

# DRAFT Decriminalising Personal Drug Use Bill 2023

## Detailed explainer

### Summary

The Greens' draft Decriminalising Personal Drug Use Bill 2023 would:

- Make it no longer illegal to possess small quantities of drugs consistent with personal use.
- Allow for the possession of up to three cannabis plants.
- Remove offences for possessing items used in the administration of drugs (such as pipes).

### Overview

The draft Decriminalising Personal Drug Use Bill 2023 is a bill that amends the *Misuse of Drugs Act 2001* and the *Poisons Act 1971*, to decriminalise the personal use of drugs.

This bill abolishes offences for the *personal use* of drugs. All other drug offences – including for the sale, supply, or trafficking of drugs – remain offences.

The draft bill establishes *personal possession limits* for each drug. It stipulates certain offences, such as possessing a controlled drug, would not apply if a person has a quantity of the drug *below* the personal possession limit for that drug.

The bill proposes to decriminalise the same drugs that were recently decriminalised in the Australian Capital Territory. These are:

- MDMA
- Amphetamine
- Cannabis
- Cocaine
- Heroin
- (Lysergic) Acid
- LSD
- Methamphetamine
- Psilocybine (the compound found in psychedelic mushrooms)

The bill proposes an exception be made to the offences of manufacturing and cultivation, to allow a person to possess up to three cannabis plants. It also allows for the manufacture, making, refining, or preparation of cannabis, as long as it does not exceed the personal possession limit.

The bill removes offences for the possession and sale of items that are used to administer drugs.

## **Contents of the Bill**

The draft bill contains 3 Parts, and 11 clauses that amend the *Misuse of Drugs Act 2001* and the *Poisons Act 1971*.

### **Part 1 – Preliminary**

Part 1 sets out the preliminary provisions of the amendment bill, including the short title, commencement date, and the repeal of the amendment bill.

#### **Clause 1 – Short title**

The Act is to be known as the *Decriminalising Personal Drug Use Act 2023*.

#### **Clause 2 – Commencement**

The Act will commence when it receives the Royal Assent (signed by the Governor), which is the final step in passing legislation.

This means the changes would commence as soon as possible after the bill is passed. There would be no transition period.

#### **Clause 3 – Repeal of Act**

The Act would be repealed a year after it commences. This is standard for all amendment bills – it doesn't mean the changes will only last for one year.

As this bill amends both the *Misuse of Drugs Act 2001* and the *Poisons Act 1971*, all the relevant provisions in this bill (Part 2 and Part 3) would remain in force in these Acts. The amendment Act itself is no longer required to be on the books.

### **Part 2 – Amendments to the Misuse of Drugs Act 2001**

Part 2 amends the *Misuse of Drugs Act 2001*. It provides the framework for decriminalising the personal use of drugs. It also allows for the cultivation of up to three cannabis plants.

Part 2 provides exemptions to offences for manufacturing, cultivating, possessing and administering drugs based on personal possession limits that are established in this Part.

This Part also removes offences relating to the possession of a 'thing' used to administer drugs.

#### **Clause 4 – Principal Act**

Establishes that the Act to be amended by the provisions in this Part is the *Misuse of Drugs Act 2001*.

#### **Clause 5 – Sections 21 and 22 substituted**

This clause replaces current sections 21 and 22 in the *Misuse of Drugs Act 2001*. These sections deal with manufacturing a controlled drug and cultivating a controlled plant.

The amendments set out that a person does not commit an offence if the plant they are cultivating is cannabis, and they are not cultivating more than three plants.

The bill also ensures a person does not commit a manufacturing offence if the drug they are 'manufacturing' is cannabis and –

- they are not 'manufacturing' cannabis from more than three plants; and
- they do not 'manufacture' cannabis in an amount that exceeds the personal possession limit for cannabis.

#### **Clause 6 – Part 3, Division 3 substituted**

This clause replaces Division 3 of Part 3 in the *Misuse of Drugs Act 2001* with a new Division 3.

This division deals with offences relating to the possession, use and administration of drugs.

This clause –

- removes the offence of possessing a utensil, appliance or other thing that is used to administer controlled drugs.
- removes the offence of self-administering a controlled drug.
- establishes it is not an offence to possess a controlled drug *if* the drug has a prescribed personal possession limit, *and* a person doesn't possess more than the that amount.
- provides it is not an offence to possess a controlled plant *if* that controlled plant is a cannabis plant and a person does not possess more than three.
- The offence of administering a controlled drug to another person is retained in the bill – this would still be an offence.

## **Clause 7 – Schedule 2 inserted**

This clause introduces a new schedule to the *Misuse of Drugs Act 2001*. It sets out personal possession limits for certain controlled drugs. The proposed limits are drawn from the *Drugs of Dependence (Personal Possession) Amendment Act 2022* of the Australian Capital Territory. The limits are –

- MDMA, 1.5 grams, or 5 single doses of no more than 0.3 grams each
- amphetamine, 1.5 grams
- cannabis that is *dried*, 50 grams
- cannabis that is *not dried*, 150 grams
- cocaine, 1.5 grams
- heroin, 1 gram
- (lysergic) acid, 0.001 grams or 5 single doses (each no more than 0.0002 grams)
- LSD, 0.001 grams or 5 single doses (each no more than 0.0002 grams)
- methamphetamine, 1.5 grams
- psilocybine (the compound in psychedelic mushrooms), 1.5 grams

## **PART 3 – Amendments to The Poisons Act 1971**

Part 3 amends the *Poisons Act 1971*. It establishes a person has not committed a number of offences solely on the basis that they possess a drug with a personal possession limit – *if* the amount is below the personal possession limit. It also establishes a similar exemption for a manufacturing offence in relation to cannabis.

Parts of this Act that ban ‘ice’ pipes and other apparatus for drug use are also removed.

## **Clause 8 – Principal Act**

Establishes the Act to be amended by the provisions in this Part is the *Poisons Act 1971*.

## **Clause 9 – Division 4A inserted**

Inserts provisions into the *Poisons Act 1971* establishing that a person has not committed any possession offence under the Act for a raw narcotic, or narcotic substance, *if* that narcotic is a drug with a ‘personal possession limit’, and *if* a person does not have quantities higher than the personal possession limit.

An exemption to the offence of manufacturing of a narcotic substance is set out: if the substance is cannabis, the amount manufactured is less than the personal

possession limit, and it is not manufactured from more than three cannabis plants.

**Clause 10 – Section 83A repealed**

This clause repeals the offence of possessing a thing used for the preparation, smoking, inhalation, administration or taking of a raw narcotic, narcotic substance, prohibited plant or prohibited substance.

**Clause 11 – Division 2B repealed**

This clause repeals provisions that ban the sale of 'ice' pipes.