

2020 **SOUTH AFRICAN**  
**DAGGA**  
**PRIVATE**  
**CLUBS**  
**INITIATIVE**

Established April 2019  
Guidelines for Establishing Your Own DPC



NON-PROFIT COMPANY

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# 1. The Concept of a Dagga Private Club

## What is a Dagga Private Club?

Following the example of Cannabis Social Clubs in Spain, Belgium, Uruguay, Switzerland and USA, South Africans have formed their own version of this, called Dagga Private Clubs. The Constitutional Court ruled for "decriminalising the use or possession of Cannabis by an adult in private for that adult person's personal consumption in private; and the "decriminalisation" of the cultivation of Cannabis by an adult in a private place for that adult's personal consumption in private".

We are aware that this right to privacy may be exercised as a collective right and so, we base our model on the willingness of our community to collectively practice this right.

## What is the purpose of a Dagga Private Club?

Within the Dagga Private Club model, we wish to provide for our community by ensuring that it provides safe access to quality Cannabis. The model also has the unique ability to improve the image of the traditional Cannabis smoker and transform our social standing. The emphasis here is not on making money, but rather on growing a Cannabis community and then, as a Cannabis community, make a difference to the immediate external community.

## How will this document help?

In order to preserve the integrity of the intended model, this resource pack has been developed according to existing Cannabis Social Clubs operating in the above-mentioned countries, taking into consideration the Constitutional Court privacy ruling of 18 September 2018.

## Will this document keep me from ending up in legal trouble?

This pack in no way constitutes a formal regulation of legally accepted guidelines on how to operate a DPC. The fate of Dagga Private Clubs in South Africa is still uncertain and will only be determined once a club (that fully subscribes to the privacy aspect of the model), is tried in court.

## Note:

This resource pack favours the adult user. Supplying medical products should be considered carefully, as it is regulated by different laws and policies that were consulted when compiling this resource.

## 2. Non-negotiables when setting up a DPC

In order to maintain the integrity of the model and to discourage official trade and dealing, the following guidelines should be considered as non-negotiable when planning to set up your Dagga Private Club:

1. If you wish to register your club as an official entity, it needs to be registered in a non-profit capacity. It supports the argument that you are not dealing if you are not making a profit.

Options include:

- o a Non-profit Organisation (NPO);
- o a Non-profit Company (NPC) – with or without members; or
- o a non-profit project of a private company.o

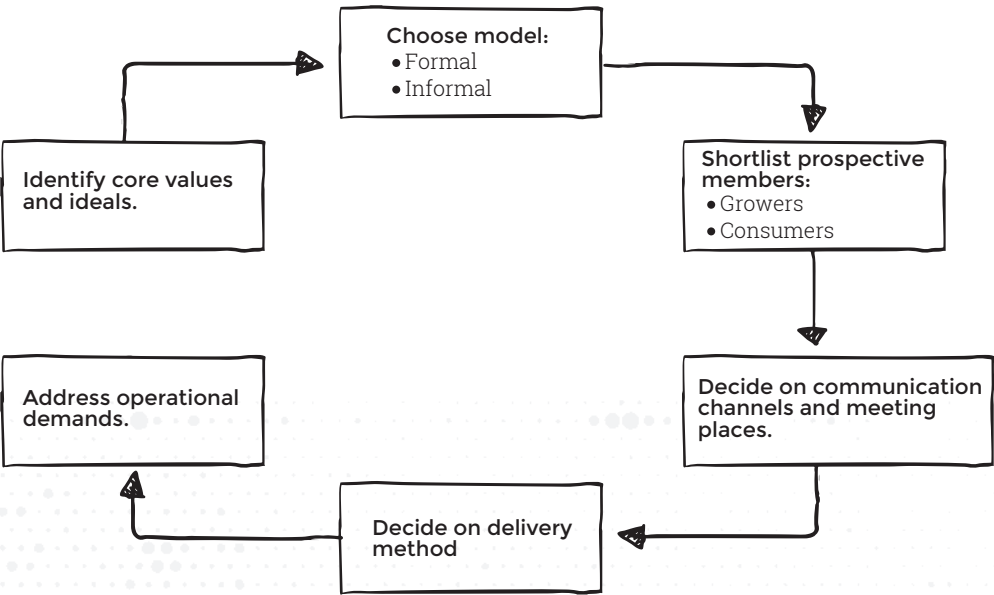
2. Clubs should strongly avoid franchising, creating sub-clubs or have separate Dagga Private Clubs officially linked to one another, as this refutes the privacy aspect that the club subscribes to from a legal perspective.

