequately equipped to deal with the increased burden of testing for and policing of cannabis road users. (CYPSA, page 9)  (e) CYPSA is not aware or any formal or meaningful research having been done into the likely results of cannabis decriminalisation in a South African context to date, and it is unclear whether this Bill and its provisions are based on or guided by any reliable sources of information whatsoever. (CYPSA, page 10) | 1.10 (a) Decriminalisation is as a result of the Prince Judgment. The Bill seeks to regulate the right of an adult person to use and possess cannabis and to cultivate cannabis plants as reflected in the Prince Judgment, by imposing limitation on this right, to protect other persons, against the harms of cannabis.  A code of conduct as contemplated in section 8 of the South African Schools Act, 1996 (Act 84 of 1996), may be used to further regulate aspect relating to cannabis. Section 8A of the South African Schools Act, prohibits a leaner to bring or possess an illegal drug on school premises; provides for the search for and seizure of illegal drugs; and disciplinary proceedings against a leaner in respect of illegal drugs.    Some of the concerns are addressed through offences in terms of the Bill, among others, the following: Any person (including a child) who deals in cannabis, is guilty of an offence (clause 4(5); any person (including a child), who smokes or consumes cannabis in a public place, is guilty of an offence (clause 5(1)); any person (including a child) who smokes cannabis in a public or private place in the immediate presence of a child, is guilty of an offence (clause 5(3)); any person (including a child) who engages a child to deal in cannabis is guilty of an offence (clause 6(2)); and any person (including a child) who provides cannabis to a child is guilty of an offence (clause 6(3)).  (b) Noted. The Bill seeks to restrict the availability of cannabis, through offences that criminalise the possession, use and cultivation of cannabis outside the sphere of privacy in terms of the Prince Judgment.  .  (c) It is correct that teachers' unions have not been consulted in the preparation of the Bill. Although preferable, it is not an absolute requirement, to subject a Bill to public consultation process before its introduction into Parliament. In any event the ambit of the Bill is rather narrow (see the discussion in paragraph 1.1(b)).  (d) The legal position in terms of the Prince Judgment will give rise to increased driving of vehicles whilst drivers are under the influence of cannabis. Clause 10 read with Schedule 5 amends the National Road Traffic Act, 1996 (Act 93 of 1996), to provide for this. Section 65(1) of the National Road Traffic Act, already criminalises the driving of a vehicle or to occupy the driver's seat of a motor vehicle whose engine is running, while under the influence of a drug having a narcotic effect.  (e) As indicated in paragraph (a) above decriminalisation resulted from the Prince Judgment. The Bill is substantially in line with foreign legislation, which in addition to the recreational cannabis commercial activities, also regulates the personal use of cannabis. |
| 1.11 The Bill does not apply to the SANDF, alternatively the SANDF should be excluded from the Bill through suitable amendments. (DOD, page 1, paragraphs 1 to 5 and page 4 paragraph 17) | Other legislation regulates this aspect, among others, the Defence Act, 2002 (Act 42 of 2002), the Military Discipline Supplementary Measures Act, 1999 (Act 16 of 1999), and Military Discipline Code referred to in section 104(1) of the Defence Act, 1957(Act 44 of 1957) and cannot be provided for in terms of the Bill. |
| 1,12 The legal position emanating from the Prince Judgment is not clear and enforcement thereof prejudices cannabis users who exercise their constitutional rights. The Bill must take extra care to mitigate the enforcement of trivial cannabis offences. (Cradlestoned, pages 15 to 16, paragraph 6). | 1.12 It is acknowledged that the present day legal position regarding cannabis is uncertain and open for arbitrary enforcement. The Bill seeks to provide a legal framework for enforcement. |
| 1.13 (FGA, page 1):  (a) The Bill is rejected. The recent amendments have only served to make the Bill even more unconstitutional.  (b) The Bill does not offer a solution for commercialization of cannabis.  (c) The Bill is not evidence based and aims to regulate cannabis on the basis of perceived harms of cannabis, the plant itself and the trade therein.  (d) The Portfolio Committee must consider FGA's "Cannabis in South Africa: The People’s Plant. A Full Spectrum Manifesto for Policy Reform", that proposes a model for cannabis regulation. In terms of the Manifesto, cannabis regulation should be based of on four pillars (Chapter 5). The Medical Pillar (cannabis for medicinal purposes) and Industrial Pillar (industrialization of hemp) are not relevant to the Bill. The Constitutional Rights Pillar and Adult Use Commercial Pillar are relevant to the Bill and are discussed below.  (i) The ***Constitutional Rights Pillar (Pillar 1)*** caters for fair regulation of cannabis use by adults in terms of the Prince Judgment and must include traditional, cultural, religious and health uses of the plant, outside of pharmaceutical products. In paragraph 5.1, it is indicated that limitations on the number of plants allowed to be grown at home is not an option. "The only limitation should be that plants cultivated in private, for personal use, cannot be used for commercial purposes". Dagga Private Clubs (DPCs) as an option to further realize and regulate the right of adults to cultivate and use cannabis are discussed in paragraph 5.1.1. National Operational and Quality Standard for DPCs (Standards) has already been developed. DPCs should be managed by a government body that must also ensure compliance with the Standards. The Cannabis Ombudsman (established in terms of Pillar 2), is responsible for compliance review of DPCs.  (ii) The ***Adult Use Commercial Pillar (Pillar 2)*** deals with the regulation of the cultivation, processing and trade of cannabis for adult use.The cornerstone of Pillar 2 is Cannabis Hubs that would allow for companies and persons involved in the current unregulated cannabis industry to participate in such commercial activities. The Cannabis Ombudsman (see paragraph 5.5.1) is responsible for the proper administration and functioning of Cannabis Hubs. Cannabis Hubs implement policies on the ground by offering services required by the regulations. Cannabis Hubs are local, decentralized and democratic enforcement platforms that take care of quality control, pricing, crop certification, tax collection, anonymous auctions, warehousing, and management of by-products (see paragraphs 5.2.1.2 - 5.2.1.4 and 5.2.2. – 5.2.5). | 1.13 (a) Noted.  (b) The Bill seeks to further regulate the legal position that resulted from the Prince Judgment through appropriate legislative provisions to –  \* use or be in possession of cannabis in private for his or her personal consumption in private; and  \* cultivate cannabis in a private place for his or her personal consumption in private.  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).  To facilitate commercialisation the Bill removes cannabis and hemp "dagga" from the purview of the Drugs Act (one of three laws that give effect to South Africa's obligations in terms of the Drug Control Conventions). Clause 1(2) of the Bill provides for the promotion of other legislation that may deal with commercialisation of cannabis for recreational purposes. The new proposed clause 1A goes further and authorises commercial activities in respect of recreational cannabis subject to the promotion of other legislation.  (c) The harms of cannabis can be motivated with reference to the fact that cannabis (THC) is:  \* included in Schedules I and IV and the text of the Single Convention on Narcotic Drugs, 1961 as amended by the 1972 Protocol (regarded by many as an overstatement of the harmfulness of cannabis);  \* subject to regulation in almost all foreign jurisdictions, either as a psychotropic substances, a medicine or a substance authorised for recreational use; and  \* in terms of relevant academic literature regarded as a substance with narcotic and mood altering properties.  According to literature: Intensive use from a young age can adversely affect the brain development of adolescents up until the age of 21; there is a relationship between regular cannabis use and psychotic disorders particularly among persons who began using cannabis in adolescence as well those with psychiatric disorders; and intensive use of cannabis has been linked with certain mental conditions. The point in question is that cannabis possesses narcotic properties and it has never been established that it is "safe". According to reviewed literature the harms associated with cannabis are substantially similar to alcohol, although there are opinions that it poses a lesser harm potential than alcohol. In light of the afore-mention it is submitted that the harm bases approach for the regulation of cannabis for private purposes is necessary to protect others against the harms that may result from the cultivation, distribution, availability and use of cannabis.    (d)(i) The new proposed clause 1B does provide for cultural and religious use of cannabis. The new proposed clause 2(4), caters for the medicinal use of cannabis and the use of cannabis for palliation subject to quantitate restrictions. The limitation on the quantities of cannabis plants that may be cultivated is required to limit cannabis to personal use.  The Portfolio Committee already considered cannabis clubs. Cannabis clubs may provide an appropriate solution to perceived problems where a person does not have a place to cultivate cannabis or a place to consume cannabis However, cannabis clubs requires extensive regulatory measures, among other, licensing, inspection to ensure compliance and funding for such measures. Cannabis clubs is provided for by foreign jurisdictions that have a commercial regulatory framework for recreational use of cannabis. In the context of the Bill, it will be impractical to provide for cannabis clubs mainly due to oversight requirements and funding. **(See previous submission (Tony Budden (p 5); Wegerif (p 5)) par 3.6; (Cannabis Trade Association Africa (p 1); Tony Budden (p 1)) paragraph 4.12/ (COSATU (p 5); SADPI (p 3)) par 6.3 in this regard)** According to the submission it is indicated that a government body should manage cannabis clubs.  **(see the submission of SADPI, in paragraph ......, ................, below)**  (d)(ii) This aspect relates to the commercialisation of cannabis. Paragraph (b), above discusses the extent to which the Bill facilitates commercial activities and this proposal can therefore not be accommodated in terms of the Bill. Clause 1A(3), provides that legislation that authorises and regulate cannabis commercial activities must take into account aspects that may be considered as harm reduction measures. It is submitted that this Bill cannot prescribe a specific model for cannabis commercialisation to the legislator. |
| 1.14 The reduction of the penalties; the commercialisation of cannabis for recreational purposes; the regulation of cannabis for cultural and religious purposes; and the use of cannabis for palliation or medication are welcomed. There are however certain concerns. (SADPI) | 1.14 Noted. The concerns are discussed in more detail under **paragraphs ............, below.** |

**2. Long title**

|  |  |
| --- | --- |
| **Comments** | **Responses** |
| 2.1 ***(Afristar (page 4, paragraph 4.2):***  The long title of the Bill states that the objectives of the Bill are, among others, to "provide for cultivation, possession and supply cannabis plants and cannabis by organisations for religious purposes in adherence to the Rastafarian faith, on behalf of its members". This needs to be amended to accommodate all cultural or religious communities. (WCG (Annexure page 2)) | 2.1 Agree with proposal. Amendment proposed:  **"provide for the cultivation, possession and supply of cannabis plants and cannabis by [organisations] cultural or religious communities for cultural or religious purposes[ in adherence to the Rastafarian faith], on behalf of its members;"** |
| 2.2 ***WCG (Annexure page 2):***  The word "of" must be inserted between the words “supply” and “cannabis in the first line of the second item of the long title. | 2.2 Agree with proposal. See paragraph 2.1 above. |
| 2.3 ***WCG (Annexure page 2):***  The "Arrangement of Sections" must be amended to clarify that the special measures are applicable in respect of all cultural and religious communities. | 2.3 Agree with proposal. |
| 2.4 ***RNCSA (page 5):***  The following amendments to the long title are proposed:  (a) The second item must be amended to read "Provide for the protection of members and organisations of the Ras Tafari faith in respect of cultivation, possession and supply of cannabis in adherence to the Ras Tafari faith"; and  (b) the fifth item must be amended to read "educate adults and children about the responsible uses of cannabis”. | 2.4(a) See paragraph 2.1.  2.4(b) The fifth item of the long title provides as follows: "**protect adults and children against the harms of cannabis**". The fifth item summarised the objects of clauses 3, 4, 5 and 6, which aim to protect other persons, including children, against the harms of cannabis. In terms of the proposed clause 1B(9), clauses 3, 4, 5 and 6 apply to members of a cultural or religious community. The Bill does not provide for measures to "educate adults and children about the responsible uses of cannabis”. |

**3. Clause 1: Definitions and interpretation**

|  |  |
| --- | --- |
| **Comments** | **Responses** |
| **Definition: "cannabis"**  3.1 Paragraph *(b)* of the definition of cannabis*,* refers to 2% THC and paragraph *(c)* of the definition, refers to a fraction of a percentage of THC. These values are not consistent and based on scientific evidence, but apply conservative standards of western countries. It is questionable whether the climate of South Africa is suitable to cultivate cannabis with the prescribed THC content, unless suitable cultivars are imported. (Afristar, pages 3 - 4, paragraph 4.2; Abalimi, page 9; CDCSA pages 2 -3 paragraphs 7 - 9):) | 3.1 The Bill defines "cannabis" among others, as "any substance which contains THC". Beverages, food and medicinal products, with trace amounts of THC will therefore be regarded as cannabis. To address the over broadness and unintended effect, paragraph *(b)* is amended to provide that "any substance which contains more than 2% THC per volume" must be regarded as cannabis.  The proposed insertion of paragraph *(c)* in the definition of cannabis, is to provide for a THC content of 0.2% in respect of certain offences (clause 4(3) (storing of cannabis); clause 5 (smoking of cannabis); clause 5(5)(b) (consume cannabis in a vehicle on a public road); and clause 6 (offences involving a child)).  The reference to the western standards relates specifically to hemp cultivation. Most foreign jurisdictions regard cannabis with a THC content of either 0.2% or 0. 3%, as hemp. The Bill defines "hemp" as a cannabis plant which has a concentration of THC that does not exceed the percentage of THC as may be prescribed in terms of legislation that regulates hemp. |
| 3.2 (a) "Any substance containing THC" is something else than cannabis plants (including hemp), cannabis cultivation material or the removed flowering or fruiting tops of a cannabis plant. The Bill, however, does not cater for the "manufacturing" of "any substance containing THC".  (b) The inclusion of "any substance containing THC" in the definition of "cannabis" is problematic in the context of the definitions of "prescribed quantity"; "cannabis equivalent"; "commercial quantity"; "trafficable quantity"; "consumption"; and "cannabis product" and may impact on the practical application of the Bill.  (DOD, page 2 – 3, paragraphs 6 -10): | 3.2 (a) Kief, hashish and THC dissolved in a solvent, are examples of "any substance containing THC". However, edibles, such as fudge or dagga cookies and cannabis tea, also qualify as "any substance containing THC". Although the extraction of THC through solvents are regulated in some foreign jurisdictions, the "manufacturing" of the aforementioned examples in the context of private use of cannabis is not regulated. It is submitted that there is no need to regulate the "manufacturing" of "any substance is containing THC" in terms of the Bill.  (b) The words "any substance containing THC" must be interpreted in the following context:  (i) In terms of the definition of "cannabis", "fresh cannabis, dried cannabis and cannabis concentrate, are classes of cannabis".  (ii) Cannabis concentrate is defined as cannabis that has undergone a process to concentrate the THC content, and cannabis solid concentrates and cannabis liquid concentrates are classes of cannabis concentrate.  (iii) The definitions of "prescribed quantity", "commercial quantity" and "trafficable quantity" refer to the "quantity of any dried cannabis or its cannabis equivalent" prescribed in the relevant parts of Schedules 3. Cannabis equivalent is in turn defined as "a quantity referred to in Schedule 2, in respect of any class of cannabis referred to in that Schedule which is deemed to be equivalent to one gram of dried cannabis". Schedule 2 lists fresh cannabis and cannabis solid concentrates and cannabis liquid concentrates, as cannabis equivalents.  (iii) The words "any substance containing THC", must therefore be regarded as either a cannabis solid concentrate or a cannabis liquid concentrate.  Clause 5 provides for smoking and consumption offences in respect of cannabis, which would include "any substance containing THC". It is acknowledged that it is mainly the flowering or fruiting tops of a cannabis plant that is smoked. However, "any substance containing THC" can include concentrated THC used in conjunction with a vaping device. The definition of "cannabis product" is only relevant to clause 1(2) of the Bill. |
