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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

(Kingethan15 Minister for Justice)

Presented and read a first time

**Criminal Code and Other Legislation Amendment
(Removing Commonwealth Restrictions on Cannabis)
Bill 2018**

No. , 2018

**A Bill for an Act to remove Commonwealth restrictions on cannabis,
and for related purposes**

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A Bill for an Act to remove Commonwealth restrictions on cannabis, and for related purposes

The Parliament of AustraliaSim enacts:

1 Short title

This Act is the *Criminal Code and Other Legislation Amendment (Removing Commonwealth Restrictions on Cannabis) Act 2018* .

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details

1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day after this Act receives the Royal Assent .
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2. Schedules 1 to 6	The day after the end of the period of 12 months beginning on the day this Act receives the Royal Assent.

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Note : The provisions of the *Criminal Code Regulations 2002* amended or inserted by this Act, and any other provisions of those regulations, may be amended or repealed by regulations made under section 5 of the *Criminal Code Act 1995* (see subsection 13(5) of the *Legislation Act 2003*).

Schedule 1 — Amendments to the Criminal Code Act 1995

Criminal Code Act 1995

1 Section 300.2 of the *Criminal Code*

Insert:

cannabis means:

- (a) any part of a cannabis plant (including the whole plant and any flowering or fruiting tops, seeds, stems and leaves), however described; or
- (b) any resin, oil, compound (including cannabinoids) or other product, whether crude or purified, obtained from a cannabis plant.

2 Before section 301.1 of the *Criminal Code*

Insert:

301.1A Application of this Act to cannabis

Despite any other provision of this Act, a regulation must not list cannabis as, and the Minister must not determine cannabis is, any of the following:

- (a) a controlled drug;
- (b) a controlled plant;
- (c) a border controlled drug;
- (d) a border controlled plant;
- (e) a serious drug;
- (f) a controlled precursor;
- (g) a border controlled precursor.

3 Subsection 301.2(2) of the *Criminal Code*

After “permit”, insert “certain”.

4 After paragraph 320 .2(2)(b) of the *Criminal Code*

Insert:

- (ba) cannabis; or

Schedule 2 — Amendments to the Criminal Code Regulations 2002

Criminal Code Regulations 2002

1 Regulation 5B

Repeal the regulation.

2 Subregulation 5E(1) (table item 1)

Repeal the item.

3 Schedule 3 (table items 50, 51, 95 and 238)

Repeal the items.

4 Schedule 4 (table items 34, 35, 36, 71 and 194)

Repeal the items.

Schedule 3 — Amendments to the Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990

Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990

1 Section 3

Repeal the following definitions:

- (a) definition of *cannabis* ;
- (b) definition of *cannabis plant* ;
- (c) definition of *cannabis resin* .

2 Section 3 (paragraph (c) of the definition of *manufacture*)

Omit “opium, coca leaves, cannabis or cannabis resin”, substitute “opium or coca leaves”.

3 Paragraph 6(1)(a)

Omit “opium poppy, coca bush or cannabis plant”, substitute “opium poppy or coca bush”.

4 Paragraph 6(1)(b)

Omit “opium, coca leaves, cannabis or cannabis resin”, substitute “opium or coca leaves.” .

5 Subsection 15(2) (table item dealing with cultivation of cannabis plant)

Repeal the item.

6 Subsection 15(5) (table)

Repeal the table, substitute:

Quantity of drug or substance	Maximum Period of Imprisonment
If a commercial quantity of the drug or substance was sold, supplied or possessed	Life

If a traffickable quantity of the drug or substance was sold, supplied or possessed	25 years
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If less than a traffickable quantity of the drug or substance was sold, supplied or possessed	5 years
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7 Schedule 2 (table items dealing with Cannabis, Cannabis Oil and Cannabis Resin)

Repeal the table items.

8 Part 1 of Schedule 3 (table item dealing with Tetrahydrocannabinols (THC) and their alkyl homologues)

Repeal the table item.

Schedule 4 — Amendments to the Defence Force Discipline Act 1982

Defence Force Discipline Act 1982

1 Section 59

Repeal the section, substitute:

59 Dealing in or possession of prohibited drugs

Selling, dealing or trafficking in a prohibited drug—defence member or defence civilian outside Australia

(1) A person who is a defence member or a defence civilian commits an offence if the person:

- (a) is outside Australia; and
- (b) sells, or deals or traffics in, a prohibited drug; and
- (c) knows the nature of the drug.

Maximum punishment: Imprisonment for 10 years.

(2) It is a defence to a charge under subsection (1) if the person proves that he or she had lawful authority for the conduct mentioned in paragraph (1)(b).