3. The DPC should not be undertaking any marketing activities on a public platform, unless the platform has a private group only accessed by members. Marketing should be restricted to members of the club only.

4. The DPC should manage a strict intake policy on new members. Prospective members should already be consumers of Cannabis and must state their level of consumption. New members should preferably be via recommendation from existing members and it is advised to vet them through e.g access to and review of their Facebook listing.

### 3. Planning how your Dagga Private Club will work.

The following flow diagram will indicate the process to follow and procedures to consider when planning how your Dagga Private Club will operate:



#### 3.1 Identify Core Values & Ideals

It is important to establish reasons and standards for yourself when deciding what it is that your club wants to achieve. Consider the following to guide you:

##### 3.1.1 Who?

Who do you want in your club? Will it be a group of friends and family members only? Do you want your club to grow in numbers or stay small?

### **3.1.2 What?**

What products will you be cultivating and distributing within your club? What quality of product do you wish to make available? What other activities will you be offering members? Remember that supply should follow demand, not the other way around!

### **3.1.3 Where?**

Within which area will you be operating? Where are your prospective members based?

### **3.1.4 Why?**

Why do you want to open a Dagga Private Club? If your answer is “to make money”, this is not the model for you. It is fair to make a living by managing a Dagga Private Club, but you should not be following this model if you want it to make you rich. Underlying values such as safety, traceability, quality and community support can be translated into a vision of “safely supplying traceable, quality cannabis to the community”. You can also choose to educate members and offer workshops about cannabis and cannabis-related topics.

### **3.1.5 How?**

How will you be acquiring and distributing your product to your members? How will you find members? How will you manage them and their requirements?

It is important to answer these questions first, as it will form the basis of proceeding with the next steps.

## **3.2 Choose your model: A formal business or informal cooperative.**

This is where things are starting to get complicated. Use your answers in section 3.1 to guide you in deciding how your club will work.

## **3.2 Registering a business - Or not.**

### **3.2.1 Keeping it informal.**

If you plan to keep your club small with less than 20 members, you would only need to keep meticulous records of your actions. We strongly advise having the documents outlined in section 5.1 below.

### 3.2.1 Keeping it informal, continued.

Pros:

- o The less people know about it, the better
- o Members will all know each other personally, which contributes to mutual trust
- o Limited paperwork and administration
- o No business-related costs

Cons:

- o Limited resources available
- o Possible capacity issues
- o Fewer growers mean higher risk of losing an entire crop with no back-up option

### 3.2.2 Registering a formal business.

If your vision for your club includes growth and a membership of more than 20 individuals at any given time, it is advisable to register your Dagga Private Club formally with the CIPC as outlined below.

You have a few options in this regards, but the most popular and simplest are:

- o Register as a Non-profit Organisation / Non-profit Company
- o Register as a non-profit project of a registered private company

Pros:

- o Formalised records present a better case
- o Operational procedures can be designed to further protect the organisation
- o The non-profit aspect supports the notion that you are not dealing

Cons:

- o Business costs
- o Compulsory appointments of staff
- o Bigger start-up cash injection needed
- o More time-consuming administrative burden & greater risk of non-compliance

### **3.3 Shortlist possible members**

To start your club, you will need a certain amount of growers and consumers. The amount of consumers you have will determine the size of the growing sites. The amount of growers and their growing capacity will determine the amounts that can be distributed to every member. It is advisable to identify a limit after which no new members will be allowed in the club, unless a current member leaves the club. The bigger the club, the greater the chances of the club not being private. The recommended limit is 300 members per club.

#### **3.3.1 Consumers**

When choosing consumers for your club, stick to people you know personally. Make sure that your prospective members already have a habit of consuming cannabis – joining your club should not be an option to someone who only plans to start smoking cannabis after they become a member. It is strongly recommended that members declare their regular and intended consumption in the members agreement, as this is central support to your justification for level of production.

This can also assist you in planning for the amount of growers you need to include in your club. In order to limit the possibility of members reselling products distributed by the club, clubs are advised to set a monthly limit supplied to every member.

Prospective club members need to understand the nature of the club, that trading in cannabis is still illegal and that they are not allowed to discuss the club with non-members. They must also be willing to exercise their right to privacy as a collective in the capacity of the club.

