

Submission to the Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018

The opportunity to provide feedback on the Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill to the Australian Capital Territory Legislative Assembly is most welcome.

Officially launched in 2014, Penington Institute grew out of the rich and vibrant work of one of its programs, Anex, and its 20 years' experience working with people and families directly affected by problematic drug use. Penington Institute's mission is to actively support the adoption of approaches to drug use that promote safety and human dignity. It does so through independent, non-partisan thought leadership, community education, training, research and policy formation.

The stated purposes of the Canadian *Cannabis Act* are pertinent and illustrative of a shift occurring in the control and regulation of cannabis globally and are to:

“protect public health and public safety and, in particular, to:

- (a) protect the health of young persons by restricting their access to cannabis;
- (b) protect young persons and others from inducements to use cannabis;
- (c) provide for the licit production of cannabis to reduce illicit activities in relation to cannabis;
- (d) deter illicit activities in relation to cannabis through appropriate sanctions and enforcement measures;
- (e) reduce the burden on the criminal justice system in relation to cannabis;
- (f) provide access to a quality-controlled supply of cannabis; and
- (g) enhance public awareness of the health risks associated with cannabis use.”

Evidence supports a shift away from enforcement-based regulation of low-level cannabis possession and use in the ACT for the following reasons:

- Enforcement-based approaches that focus on criminalisation have proven ineffective at reducing the availability of cannabis use and levels of cannabis use in Australia as well as being extremely costly;
- Cannabis has a low harm profile compared to other licit and illicit drugs, and the harms of cannabis use are better managed through other mechanisms (social, health and community services);
- Regulating low-level cannabis use through other means minimises cannabis users' contact with the criminal underworld (who now monopolise high-scale supply of cannabis) and the justice system, rebalancing criminal justice resources to more serious crime.

Cannabis is the most widely used and trafficked illicit substance globally, and this holds true for Australia. The 2016 National Drug Strategy Household Survey showed that 35% of Australians (6.9 million people) over the age of 14 years had used cannabis at least once in their lifetime and 10.4% (2.1 million) in the last 12 months. Of the latter, 14.4% used every day.¹

This is despite possession and use of cannabis being illegal in Australia. In 2016-17, there were approximately 60,000 cannabis seizures, constituting a total weight of 7,547 kilograms. In the same period, there were 77,549 cannabis-related arrests nationally.² While these figures are significant, cannabis remains readily available for those Australians who want to access it.

In 2017-18, 78,000 people faced court on illicit drug charges in Australia, constituting the second most populous offence category (behind acts intended to cause injury).³ For people sentenced to prison, illicit drug charges constitute the second largest charge category.⁴ Clearly, the regulation of illicit drugs through enforcement constitutes a significant portion of criminal justice resource expenditure.

However, there is growing recognition that the criminalisation of cannabis is not only ineffective at controlling its use and availability in the community but is likely to produce its own harms.⁵ The criminalisation of illicit drugs in general incurs several forms of social harm: the criminalisation of users; the costs of enforcement; a further burdening of an overcrowded criminal justice system; increases to the prison population; maintaining the black-market demand for illicit drugs; and marginalising people who use drugs away from social, health and support resources.⁶

In many ways, the criminal justice system in Australia recognises and attempts to mitigate the harms arising from the continued criminalisation of cannabis. Cannabis possession was decriminalized in South Australia in 1987, in the ACT in 1992 and all other states and territories have warning systems or diversion programs in place.

Angela Smith, an Australian Federal Police officer based in Canberra and president of the Australian Federal Police Association said in relation to cannabis arrests in the ACT: 'Most – and I'd suggest all – would be diverted to the drug diversion program.'⁷ That the practice of diversion is so common constitutes

¹ AIHW (2016) *National Drug Strategy Household Survey 2016: Detailed Findings*, Australian Institute of Health and Welfare

² ACIC (2017) *Illicit Drug Data report 2016-17*, Australian Criminal Intelligence Commission.

³ ABS (2018) 'Key Findings: Illicit Drug Offences', *Australian Bureau of Statistics*:

<https://www.abs.gov.au/ausstats/abs@.nsf/mf/4519.0>

⁴ ABS (2018) 'Prisoner Characteristics, Australia: Snapshot', *Australian Bureau of Statistics*:

<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2018~Main%20Features~Prisoner%20characteristics,%20Australia~4>

⁵ Law Reform, Road and Community Safety Committee (2018) 'Inquiry into drug law reform', *Parliament of Victoria*.

