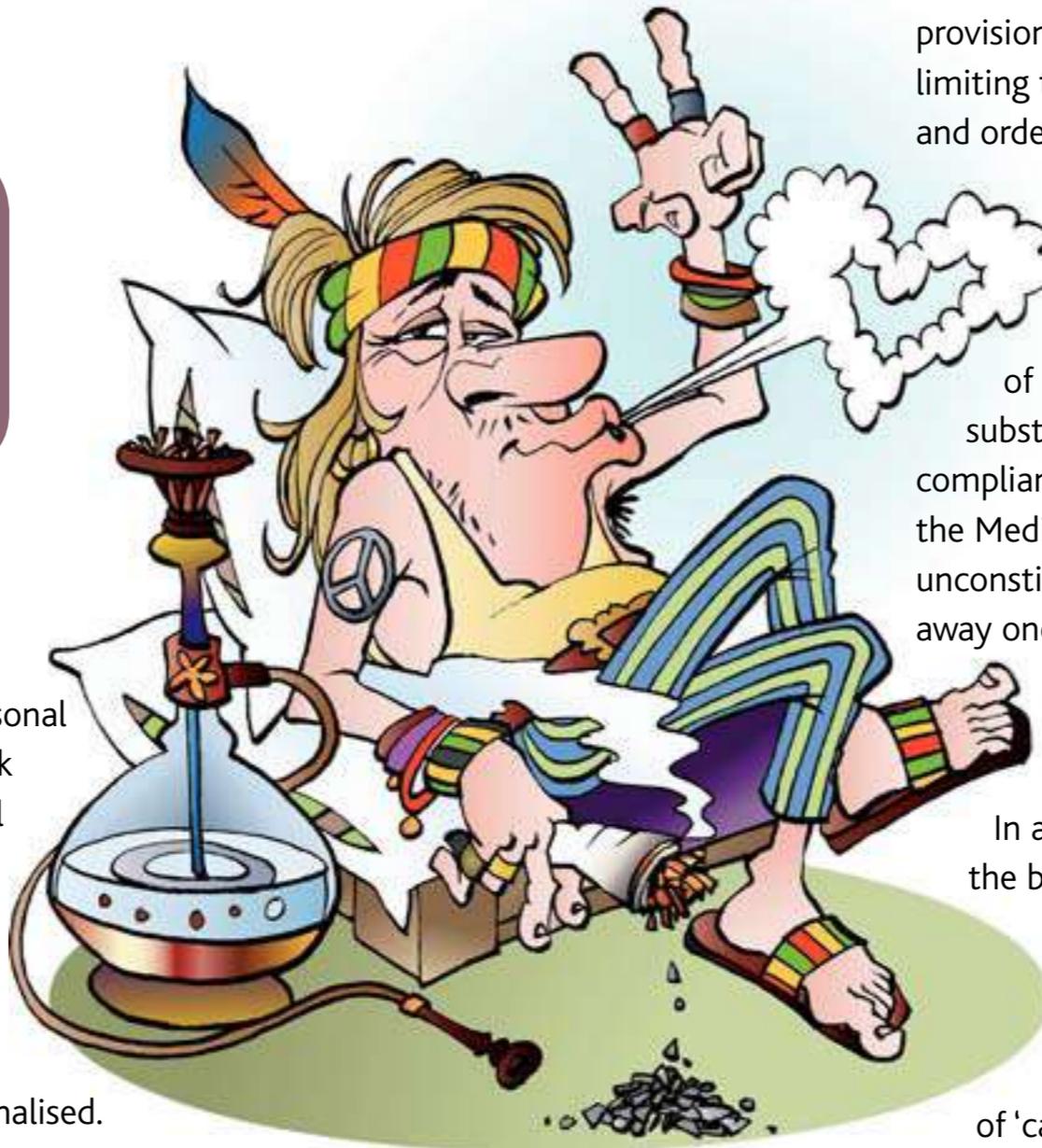


# The new Cannabis for Private Purposes Bill Taking us forward, backward, or nowhere at all?

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The recently published Cannabis for Private Purposes Bill has some good elements; but may fail to create a new commercial industry or provide clarity to an area mired in uncertainty

Cabinet recently approved the Cannabis for Private Purposes Bill, 2020, to regulate the use and possession of cannabis, as well as the cultivation of cannabis plants by adults for personal use. The bill seeks to give effect to the landmark September 2018 decision by the Constitutional Court in the Prince judgment. In this judgment, the use or possession of cannabis in private by an adult for his/ her own consumption, as well as the cultivation of cannabis by an adult in a private place for his/ her own personal consumption in private was effectively decriminalised.