As a collective, members contribute money or grow products to growers within the club, to help carry the related expenses of growing cannabis and compensate the grower for their expertise and labour.

#### **3.3.2 Growers**

Part of the aim of establishing Dagga Private Clubs in South Africa is to ensure that people have access to good quality cannabis. The saying “know your farmer” has long extended to the cannabis community too and encourages traceability of recreational cannabis.

With this in mind, identify growers that could contribute to your club. Make sure that you know these growers personally, that you approve of their growing methods and that the product they produce is of satisfactory quality to your prospective consumers.

Prospective growers need to be willing to practice their right to grow in a private space, as part of a collective (the club) and hand over their harvests to the club for distribution among members. Growers will be reimbursed by the club for the expenses they’ve had to incur to realise the grow.



## **3.4 Decide on communication channels & meeting places**

### **3.4.1 Physical or digital?**

When designing how and where your club will operate, it is important to keep the privacy aspect in the forefront of your mind. When deciding which of the two options listed here to follow, keep in mind where your prospective members will be based and who will be responsible for maintaining the space – whether digital or physical.

#### **3.4.1.1 Digital space**

The most popular way to build and manage a club is doing so on a digital platform. The platform could be in the form of a website, Facebook group, Telegram or Whatsapp group, etc. The main requirement is that the platform should only be accessible to members and should require authentication. You wouldn't want a non-member to be able to see what products you have available, so every member should be issued with a unique password to access the platform.

#### **3.4.1.2 Physical Space**

You could also have a physical building where members could meet in private and consume cannabis as a collective. A physical space like this should only be accessible to members of the club and should not be accessible by members of the public.

An alternative option is to have a Members' Area, if the space forms part of another company such as a restaurant or coffee shop. The Members' Area should be marked clearly as such and must only be accessed by members and not customers of the company at which it is located.

One of the greatest risks to a club is via social media and so use of public social media posts and platforms about the club by members must be strictly prohibited

### **3.4.2 Communication**

From time to time, members of the club would need to communicate amongst each other. It is up to you to decide the channels your club will make use of. Once again, communication should be designed around the privacy aspect. Therefore it is advisable to make use of reliable communication platforms such as Telegram; or to create a members' only website, where members can login with a unique password and communicate with each other through the site. Notifications can be tailored to each person's individual preference.

## **3.5 Decide on a delivery method**

There is obviously still much risk involved in transporting cannabis. These risks should be addressed when your delivery method is determined. The following options discuss the risks involved with each option and to what extent the risk can be mitigated.

### **3.5 Decide on a delivery method, continued.**

#### **3.5.1 Appoint a delivery person.**

The club may choose to appoint an individual who will manage deliveries. This person should be fully aware of the legal risks involved when transporting cannabis. To legitimize the delivery as much as possible, the club should issue a manifesto, authorizing the individual to deliver cannabis to a private member of the club. The driver should be thoroughly trained on his/her rights and procedures to follow in the event that police discover the cannabis and wish to press legal charges.

#### **3.5.2 Appoint a delivery company.**

The club may also choose to outsource its delivery to a courier company. There are certain companies in South Africa who are cannabis-friendly and others that should be avoided. The risk of interception of packages remains and can only be mitigated to an extent. It is suggested that someone in the club approaches a delivery company and gets an idea of whether they would be cooperative or not. Keep in mind that a waybill would still require a sender's details, so the club's details will still be visible – depending on what you choose to divulge.

#### **3.5.3 Members collection.**

If the club has access to a building from which its products could be distributed, members could make an appointment and collect their products from the clubhouse or premises. This delegates the transportation risk back to the members of your club.

It is also highly advisable that members receive orientation on how to act and respond in the event that the police find them with cannabis from the club, in their possession. It is important for them to be aware of their rights, as this could impact on the club directly. You also want to protect your community, and by educating them on the do's and don'ts when dealing with the law, is doing just that.

### **3.6 Address operational procedures.**

Regardless of whether your club will be formalised or not, there will be certain duties that will need to be performed. The following lists are by no means completed and the duties identified are not exhaustive or set in stone. It identifies duties that would need to be assigned to an individual in order for the club to run smoothly.

