

**THE CRIMINAL CODE AND OTHER LEGISLATION
AMENDMENT (REMOVING
COMMONWEALTH RESTRICTIONS ON CANNABIS)
BILL 2018**

**Submission from the National Drug Research
Institute, Curtin University (NDRI) to Senate
Legal and Constitutional Affairs Legislation
Committee
*June 2018***

Professor Simon Lenton

Director

National Drug Research Institute

Curtin University

Building 609 (Level 2), 7 Parker Place

Technology Park, Bentley WA 6102

ndri@curtin.edu.au



About NDRI

The National Drug Research Institute's (NDRI) mission is to conduct and disseminate high quality research that supports evidence informed policy, strategies and practice to prevent and minimise alcohol and other drug-related health, social and economic harms among individuals, families and communities in Australia. Since its inception in 1986, the Institute has grown to employ about 30 research staff, making it one of the largest centres of drug research and public health expertise in Australia. It is a World Health Organization Collaborating Centre for Alcohol and Drug Abuse.

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; directly contributed to Australian and State government alcohol and illicit drug policy, including cannabis policy and naloxone availability; significantly contributed to international evidence-based school interventions; influenced NHMRC guidelines to reduce alcohol health risks; and been cited in development of policy documents for Aboriginal Australians. The Institute's work was described as *"research considered truly internationally competitive and making a major contribution to the advancement of knowledge"* in the Research Quality Framework.

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 1% of cannabis users in one year unlucky enough to be apprehended 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 led 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 is currently involved in research on the implementation of the legal cannabis regime in Colorado (see Subritzky, Pettigrew, & Lenton, 2016; Subritzky, Pettigrew, & Lenton, 2017).

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 (Kilmer & Pacula, 2017).

Australia as a venue for cannabis policy experiments

The fact that drug possession and supply law has effectively been state and territory law has meant Australia has provided an opportunity for natural policy experiments, such as those studies referred to above. Consistent with that, a number of Australian states and territories have implemented various civil and cautioning schemes for cannabis, while maintaining prohibition. Prohibition with civil penalties schemes were introduced for minor cannabis offences in South Australia in 1987, the Australian Capital Territory in 1992, the Northern Territory in 1996 and in Western Australia from 2004 to 2011. Furthermore, prohibition with cautioning and diversion schemes were introduced for cannabis in the non-civil penalty jurisdictions and for all other illegal drugs (heroin, amphetamine-type stimulants, cocaine, LSD, ecstasy, etc.) for all Australian states and territories under the Illicit Drug Diversion Initiative (IDDI) introduced under the Howard Government in 1999. However the federal prohibition on cannabis has provided a legislative impediment on non-prohibition policy reforms at a state and territory level, even if to date, none have been actively proposed or implemented. To the extent that the current Bill would potentially remove a federal barrier to state and territory implementation of post prohibition models of cannabis regulation would, from a scientific point of view, be a move forward. Although from a public policy and regulatory point of view we have some concerns about the proposal.

Implications of removing Australian border controls on cannabis and cannabis products

Essentially this Bill aims to remove Commonwealth restrictions on cannabis to leave decisions on its legal status up to the states. This will effectively allow the states to set their own legislative parameters with regards to cannabis, independent of Commonwealth controls. But customs and import controls will also be removed by these actions. What will be the implications of this on the ability to control cannabis products coming into the country? If such controls were removed, it is highly likely there would be many attempts to bring herbal, concentrates and edible and other cannabis products into the country. Are state and territories set up to monitor and control such importations? We note that even in current legal and regulated markets in North America that have implemented product testing systems, there have been problems with large volumes of cannabis product contaminated with dangerous chemicals being released onto the domestic market (Miller & Looi, 2017; Raber, Elzinga, & Kaplan, 2015; Robertson, 2017; Subritzky, et al., 2017). Should the federal ban be lifted, what mechanisms will be in place to protect Australian cannabis consumers from contaminated cannabis products entering the Australian market? We believe if the Bill is to be passed, then the Commonwealth and states need to identify existing mechanisms or explore new measures to appropriately regulate the importation of what will be legal cannabis products.

