
Criminal Code and Other Legislation Amendment (Removing Commonwealth Restrictions on Cannabis) Bill 2018

Submission prepared for the
Senate Legal and
Constitutional Affairs
Legislation Committee

Erin Lalor
CEO
Erin.lalor@adf.org.au

June 2018

Level 12
607 Bourke Street
Melbourne VIC 3000

PO Box 818
North Melbourne
VIC 3051

-
T 03 9611 6100
F 03 8672 5983
adf@adf.org.au
adf.org.au

ABN 66 057 731 192

Introduction

Founded in 1959, the Alcohol and Drug Foundation (ADF) has contributed nearly 60 years of continuous service to communities across Australia. The ADF is one of Australia's leading bodies working to reduce the burden of disease caused by alcohol and other drug problems in local communities around the nation.

The ADF's focus is on prevention and early intervention and our strategies include community action, health promotion, education, information, policy, advocacy, and research.

The ADF welcomes the opportunity to comment on the Criminal Code and Other Legislation Amendment (Removing Commonwealth Restrictions on Cannabis) Bill 2018 and we would be pleased to provide further advice should the Committee consider that useful.

Overview of the Bill

The ADF understands that this Bill has an impact on all Commonwealth legislation that limits access to cannabis for any purpose. Under this Bill cannabis will not be a prohibited substance at Commonwealth level and control of cannabis and related products will shift to the state and territory level. This Bill enables states and territories to determine their own stance independent of the Commonwealth so they may continue to prohibit cannabis, except for medical purposes, or legislate to render it legal, subject to various conditions. According to the Explanatory Memorandum the aim of the Bill is to enable a state or Territory government to legislate to make lawful the ingestion of cannabis for any purpose, medical or non-medical.

Rationale for Review of Drug Laws

A growing mood for review of illicit drug policy is apparent due to an awareness that traditional policies and practices have not solved a seemingly intractable problem. The impulse for policy reform is driven by a body of evidence that identifies growing human and financial costs of an endless 'war on drugs'. In 2008 the United Nations Office on Drugs and Crime (UNODC) stated illicit drug prohibition has many unintended negative consequences:

- The creation of a black market that provides criminals with substantial revenue;
- 'Policy displacement' where resources are directed from health services to law enforcement;
- A 'balloon effect' where drug production, transit and supply shifts from place to place under pressure from law enforcement efforts but continues to supply a constant demand for drugs;
- 'Substance displacement' where enforcement measures on one drug results in consumption of other substances;
- Stigmatisation of drug use which prevents people in need from accessing treatment and support.

Prevalence of Cannabis in Australia

Cannabis is the most prevalent illicit drug in Australia as it has been for several decades. In 2016 the most recent National Drug Strategy Household Survey estimated that one-third (35%) of Australians aged over 15 years in 2016 had used cannabis in their lifetime, 10.4% used had cannabis within the past 12 months, of whom 14.4% or (302,400 people) used cannabis every day. (1)

The impulse for Policy Reform

The ADF believes there is a need to reconsider the treatment of non-medical or recreational use of cannabis in Australia. People charged with low-level cannabis offences of possession and/or use of cannabis, face consequences that are not proportionate to the offence: these include impeding access to certain occupations and travel to certain countries. An advantage of removing criminal sanctions for low-level cannabis offences would be the avoidance of a criminal record, reduced stigma leading to better access to treatment, and the relieving of a burden on the law enforcement and judicial systems. Advocates for drug law reform usually propose either the decriminalisation or the legalisation of cannabis.

Decriminalisation:

Legalisation is often confused with “decriminalisation”. Decriminalisation removes criminal sanctions for minor offences, such as possession of a small amount of cannabis and replaces them with civil or administrative sanctions, such as warnings and fines. While the substance remains illegal the ‘offender’ does not receive a criminal record for possessing it. However, the production, distribution and sale of cannabis remain criminal activities and criminals continue to benefit from the illicit trade in production, distribution and sales. (2) *De jure* decriminalisation occurs when the law is changed to permit drug possession and use of limited amounts while *de facto decriminalisation* occurs when cases involving defined small quantities are not investigated or not prosecuted by police.

