

2 November 2023

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

To the Committee Secretary,

Re: Legalising Cannabis Bill 2023

The Alcohol and Drug Foundation (ADF) thanks the committee for the opportunity to comment on this bill. The ADF delivers evidence-based approaches to minimise alcohol and other drug harm. We recognise the power of strong communities and the important role they play in preventing problems occurring in the first place. A community-centric approach is at the heart of everything we do.

The ADF does not currently have a position supporting the legalisation of cannabis in Australia but recognises the emergence of this issue in global drug policy discussions. The ADF is committed to evidence-based drug policy that minimises harm via the three pillars of the *National Drug Strategy* – demand reduction, supply reduction, and harm reduction. The regulation of a harmful product for legal sale is a pathway that can achieve these ends, as is the case with the legal sale of tobacco and alcohol. The ADF has provided previous feedback to the draft version of this bill and will therefore aim only to raise select issues relating to the bill and the broader regulation of harmful substances.

Considerations for regulation of harmful substances

It is clear that prohibition of substances and the criminalisation of individuals using substances generates harm, but the evidence is also clear that there are risks associated with the use of psychoactive substances like cannabis. Any move to create a regulated market for cannabis must therefore strive to find a balance between ensuring adequate availability so that the illicit market is undermined, while also providing protections to ensure the risk of harms are reduced. These protections can include creating a non-for-profit or government monopoly model, limiting trading hours and outlet density, ensuring responsible service is in place, limiting online sales and delivery, limiting product types, age restrictions, bans on promotion, effective pricing, and minimising the role of for-profit actors in the sector.

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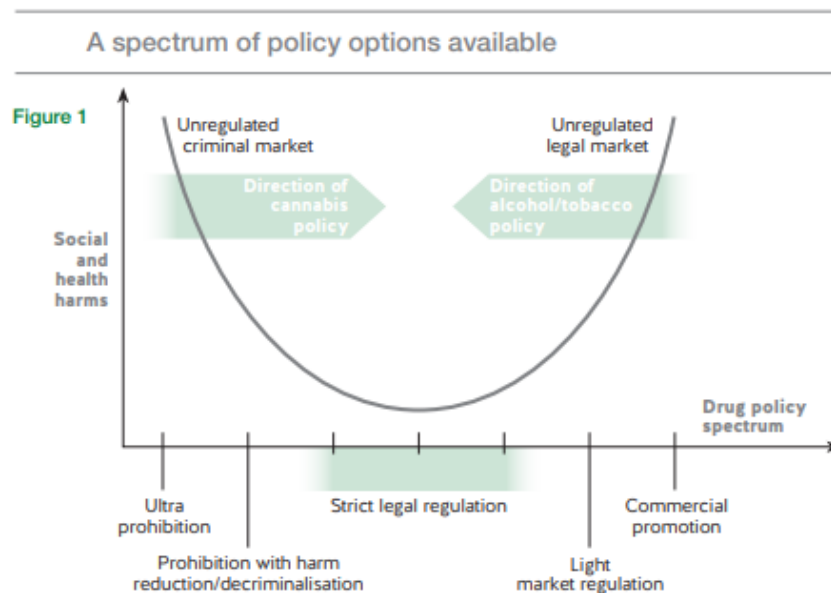
Lessons from alcohol and tobacco control have demonstrated that creating safer environments through regulating availability, pricing, and promotion, can have profound impacts on the public health outcomes associated with substance use while maintaining a legal market. An effective approach to cannabis regulation will involve the three pillars of harm minimisation – supply reduction through regulation, demand reduction through education and public health messaging, and harm reduction education and advice for those who do choose to use. A holistic approach will require going beyond the mechanics of legalisation and market regulation and must ensure that the community at large is targeted through holistic approaches.

The objective of legalisation would be to remove the criminal, economic, and social injustices that have been caused by cannabis prohibition, and to reduce the risk of harm associated with cannabis use. Therefore, the proposed model within this bill should be judged on these merits. Australia has extensive experience with the regulation of alcohol and tobacco, and lessons for the regulation of cannabis should be drawn from these. Minimising the impact of commercial actors in any proposed cannabis market should be a priority of the regulation of harmful substances, to ensure that its public health objectives can be maximised. The legalisation of cannabis can otherwise continue to reproduce inequalities, where economic considerations outweigh social and public health considerations. Experience in other harmful industries shows that commercial determinants in the health space can have an outsized impact on harms.

