

# SA's Grow Clubs and cannabis law: just how legal is it, really?

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A loophole may have provided space for edgy entrepreneurs...



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Somewhere in the industrial heartland of South Africa, a figure in a tie-dyed Grateful Dead hoodie looks out across a dimly-lit warehouse surveying an indoor jungle of flourishing marijuana plants. Somewhere else in the verdant suburbs of Cape Town, a young woman returns home from work and falls onto the couch. Before settling in to choose a series on Netflix, she picks up a wooden box from the coffee table, no longer hidden under the couch, takes out a pack of Rizla papers and a little bag of sweet-smelling marijuana.

## Cannabis for private use

You're not seeing the connection between a warehouse full of cultivated marijuana and a stoner-hipster lying on her couch? Why is the stoner-hipster no longer hiding her wooden box under the couch? What has changed to make these two scenarios interesting?

Well, it's 2019 and the use of cannabis "in private" and cultivating cannabis "in a private place" for personal consumption are no longer criminal offences in terms of the Drugs and Drug Trafficking Act 140 of 1992. In September 2018, the Constitutional Court confirmed the Western Cape High Court's unanimous judgment that flowing from the right to privacy entrenched in the Constitution, the use of cannabis "in private" and cultivating cannabis "in a private place" for personal consumption are no longer criminal offences in terms of the Act.

The Court found that the criminalisation of these acts in a private place for personal use constitutes an unjustified infringement on the right to privacy. The Constitutional Court did not decriminalise "dealing" or trading in cannabis as the right to privacy has no impact on the purchase or sale of cannabis. Along with this judgment, the South African Health Products Regulatory Authority earlier this year granted the first medical cannabis licence for the commercial production of medical cannabis.

## Edgy entrepreneurs and the fine line of the law

Our Grateful Dead groupie is, in fact, an entrepreneurial farmer. He has established a Grow Club to exploit the decriminalisation of the personal use and cultivation of cannabis "in private".

The Grow Club model sees the club's members rent space in a warehouse where professional cannabis farmers will grow a club member's "personal" stash.

The theory is that the rented space at the grow club is the private place of the member. The membership fee includes the rent and also the professional cultivation service required to grow and harvest the plants. The theory is also that there is no buying or selling of cannabis in the process and neither the Grateful Dead groupie, nor the stoner-hipster, are doing anything unlawful.

We return briefly to Cape Town where our stoner-hipster's doorbell rings. She gets up expecting to collect her sushi order from Mr D but instead she receives her personal marijuana, grown "by her" in her rented warehouse space and subsequently delivered to her at no additional charge. The first Grow Clubs in South Africa have already begun to pop up. The subscription fees are approximately R1,000 per month and members are restricted to two to four plants, depending on the club's rules.

## Legal loophole

The amendment of the legislation by an order of unconstitutionality may have created something of a "loophole" for Grow Clubs and for edgy entrepreneurs.

But Parliament will have the final say whether or not to follow global zeitgeist in favour of the legalisation of cannabis for medical and recreational purposes. In the meantime, there are a couple of questions worth mulling over:

- Is space in a warehouse, albeit rented for exclusive use, actually private?
- How is it possible that Rolling Stone magazine only ranked The Grateful Dead at 57 in its Greatest Artists of All Time?

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