| **Definition: "guardian"**  3.3 A guardian is defined, in terms of the Children’s Act, to mean “a parent or other person who has guardianship of a child”. Guardianship, in turn, is one of the four recognised parental responsibilities and rights that are bestowed on parents or other persons who have applied to the High Court be the child’s guardian in terms of section 24 of the Children’s Act, or where a child is placed under the guardianship of another in terms of the provisions of a will, following the passing of a child’s parents as set out in section 27 of the Children’s Act. Consequently, many children are raised by their relatives like the grandparents, aunts or uncles or other persons who volunteer to be the child’s caregiver, although they are not the child’s birth parent or legal guardian through section 24 or section 27 of the Children’s Act. All of these individuals can raise the child without ever being (legally) the child’s guardians. The definition of "guardian" must be substituted with the following definition:  "**'appropriate person'** means any member of a child's family, including a sibling who is 16 years or older, or care-giver referred to in section 1 of the Children's Act;" – (definition of 'appropriate adult' in the Child Justice Act, 2008 (Act 75 of 2008))  (CCL page 5 to 6 paragraph 4.1): | 3.3 The proposed "appropriate person" definition of the Child Justice Act cannot readily be adopted to extend the ambit of the definition of guardian in the context of clause 6(1), which aims to target an adult person who has parental responsibilities. To include "any member of a child's family, including a sibling who is 16 years or older", in the ambit of clause 6(1), may have unintended consequences, since it may criminalise the conduct of other minors or persons who do now have parental responsibilities. A "care-giver" will include the child at the head of a child-headed household, who is in terms of section 137(1)(c), a child over the age of 16 years who has assumed the role of care-giver in respect of the children in the household. The other categories of person under the definition of **'care-giver'** may be included in clause 6(1)*(a)* and paragraph *(b)* should be amended consequentially. |
| ***Definition: "possess in private"***  3.4 Possess in private should not include measures that treat cannabis as dangerous or dirty as justification that it be shielded from public view. If those measures are not in place for tobacco or alcohol, then they are unfairly discriminative must be removed. (CDCSA page 3, paragraph 11; RNCSA , page 8) | 3.4 It is acknowledged that similar measures do not apply to tobacco or alcohol. The aim is to address dealing in cannabis and to curb promotion or enticement of others to use cannabis (especially children). Foreign jurisdictions have similar measures in place and even criminalise the display of paraphernalia that is used with cannabis, such as bongs, etc. The Prince Judgment already clarified this aspect. |
| ***Definition: "public place"***  3.5 A "public place" must be defined as "any place where there are no children closer to the smoker within the space of one meter". (RNCSA, page 8) | 3.5 The proposed amendment to the definition of "public place" extends the use of cannabis beyond the limitations of the Prince Judgment and will also limit the definition of "private place". |
| ***Definition: "seedling"***  3.6 The proposed limitation on height of plants is arbitrary and does not reflect the South African reality where cannabis plants can reach heights of 3-4 metres. (CDCSA, page 3, paragraph 10) | 3.6 The height limitation is necessary to differentiate between an immature cannabis plant and a seedling. In terms of the amendments proposed to the definition of "seedling" read with clause 2(1)(a), a person may possess unlimited seedlings and the limitations in terms of clause 2(1)(b) do not apply to seedlings, since it is not a "cannabis plant equivalent". |
| ***Definitions "THC" and "THCA"***  3.7 "THC" is defined as delta-9-tetrahydrocannabinol ((-)-Δ9-trans-tetrahydrocannabinol), a psychoactive chemical and includes THCA. The inclusion of THCA in the definition of THC will make it impossible to prosecute the offences, such as those in clause 6(5), which are based on the distinction between THC and THCA. THCA should be removed from this definition. (Cradlestoned, page 5 paragraph 2) | 3.7 "THCA" means delta-9-tetrahydrocannabinolic acid, a non-psychoactive chemical that may be converted to THC. If THCA is excluded the offences will on apply to a substance containing THC (see definition of "cannabis"). The inclusion of THCA is therefore necessary for the various offences in terms of the Bill. |
| **Definitions: "prescribed quantity, "commercial quantity" and "trafficable quantity"**  3.8 The quantity limitations cannot be supported. Various factors may influence the plants and it is therefore necessary to plant more than what is needed. (Abalimi, page 8) | 3.8 The limitation on the quantities of cannabis plants that may be cultivated is required to restrict cannabis to personal use. |
| 3.9 (a) There appear to be a discrepancy between the definitions of “commercial quantity” and “trafficable quantity”, and Schedule 4. Schedule 4, lists the commercial and trafficable quantities, yet the definitions determine that the quantities must be more than the indicated quantities. (DOD, page 3, paragraphs 11 and 12)  (b) All information in Schedules 3 to the Bill, should be included in the applicable provisions of the Bill for ease of reference and to assist with the interpretation of the Bill. Reference is made to clauses 3(1)*(a)*, (4)*(a)*, and (5)*(a)* and 4(1)*(a)* and (2)*(a)* (which provides for offences in excess of the prescribed quantity, but less than a trafficable quantity, without specifying the trafficable quantity). (DOD, page 3, paragraphs 13 to 14)  (c) There appears to be a quantity in excess of a prescribed quantity but less than a trafficable quantity that is not being criminalised (see clauses 3(1)*(a)*, (4)*(a)*, and (5)*(a)* and 4(1)*(a)* and (2)*(a)*). The Bill should clarify this aspect. (DOD, page 4, paragraphs 15 to 16) | 3.9 (a) Although the definitions of “commercial quantity” and “trafficable quantity” read with Schedule 4, is clear in its application the following amendments may be considered to the definitions:  \* "**trafficable quantity**" **[means]** for purposes of the sections referred to Column 1 of Schedule 4, **[the quantity that exceeds]** means—  *(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 any quantity in excess thereof that is not a commercial quantity; and  **\*** "**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;  (b) Thornton (Legislative Drafting (4th ed), page 400) says: "The use of schedules is a legitimate and helpful device for the clearer presentation and more efficient communication of the contents of legislation. The general practice is for matters of principle to remain in the sections of the statute while lesser matters of machinery or detail may be arranged in schedules. The principal purpose of this arrangement is to enable the presentation of the main sections of the enactment uncluttered by material of secondary or incidental importance.". It is a well-established drafting practice to include quantities, values or substances in a Schedule to a Bill.  (c) Clauses 3(1)*(a)*, (4)*(a)*, and (5)*(a)* and 4(1)*(a)* and (2)*(a)*, criminalises quantities in excess of the prescribed quantities in Schedule 3, but which is less than a trafficable quantity specified in Column 2 of Schedule 4, and need not to be clarified further. |
| 3.10 The proposed trafficable quantities are arbitrary and impose regulatory measures on cannabis that are not similar to those imposed on alcohol or tobacco users and therefor unfairly discriminative. (CDCSA, page 3 paragraph 12) | 3.10 The prescribed quantities are to restrict cannabis for private use. If there is no limitation on the prescribed quantities for personal use, it may be used as a facade to facilitate the dealing in cannabis. The prescribed quantities in Schedule 3 of the Bill are liberal if compared with the limitations in foreign jurisdictions and gives effect to the Prince Judgment.  In terms of the Western Cape Liquor Act, 2008 (Act of 2008):  \* A licensee may not sell to one person, in a single day for consumption off the licensed premises, more liquor than a quantity, which the Minister may prescribe (section 60(2).  \* A person who is not licensed or authorised to sell liquor may not at any time have in his or her possession or under his or her control more liquor than the quantity prescribed in terms of subsection 60(2) (section 60(3).  \* A contravention of section 60(3) is an offence (section 60(4)). |