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the Criminal Code.

Possessing a prohibited drug—defence member or defence civilian outside Australia

(3) A person who is a defence member or a defence civilian commits an offence if the person:

- (a) is outside Australia; and
- (b) is in possession of a prohibited drug; and
- (c) knows that he or she possesses that drug and knows its nature.

Maximum punishment: Imprisonment for 2 years.

(4) It is a defence to a charge under subsection (3) if the person proves that he or she had lawful authority for possessing the prohibited drug.

Note: The defendant bears a legal burden in relation to the matter in subsection (4). See section 13.4 of the Criminal Code.

Administering a prohibited drug—defence member or defence civilian outside Australia.

(5) A person who is a defence member or a defence civilian commits an offence if the person:

- (a) is outside Australia; and
- (b) administers, or causes or permits to be administered, to himself or herself, a prohibited drug.

Maximum punishment: Imprisonment for 2 years.

(5A) It is a defence to a charge under subsection (5) if the person proves that he or she had lawful authority for the conduct mentioned in paragraphs (5)(b).

Administering a prohibited drug—defence member or defence civilian in Australia

(6) A person who is a defence member or a defence civilian commits an offence if the person:

- (a) is in Australia; and
- (b) administers, or causes or permits to be administered, to himself or herself a prohibited drug.

Maximum punishment:

- (c) if the convicted person is a defence member—imprisonment for 2 years; or
- (d) if the convicted person is a defence civilian—a fine of 3 penalty units.

(6A) It is a defence to a charge under subsection (6) if the person proves that he or she had lawful authority for the conduct mentioned in paragraphs (6)(b).

Possessing non-trafficable quantity of a prohibited drug—defence member in Australia

(7) A defence member commits an offence if the member:

- (a) is in Australia; and
- (b) is in possession of a quantity of a prohibited drug not exceeding the prescribed quantity of that drug; and
- (c) knows that he or she possesses that drug and knows its nature.

Maximum punishment: Imprisonment for 2 years.

(8) It is a defence to a charge under subsection (7) if the member proves that he or she had lawful authority for possessing the prohibited drug.

Note: The defendant bears a legal burden in relation to the matter in subsection (8). See section 13.4 of the Criminal Code.

Definitions

(9) In this section:

controlled drug has the same meaning as in Part 9.1 of the *Criminal Code*.

controlled plant has the same meaning as in Part 9.1 of the *Criminal Code*.

prescribed quantity, in relation to a prohibited drug, means:

- (a) for a narcotic substance that is a controlled drug or a controlled plant in relation to which there is a trafficable quantity specified under the *Criminal Code*—the trafficable quantity so specified for that substance; or
- (b) for any other prohibited drug—50 grams.

prohibited drug means:

- (a) a narcotic substance (as defined by subsection 4(1) of the *Customs Act 1901*); or
- (b) an anabolic steroid (within the meaning of Part 8 of the *Crimes Act 1900 (ACT)*).

Schedule 5 — Amendments to the Narcotic Drugs Act 1967

Narcotic Drugs Act 1967

1 Section 3

Repeal the section, substitute:

3 Simplified outline of this Act

This Act gives effect to certain of Australia's obligations under the Single Convention on Narcotic Drugs, 1961, as in force from time to time. The Convention, as amended by the 1972 Protocol, is set out in Schedule 1 to this Act.

A licensing and permit scheme regulates the manufacture of drugs covered by the Convention, but does not include cannabis.

Authorised inspectors have monitoring, inspection and enforcement powers under the Regulatory Powers Act to ensure this Act is being complied with. The Secretary has comprehensive powers to give directions to licence holders and former licence holders.

2 Section 4 (definition of *cannabis*)

Repeal the definition, substitute:

cannabis has the same meaning as in section 300.2 of the *Criminal Code* .

3 Section 4

Repeal the following definitions:

- (a) definition of *cannabis licence* ;
- (b) definition of *cannabis permit* ;
- (c) definition of *cannabis plant* ;
- (d) definition of *cannabis research licence* ;
- (e) definition of *cannabis research permit* ;
- (f) definition of *cannabis resin* ;
- (g) definition of *cultivate a cannabis plant* ;
- (h) definition of *medicinal cannabis licence* ;
- (i) definition of *medicinal cannabis permit* ;
- (j) definition of *medicinal cannabis product* .

4 Section 4 (definition of *licence*)

Repeal the definition, substitute:

licence means a manufacture licence.

5 Section 4 (definition of *permit*)

Repeal the definition, substitute:

permit means a manufacture permit.