Public support for legalisation of cannabis in Australia

There has not been a recent comprehensive public debate in Australia about the pros and cons of legalising cannabis for non-medical or 'recreational use'. Although support for legalisation of cannabis for medical purposes has been high for some time, increasing from 69% in 2013 to 85% in 2016, support for the legalisation of cannabis (for recreational purposes) among the general Australian population has increased from 26% in 2013 to 35% in 2016 (Australian Institute of Health and Welfare, 2017). Even if this is an underestimate, it is hard to imagine that legalisation of cannabis for recreational purposes is supported by more than 50% of the population.

International evidence on the impacts of cannabis legalisation schemes is still accruing

There are a number of jurisdictions internationally that have embarked or are embarking on a variety of legalisation measures (Drug Abuse Control Commission Organization of American States, 2014; Health Canada, 2016; Homel & Brown, 2017; Kilmer, 2017; Parliament of Canada, 2017). Evidence on the resulting benefits and costs is starting to accrue but it may take 10 years (Homel & Brown, 2017) or up to a generation (Caulkins & Kilmer, 2016) before all the evidence is in. Australia is well placed to learn from international examples, yet the evidence is still accruing. Parliament may decide to pass this Bill into legislation to allow states and territories to implement schemes to legally regulate cannabis for 'recreational' use. Should it do so, it should be clear that this is in an environment where the costs and benefits of the various options for regulating cannabis in a legal market are not yet known.

Assumptions in the modelling informing the Bill

The proposal only considers revenue to the Commonwealth from GST and other sources of revenue. Neither public health costs nor the anticipated costs of proper regulation of a legal cannabis market are included and these are likely to be substantial, even if they are largely borne by the states.

The model assumes cannabis use will increase. This is based on an assumption that all states and territories legalise and seems to assume a fully commercial model. It is not clear that a fully commercialised model is the ideal from a public health point of view (consider alcohol and tobacco) (Caulkins, 2014). There are non-commercial models such as Cannabis Social Clubs operating in Spain, Belgium, U.K., Italy, Slovenia, the Netherlands and Uruguay (Queirolo, Boidi, & Cruz, 2016) and while these are likely to have less adverse impacts on public health, revenue to the government through GST and sales taxes are likely to be far less than that generated by a fully commercialised model. Australia is also yet to have a debate about the type of model of cannabis regulation post legalisation. In that sense, assuming a fully commercialised model provides heroic assumptions about potential revenues for government.

The explanatory memorandum in the justification notes that while the proposal to legalise is in breach of Australia's obligations under international drug treaties and conventions, it cites a number of examples of current legal regimes as evidence that in practice the sanctions have been minor. However, it should be noted that United Nations treaty obligations only apply to nation states and thus the U.S. states that have legalised cannabis for recreational purposes are outside the remit of the conventions and, as currently federally the U.S. maintains a prohibition, these examples do not apply. Similarly, the Netherlands maintains its prohibition on the books and as such is not in direct breach of the treaties (Room, Fischer, Hall, Lenton, & Reuter, 2010). The only nation state who has currently legalised cannabis for recreational purposes is Uruguay (Kilmer & Pacula, 2017). Canada plans to implement its legalisation nationally on 1 July 2018. It is currently uncertain how it will be handled by the U.N. drug control conventions and structure (Bear, 2017).