**4. Clause 1A: Commercial activities in respect of recreational cannabis**

|  |  |
| --- | --- |
| **Comments** | **Responses** |
| 4.1 Clause 1A(2) does nothing, except state the obvious. It should rather state that the Bill authorises and regulates commercial activities in respect of recreational cannabis as alluded to by the constitutional court ruling in allowing access to all to recreational cannabis for private purposes or it should be deleted. (Afristar, page 4, paragraph 4.2) | 4.1 The reasons why the Bill cannot provide for recreational cannabis commercial activities are discussed in paragraph 1.1(c) and (e), above.  South Africa's obligations under the Drug Conventions contributed to the delay in the promotion of legislation that authorises and regulates recreational cannabis commercial activities.  The Drugs Act, gives effect to South Africa’s obligations under the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol, the Convention on Psychotropic Substances, 1971 and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Drug Conventions). The cumulative effect of the Drug Conventions are that State Parties are, among others, obliged to:  \* Limit to medical and scientific purposes, the manufacture, export, import, distribution of, trade in, use of, and possession of, drugs (cannabis); and  \* adopt measures to establish as a criminal offence under its domestic law the intentional possession, purchase or drugs (cannabis) for personal consumption, subject to its constitutional principles and the basic concepts of its legal system.  Clause 1(2) of the Bill has been criticised for its failure to clearly authorise recreational cannabis commercial activities in contravention of South Africa's Drug Convention obligations.  To facilitate recreational cannabis commercial activities, the Bill -  \* removes cannabis from the purview of the Drugs Act (South Africa's legislation that gives effect to the Drug Conventions); and  \* by virtue of the proposed clause 1A, and notwithstanding South Africa's obligations under the Drug Conventions, authorises recreational cannabis commercial activities, subject to the enactment of other legislation. |
| 4.2 Legislation that enables the rapid industrialisation of cannabis is required. The ECDRA-Report deals with the core aspects of a cannabis regulatory framework for the rapid industrialisation and commercialisation of cannabis in the RSA context and should be considered as an alternative to the Bill. (Afristar, pages 5 - 6, paragraph 5).  (**ECDRA-Report**: Report on the Conceptualisation, Motivation and Key Provisions of an Enabling Regulatory Framework for Cannabis) | 4.2 The ECDRA – Report is only relevant to legislation that may be enacted to provide for recreational cannabis commercial activities. |
| 4.3 (a) Legislation that seeks to regulate cannabis commercial activities must benefit and empower previously disadvantaged communities to participate in such activities.  (b) Criminalisation should not be used as an enforcement mechanism to regulate any activities relating to cannabis.  (c) Government must consult with communities already involved in illegally cannabis commercial activities on any legislative proposal for cannabis commercialisation. must benefit and empower previously disadvantaged communities to participate in such activities.  (d) The Bill in its current form is rejected.  (RCSA, pages 1 to 2, paragraph 2.1) | 4.3 Paragraph (a) and (c) is relevant in the context of legislation that provides for recreational cannabis activities and cannot be provided for in clause 1A. Criminalisation as an enforcement mechanism to regulate any activities relating to cannabis is discussed in paragraph 1.1(e) above. Liquor legislation and the Tobacco Products Control Act, enforce compliance with its provisions through criminal offences. |
| 4.4 (a) The Bill provides for the growing of cannabis and cannabis use as lawful activities while at the same time it does not allow the trade of cannabis. It is submitted that this will result in unintended consequences which will contribute to a growing number of unlicensed outlets and individuals selling seedlings and cannabis products both for recreational and medicinal purposes.  (b) Cognisance needs to be taken of the larger landscape of cannabis legalisation that is emerging from other areas of government. The Bill fails to look holistically at establishing a legal framework suited to unlocking the cannabis value chain, parts of which have already opened up via the Medicines and Related Substances Control Act, 1965, and the exemption of industrial hemp.  (c) There is a need for a less piecemeal, and more all-encompassing legal framework for the regulation of cannabis, which takes into account the entire cannabis value chain, and how cannabis can be a tool to uplift communities through the plant’s multifaceted industrial, nutritional and medicinal uses.  (d) A legislative review is proposed to address the wider cannabis issues including enabling legislation governing its use for commercial and industrial applications.  (WCG (letter pages 1 to 2)) | 4.4 The reasons why the Bill cannot provide for recreational cannabis commercial activities are discussed in paragraph 1.1(c) and (e), above. Although legislation that provides for recreational cannabis activities, can be used regulate all relevant aspects thereof, it is submitted that the finalisation and implementation of such legislation will take time. The *de facto* legal position that resulted from the Prince judgment does not regulate all relevant activities pertaining to the use, possession and cultivation of cannabis. The Bill seeks to clarify the *de facto* legal position, address aspects that are not regulated in terms of the *de facto* legal position and provide a legislative framework for the regulation of cannabis. Many countries that opted for commercialisation of cannabis have similar provisions as those contemplated in clauses 2, 3, 4, 5 and 6 of the Bill to protect others against the resultant harm of cannabis in a controlled legalisation environment. |
| 4.5Clause 1A(2): The legislative competence of Parliament to pass laws on a functional area flows directly from the Constitution. It is not necessary or envisaged in the constitutional framework that Parliament reserves for itself the authority to pass legislation that will authorise and regulate commercial activities in respect of recreational cannabis in this revised Bill. The clause is redundant. (WCG Annexure, pages 1 to 2) | 4.5 It is acknowledged that the legislative competence of Parliament to pass laws on a functional area flows directly from the Constitution. A redraft of Clause 1A will be proposed. |
| 4.6 Previously disadvantaged communities must benefit cannabis commercial activities. Monetary and other form of assistance should be provided to the Rastafari to empower them to fully participate in cannabis commercial activities. (RNCSA , pages 1 and 3 to 4, paragraph 4; Abalimi, page 7; TRON, pages 4 to 5; TROAN pages 3 to 5) | 4.6 The Bill cannot by virtue of clause 1A prescribed to Parliament that legislation that may be enacted to provide for recreational cannabis activities must empower the Rastafari to participate in such activities. |
| 4.7 Clause 1A(3): The references to "harm reduction", "demand reduction", and "harms associated with recreational cannabis", should be omitted since it has not been proven that cannabis is harmful. To present cannabis as harmful may adversely impact on commercial activities and alternative terminology such as "demand management" and "public education and awareness campaigns in respect of the benefits and potential harms associated with recreational cannabis”, are proposed. (RNCSA, page 2, paragraph 2.1 and page 5) | 4.7 Cannabis is, similar to tobacco and alcohol, considered to be harmful and should be regulated similarly. |
| 4.8 The need for cannabis commercial regulation is acknowledged but should be drafted by the persons already involved in such activities. (CWC, page 2) | 4.8 Legislation that regulates recreational cannabis commercial activities in South Africa is complex and can only be finalised after consultation with the various stakeholder. |