6 After section 4

Insert:

4A Application of this Act to cannabis

(1) Nothing in this Act makes it an offence or contravention of a civil penalty provision for any person or body corporate to participate in the cultivation, production, manufacture, extraction, preparation, transportation, distribution, delivery, brokerage, dispatch, trafficking, offering, purchase, sale, trade, exporting, importing, use, consumption or possession of cannabis.

(2) Subsection (1) is enacted for the avoidance of doubt.

(3) A reference in this Act to a drug does not include a reference to cannabis.

7 Section 7A

Repeal the section.

8 Section 8

Repeal the section, substitute:

8 Provisional application of Act to substances

(1) Where the Commission on Narcotic Drugs of the Economic and Social Council of the United Nations decides, in accordance with paragraph 3 of Article 3 of the Convention, that the Parties to the Convention shall apply provisionally to a substance all measures of control applicable to drugs in Schedule I annexed to the Convention, the regulations may provide that the substance is a drug for the purposes of this Act.

(2) Subsection (1) does not apply to cannabis.

9 Chapter 2

Repeal the Chapter.

10 Section 11F

Repeal the section, substitute:

11F Simplified outline of this Chapter

A manufacture licence may authorise the manufacture of a drug and activities related to such manufacture.

Before a licence holder can manufacture a drug, the licence holder must obtain a manufacture permit. Permits deal with matters such as the types and quantities of drugs that can be manufactured.

Certain conditions are imposed on all manufacture licence holders, and the Secretary may impose additional conditions.

Manufacture licences and manufacture permits can be varied or revoked in certain circumstances.

There are offences and civil penalties relating to the manufacture of drugs.

11 Section 11K

Repeal the section.

12 Paragraph 11N(i)

Repeal the paragraph.

13 Section 12F

Repeal the section, substitute:

12F Conditions that may be described or imposed

The conditions of a manufacture licence that may be prescribed or imposed may relate to, but are not limited to, the following:

- (a) matters relating to the activities authorised by the licence, including activities authorised in accordance with a permit;
- (b) the supply, delivery, dealing in any way with, transportation and disposal of drugs manufactured under the licence;
- (c) waste disposal;
- (d) the destruction of drugs, narcotic preparations and by-products of such drugs or preparations;
- (e) documentation and record keeping in respect of activities to which the licence relates;
- (f) facilities and containment in respect of the manufacture authorised by the licence, including requirements relating to the following:
 - (i) the security of the premises;
 - (ii) the certification of premises or facilities to specified containment levels;
- (g) the safety, security and surveillance of premises;
- (h) access to land and premises on which activities authorised by the licence are, are to be, or have been undertaken;
- (i) measures to manage risks posed to the health and safety of people, or to the environment;
- (j) data collection, including studies to be conducted;
- (k) information that is to be provided, whether on request by the Secretary or on a regular basis, and the times at which, or periods within which, such information is to be provided;

- (l) the taking of samples of any thing to which the licence relates and the removal and testing of such samples;
- (m) auditing and reporting;
- (n) actions to be taken in case of loss, theft, spoilage or destruction (however occurring) of drugs manufactured, under (or purportedly under) the licence, or of narcotic preparations;
- (o) compliance with a code of practice;
- (p) contingency planning;
- (q) matters relating to the employment of staff or the engagement of contractors;
- (r) advertising to the public by the licence holder in relation to drugs or narcotic preparations.

14 Section 12L

Repeal the section.

15 Section 12M

Repeal the section.

16 Section 14H

Repeal the section, substitute:

14H Simplified outline of this Chapter

This Chapter enables the Secretary to obtain information and documents from applicants for licences and licence holders.

This Chapter also enables the Secretary to request information and documents from other persons, and to require information and documents from certain agencies.

The Secretary is authorised to release information and documents obtained under or for the purposes of this Act.

The Secretary has directions powers with respect to the security of premises and the destruction of drugs.

This Chapter also deals with internal and external review of decisions.

This Chapter provides that State and Territory agencies can be authorised to undertake the manufacture of certain drugs.

This Chapter provides for a review of the Act.