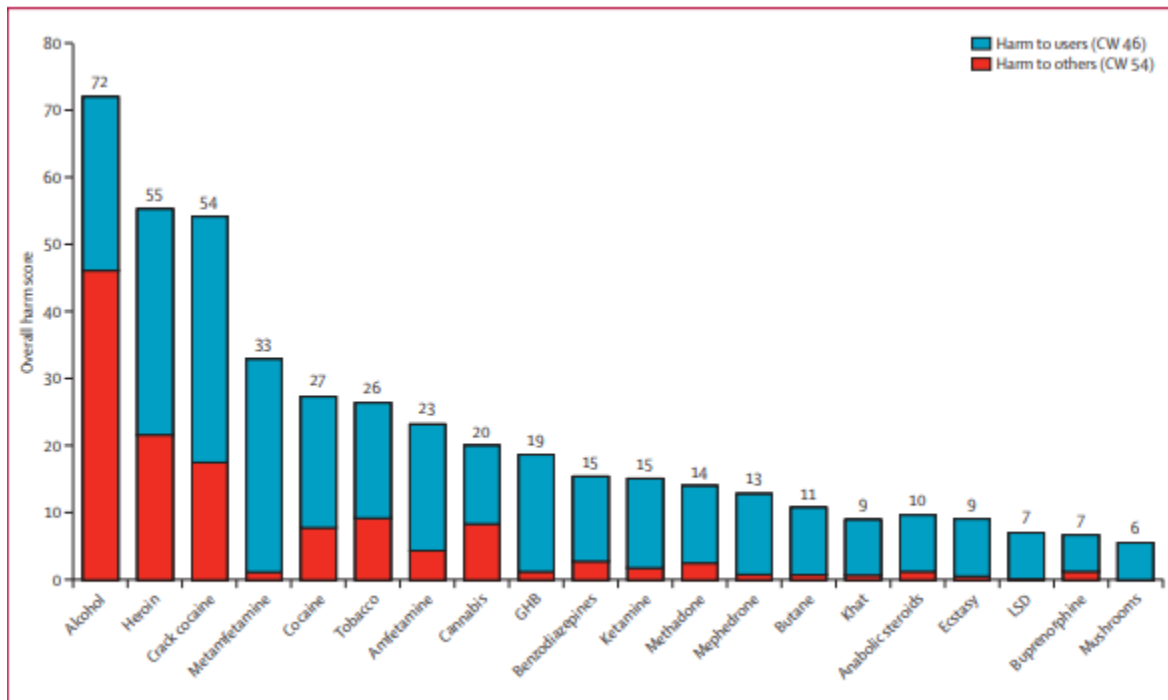
⁶ Mostyn et al (2012) 'The Criminalisation of Drugs and the Search for Alternative Approaches', *Current Issues in Criminal Justice*, vol. 24(2).

⁷ Pryor, S. (2018) 'Everything you need to know about legalizing cannabis in the ACT', 14th December, *The Canberra Times*.

a recognition within the criminal justice system that enforcement-based criminalisation is not an appropriate or effective response to cannabis use.

The exact number of cannabis-related police warnings or diversions issued is difficult to know but there is widespread acknowledgement that, unless accompanied by other offending, criminal charges for low-level cannabis possession are uncommon in the ACT. If the majority of low-level cannabis offending is diverted, this begs the question why the low-level possession and use of cannabis is criminalised at all? The health focused approach, to legalise low-level possession and use, as the current bill proposes, while retaining penalties for higher levels of production, trafficking and inappropriate use (i.e. around children) is likely to protect the community from harm.

It must be noted that there are harms associated with cannabis use – as there are with all drugs. In fact, the harms of legal drugs such as alcohol, tobacco and pharmaceuticals are considerable.⁸ The harms of cannabis may include dependence, increased tolerance and use. There are also associations between cannabis use and poor mental health, but the exact nature of this relationship remains unclear.⁹ A 2010 study by Professor David Nutt scored various drugs according to the harms (to the user and others as well as social, economic and environmental harms) associated with it. Out of a possible score of 100, cannabis scored 20 compared to 55 for heroin and 72 for alcohol (see graph below).¹⁰ If the severity of regulatory responses should be proportionate to the degree of harm posed by a specific drug, then current responses to cannabis are in clear need of reform.



Nutt et al's table ordering drugs by their overall harm score.

⁸ Law Reform, Road and Community Safety Committee (2018).

⁹ Law Reform, Road and Community Safety Committee (2018).

¹⁰ Nutt, D. et al (2010) 'Drug harms in the UK: a multicriteria decision analysis', *The Lancet*, vol. 376(9752).

Considering such evidence, there is increasing recognition that, despite extensive efforts at enforcement, cannabis remains the most widely used illegal drug in the world. If current responses to cannabis are ineffective at reducing supply, and diversion programs are needed to avoid the harms of interventions, the current model is not an effective means of controlling access to cannabis.