The Court declared unconstitutional those provisions of the Medicines Act and Drugs Act limiting the ability to use cannabis in such ways, and ordered Parliament to correct these invalidated provisions within 24 months from the date of the judgment, during which time the judgment would be suspended. During the suspension of the operation of the order of the invalidity the court substituted, i.e., read in, its own (constitutionally compliant) provisions for those provisions of the Medicines Act and Drugs Act found to be unconstitutional, and held that these would fall away once the defective legislative provisions had been cured by Parliament. A failure by Parliament to do so would result in the reading-in order becoming final. In accordance with the Prince judgment, the bill removes cannabis from the Schedules to the Drugs Act, which lists cannabis and tetrahydrocannabinol as an undesirable dependence-producing substance. Hemp is expressly excluded from the definition of 'cannabis plant' in the bill, which



appears to contemplate that hemp will be separately regulated. The position of the South African Health Products Regulatory Authority (SAHPRA) is that the Department of Agriculture, Land Reform and Rural Development will be responsible for the regulation of hemp and hemp products.

In terms of the new bill, an adult person may for personal use:

- possess unlimited cannabis seeds and seedlings for purposes of cannabis cultivation material
- cultivate four flowering cannabis plants or cannabis plant equivalents per adult person in a private place
- possess, in private, 100 grams dried cannabis or cannabis equivalent in a public place
- possess in a private place 600 grams dried cannabis or cannabis equivalent per adult or 1200 grams dried cannabis or cannabis equivalent per dwelling, which is occupied by two or more adult persons
- possess, in private, one flowering cannabis plant or cannabis plant equivalent in a public place.

Subject to the limitations set out in the bill, adults are permitted to consume cannabis in a private place, and adults may without the exchange of remuneration provide to, or obtain from, another adult, for personal use:

- 30 seeds or seedlings or any combination thereof for purposes of cannabis plant cultivation material

“ Hemp is expressly excluded from the definition of ‘cannabis plant’ in the bill which appears to contemplate that hemp will be separately regulated. ”



- one flowering cannabis plant or cannabis plant equivalent; and
- 100 grams dried cannabis or cannabis equivalent.

The bill prescribes four classes of offences which impose increasingly harsh penalties, depending on the offence concerned.

The offences contemplated in the bill primarily relate to whether the cannabis in question is within prescribed quantities or being possessed or used in the appropriate location or, further whether

the cannabis use/possession is appropriate having regard to both of these factors in conjunction, for example, is within the prescribed quantity stipulated for a public place specifically.

The bill makes it an offence, amongst others, to smoke cannabis in a public place, in a vehicle on a public road, or in the immediate presence of any non-consenting adult person/child. The bill also contains specific provisions prohibiting the use, possession and cultivation of cannabis when doing so involves children.

The bill, however, automatically expunges the criminal records and sentences of persons previously convicted of contravening several legislative provisions regulating cannabis use, notably the provisions of the Drugs Act that criminalised the use and possessions of cannabis.

On the face of it, the bill does not expressly envisage commercial applications of cannabis. The bill also does not appear to protect or make provision for the utilisation of cannabis for traditional uses, and does not seek to directly promote the small-scale cannabis/ dagga growing industry, which was considered to be a promising catalyst for the growth of South Africa's most underdeveloped regions and the development of small-scale businesses.



These may represent missed opportunities that ought to have been explored in the bill, particularly having regard to the country's dire prevailing economic situation.

Adding to this, the Minister of Health recently amended various Schedules to the Medicines Act introducing several changes to the regulation of cannabis-related products including cannabidiol (CBD), the non-psychoactive component of cannabis. These amendments introduce a limit to the amount of CBD that may be sold freely per sales pack and impose additional compliance requirements on those wishing to sell such products. These amendments similarly impede the growth of what had been a burgeoning industry in South Africa and will likely inhibit local

businesses from participating meaningfully in this sector on an international scale.

The bill has been tabled in Parliament for processing, and will still need to undergo a public consultation process before it can be passed into law. It is likely that the 24-month suspension of invalidity ordered by the Constitutional Court in Prince will lapse before the invalidated provisions are remedied by legislation. Unless a further extension is granted, the reading-in order by the Court will take effect, likely introducing further confusion into a legal landscape already mired in uncertainty. **SR**