| 4.9 Abalimi represents cannabis growers under the municipal demarcation of Port St Johns with just over 130 villages lying on either side of the Mzimvubu River. According to their submission:  (a) The illegal cultivation and dealing in cannabis are the only economic activities that allow these communities to earn an income (pages 3 to 4).  (b) Clause 1A envisages a regulated commercial model that will be regulated and will require a license or permit system which will exclude marginalized communities and benefit the rich. Such legislation will criminalises cannabis commercial activities without a licence or permit (pages 5 to 6). | 4.9 The Draft Cannabis Master Plan aims to implement a Cabinet decision regarding commercialisation of cannabis to increase economic growth, create jobs, and alleviate poverty. Legislation that may be enacted in terms of the proposed clause 1A to regulate cannabis commercial activities would be in-line with Government policy. The Bill cannot by virtue of clause 1A prescribed to Parliament that legislation that may be enacted to provide cannabis commercialisation must contain provisions to accommodate marginalized communities. |
| 4.10 The proposed amendments to regulate commercial activities around cannabis flows from an improper and unlawful interpretation of the duty and responsibility of the Department. The Prince Judgment imposes upon the Department the obligation to ensure that cannabis is regulated in a manner that respects the whole Constitution. Parliament must respect the fact that our laws operate interrelated, interdependent and holistically. Parliament must therefore ensure the Bill respects the privacy provisions but must also ensure that the Bill does not violate the rest of the Constitution. The Bill must therefore ensure that cannabis, at the very least, is treated in the same manner as alcohol or tobacco and may not subject the cannabis community to stricter regulatory measures. The penalties and offences created under the Bill must be the same as those for tobacco and alcohol. However, the Bill proposes a much stricter penal regulation for cannabis which is unconstitutional.  (CDCSA, page 1, paragraphs 3 to 4; pages 3 paragraph 14) | 4.10 The right of an adult to cultivate and use cannabis is as a result of the right of privacy interpretation in the Prince Judgment, see paragraph 1.1(b), above. It was indicated on more than one occasion 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. Paragraph 4.4 above discusses the intended purposes of the Bill and this is achieved through the following provisions:  \* Clause 2, which respects the right of privacy of an adult person to use and possess cannabis and to cultivate cannabis plants as reflected in the Prince Judgment.  \* Clauses 3, 4, 5 and 6, which impose limitation on this right, to protect other persons, including children, against the harms of cannabis.  The provisions of the Bill are substantially similar to the laws of foreign jurisdictions that legalized cannabis recreational activities.  It is acknowledged that the Bill provides for stricter regulation measures as those applicable to tobacco in terms of the Tobacco Products Control Act and alcohol in terms of Liquor Legislation, this stricter regulation emanate from the Prince Judgment itself – see paragraph 1.1(b).  **(See paragraph .............., for a discussion of the proportionality of the penalties)** |
| 4.11 Demand reduction and restrictions on advertising is not conducive for a developing recreational cannabis industry. A complete ban on advertising would stifle consumer education on safe and responsible usage, safe products and to make informed decisions. A more appropriate approach would be to regulate advertising by industry code restrictions such as: Restrictions on creative elements intended to have a primary appeal to persons who are under the legal consumption age, limiting it to media that is primarily used by adults; limitations on advertising hours; restrictions on places of bill-board advertising etc. (CRISA pages 1 to 5; Abalimi page 9) | 4.11 Section 3 of the Tobacco Products Control Act, prohibits, the advertising or promotion of tobacco. Section 9 of the Liquor Act, 2003, provides for restrictions on advertising.  Paragraph (e) may be amended as follows:  "*(e)* the prohibition or restriction of advertising or promotion of recreational cannabis;" |
| 4.12 Small farmers currently involved in illegal cultivation and distribution of cannabis must be allowed to immediately participate in the rapid industrialisation of cannabis. The regulation of cannabis for medical purposes is discussed. It is indicated that the current licencing regime is onerous and is aimed at the export market. It is proposed that an agency other than SAHPRA must be responsible for the regulation of cannabis for medicinal purposes.  CDCFS (p1 - 3) | 4.12 The Bill cannot authorise cannabis commercial activities, or provided for the regulation of medicinal cannabis. |
| 4.13 It is inappropriate to use the Bill to reflect an intention, but not create any meaningful laws, to commercialise a trade in cannabis. Legislation that regulates all aspects relating to cannabis, including commercialisation and the regulation of the private use is preferable to piecemeal, attempt to retrofit apartheid-era legislation that never presumed any legitimate uses for cannabis. (Cullinan, page 4 paragraph 5.1) | 4.13 See paragraph 4.10, above. |
| 4.14The objectives provided for in clause 1A(3), is unlikely to be achieved in a country with an already overburdened police force, few and poorly funded rehabilitation centres and a lack of control over even socially acceptable substances, such as alcohol and cigarettes which are currently easily available those below the age of 18 despite supposedly being regulated and restricted for use by people over the age of 18. The legalization of cannabis in South Africa *via* this Bill will only reinforce and encourage cannabis use by youth below the age of 18 years. Harm reduction measures which have been implemented in first world countries are showing little signs of success and have largely resulted in increased drug use and criminal activity. South Africa should not legalise cannabis. (CYPSA**,** pages 6 to 7) - Also see the general comment of CYPSA in paragraph 1.10) | 4.14 Noted. Commercialisation of cannabis can be used as a measure to limit access to cannabis to adults. |
| 4.15 Although clause 1A(1) authorises commercial activities in respect of recreational cannabis it is subject to clause 1A(2), which provide that national legislation may be enacted to authorise and regulate commercial activities in respect of recreational cannabis. Clauses 1A(1) and (2), therefore 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. (Cradlestoned, page 6 paragraph 3; FMF pages 3 to 4)  **.**Amendments to clause 1A are proposed which oblige the Minister of Trade, Industry and Competition, within a specified period, to introduce legislation which authorises and regulates commercial activities in respect of recreational cannabis, in Parliament (Cradlestoned, page 8 to 9, paragraphs 3.10 to 3.12) | 4.15 The significance of clause 1A(1), is discussed in paragraph 4.1 above. The proposed amendments to clause 1A cannot be accommodated. |
| 4.16 (a) The word “recreational” discriminates against responsible adults who use cannabis as a safe relaxant.  (b) It "does not serve the progress of a legitimate cannabis industry in South Africa to create a muddle of provisions for commercialisation within a specifically private bill".  (c) What about the fact that both Judge Davis and Judge Zondo’s judgments described “dealing in” Cannabis as a social ill? (FGA, page 2) | 4.16 Noted. |
| 4.17 SAMA:  The World Medical Association opposes recreational cannabis, and urges national medical association to do likewise, on the basis of associated serious adverse health effects such as increased risk of psychosis, fatal motor vehicle accidents, dependency, as well as deficits in verbal learning, memory, and attention. **-** (Page 4, paragraph 1.1)  In the interest of safety, efficacy, and quality, we call for substantial control over all the aspects of cannabis product production, including strict licensing criteria for manufacturers and sellers, strict growing conditions and testing of the raw plant, and strict control over the supply chain for the commodity. - (Page 5 paragraph 2.1)  Research evidence has emerged from countries such as the United States on increased recreational use and increased intention among the youth to use cannabis as a result of legalization processes. - (Page 5-6 paragraph 2.3)  As seen with alcohol and tobacco, youths are susceptible to marketing campaigns and are targeted by these industries. SAMA asserts that a strict regulatory environment and marketing and promotion should be created in South Africa for cannabis and its derivatives for recreational purposes, as is the case for other controlled substances such as alcohol and tobacco. (pages 6 -7 ; paragraph 2.3.1) | 4.17 The concerns of SAMA are noted. |