Several jurisdictions, most notably Uruguay, Canada and several states in the US, have in recent years legalised cannabis for recreational use. Several more countries, Australia included, have enacted reforms to increase access to medicinal cannabis. And still others (i.e. Portugal) have enacted policies to reduce the harms associated with the criminalisation of cannabis and other drugs. Demonstrably, there are an array of options for regulatory control of cannabis not premised upon criminalisation and enforcement.

The careful and responsive regulation of a product for which there is established demand offers a greater degree of control than enforcement-based criminalisation. As many commentators and experts have noted, the criminalisation of drugs ensures that drug markets remain unregulated, lack quality control and safety standards, and funnel profits to criminal enterprises.¹¹ Regulated legalisation on the other hand, offers a range of levers with which to control supply, quality and access, as well as offering an opportunity for significant revenue raising through taxation.

Uruguay, for example, legalised cannabis in 2013. Its regime consists of allowing the growing of up to six plants at home for personal use as well as registered growing clubs for up to 99 plants, enabling access to cannabis for non-growers without the profit incentive to increase the market. A state-controlled cannabis dispensary was established along with the creation of a cannabis regulatory institute to oversee the market. This is significantly different from North American models (Canada and several US states), which some have described as ‘for-profit commercial models’ where for-profit producers and retailers are licensed by the government.¹² This latter is similar to the current model for the supply and sale of alcohol in most countries.

One important question for jurisdictions considering cannabis-related regulatory and legislative reform is how to control the access of young people to cannabis. In Australia, young people make up a significant proportion of people who use cannabis: the average age of first use of cannabis is 18.7 years, and 22% of people aged in their 20s had recently used cannabis.¹³ Young people are at heightened risk of drug-related harms for a range of reasons, including the effects of regular use on their developing brains.

In Canada, young people (those aged below 18) are subject to tighter cannabis regulation. Where adults may possess up to the 30 grams dried cannabis (or resin/oil equivalent), a young person may only possess less than five grams. In fact, the first stated purpose of the Canadian *Cannabis Act* is to:

- (a) protect the health of young persons by restricting their access to cannabis;¹⁴

¹¹ Shanahan and Ritter (2014) ‘Cost Benefit Analysis of Two Policy Options for Cannabis: Status Quo and Legalisation’, *PLOS ONE*.

¹² Homel and Brown (2017) ‘Marijuana legislation in the United States: An Australian perspective’, *Trends and Issues in Crime and Criminal Justice*, Australian Institute of Criminology.

¹³ AIHW (2016).

¹⁴ *Cannabis Act*, Parliament of Canada: <https://laws-lois.justice.gc.ca/eng/acts/c-24.5/page-2.html#h-6>

Further, the Act specifically states that:

5.1 For greater certainty, nothing in this Act is to be construed as limiting the operation of the extrajudicial measures that are provided for under the *Youth Criminal Justice Act*.¹⁵

Additional restrictions relating to supply and retail apply to young people in Canada that ensure their access to cannabis is limited while not criminalising or punishing young people who possess or use cannabis.

Penington Institute endorses the proposed Act's retention of the Simple Cannabis Offence Notice for those under the age of 18 caught possessing cannabis to facilitate them into health and social interventions.

However, Penington Institute questions the proposed Act's failure to address the issue of supply. Retaining criminal penalties for the distribution of small quantities of cannabis seems inconsistent with the legalisation of possession. The proposed Act fails to address non-commercial modes of supply such as sharing or other means of exchanging. Penington Institute recommends that the Act clarify what modes of supply are protected by the bill, while retaining penalties for supply to a minor, but supporting non-criminal access for those personally unable to grow cannabis.

Penington Institute also notes the restrictions on indoor and so-called 'artificial' cultivation. While it is understandable for the ACT to want to avoid legalising hydroponic 'grow-houses', the four-plant limit and prevention of inside growing, even in soil, effectively achieves this. Not allowing indoor plants or those assisted with lamps seems unfair and unrealistic to the many Canberrans who live in apartments or do not have backyards, particularly from lower socio-economic backgrounds. Further, if those Canberrans living in an apartment wish to purchase cannabis (because they cannot grow it), they are liable to criminalisation for this.

Amending the Act to allow indoor cultivation while retaining a clear distinction between cultivating cannabis for personal use and commercial gain solves this problem.

As demonstrated by the examples above, there is a range of options allowing different levels of regulatory control and flexibility to ensure unintended consequences are avoided (see Homel and Brown 2017 for further details). The ACT should be commended for seeking reform in this area, and endorses changes proposed such as those in the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018*, particularly if they are able to reduce the scale and profits of the criminal underworld suppliers of cannabis and reduces the need to engage the criminal underworld to access a drug known to be dramatically less harmful than most drugs, including cigarettes.

¹⁵ Ibid.