

Chapter 1

Introduction and overview

Referral and conduct of the inquiry

1.1 On 25 June 2015, the Senate referred an inquiry into personal choice and community impacts to the Senate Economics References Committee (committee) for inquiry and report by 13 June 2016.¹

1.2 The committee's terms of reference require it to report on:

The economic and social impact of legislation, policies or Commonwealth guidelines, with particular reference to:

- a. the sale and use of tobacco, tobacco products, nicotine products, and e-cigarettes, including any impact on the health, enjoyment and finances of users and non-users;
- b. the sale and service of alcohol, including any impact on crime and the health, enjoyment and finances of drinkers and non-drinkers;
- c. the sale and use of marijuana and associated products, including any impact on the health, enjoyment and finances of users and non-users;
- d. bicycle helmet laws, including any impact on the health, enjoyment and finances of cyclists and non-cyclists;
- e. the classification of publications, films and computer games; and
- f. any other measures introduced to restrict personal choice 'for the individual's own good'.

1.3 In accordance with usual process, the committee advertised the inquiry on its website and wrote to relevant persons and organisations inviting submissions to the inquiry.

1.4 To date, the committee has received 485 public submissions and two confidential submissions. The public submissions are available on the committee webpage.

1.5 The committee has held seven public hearings. At its first public hearing, on 11 September 2015 in Canberra, the committee heard evidence on decision making generally. The other public hearings focused on specific matters in relation to the inquiry terms of reference as follows:

- on 3 November 2015, in Parramatta, the committee heard evidence on proposed restrictions on the activities of fans of the Western Sydney Wanderers Football Club;

1 *Journals of the Senate* No. 102, 25 June 2015, p. 2832.

- on 16 November 2015, in Melbourne, the committee heard evidence on mandatory bicycle helmet laws in accordance with inquiry term of reference (d);
- on 20 November 2015, in Sydney, the committee heard evidence relating to inquiry term of reference (b) concerning the sale and service of alcohol with focus on Sydney's lockout laws;
- on 9 March 2016, in Sydney, the committee heard evidence regarding inquiry term of reference (a) concerning tobacco, nicotine and e-cigarettes;
- on 11 March 2016, in Sydney, the committee heard evidence regarding the sale and service of marijuana in accordance with inquiry term of reference (c); and
- on 22 April, in Canberra, the committee heard evidence regarding the classification of publications, films and computer games under term of reference (e).

1.6 This report focuses on the evidence in relation to the term of reference (c) concerning the sale of marijuana and associated products.

1.7 The committee thanks all those who have participated in the inquiry so far.

Purpose of the interim report

1.8 The purpose of this interim report is to consider the evidence provided to the committee on the topic of the sale of marijuana and associated products. It considers the sale and use of marijuana for recreational purposes and personal enjoyment and explores the arguments for and against personal choice to use marijuana. In particular, it examines the key argument made by some advocates that the legislative response to marijuana is disproportionate to the risk it poses to individuals and the community, and that the lack of personal choice in using the drug causes negative consequences.

1.9 For the purposes of this report, the term 'marijuana' will be used to include references to other cannabis products.

What is marijuana?

1.10 Marijuana is a substance which derived from the *cannabis sativa* plant, which contain chemical compounds that produce psychological and physiological changes in the body. The main psychoactive element in the plant is delta-9-tetrahydrocannabinol (THC), which causes many of the health and psychological issues linked with using marijuana.²

1.11 The leaves, stems, flowers and seeds of the plant are used to make three types of substances that are usually either consumed via smoking or as an ingredient in food. The three forms of cannabis are:

2 Australian Crime Commission, *Illicit Drug Data Report 2013-14*, https://crimecommission.gov.au/sites/default/files/IDDR-201314-Complete_0.pdf (accessed 13 January 2016) p. 58.

- marijuana, which is made up of a mix of dried leaves and flowers of the plant, and is the most common but weakest form of cannabis;
- hashish, which consists of dried cannabis resin, and tends to be more potent than marijuana due to a higher THC content; and
- hashish oil, which is the strongest form of cannabis but is rare in Australia.³

1.12 The Australian Drug Foundation described the substance's effects as follows:

Cannabis users report a number of perceived benefits, including: the pleasure derived from an altered state (e.g. euphoria or relaxation); the social benefits of a shared experience; a way to cope with or escape problems experienced in everyday life; cognitive benefits and enhanced creativity; heightening of ordinary sensory experiences; and therapeutic value for a physical or mental health problem.

...

