

**To:** The Department of Justice and Constitutional Development

**For the attention of:** Mr M Mokulubete

**RE: Structured Submission on the Draft Cannabis for Private Purposes Regulations,  
2025**

1. We appreciate the opportunity to provide comments on the Draft Cannabis for Private Purposes Regulations, 2025.
2. At the outset, we wish to record that, while we recognise the constitutional corrective intent of the Cannabis for Private Purposes Act, 2024 (“the Act”), we remain concerned that certain provisions of the Act itself may not fully conform to the requirements and reasoning articulated by the Constitutional Court in *Minister of Justice and Constitutional Development v Prince* (2018).
3. In particular, we note concerns regarding—
  - 3.1 The criminalisation of possession and cultivation exceeding prescribed quantities, without a clearly articulated proportionality framework;
  - 3.2 The broad definition of “deal in”, which may create uncertainty between private sharing and commercial conduct;
  - 3.3 The concealment component embedded within the concept of “private purpose”, which appears to extend beyond the Constitutional Court’s privacy-based reasoning;
  - 3.4 The introduction of layered criminal liability structures that may risk reintroducing overbreadth into the private sphere identified and protected in *Prince*.
4. We state these concerns respectfully and in good faith. Our intention is not adversarial. Rather, we believe continued dialogue is necessary to ensure that the evolving cannabis framework remains constitutionally coherent, proportionate, and practically enforceable.
5. We would welcome the opportunity to engage further with the Department on these broader statutory issues at an appropriate stage.
6. In the interest of constructive cooperation and recognising that the present consultation concerns the Draft Regulations specifically, we confine our detailed comments below to the regulatory provisions as published.
7. For clarity and ease of engagement, our responses address each regulation and subparagraph individually.

## **Regulation 1 – Definitions**

1.1 We support the incorporation of statutory definitions from the Act.

1.2 The definition of “cannabis plant” (excluding hemp) is appropriate, provided there is clarity elsewhere in law regarding THC thresholds and enforcement standards.

1.3 We recommend that no additional interpretive expansion be introduced through regulation beyond what the Act provides.

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## **Regulation 2 – Maximum Amount for Possession (Private and Public)**

2.1 We do not oppose the introduction of quantitative thresholds.

2.2 However, we respectfully request publication of the evidentiary or policy basis used to determine 750g as the selected threshold.

2.3 The same threshold applying to both private and public possession requires justification, particularly as public exposure is conceptually distinct from private autonomy.

2.4 Transparency in methodology will strengthen constitutional defensibility and enforcement coherence.

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## **Regulation 3 – Maximum Number of Plants**

3.1 We accept that plant-count limits are authorised under section 6(1)(a) of the Act.

3.2 However, plant yield varies significantly depending on cultivation conditions; a fixed plant count may not accurately correlate with intended personal use.

3.3 We request clarification on whether seedlings, clones, or non-flowering plants are included in the count, to avoid arbitrary enforcement.

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## **Regulation 4 – Maximum Amount for Transportation**

4.1 We do not object in principle to transport limits.

4.2 The transport threshold should logically align with possession thresholds to avoid internal contradictions.

4.3 If the transport cap differs materially in future revisions, a clear rationale should be provided.

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## **Regulation 5 – Conditions Relating to Transportation**

### **5(1) – Concealment Requirements**

- 5.1 We believe concealment requirements are superfluous.
  - 5.2 The Act already distinguishes between private and public use.
  - 5.3 Concealment does not materially advance public safety objectives.
  - 5.4 Concealment standards are difficult to define objectively and are prone to inconsistent enforcement.
  - 5.5 We therefore recommend removal of mandatory concealment provisions.
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### **5(2) – Restriction to Prescribed Amount**

- 5.6 This provision is redundant, as quantity limits are already prescribed in Regulations 2 and 4.
  - 5.7 We suggest simplification to avoid duplication.
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### **5(3)(a) – Prohibition on Mixing Cannabis with Other Substances**