| 4.17 Recreational cannabis commercial activities should be regulated similar to alcohol. However access to cannabis should be restricted to persons who is 21 years or older (SDLD). | 4.17 Legal access in the US is restricted to persons that is 21 years of age or older. |
| 4.18 The failure to provide for the commercialisation of cannabis will stimulates illegal activities. Commercialisation on the other hand may be an effective means to regulate cannabis to reduce harms associated therewith.  The commercialisation of cannabis in the US gave rise to a lucrative market and contributed to job creation. South Africa can similarly benefit from cannabis commercial activities. (SAAAI) | 4.18 |

**5. Clause 1B: Special measures to accommodate cultural or religious communities**

|  |  |
| --- | --- |
| **Comments** | **Responses** |
| 5.1 (a) Cannabis cultivation should be freely open to all to grow without any form of permit or restriction of any kind. A permit system is not necessary for an agricultural commodity. Regulation is only required at the stage of processing or retail to ensure quality and safety.  (b) If the Bill allows for recreational cannabis use then there is no need for a special permit system as everyone has the right to access and use cannabis similar to alcohol and tobacco.  (c) Legislation should be implementable with minimal red tape. This provision must be omitted, since it is totally unrealistic to expect the SAPS to have the required resources to enforce this provision.  (Afristar, page 4 to 6, paragraph 4.2) | 5.1 (a) Clause 1B seeks to accommodate cultural or religious use of cannabis within the regulatory framework of the Bill. Clause 1B makes provision for the issuing of a permit which authorises a cultural or religious community, among others, to: Possess, obtain and supply cannabis plant cultivation material; cultivate cannabis plants in a private place; possess in private, cannabis plants in a public place; possess, obtain and supply cannabis plants; provide, obtain and supply cannabis; possess in private, cannabis in a public place; or possess cannabis in a private place, on behalf of its members for cultural or religious purposes.  (b) The Bill cannot provide for recreational cannabis commercial activities for the reasons discussed in paragraph 1.1(c) and (e), above. The legalisation of recreational cannabis commercial activities would not by necessary implication accommodate cultural and religious use of cannabis, as contemplated in clause 1B. Legislation that regulates alcohol may be used as a possible comparative regulatory framework for recreational cannabis commercial activities. The alcohol legislation strictly regulates all aspects of the manufacture, supply and distribution of alcohol and restricts the aforementioned to permit/license holders.  (c) Clause 1B is a measure to accommodate the cultural or religious use of cannabis within the context of judgment of Judge Ngcobo in **Prince v President of the Law Society of the Cape of Good Hope** 2002 (1) SACR 431 (CC). Clause 1B, among others, provides,:  (i) For self-regulation to the extent that the cultural or religious community is required to monitor, manage and enforce compliance with the conditions, restrictions, obligations or requirements of the permit and the regulations contemplated in subsection (8); and  (ii) for authorised person (to be prescribed in terms of subclause (11)*(a)*), to conduct on-site examinations or inspections, to monitor compliance with the provision of a permit. |
| 5.2 Religious and cultural communities use and supply cannabis for cultural and religious purposes "as commanded, directed by the Almighty God and ancestors and has been guided by those who received the calling and therefore has never been and cannot be provided for, regulated or limited by man-made laws". Government must therefore recognize, acknowledge and protect such cultural and religious communities, their sacramental usage of cannabis in spiritual rituals.  (RCSA, pages 2 to 3; paragraph 2.2) | 5.2 Freedom of religion and the rights of cultural, religious and linguistic communities, as provided for in section 15 and 31 of the Constitution, are subject to limitations (see Christian Education v Minister of Education (CCT 4/00); Prince v President of the Law Society of the Cape of Good Hope 2002 (1) SACR 431 (CC); and Freedom of Religion South Africa v Minister of DOJ (CCT 320/17)). Clauses 2, 3, 4, 5 and 6 limit the aforementioned rights to protect other persons, including children, against the harms of cannabis. Clause 1B seeks to accommodate and regulate the cultural or religious use of cannabis within the regulatory framework of the Bill. |
| 5.3 (a) Clause 1B(1)*(b)*(iv): The phrase “that may made in terms of subsection (8)” is non-sensical and should be redrafted.  (b) Clause 1B(1)*(b)*(v)??: The word “identified” should be deleted and substituted with the word “identify” (clause 1B(1)(c)(v)).  (c) Clause 1B (1)*(b)*(vii)*(bb)*??: The words “four months” should be deleted and substituted with the words “four-month” (clause 1B(1)*(c)*(vii)*(bb)*)  (d) Clause 1B(4)*(a)*: The word “applications” should be deleted and substituted with the word “application”.  (e) Clause 1B(7)*(b)*(iv): The sentence construction of the introductory paragraph from the word “requirements” is incorrect and should be reconsidered.  (f) Clause 1B(8)*(c)*: The use of the word “shall” is archaic and should be deleted and substituted with the word “must”. The word ‘must” is used consistently elsewhere throughout the text of the Bill.  (g) Clause 1B(8)*(c)*: The punishment options of fines and imprisonment would result into criminal records for the offenders concerned. In line with the principles of restorative justice, punishment options for offenders should range from least to most restrictive, depending on the severity of the offence.  (h) Consideration should be given to include penalties that would not necessarily result into criminal records for specific transgressions that relate to the use and possession of cannabis. Alternatives can include community service. It is recommended that non-custodial punishment options other than a fine or imprisonment should be considered and included as alternatives.  (WCL Annexure) | 5.3 (a) Correction proposed: "(iv) must contain the applicable information in paragraph *(c)* and such other information prescribed by regulations that may be made in terms of subsection (8);".  (b) Correction proposed: "(v) indicate whether the cultural or religious community keeps record of its members, or describe the manner used by the cultural or religious community to **[identified]** identify its members;".  (c) Correction proposed:  "(vii) give estimated quantities of—  *(aa)* cannabis plants that is required to be cultivated per cultivation season; and  *(bb)* cannabis that is required for a **[four months]**  four-month period,  for the purposes of cultural or religious practices by its members, and specify the manner in which such quantities have been calculated with reference to the number of adult members in item (vi);".  (d) Correction proposed: "*(a)* The Minister must, if not satisfied as contemplated in subsection (3)*(a)* that the permit must be issued, refuse the **[applications]** application.".  (e) This will be considered.  (f) It is submitted that the use of word "shall" is correct in the context of the paragraph:  "*(c)* Any regulations made in terms of paragraph *(a)*(iii), (iv) or (vi), **may** provide that any person who contravenes or fails to comply with a provision thereof, **shall** be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding two years.".  (g) Clause 1B(8)(c) provides as follows: "*(c)* Any regulations made in terms of paragraph *(a)*(iii) (on-site examinations or inspections by an authorised person, to monitor compliance with the provision of a permit), (iv) (destruction of cannabis plant cultivation material, cannabis plants and cannabis in excess of the quantities in subsection (7)*(b)*(i)) or (vi) (any other matter which is necessary or expedient to achieve the objects of this section), may provide that any person who contravenes or fails to comply with a provision thereof, shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding two years".  It is submitted that criminalisation as an enforcement mechanism is necessary to ensure compliance with the regulations concerned.  (h) It is impractical in the context of clause 1B, to provide for " non-custodial punishment options other than a fine or imprisonment", as alternatives. |
| 5.4 Broader consultation with cultural and religious communities which may be affected by the provision should take place.  (RNCSA page 1, paragraph 1 and page 2 paragraph 3.2) | 5.4 Noted. |
