

18 January 2024, Johannesburg

Comments on the Cannabis for Private Purposes Bill

To: Members of the South African National Council of Provinces (All Provinces)

From: Fields of Green for ALL NPC (Reg 2013/191487/08)

Dear Members of the Council,

Fields of Green for ALL thanks the council for this opportunity to contribute our comments once again.

1. It is of very grave concern to ALL in the South African Cannabis Community that the **cultivation of Cannabis has been omitted from the latest version of the Bill.**

BILL

To—

- respect the right to privacy of an **adult person to use or possess cannabis;**
- regulate the **use or possession of cannabis by an adult person;**
- provide for an alternative manner by which to address the issue of the prohibited use, possession of, or dealing in, cannabis by children, with due regard to the best interest of the child;
- prohibit the dealing in cannabis;
- provide for the expungement of criminal records of persons convicted of possession or use of cannabis or dealing in cannabis on the basis of a presumption;
- amend provisions of certain laws; and
- provide for matters connected therewith.

Given that today, 18 January 2024, we received the government notice of amendments to the Medicines and Related Substances Act, 1965 and the cultivation of Cannabis by adults is specifically excluded from the Schedules:

Tetrahydrocannabinol [(~~-~~)-transdelta-9-tetrahydrocannabinol]), except

- a. in raw cannabis plant material cultivated and possessed in accordance with a permit issued in terms of the Plant Improvement Act (Act 11 of 2018) and processed products manufactured from such material, intended for agricultural or industrial purposes, [and not for human or animal ingestion, containing 0,2 % percent or less of tetrahydrocannabinol;] including the manufacture of consumer items or products which have no pharmacological action or medicinal purpose, or
- b. [processed products made from cannabis containing 0,001 percent or less of tetrahydrocannabinol; or]
- c. when raw cannabis plant material is cultivated, possessed, and consumed by an adult, in private for personal consumption.

2. Children cannot be isolated in determining Cannabis laws and regulations. The Bill should therefore seek to *"provide for an alternative manner by which to address the issue of the prohibited use, possession and cultivation of, or dealing in, cannabis by children, with due regard to the best interest of the child, parent and/or guardian and/or caregiver."*

If we are meant to comment on children, we need to consider the spaces they occupy. These spaces are no different to the spaces adults occupy. Their parents, guardians and/or caregivers may share in relationships with Cannabis that place them near the plant. If we are set to provide for Adult Use under the Cannabis for Private Purposes Bill, should we not consider that many adults who use Cannabis have children?

Children of Adult Users of Cannabis do not live isolated from the plant, no more than children of Adult Users of alcohol do not live isolated from alcohol, nor should they be required to in terms of the proposed Bill.

Point (2) states that

"no adult person may use cannabis in a private place for a private purpose –

(a) in the presence of a child or non-consenting adult person"

This is problematic for ALL uses of Cannabis by an Adult Person who is a parent, guardian or caregiver of a child.

Requiring Adults to keep their use of Cannabis hidden is not practical. There are various cultural, religious, traditional and health uses that, when taken into consideration, expose deficiencies in the Bill. Being required to hide our relationship with Cannabis from our children denies basic human rights, while also not considering that the Liquor Act contains no such limitation on how children are exposed to alcohol, either within private spaces or in social situations.

3. In terms of offences and penalties, this working document contains certain contradictions. The proposed offences and penalties are not in the best interest of children when the penalties, such as severely sanctioning and/or fining parents, guardians, and/or caregivers for not cultivating or storing their Cannabis correctly (for example) will, in turn, negatively affect their ability to care for the very children this proposed bill purports to be protecting.

The recent case in Soshanguve where 90 children were hospitalised for the alleged consumption of "space cakes" demonstrates how dangerous stigma is in enforcing bad laws around Cannabis. Without forensic evidence as to the contents of the "space cakes" there is no evidence of the perceived harms of Cannabis. There is also no evidence for why attempted murder charges are levelled against the suspected vendors. Cases like these do nothing more than spread misinformation and create panic and are indicative of how far we still have to go in dispelling stigma around Cannabis. Let us start by not writing stigmatising laws.

This brings us back to the issue of the relative harms of cannabis never being ventilated in a court of law and the evidence of the scale of harms relative to other drugs has, despite continually being referred to by Fields of Green for ALL and others, never been fully considered during the passage of this bill through parliament.

4. Another area of concern is the proposed amendments to Traffic Act having THC, but not Cannabis, retrofitted into the penalties. we are concerned as to how these measures will further undermine the rights of Cannabis Users. The recent Police Directive stipulates that a car is a private space, yet this is not provisioned in this working document nor in the proposed amendments to the Traffic Act.
5. Our final but most grave concern with this document is how the appointed minister may amend regulations with no indication of public consultation, as is provided for in the Tobacco Act, for example. The Tobacco Act under section 6 (3) 'Regulations', reads:

"The Minister shall, not less than three months before issuing any regulation under this Act, cause a draft of the regulation to be published in the Gazette, together with a notice declaring their intention to issue such a regulation and inviting interested persons to furnish him with any comments thereon or representations in connection therewith within a specified period."

In order to protect and provide for democratic processes, the same provisions must be included in the Cannabis for Private Purposes Bill and any other related regulations for any intervening minister or appointed representative promulgating any additional regulation. Fields of Green for ALL would also like to know specifically which 'Minister' is being referred to here.

It remains a fact that the harms of prohibition far outweigh the perceived harms of Cannabis. Given that the Minister is mandated with crafting regulations for the Cannabis sector going forward, we urge those tasked with ensuring evidence-based, Constitutional laws and regulations to pay careful attention to the evidence on which the bill is based and our rights, as enshrined in our South African Bill of Rights and Constitution.

As interested and affected parties, we have endured years of deliberations over this Bill. We have also endured unending harassment from law enforcement. At the same time, we have highlighted the shortcomings of the bill and offered solutions that seem to have been taken into consideration to a certain extent. However, as outlined above, there is still an underlying spirit of prohibition in this working document. It is for this reason that we still have the option to ventilate outstanding issues in court. Fields of Green for ALL's strategic litigation is ongoing, but we are still hopeful for the resolution of the outstanding matters before this bill is passed.

Thank you for your attention.

Myrtle Clarke

(Managing Director)

Fields of Green for ALL NPC



<https://www.fieldsofgreenforall.org.za>