#### **3.6.1 Duties in an informal club.**

An informal club would require no business agreements or formalised administration. However, in the event that the police wish to investigate your club, you would need to provide proof that you are not dealing. The following roles are advisable with its suggested duties:

### **3.6.1 Duties in an informal club, continued.**

- o Administrator
- o Manages agreements between members, growers and the club structure
- o Manages records of harvests and distribution
- o Manages member register
- o Manages communication between members
- o Manages collection of harvests and distribution to members

### **3.6.2 Duties in a formal club.**

A formal club would be a registered company, and depending on how you register the club, the Companies Act requires you to employ certain people in certain capacities. The staff appointments your club needs to make, will depend on which type of company you choose and how you choose to register it. The following lists are only guidelines and legal advice is highly recommended during the registration process.

#### **3.6.2.1 Compliance with the Companies Act of 2008**

The type of business you register will determine, by law, which appointments are compulsory for your company. We strongly advise making use of a legal practitioner to advise you in setting up your company and what legal responsibilities it would need to undertake. Some companies are required to appoint an auditor, others not. Determine the best option for yourself after detailed consultation and sufficient research. Remember that the company will be a legal entity and is subjected to certain annual submissions to the CIPC. Ensure that you understand what is required of you to avoid running into legal problems later on.

Note: About being audited:

“The following non-profit companies are required to have their annual financial statements audited:

Any non-profit company if, in the ordinary course of its primary activities, it holds assets in a fiduciary capacity for persons who are not related to the company, and the aggregate value of such assets held at any time during the financial year exceeds R5 million;

Any non-profit company that was directly or indirectly incorporated by the state, an organ of state, a state-owned company, an international organisation, foreign state entity or a foreign company;

### 3.6.2 Compliance with the Companies Act of 2008, continued.

Any non-profit company incorporated to fulfill a statutory or regulatory function in terms of legislation or to carry out a public function at the initiation or direction of an organ of state, a state-owned company, an international organisation or a foreign state entity.

Unless the company has opted to have its annual financial statements audited or is required by its Memorandum of Incorporation (MOI) to do so, a non-profit company may be subject to independent review if:

- o It compiles its financial statements internally and its Public Interest Score is less than 100;
- o It has its financial statements compiled independently at its Public Interest Score is between 100 and 349;

Non-profit companies that are not required to have their financial statements audited, may elect to voluntarily file their audited or reviewed statements with their annual returns. If such companies choose not to file a full set of financial statements, they must file a financial accountability supplement with their annual return.

You may wish to appoint an auditor, audit committee members and a company secretary, however, you aren't obliged to appoint any of these unless the company is "directly or indirectly incorporated by the state, and organ of state, a state owned company, and international entity, a foreign state entity or a foreign company or if it performs a statutory, regulatory or public function" CIPC, June 2020

#### 3.6.2.2 Suggested roles and responsibilities

Administrator / Secretary

- o Handling membership agreements; growers agreements; logistics manifesto's; accounting responsibilities; etc
- o Manages communication platform.
- o Manages employees of the company.

Growing Supervisor

- o Assisting growers with grow advice; maintenance of plants; harvesting; processing and weighing of product.
- o Packager
- o Dividing of harvests among members; labelling; packaging.

Quality Manager

### **3.6.2.2 Suggested roles and responsibilities, continued.**

- o Ensures a consistent standard for the quality of the product distributed to members; compliance with best cultivation practices; etc.

Logistics Person

- o Collects harvests from growers and delivers packages to members.

Trainer / Consultant / Induction officer

- o Trains new members on their legal rights as it relates to cannabis; trains members on best practices when confronted by the law about cannabis; offers workshops on cannabis and cannabis-related topics; etc

Remember one person can carry out more than one of these roles at the same time, but there should be enough oversight to ensure accountability to members.

People involved with the above duties can be reasonably reimbursed for their time and efforts – they would be considered employees of the NPC.

## **4. Social Responsibility.**

As members of the community, cannabis consumers are tired of being called unproductive and accused of not contributing to the society. Unfortunately, propaganda against cannabis has been ongoing for decades and there are many stereotypes to break. In order to improve the view on cannabis consumers and our general standing in the community, one or more of the following value-added services are advised to be undertaken by a Dagga Private Club:

### **4.1 Donating to a charity/good cause.**

Should any profits be recorded within the Non-profit company, the company may choose to reinvest the profit back into the company, or they may choose to donate the money to a charitable cause. This can be done at members' discretion and as frequently as chosen.