Commercial determinants of health

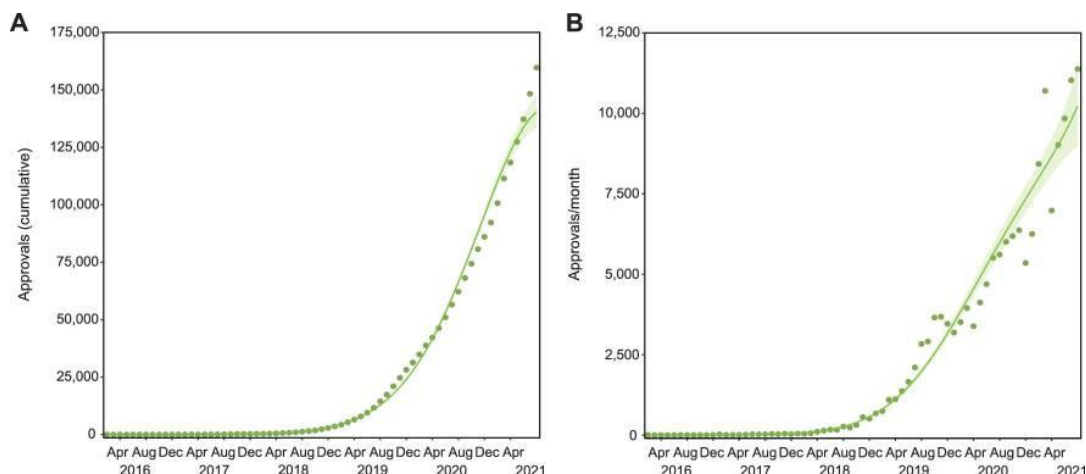
A growing body of research is exploring the commercial determinants of health. Commercial determinants of health are drivers of health outcomes that are motivated by commercial rather than public health interest¹. In other industries where harmful products are provided by for-profit organisations, there is a conflict between the incentives of for-profit organisations and public health outcomes. For-profit entities will invariably seek growth and profit as their key driver, without consideration of public health outcomes. The example of the tobacco industry demonstrates how for-profit business can actively work against the public good. It has taken decades of hard-fought regulation to contain the power of the tobacco industry in the developed world. Similar challenges exist in the alcohol and gambling spaces in Australia today. The ADF would therefore recommend that any model of cannabis legalisation be done with the role of commercial entities minimised, particularly at the point of retail sale.

Evidence from other harmful industries demonstrate that availability, pricing, and promotion, are all drivers of harms². Commercial providers have an incentive to increase availability, lower prices, and increase promotion of harmful products to maximise sales. At the other end of the spectrum, a fully prohibitionist approach unfairly criminalises and encourages illicit markets. An overly commercialised model drives harms through heightened availability and promotion, while regime of overregulation drives harm through forcing individuals into black markets and criminalisation. The following diagram from Transform Drug Policy Foundation demonstrates this spectrum of regulatory options and their corresponding harms:³



Medicinal Cannabis

The ADF would like to bring the committee's attention to the rapid proliferation of medicinal cannabis prescribing in Australia. Over 1 million prescriptions have been made to Australians since the classification of medicinal cannabis as a therapeutic good⁴. Of significant concern is the emergence of commercial actors in the medicinal cannabis space in Australia. The rapid proliferation of prescribing has seen the emergence of doctor's clinics that are marketed directly as cannabis clinics. Internet searches quickly produce numerous results. These clinics are vertically integrated – they conduct online consultations and then sell the prescribed medication to the consumer. This is of concern as these clinics have an incentive to prescribe medical cannabis products. As cannabis is not indicated for specific conditions, prescriptions can be made for a range of issues that may not have a solid evidence base. The following graph from a study by MacPhail et al. demonstrates the trend in medicinal cannabis prescribing.⁵ While this study's data stops at the end of 2021, this trend has largely continued.⁴



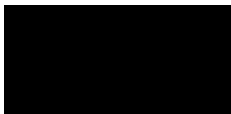
With the presence of commercial actors whose main purpose is to provide cannabis prescriptions and then sell the medicines, there is a risk that the motivation for prescribing is financial rather than medical. This has the potential to cause harms if cannabis products are inappropriately prescribed. The medicinal cannabis space is at greater risk of these harms given the significant increase in prescribing, ambiguity around prescribing practices, potential non-medical demand for cannabis, and the ongoing criminalisation of non-medical cannabis possession and use in Australia. Indeed, it is arguable that Australia risks developing a quasi-legalised market for non-medical cannabis access through medicinal cannabis. This is a serious issue that must be considered when assessing options for changes to cannabis regulation in Australia.

Cannabis and impairment testing

Drug driving and workplace testing is a key issue to resolve with the states and territories. This is already becoming an imperative with rising rates of medicinal cannabis prescribing and would be even more so under a legalised model. Currently roadside and workplace drug tests test for the presence of THC, the main psychoactive substance in cannabis, rather than for impairment. This is an issue as THC is lipid, rather than water-soluble, and can be detected in the blood for a long time after last use of cannabis – in some cases even months. This is presenting a complex issue for people prescribed medicinal cannabis who may not be impaired but may still be being detected with cannabis in their system, and potentially facing an immediate loss of licence. This may also be the case in industries where drug testing takes place. While the need for road and work safety is an imperative, the current approach penalises people who are not impaired – undermining the purpose of the law. Unfortunately, there are no clear technological or policy solutions at this stage. Serious work must be done on this issue to rectify the current injustice, and doubly so if legalisation of cannabis is to be considered.

The ADF thanks the committee for their time and encourages further engagement with evidence-based approaches to harm minimisation in drug policy.

Sincerely,



Dr. Erin Lalor

CEO

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References

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2. World Health Organisation. WHO Expert Committee on Problems Related to Alcohol Consumption. Geneva: WHO; 2007.
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5. MacPhail SL, Bedoya-Pérez MA, Cohen R, Kotsirilos V, McGregor IS, Cairns EA. Medicinal Cannabis Prescribing in Australia: An Analysis of Trends Over the First Five Years. *Front Pharmacol*. 2022;13:885655.