Inquiry into the Legalising Cannabis Bill 2023

Brief Submission from the National Drug Research Institute, Curtin University (NDRI)

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Overview

The National Drug Research Institute's (NDRI) purpose is to conduct and disseminate research that supports evidence -informed policy and practice to prevent and minimise alcohol and other drug-related health, social, cultural and economic harms.

Since its inception in 1986, the Institute has grown to employ about 25 research staff, making it one of the largest centres of drug research and public health expertise in Australia.

Researchers have completed more than 500 research projects, resulting in a range of positive outcomes for policy, practice and the community. For example, NDRI research has significantly informed and contributed to policy and evidence-based practice such as the National Amphetamine-Type Stimulants (ATS) Strategy, the National Drug Strategy and the National Alcohol Strategy; contributed to Australia's involvement in international strategies, such as WHO Global and Regional Strategy to Reduce Harmful Use of Alcohol; significantly contributed to international evidence-based school interventions; influenced NHMRC guidelines to reduce alcohol health risks; been cited in development of policy documents for Aboriginal Australians; and directly contributed to Australian and State government alcohol and illicit drug policy, including in the areas of naloxone availability and cannabis policy.

NDRI's previous involvement in research leading to cannabis law reform

NDRI, and Lenton in particular, has a long history of conducting research bearing on cannabis policy reform. We have previously documented the adverse impacts of a criminal conviction on individuals apprehended for a minor cannabis offence in Western Australia and compared these with the impacts of a civil penalty in South Australia (Lenton, Humeniuk, Heale, & Christie, 2000). We have provided evidence that less than 3 per cent of cannabis users in one year unlucky enough to be apprehended face a criminal charge (Lenton, 2000) and a conviction fails to provide a specific deterrent effect, doing very little to affect the cannabis use of those who are convicted (Lenton & Heale, 2000). On the basis of such evidence, we recommended the application of civil rather than criminal penalties for minor cannabis offences in Victoria (Lenton, Heale, et al., 2000) and Western Australia (Lenton, 2004), which contributed to the implementation of the Cannabis Infringement Notice scheme in Western Australia in 2004 under the Gallop government (Lenton & Allsop, 2010) (the scheme was repealed by the Barnett government in 2011).

Beyond this, NDRI was involved in research on the implementation of the legal cannabis regime in Colorado (see Subritzky, Lenton, & Pettigrew, 2016; Subritzky, Pettigrew, & Lenton, 2017) Lenton is also part of a large international study of small-scale cannabis growers in 15 (Lenton, Frank, Barratt, Dahl, & Potter, 2015; Lenton, Frank, Barratt, Potter, & Decorte, 2018; Potter, et al., 2015) and now 18 countries [See: https://worldwideweed.nl/].

With the developments in legal medical and 'recreational' cannabis markets internationally, consideration of cannabis policy options for which we have evidence of implementation and effects has moved beyond the comparison of strict criminal penalties schemes versus civil penalty schemes to consider both commercial and non-commercial models of cannabis regulation post prohibition (Decorte, Lenton, & Wilkins, 2020; Kilmer, 2017).

Overall intent of the Bill

Overall, we see the Bill to be well intended and consistent with the developing research evidence on the impact of cannabis legalisation schemes and expert advice and recommendations regarding the potential public health benefits of middle ground, rather than fully commercial profit-driven, models of cannabis legalisation.

We also note the following specific elements of the Bill as beneficial and in keeping with the public health evidence:

1. Exclusion of persons involved in the manufacture of alcohol or alcohol products, tobacco or tobacco products, or pharmaceutical products from being able to receive a licence under Section 27 or engage in activities under Section 10.
2. Permitting cultivation of cannabis not more than 6 plants per household.
3. Allowing small scale social supply of cannabis where the value of the cannabis is not more than $50 under Section 20 (d).
4. Allowing for Cannabis Social Clubs under Section 27 (2) (b), a not-for-profit co-operative that is registered on a State or Territory co-operatives register.
5. Generally appropriate conditions for location and operation of cannabis cafes under Section 30.
6. Public health consistent requirements for labelling, packaging and storage of cannabis products under Section 32.

This Bill would override State and Territory Misuse of Drugs Acts with regard to possession and cultivation and supply of cannabis

We believe that the operation of the Bill under section 25 and 26 would essentially override State and Territory Misuse of Drugs Acts, making anyone in possession of a registered (or about to be registered) cannabis strain not *criminally* responsible for the offence. Whether this means that it would be potentially subject to *civil* rather than *criminal* law at State and Territory level is not clear to us. Further under Section 18 the growing of up to 6 cannabis plants (not simply registered strains) would be 'permitted' i.e. not a civil or criminal offence. Similarly under Section 20(d) supply of cannabis of not more than $50 value would be permitted.

The general point is that this Commonwealth Bill would override State and Territory Misuse of Drugs Acts with regards to possession of (registered) cannabis strains or cultivation of any cannabis plants and low level supply. Not only does this raise questions about the willingness of the Commonwealth to take such action, but also the implications of enforcement of the Act and its regulations. Would this be done by State and Territory law enforcement agencies, the Australian Federal Police, or both? What would be the implications of this?

Registering strains so Commonwealth law applies

The main challenge we see with the Bill, as drafted, is its framing around registration of cannabis strains. We understand that this has been done for the Commonwealth legislation to apply to what otherwise is essentially a matter for State and Territory legislation under the respective Misuse of Drugs Acts. This may be seen by some as a legally deft and convenient framing to make the Bill one that can be tabled in the Commonwealth Parliament which has jurisdiction over patent and such matters. However, in our view, the consequences of this make the Bill likely administratively cumbersome, possibly unworkable, and probably likely to produce enforcement challenges with regards to the activity of State and Territory police.

For example, we understand that what constitutes a cannabis strain is a matter of contention but as of 2015 there were over 700 strains which have been identified (Gloss, 2015) and there are likely to be many more as a result of the efforts of cannabis breeders in legal markets in the years since.

Section 7, Definitions defines a ***cannabis strain*** as 'a cannabis plant grouping that is distinguishable from another cannabis plant grouping on the basis of one or more botanical, ethnobotanical or genetic identifiers.'

Our understanding of how the proposed bill is to operate is that it the meaning of 'regulated cannabis activity' (section 10) only applies to activities (10 (a) to 10 (l) which are undertaken using 'registered cannabis strains'.

The testing and codification of these over 700 strains will likely be a complex, time consuming and potentially expensive process if it relies on genetic testing.

However, more significantly, we have concerns about the workability of Section 25 (d) dealing with possession of cannabis products by minors and Section 26 dealing with possession of cannabis products by other persons. Specifically, it is hard to fathom how law enforcement at a State and Territory level are going to be able to determine, in a procedurally workable way, whether any sample of cannabis that an individual has in their possession is within, or without, the list of registered strains, given that the register may include hundreds of strains.

With regards to Section 29 Conditions of licences—operating a Cannabis Café it does not seem to be addressed how Australian workplace safety laws including operation of smoke-free workplaces will apply to Cannabis Cafes even if clauses 1 (a) (i) to (iii) apply.

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