| 5.5 (a) Any limitations on the cultivation, possession and supply of cannabis or the imposition of prescribed quantities of cannabis, cannabis plants or cannabis plant cultivation material as part of religious and cultural exemption defeat the very purpose of religious and cultural exemption.  (b) The Rastafari Nation should be authorised to self-regulate the cultivation, possession and supply of cannabis by its members.  (c) The clause must also provide for a "once-off registration" by a religious and cultural organisation for a permit on behalf of their members.  (RNCSA, page 2, paragraphs 3.3, 3.4, 3.6 and page 5) | 5.5 (a) Freedom of religion and the rights of cultural, religious and linguistic communities are limited by other protected rights. Clause 1B seeks to accommodate the cultural or religious use of cannabis in the context of other protected rights. To balance the various rights involved restrictions or limitations are necessary to:  (i) Confine access to, and supply of, cannabis plants and cannabis to adult members of the cultural or religious community concerned;  (ii) restrict the cultivation of cannabis plants and the possession, storing and supply of cannabis, to such quantities that are reasonably required by the adult members of the cultural or religious community for purposes of cultural or religious practices;  (iii) protect child members of the cultural or religious community concerned against the harms associated with the cannabis;  (iv) protect any other person who is not a member of the cultural or religious community concerned against the harms associated with cannabis; and  (v) curb dealing in, and other criminal activities associated with, cannabis.  (b) Self-regulation, which allows a party to be regulated, to dictate the conditions of self-regulation is ineffective. Clause 1B provides for self-regulation to the extent that the cultural or religious community is required to monitor, manage and enforce compliance with the conditions, restrictions, obligations or requirements of the permit and the regulations contemplated in subsection (8).  (c) This comment relates to a once-off application for a permit and clause 1B do not provide otherwise. I**t must be pointed out that a religious or cultural event at a place not specified in a permit is not addressed in clause 1B and a suitable amendment will be proposed.** |
| 5.6 (a) There should be a moratorium on all arrest for cannabis.  (b) The Rastafari National Council must be recognised as the official body of the Rastafari Nation in South Africa and the Rastafari Ganja Council must be recognised as a structure within the Rastafari which is responsible for cannabis commercial activities.  (RNCSA, pages 3 to 4, paragraphs 4.2, 4.8 and 4.12) | 5.6 (a) Noted.  (b) The proposal cannot be accommodated. |
| 5.7 (a) Clause 1B(1)*(b)*(vii), must be omitted since it is not possible to provide estimate quantities of cannabis plants or cannabis that is required for religious purposes. The estimate requirements infringe on the Ras Tafari faith practices and are unconstitutional.  (b) Clause 1B(3)*(b)*(ii) must be amended to provide that the permit must be issued in the name of the cultural or religious organization and that of the authorised representative of the cultural or religious organisation or community”.  (c) Clause 1B(7)*(b)*(iv)*(cc)* must be omitted because "church grounds and place of worship of the Ras Tafari accommodates all and does not restrict in any way access to anyone".  (RNCSA, pages 5 to 6): | 5.7 (a) This purposes of such a restriction or limitation is discussed in paragraph 5.5(a), and is a justifiable limitation in the context of cannabis regulation.  (b) This proposal can be accommodated.  (c) The provision in question relates to conditions, restrictions, obligations or requirements which may be imposed by regulation to restrict access to land or a dwelling which is to be used for cultural or religious purposes. The aim of the provision is, among others, to restrict access to cannabis at such place. |
| 5.8 RAS(organisation which promotes the "Ras Tafari" religion and cultural at institutions of higher education):  (a) There is discrimination against members of Ras Tafari (members) at places of higher education for the following reasons:  (i) They cannot access and use cannabis at places of higher education;  (i) designated smoking areas cannot be used for smoking cannabis; and  (ii) tobacco and alcohol consumption is allowed but the use of cannabis is prohibited  (b) A religious and cultural cannabis dispensary on campus for members should be allowed.  (c) Ras Tafari student organisations should be allowed to cultivate cannabis on designated premises of places of higher education for purposes of research.  (d) Members should be allowed to possess cannabis in transit from one place of higher education to another for purposes of a Ras Tafari event.  (e) Members should be allowed to cultivate cannabis in furtherance of scientific research, on lands and areas approved for that cultivation and research with designated laboratories for such purposes. | 5.8 Clause 1B(9), provides that sections 2, 3, 4, 5 and 6 of the Bill, apply to members of a cultural or religious community (the Minister may in terms of subclause (7)*(b)*(ii), in a permit provide for a quantity of cannabis in excess of a prescribed quantity contemplated in section 2, for cultural or religious purposes).  (a) Clause 5(1) prohibits the smoking of cannabis in a public place. A place of higher education may prohibit the use of cannabis. There is no discrimination against a member.  (b) This cannot be accommodated in terms of clause 1B.  (c) The Bill cannot provide for the cultivate cannabis on designated premises of places of higher education for purposes of research.  (d) As indicated in paragraph 5.5(c), an amendment to accommodate a once-off religious or cultural event may be considered. However, the use of cannabis on the premises of a place of higher education cannot specifically be accommodated.  (e) The Bill cannot regulate research activities. |
| 5.9 Abalimi:  (a) How does one distinguish between an ordinary person and persons contemplated in clause 1B. Are they a card carrying member that classifies them as belonging to the Rastafarian community? Is this not a discriminatory approach to solve the problem? (pages 6 to 7).  (b) The use of cannabis by traditional healers has not been considered by the Bill. (page 7) (CDCFS, page 2)  (c) Rather than granting special measures to accommodate cultural or religious communities, a more inclusive approach should be adopted, giving equal rights to all living in South Africa. (page 7)  (d) The quantity limitations cannot be supported. Various factors may influence the plants and it is therefore necessary to plant more than what is needed. (page 8)  (e) Protection of adults and children is important, but should be aligned with the measures applicable to tobacco and alcohol. (page 9)  (f) Clause 1B places a huge administrative burden on cultural and religious communities and can be used to infringe upon protected rights. (page 9)  (g) Similar models that force persons together for purposes of obtaining funding or an advantage have failed in the past. (page 10) | 5.9 (a) Clause 1B is about the authorisation of a cultural or religious community to perform certain activities in respect of cannabis for cultural and religious purposes on behalf of its members.  At the outset it must be stated that clause 1B(9), provides that sections 2, 3, 4, 5 and 6 of the Bill, apply to members of a cultural or religious community (the Minister may in terms of subclause (7)*(b)*(ii), in a permit provide for a quantity of cannabis in excess of a prescribed quantity contemplated in section 2, for cultural or religious purposes).  Clause 1B(1)*(c)*, provides among others that a cultural or religious community must in an application –  "(v) indicate whether the cultural or religious community keeps record of its members, or describe the manner used by the cultural or religious community to identified its members;  (vi) specify the number of adult members belonging to the cultural or religious community;  ......  (ix) identify all authorised members of the cultural or religious community, as the case may be, who will be involved in the activities which are required to be authorised in terms of paragraph *(a)*;  (x) provide assurances to the satisfaction of the Minister that the authorised representative and the community concerned is in a position to effectively monitor, manage and enforce compliance with the conditions, restrictions, obligations or requirements of the permit and the regulations that may be made in terms of subsection (8);".  