Legalisation

Legalisation allows the sale and consumption of cannabis as a legal product, subject to greater or lesser degrees of regulation, akin to state controls on alcohol, tobacco and pharmaceutical substances. A basic distinction is between commercial and non-commercial models of legalisation which either allow or prevent or restrict the role of private businesses in the market. The outcomes of cannabis legalisation will be influenced by the features of the legal market that is adopted: these include means of access to products, their availability and price, level of taxation, range and strength of products, right to domestic cultivation, and other economic and cultural matters. (3)

Alternative Models of Legalisation

Several national and state jurisdictions around the world have rendered the non-medical use of cannabis legal, though with differing levels of control by the state.

- Uruguay has a non-commercial market where people who register as cannabis consumers can purchase up to 40 grams of cannabis per month through pharmacies and they can cultivate six plants for their household. (4) Potency and price of cannabis products are strictly controlled by the government. (5)
- Colorado has established a commercial market for cannabis with comparatively minimal regulation, where private for-profit businesses compete to produce and sell a wide variety of products, from ‘traditional’ cannabis flower to edible foodstuffs and concentrated forms of cannabis. Potency and price of products is set by the market. (6)
- Canada has decided to introduce a commercial model with more centralised control than in Colorado, with the federal government responsible for licensing the production of cannabis and the individual provinces will have responsibility for controlling the terms of distribution and sale of legal products. (7)

As these models of legal cannabis are in their infancy, it is too early to draw firm conclusions about their effects, their impact on levels of cannabis use and related harms, on the black market, on stigma and on access to treatment for people whose use of cannabis requires professional assistance.

Conclusion

In the view of the Alcohol and Drug Foundation, the Criminal Code and Other Legislation Amendment (Removing Commonwealth Restrictions on Cannabis) Bill 2018 is premature in seeking to remove the legal barriers to non-medical use of cannabis. A decision to consider changing the legal status of cannabis deserves to be undertaken in the context of a critical and comprehensive review of all relevant matters and careful consideration of all options. Questions of drug policy are complex matters that involve scientific evidence, medical expertise, fears and volatile emotions and should not be decided in haste. The ADF believes a period of extensive community discussion is required that would allow the public and experts from various relevant disciplines to voice their views and debate the issues prior to a decision by policy makers.

The different legal cannabis systems in Colorado, Canada and Uruguay demonstrate that the question is not a simple one of either prohibition or legal regulation, but where legalisation is decided upon, attention will turn to consider the extent of regulation and the extent of government control. A thorough understanding of the implementation and results of legal cannabis regimes overseas would assist the public and policy makers to gauge the possible and likely effects of those systems. The current Bill before the Senate does not have the benefit of being founded on the results and conclusions of a broad ranging investigation into the pros and cons of providing greater access to cannabis, and consequently, in our view, the evidence that would enable a fully considered decision is not yet available.

References

1. Australian Institute of Health and Welfare National Drug Strategy Household Survey 2016: detailed findings. Drug Statistics series no.31. Cat. no. PHE 214. AIHW, Canberra, 2018.
2. Task Force on Legalization and Regulation of Cannabis. A Framework for the Legalization and Regulation of Cannabis in Canada. Government of Canada. Ottawa. 2016.
3. Caulkins, J., Kilmer, B., MacCoun, R., Pacula, R.L. & Reuter, P. (2011). Design considerations for legalizing cannabis: lessons inspired by analysis of California's proposition 19. *Addiction*, 107, 865-871.
4. Room, R. (2013). Legalizing a market for cannabis for pleasure: Colorado, Washington, Uruguay and beyond. *Addiction* doi:10.1111/add.12355
5. Kilmer, B. & Pacula, R.L. (2016). Understanding and learning from the diversification of cannabis supply laws. *Addiction*, 112, 1128–1135.
6. Parnes, J.E., Bravo A.J., Conner B.T. & Pearson M.R.A. (2018). A burning problem: cannabis lessons learned from Colorado. *Addiction Research and Theory*, 26(1), 3-10.
7. Task Force on Legalization and Regulation of Cannabis. A Framework for the Legalization and Regulation of Cannabis in Canada. Government of Canada. Ottawa. 2016