### **4.2 Adopting a charitable cause and offering members availability.**

The Dagga Private Club may choose to adopt a charitable cause, such as a regional branch of the NSCPA. The members may then choose to make themselves available at set frequencies and act as volunteers for their chosen cause, within the collective of the club.

## 5. Recommended Documentation.

All the above processes have their own documentation accompanying it. By using the process we mapped out here, we have identified possible documentation for the use of informal and formalised Dagga Private Clubs alike. These lists are by no means complete or exhaustive and should only be used as a guideline when planning your Dagga Private Club.

### 5.1 Documentation for an informal Dagga Private Club

- o Informal constitution – a document explaining the model, its purpose and how it operates;
- o Members' register with members' details;
- o Members agreements (including ceding agreement which specifically assigns the members private right to grow to the club);
- o Grower agreements;
- o Production register;
- o Distribution register.

It is recommended that copies of all these documents are kept on site at each growers location so they can be produced to Police incase of a visit.

### 5.2 Documentation for a formal Dagga Private Club

#### 5.2.1 Registering a Non-Profit Company

When you register your NPC, you will need the following documentation: 5

- o Form CoR 9.1 (CIPC) – Application to reserve a company name
- o Form CoR 14.1 (CIPC) – Notice of Incorporation
- o Form CoR 14.1 Annexure A (CIPC) - Notice of Incorporation: Initial Directors of the Company
- o Form CoR 15.1 Annexure E (CIPC) - Long Standard Form Non Profit Companies with members – Memorandum of Incorporation (or your own version of a MOI)
- o Business Plan

#### 5.2.2 Compulsory company records to maintain.

To be legally compliant, your NPC needs to maintain certain records and make certain submissions:

##### 5.2.2.1 Company records.

To be legally compliant, your NPC needs to maintain certain records and make certain submissions:



### 5.2.2.1 Company records, continued.

"The Companies Act requires all companies to maintain their company records. A company must at all times have a copy of its Memorandum of Incorporation (MOI) and any amendments or alterations to it, as well as any rules that apply to the company in terms of its MOI. The company is also required to keep a register of its shares and its company secretary and auditor, to the extent that the company is required to make such appointments. In addition, the company is required to keep the following records for a period of seven (7) years:

- o A record of its directors, including the following detailed information about each director:
  - o The full name and any former names,
  - o the identity number or date of birth,
  - o the nationality and passport,
  - o the occupation,
  - o the date of their most recent election or appointment;
  - o the name and registration number of any other company or foreign company that the director is a director of;
  - o the address for service for that director; and
  - o any professional qualifications and experience of the director in the case of a company required to have an audit committee.
- o Copies of
  - o All reports presented at an annual general meeting;
  - o Annual financial statements required by the Act;
  - o Any accounting records required by the Act;
  - o Notices and minutes of all shareholder meetings, any resolutions taken at those meetings, as well as the documents made available to the shareholders in relation to those resolutions;
  - o Copies of any written communication sent by the company to shareholders; and
  - o Minutes of meetings and resolutions of directors, directors committees, or audit committees."

### 5.2.2.2 Accounting records.

"The Companies Act, 2008 requires all companies to keep accurate and complete accounting records, which must be kept and be accessible at the company's registered office."

### **5.2.2.3 Annual Returns.**

"All companies (including external companies) and close corporations are required by law to lodge their annual returns with CIPC within a certain period of time every year. An annual return is a statutory return in terms of the Companies and Close Corporations Acts and therefore MUST be complied with. Failure to do so will result in the Commission assuming that the company and/or close corporation is not doing business or is not intending on doing business in the near future. Non-compliance with annual returns may lead to deregistration, which has the effect that the juristic personality is withdrawn and the company or close corporation ceases to exist."

### **5.2.2.4 Financial statements.**

"Non-profit companies that are required to be audited by the Companies Act, 2008 or regulation 28, must file a copy of the latest approved Audited Financial Statements on the date that they file their annual return with the CIPC."

## **5.2.3 Documents relating to running a Dagga Private Club.**

Once your club has been registered, it is recommended to create and maintain the following documentation:

- o Club constitution – a framework of how the club intends to operate;
- o Club rules;
- o Membership Agreement (including ceding agreement;
- o Growers Agreement;
- o Member Register;
- o Production Register;
- o Distribution / Allocation Register;
- o Standard Operating Procedures for all major and minor procedures with in the club.



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<https://faaat.net/>

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