In terms of clause 1B(7)*(a)* the Minister must in terms of a permit impose such conditions, restrictions, obligations or requirements on any or all of the activities specified in subsection (1)(a)(i) to (viii), that the Minister considers reasonably necessary to -  "(i) confine access to, and supply of, cannabis plants and cannabis to adult members of the cultural or religious community concerned;  (ii) restrict the cultivation of cannabis plants and the possession, storing and supply of cannabis, to such quantities that are reasonably required by the adult members of the cultural or religious community for purposes of cultural or religious practices;"  The Minister may in terms of clause 1B(7)(b) –  "(iii) impose such record keeping and reporting obligations as the Minister considers necessary;  ......................  (v) provide for oversight mechanisms and procedures for monitoring compliance with the permit by the authorised representative;"  Clause 1B(11)(e) define "members" as persons who are *bona-fide* members of a cultural or religious community.  It should be clear from the above that there should be:  \* the members should identifiable (Clause 1B(1)*(c)*(iv) and (v);  \* activities in respect of cannabis is on behalf of members of the cultural or religious community concerned (clause 1B(7)*(a)*(i) and (ii); and  \* the authorised representative must ensure compliance with the permit (clause 1B(1)*(c)*(ix) and (x), (7)*(a*)(i) and (ii), and *(b)*(iii) and (v).    (b) The Bill cannot provide for this. The Traditional Health Practitioners Act, 2004 (Act No. 35 of 2004), which is applicable to traditional health practitioners, traditional medicines and traditional health practices, must regulate this aspect.  (c) Noted. However, cannabis should at least be regulated similar to alcohol due to its harm potential.  (d) The indication from comments are that there is already large scale commercial activities involving cannabis. To authorise a cultural or religious community to cultivate and possess unlimited quantities of cannabis may contribute to illegal commercial activities.  (e) Noted. However, alcohol and tobacco manufacturing and distribution are regulated to limit harm. Clause 1B aims to accommodate cannabis for cultural and religious purposes with due regard of the rights of other to be protected against the harms of cannabis.  (f) This is acknowledged (see paragraph (a)) above.  (g) Noted. |
| 5.10 More inclusive consultation must take place. The extensive powers of the Minister to regulate aspects in terms of clause 1B are a concern. The reference to " adherents of the Rastafarian faith' in clause 1B(11)*(c)*, is not required since it is recognised as a religious community. (CDCSA, page 2 paragraph 5 and page 4 - 5 paragraph 16 to 20) | 5.10 The need for additional consultation is acknowledged. |
| 5.11 (a) Clause 1B must also provide for the trade in cannabis and cannabis related products by Rastafarians.  (b) Groups or communities that use cannabis for other reasons including religious reasons cannot be covered by the quantity prescribed for personal use. The quantities prescribed for ritual use should be different from personal use and linked to observe use during the rituals. Cannabis plants should not be regulated.  (CDCFS, pages 2 to 3) | 5.11 (a) The Bill cannot authorise the dealing in cannabis.  (b) It is acknowledged that the prescribed quantity limitations the religious use should be different from person use quantities and clause 1B aims to address this aspect. |
| 5.12 Rather than protecting cultural and religious communities, such a permit system would very likely lead to the abuse of these cultures and religions, by cannabis drug users.  (CYPSA page 8) | 5.12 Noted. |
| 5.13 This amendment is welcomed. The long title and arrangements of sections must be amended to accommodate cultural or religious communities.  (Cradlestoned, page 15, paragraph 5) | 5.13 Noted. |
| 5.14 (a) How are the enforcers of this law going to identify a member of the Rastafari religion?  (b) Clause 1B is unconstitutional.  (FGA page 2) | 5.14 (a) See paragraph 5.9(a) above.  (b) In ***Prince v President of the Law Society of the Cape of Good Hope*** 2002 (1) SACR 431 (CC) (**Prince 1 Judgment**), the appellant contended that the Drugs Act and Medicines Act (which criminalise the use and possession of cannabis), although legitimate in its purpose and application to the general public, was overbroad since it did not cater for the Rastafari who uses cannabis for religious purposes by way of an appropriate exemption.  The Court held that in the proportionality analysis in terms of section 36 that the right to freedom of religion and to practise religion were important rights in an open and democratic society based on human dignity, equality and freedom, and that the disputed legislation place a substantial limitation on the religious practices of Rastafari.  Three of the Judges held that the limitation was justifiable since it serve an important governmental purpose in the war against drugs and the failure to provide for such an exemption is a reasonable and justifiable limitation. (According to the court, such an exemption will adversely affect law enforcement since there is no objective way in which cannabis for religious purposes and for recreational purposes could be distinguished and that a permit system would be impractical.  Judges Ngcobo, Sachs and Mokgoro held that the provisions are inconsistent with the Constitution to the extent that they prohibit the use or possession of cannabis by Rastafari adherents for *bona fide* religious purposes without making an appropriate exemption. |
| 5.15 Sections 1B(7)*(a)*(iii) of the Bill specify measures to protect access to cannabis by a child. There are also significant public health concerns for vulnerable populations such as pregnant or breastfeeding women. SAMA, therefore, submits that this protection should be extended to pregnant and breastfeeding women.  (SAMA, page 8, paragraph 2.6) | 5.15 |
| 5.16 Clause 1B should be amended to include "recreational cannabis clubs" which may be defined as "a club, non-profit organisation or voluntary association of consenting adults that share and pursue a common interest in the cultivation and recreational use of cannabis and who combine their cultivation efforts to produce cannabis and cannabis products for its members”.  (Growers Club) |  |
| 5.17 (a) No consultation on the Bill with the Rastafari community took place prior to its introduction into Parliament. During the Parliamentary process the Rastafari community, through its organs, advocated for the total liberation of cannabis, rescheduling of cannabis, trading rights, benefits and preferential rights as a form of reparation for damages suffered for cannabis related offences. Alternatively, an exemption from the Bill was sought on the basis of sacramental, cultural and medicinal purpose to be administered by designated persons appointed by the Rastafari community. The exemption sought by the Rastafari community is comparatively likened to the Jamaican exemption as provided in the Dangerous substance Act which expressly affords the Rastafari community protection against limitations placed by the said Act. (Tron, pages 2 to 3; TROAN, pages 2 to 3)  (b) Clause 1B must expressly state that the Rastafari community is excluded from the provisions of the Bill. In line with the right of self-determination we would like to self-regulate cannabis for sacramental use by the church and individual members in private. The Jamaican Dangerous substance Act has its limitations because it does not afford the Rastafari community rights to shared benefit of the cannabis plant. As Christian, Hindus, Jews do with their sacrament, they are allowed to package and distribute to the community that they serve. Children from the age of 13 years can use cannabis under parental supervision. The Church uses unlimited quantities of cannabis for spiritual purposes and its members in their private space would like to be exempted from the strict compliance with the provisions stipulated in the anticipated Act. (TRON Pages 3 to 6; TROAN Pages 5 to 6)  (c) The public participation process in Parliament must extend to all effected by proposed legislation.(TRON Page 6; TROAN page 7) |  |
| 5.18Quantitative limitations should be set on the cannabis plants that may be cultivated and cannabis that may be possessed or supplied for cultural or religious purposes.  (SDLD) |  |
| 5.19 To exempt certain religious and cultural communities from laws that otherwise limit the rights of everyone else offends the right to equality as provided for in section 9 of the Constitution. Section 36 of the Constitution refers to “law of general application”. A law that applies to only specific classes of people on arbitrary grounds is not a law of general application – see the Prince Judgment. (Cullinan, pages 5 to 6, paragraph 5.4) |  |