- 5.8 This introduces a substantive restriction not found in the Act.
  - 5.9 The Act defines cannabis to include products made therefrom.
  - 5.10 This prohibition may inadvertently criminalise lawful edibles or combined products.
  - 5.11 We recommend removal or clarification to align strictly with statutory definitions.
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### **5(3)(b) – Prohibition on Handling During Transport**

- 5.12 The Act criminalises use in a vehicle, not handling.
  - 5.13 Handling does not equate to consumption.
  - 5.14 This provision introduces a behavioural offence not clearly authorised by section 6.
  - 5.15 We recommend removal.
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### **5(3)(c) – Prohibition on Disclosure**

5.16 This provision has no identifiable statutory basis.

5.17 It regulates speech rather than conduct.

5.18 It is neither necessary nor enforceable.

5.19 We recommend deletion.

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### **5(4)(a) – Driver Notification to Passenger**

5.20 This is unnecessary regulatory intrusion into private adult interaction.

5.21 The Act does not require mutual disclosure among adults.

5.22 We recommend removal.

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### **5(4)(b) – Driver Verification of Passenger Quantity**

5.23 This creates a private enforcement duty not contemplated by the Act.

5.24 Private citizens should not be deputised as compliance officers.

5.25 We recommend removal.

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### **5(5) – Concealment at Time of Loading**

5.26 This repeats concealment requirements already addressed above.

5.27 For the reasons stated in paragraphs 5.1–5.5, we recommend deletion.

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### **5(6) – Variety or Strain Permissible by Law**

5.28 This provision lacks clarity.

5.29 No current general law limits permissible strains for private adult use.

5.30 This clause may introduce ambiguity and selective enforcement risk.

5.31 We recommend either clarification or removal.

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## **Regulation 6 – Passenger Provisions**

6.1 Many provisions mirror Regulation 5 and raise identical concerns.

6.2 Where duplication exists, consolidation is preferable.

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### **6(1) – Concealment by Passenger**

6.3 For reasons stated in paragraphs 5.1–5.5, concealment is unnecessary and unenforceable.

6.4 We recommend deletion.

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### **6(2)(a) – Quantity Compliance**

6.5 This is acceptable, provided clarity exists on cumulative possession across passengers.

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### **6(2)(b) – Not Readily Accessible to Others**

6.6 This resembles firearm-style regulation and is disproportionate for cannabis.

6.7 The Act does not impose inter-passenger access restrictions.

6.8 We recommend removal.

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### **6(3)(a) – Mixing Prohibition**

6.9 See paragraphs 5.8–5.11.

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### **6(3)(b) – Handling Prohibition**

6.10 See paragraphs 5.12–5.15.

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### **6(3)(c) – Disclosure Prohibition**

6.11 See paragraphs 5.16–5.19.

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**6(4) – Passenger Notification to Driver**

6.12 This duplicates 5(4) concerns.

6.13 It is unnecessary and unenforceable.

6.14 We recommend removal.

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**6(5) – Concealment at Loading**

6.15 See paragraphs 5.1–5.5.

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**6(6) – Variety or Strain Restriction**

6.16 See paragraphs 5.28–5.31.

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**Regulations 7–10 – Expungement Procedures**

7.1 We support these procedural mechanisms.

7.2 Timeframes are reasonable.

7.3 Standardised forms enhance administrative certainty.

7.4 No amendments proposed.

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**Regulation 11 – Short Title**

8.1 No objection.

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## **Overall Position**

9.1 We support the existence of clear quantitative thresholds.

9.2 We support administrative expungement processes.

9.3 We recommend removal of behavioural micromanagement provisions relating to concealment, disclosure, handling, and private enforcement duties.

9.4 Regulation should remain confined to objective, measurable standards authorised by section 6 of the Act.

9.5 Simplicity, clarity, and enforceability should guide finalisation.

We submit this response in a constructive spirit and remain available for engagement should the Department require clarification or further input.

## **List of Signees**

In addition, we submit, as an addendum, a list of signees from the Cannabis Community who support our submission.

Respectfully submitted,

Louis Eksteen

Cannabis Retail Association of South Africa – NPC 2025/550750/08

2026/03/05