References

- Australian Institute of Health and Welfare. (2017). *National Drug Strategy Household Survey (NDSHS) 2016 key findings*. Canberra: Government of Australia
- Bear, D. (2017). From Toques to Tokes: Two challenges facing nationwide legalization of cannabis in Canada. *International Journal of Drug Policy*, 42, 97-101.
- Caulkins, J. P. (2014). Nonprofit motive: How to avoid a likely and dangerous corporate takeover of the legal marijuana market. *Washington Monthly*, March/April/May, 39-41.
- Caulkins, J. P., & Kilmer, B. (2016). Considering marijuana legalization carefully: insights for other jurisdictions from analysis for Vermont. *Addiction*, 111, 2082-2089.
- Drug Abuse Control Commission Organization of American States. Comparison of Marijuana Laws/Regulations: Colorado, Washington, Uruguay, Oregon, Alaska and District of Columbia," Inter-American. Retrieved 8.02.2016 from www.cicad.oas.org/Main/Template.asp?File=/drogas/cannabis/comparativeLegalAnalysis_ENG.asp.
- Health Canada. (2016). *A Framework for the Legalization and Regulation of Cannabis in Canada: The Final Report of the Task Force on Cannabis Legalization and Regulation*. Ottawa: Health Canada. Available at: <https://www.canada.ca/en/services/health/marijuana-cannabis/task-force-cannabis-legalization-regulation.html> (Accessed 29.08.17).
- Hommel, R., & Brown, R. (2017). *Marijuana legalisation in the United States: An Australian perspective*. Canberra: Australian Institute of Criminology. Available at: <https://aic.gov.au/publications/tandi/tandi535> (Accessed 9.04.18)
- Kilmer, B. (2017). Recreational Cannabis - Minimizing the Health Risks from Legalization. *New England Journal of Medicine*, 376, 705-707.
- Kilmer, B., & Pacula, R. L. (2017). Understanding and learning from the diversification of cannabis supply laws. *Addiction*, 112, 1128-1135.
- Lenton, S. (2000). Cannabis policy and the burden of proof: Is it now beyond reasonable doubt that cannabis prohibition is not working? *Drug and Alcohol Review*, 19, 95-100.
- Lenton, S. (2004). Pot, politics and the press - Reflections on cannabis law reform in Western Australia. *Drug and Alcohol Review*, 23, 223-233.
- Lenton, S., & Allsop, S. (2010). A tale of CIN - The Cannabis Infringement Notice Scheme in Western Australia. *Addiction*, 105, 808-816.
- Lenton, S., & Heale, P. (2000). Arrest, court and social impacts of conviction for a minor cannabis offence under strict prohibition. *Contemporary Drug Problems*, 27, 805-833.
- Lenton, S., Heale, P., Erickson, P., Single, E., Lang, E., & Hawks, D. (2000). *The regulation of cannabis possession, use and supply: A discussion document prepared for the Drugs and Crime Prevention Committee of the Parliament of Victoria. (NDRJ Monograph No. 3)*. Perth: National Drug Research Institute, Curtin University of Technology.
- Lenton, S., Humeniuk, R., Heale, P., & Christie, P. (2000). Infringement versus conviction: The social impact of a minor cannabis offence in SA and WA. *Drug and Alcohol Review*, 19, 257-264.
- Miller, M., & Looi, S. (2017). Do You Know Enough About The Risk Of Toxic Pesticides In Your Weed? In *HERB*. Available at: <http://herb.co/2017/03/04/toxic-pesticides-cannabis/> (Accessed 19/4/2017).
- Parliament of Canada. (2017). Bill overview: An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and Other Acts (Cannabis Act). In *EDMS-#499782-v1-Tab B*.
- Queirolo, R., Boidi, M. F., & Cruz, J. M. (2016). Cannabis clubs in Uruguay: The challenges of regulation. *International Journal of Drug Policy*, 34, 41-48.
- Raber, J. C., Elzinga, S., & Kaplan, C. (2015). Understanding dabs: Contamination concerns of cannabis concentrates and cannabinoid transfer during the act of dabbing. *Journal of Toxicological Sciences*, 40, 797-803.
- Robertson, G. (2017). More than \$1million of tainted medical marijuana destroyed. In *the Globe and Mail*. Available at: <http://www.theglobeandmail.com/news/national/morethan1millionoftaintedmedicalmarijuanadestroyed/article34026223/> (Accessed 19/4/17).
- Room, R., Fischer, B., Hall, W., Lenton, S., & Reuter, P. (2010). *Cannabis Policy: Moving Beyond Stalemate*. New York: Oxford University Press.
- Subritzky, T., Pettigrew, S., & Lenton, S. (2016). Issues in the implementation and evolution of the commercial recreational marijuana market in Colorado. *International Journal of Drug Policy*, 27, 1-12.
- Subritzky, T., Pettigrew, S., & Lenton, S. (2017). Into the void: Regulating pesticide use in Colorado's commercial cannabis markets. *International Journal of Drug Policy*, 42, 86-96.