This Chapter also contains provisions dealing with matters such as:

- (a) requirements relating to drugs passing through Australia; and
- (b) delegating powers and functions under this Act; and

- (c) **servicing notices; and**
- (d) **making regulations for the purposes of this Act.**

17 Paragraph 14N(h)

Repeal the paragraph, substitute:

- (h) **the disclosure is in circumstances prescribed by the regulations, being circumstances that relate to public safety or the regulation of health professionals.**

18 Paragraph 14P(1)(d)

Repeal the paragraph, substitute:

- (d) **give such directions to the person as the Secretary considers appropriate in relation to drugs or narcotic preparations manufactured by the person or in the person's possession or control, or substances used in such manufacture in the person's possession or control; including but not limited to directions in relation to their handling at a place other than the land or premises at which the obtaining, production or manufacture occurred; or**

19 Section 15

Repeal the section, substitute:

15 Directions with respect to destruction, etc.

(1) The Secretary may, by notice in writing given to a person who is licence holder, or who has been a licence holder, require the destruction of, or other dealings with, drugs or narcotic preparations in the person's possession or control, if the Secretary is satisfied on reasonable grounds that:

- (a) **the drugs or narcotic preparations were manufactured in breach of the licence; or**
- (b) **the drugs or narcotic preparations were manufactured in circumstances prescribed by the regulations; or**
- (c) **circumstances prescribed by the regulations for the purposes of this paragraph exist.**

(2) If the Secretary requires the destruction of, or other dealing with, drugs or narcotic preparations the Secretary may:

- (a) **direct the person to whom the notice was given under subsection (1), or a person in charge of the drugs or narcotic preparations, to carry out the destruction or dealing; or**
- (b) **carry out the destruction or dealing; or**

(c) arrange for another person with appropriate qualifications or expertise to carry out the destruction or dealing.

(3) If the Secretary:

(a) directs the destruction of, or other dealing with, drugs or narcotic preparations as mentioned in paragraph (2)(a); or

(b) arranges for such destruction or dealing as mentioned in paragraph (2)(c);

the Secretary may supervise the destruction or dealing.

(4) If the Commonwealth incurs costs because of a requirement under this section:

(a) the person to whom the notice was given under subsection (1) is liable to pay to the Commonwealth an amount equal to the costs; and

(b) the amount may be recovered by the Commonwealth as a debt due to the Commonwealth in a court of competent jurisdiction.

Note: For requirements for a notice of a decision to give a direction under this section, see section 15F.

20 Section 15B

Repeal the section, substitute:

15B General matters about directions

(1) This section applies to a direction under section 14P, 15 or 15A.

(2) To avoid doubt, the direction may be given in respect of:

(a) drugs or narcotic preparations generally; or

(b) drugs or narcotic preparations, of a kind specified in the direction; or

(c) particular drugs or narcotic preparations, specified in the direction.

(3) If the direction is inconsistent with a condition of a licence (whether the condition is specified in the licence or imposed by this Act), the condition is of no effect to the extent of the inconsistency.

21 Section 15E

Repeal the section, substitute:

15E Reviewable decisions

(1) Each of the following decisions of the Secretary is a *reviewable decision* :

- (a) a decision under section 11H to refuse to grant a manufacture licence;**
- (b) a decision under section 11L to impose conditions on a manufacture licence;**
- (c) a decision under section 12A to refuse to grant a manufacture permit;**
- (d) a decision under subsection 13(1) to vary a manufacture licence or a manufacture permit;**
- (e) a decision under subsection 13A(4) to refuse to vary a manufacture licence or a manufacture permit on application;**
- (f) a decision under section 13B to revoke a manufacture licence or a manufacture permit;**
- (g) a decision under section 14P or 15 to give a direction to the holder or former holder of a licence;**
- (h) a decision under section 15A to give a direction to the holder of a manufacture licence.**

(2) The regulations may also provide that a decision made under a specified provision of this Act is a *reviewable decision* .

Note: The reference to this Act includes a reference to instruments made under this Act (see the definition of *this Act* in subsection 4(1)).

22 Section 25A

Repeal the section.

23 Subsection 27(4)

Repeal the subsection (not including the heading), substitute:

(4) The regulations may provide for or in relation to the following:

- (a) testing of samples;**
- (b) regulating, restricting or prohibiting premises, vehicles, equipment or machines used, or intended to be used, for or in connection with activities relating to licences;**
- (c) empowering the Secretary to do things in relation to drugs and narcotic preparations, that have been seized under this Act;**
- (d) modifying the operation of Chapter 3 of this Act if the applicant for a licence, or a licence holder, is an agency of a State or Territory;**
- (e) how forfeited goods are dealt with.**

Schedule 6 — Amendments to the Therapeutic Goods Act 1989

Therapeutic Goods Act 1989

1 After section 52E

Insert:

52EAAA Exemption of cannabis from the Poisons Standard

(1) The Secretary must ensure that the current Poisons Standard does not apply in relation to cannabis.

(2) In this section, *cannabis* has the same meaning as in section 300.2 of the *Criminal Code* .

(3) Subsections (1) and (2) apply despite anything in sections 52D or 52E.