Adverse acute effects of cannabis include anxiety, panic, loss of attention and reduced motor coordination skills, while negative health effects include risk of cannabis dependence syndrome; in addition, long-term heavy smokers risk chronic bronchitis, respiratory cancers and cardiovascular disease. People who begin cannabis use in adolescence face higher risks of some psychosocial effects (including cannabis dependence), impaired educational attainment and an increased risk of mental health problems.⁴

1.13 The Department of Health (department) advised the committee that marijuana is the most widely used drug in Australia to date.⁵ The 2013 National Drug Strategy Household Survey indicated that 35 per cent of Australians surveyed had used marijuana products at some point in their lives. 10.2 per cent Australians over the age of 14 years old had used it within the past 12 months. The study noted that 3.5 per cent of Australians had used marijuana within the past week prior to the survey.⁶ The largest group of users were concentrated in the 20- to 29-year-old age group.⁷

1.14 In recent decades, marijuana use has decreased in the Australian population. However, certain groups remain of concern to health officials. Adults within the ages of 40- to 49-years-old are most likely to use marijuana on a daily basis. 'Heavy

3 Australian Institute of Criminology, *Cannabis*, 14 May 2015, http://aic.gov.au/crime_types/drugs_alcohol/drug_types/cannabis.html (accessed 15 December 2015).

4 Australian Drug Foundation, *Submission 291*, pp 14-15.

5 Department of Health, *Submission 444*, p. 2.

6 Intergovernmental Committee on Drugs, *National Drug Strategy 2016-2025 – Draft: for public consultation*, October 2015, [http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/73E3AD4C708D5726CA257ED000050625/\\$File/draftnds.pdf](http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/73E3AD4C708D5726CA257ED000050625/$File/draftnds.pdf) (accessed 15 December 2015).

7 Australian Crime Commission, *Illicit Drug Data Report 2013-14*, https://crimecommission.gov.au/sites/default/files/IDDR-201314-Complete_0.pdf (accessed 13 January 2016) p. 58.

patterns of use' are reported among users aged between 14 and 19 years.⁸ Marijuana users who suffer a psychotic condition or illness may more acutely experience symptoms such as hallucinations, and can exacerbate symptoms.⁹ The Australian Drug Foundation noted that certain groups are more likely to develop marijuana-related problems, such as:

- young people under the age of 17 years old, who can experience problems such as memory impairment, cognitive issues, decline in IQ, and mental health problems such as schizophrenia and depression; and
- people with a family history of psychosis (as cannabis may trigger a psychotic episode) or with a pre-existing psychiatric condition.¹⁰

1.15 Furthermore, marijuana accounts for the 'greatest proportion of illicit drug offences in Australia'.¹¹ The Australian Crime Commission (ACC) reported that a record number of arrests were reached in 2013–14, accounting for 66,684 arrests. This represents a 21.3 per cent increase in marijuana-related offences in the past decade, the majority of which were directed towards consumers (as opposed to marijuana suppliers).¹² The jurisdiction with the most marijuana-related offences in the past decade is Queensland, followed by New South Wales.¹³ In combination with the rates of usage, the ACC argues that these statistics indicate that marijuana 'continues to account for the greatest proportion of illicit drug use, seizures and arrests' and is the 'dominant illicit drug in Australia'.¹⁴

Legislative framework

1.16 Marijuana is currently prohibited in Australia, with a combination of Commonwealth and state or territory law used to enforce the restrictions. Australia is bound to three international agreements which advocate the control and prohibition of illegal substances such as marijuana. These agreements are:

- the Single Convention on Narcotic Drugs (1961);
- the Convention on Psychotropic Substances (1971); and

8 'Heavy patterns of use' is defined as 'use of more than 10 cones or joints per day': Roxburgh A, et al, 'The epidemiology of cannabis use and cannabis-related harm in Australia 1993-2007' *Addiction*, vol. 105, no. 6, pp 1071–9, 1074.

9 Australian Crime Commission, *Illicit Drug Data Report 2013-14*, https://crimecommission.gov.au/sites/default/files/IDDR-201314-Complete_0.pdf (accessed 13 January 2016) p. 59.

10 *Submission 291*, p. 15.

11 Australian Crime Commission, *Illicit Drug Data Report 2013-14*, https://crimecommission.gov.au/sites/default/files/IDDR-201314-Complete_0.pdf (accessed 13 January 2016) p. 68.

12 Australian Crime Commission, *Illicit Drug Data Report 2013-14*, p. 68.

13 Australian Crime Commission, *Illicit Drug Data Report 2013-14*, p. 68.

14 Australian Crime Commission, *Illicit Drug Data Report 2013-14*, p. 69.

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- the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).¹⁵

1.17 The department indicated that government policy at both the Commonwealth and state levels regarding illicit drugs is guided by the *National Drug Strategy 2010-2015* (NDS).¹⁶ As 'a product of collaboration between Commonwealth, state and territory governments, and extensive community and sector consultations', the NDS aims to improve:

health, social and economic outcomes for Australians by preventing the uptake of harmful drug use and reducing the harmful effects of licit and illicit drugs in our society.¹⁷

1.18 Under Commonwealth law, the control and prohibition of cannabis and cannabis products is legislated using a number of legal instruments, including:

- the *Therapeutic Goods Act 1989*, which regulates the availability of cannabis and other materials as therapeutic substances (cannabis is listed as a Schedule 9 Prohibited Substance under the Poisons Schedule);¹⁸
- the *Narcotic Drugs Act 1967*, which regulates the manufacture of cannabis and other narcotic drugs;
- the *Customs Act 1901* and *Customs (Prohibited Imports) Regulations 1956* and *Customs (Prohibited Exports) Regulations 1958*, which controls the import and export of cannabis and other narcotic drugs in and out of Australia; and
- the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990* and Part 9.1 of the *Criminal Code Act 1995*, which contains offences relating to the cultivation, import and export, and possession of controlled plants and drugs, which includes cannabis.¹⁹

1.19 The production, sale, possession or use of any form of the cannabis plant for recreational purposes is uniformly prohibited in all Australian states. Enforcement of marijuana-related offences is a state responsibility. However, different penalties apply depending on the state or territory in which the offence took place. In South Australia, the Australian Capital Territory and the Northern Territory, minor marijuana offences have been decriminalised and attract only civil penalties. Most states and territories offer diversion programs or drug and alcohol treatment programs before criminal

15 Senate Legal and Constitutional Affairs Legislation Committee, *Regulator of Medicinal Cannabis Bill 2014*, August 2015, p. 10.

16 Department of Health, *Submission 444*, p. 2.

17 Department of Health, *Submission 444*, p. 2; Australian Government, *National Drug Strategy*, 24 November 2015, <http://www.nationaldrugstrategy.gov.au> (accessed 22 December 2015).

18 Senate Legal and Constitutional Affairs Legislation Committee, *Regulator of Medicinal Cannabis Bill 2014*, August 2015, p. 14.

19 Senate Legal and Constitutional Affairs Legislation Committee, *Regulator of Medicinal Cannabis Bill 2014*, August 2015, pp 11-12.

sanctions are applied.²⁰ Table 1.1 provides a summary of cannabis possession laws in each state and territory.

1.20 As Table 1.1 demonstrates, there is a range of consequences for marijuana-related offences, depending on the state or territory a person is charged in. While there is an emphasis by states and territories on addressing drug dependence and channelling sanctions towards rehabilitation programs, significant differences remain between jurisdictions. While a person may attract criminal prosecution and serious penalties in one state, in another state the same person may face only drug counselling or information.

Table 1.1 – Treatment of minor cannabis offences in Australian Jurisdictions²¹

<i>Jurisdiction</i>	<i>Treatment of minor cannabis offences</i>
Australian Capital Territory	The ACT introduced a civil penalty system for the possession of 'small amounts' of cannabis in 1993. If someone is caught with up to two non-hydroponic cannabis plants, or up to 25 grams of marijuana (cannabis plant material), they receive a \$100 fine with 60 days to expiate (pay the fine) instead of a criminal charge. Instead of paying the fine, the person may choose to attend a drug assessment and treatment program.
South Australia	In 1987, South Australia was the first state to decriminalise minor cannabis offences. The possession of up to 100 grams of marijuana, 20 grams of hash, one non-hydroponic plant or cannabis smoking equipment can result in a fine of \$50 to \$150 with 60 days to expiate.
Northern Territory	Since 1996, adults found in possession of up to 50 grams of marijuana, one gram of hash oil, 10 grams of hash or cannabis seed, or two non-hydroponic plants can be fined \$200 with 28 days to expiate rather than face a criminal charge.
New South Wales	If someone is caught with up to 15 grams of cannabis, they may receive a 'caution' from the police, which includes information about the harms associated with cannabis use and a number to call for drug-related information or referral. Only two cautions are allowed to be given to the same person before criminal charges are laid.
Victoria	A police officer may give someone a caution and offer them the opportunity to attend a cannabis education program if they are caught with no more than 50 grams of cannabis. Like NSW, only

20 Senate Legal and Constitutional Affairs Legislation Committee, *Regulator of Medicinal Cannabis Bill 2014*, August 2015, p. 15.

21 Senate Legal and Constitutional Affairs Legislation Committee, *Regulator of Medicinal Cannabis Bill 2014*, August 2015, p. 16.

	two cautions are allowed to be given to the one person.
Tasmania	Someone found in the possession of 50 grams of cannabis can be given a caution up to three times in ten years. For the first caution, information and referral is provided. A brief intervention is given with the second caution. On the third and final caution, the offender must be assessed for drug dependence and attend either a brief intervention or treatment program.
Queensland	Police officers in Queensland offer someone the option of diversion, rather than prosecution, if they are found in possession of up to 50 grams of cannabis. The diversion includes a mandatory assessment and brief intervention program. Only one offer of diversion is allowed per person.
Western Australia	Individuals in possession of not more than 10 grams of harvested cannabis and/or a used smoking implement who have no prior cannabis offences are required to attend a Cannabis Intervention Session within 28 days or receive a cannabis conviction for the offence. All cannabis cultivation offences will attract a criminal conviction.

Recent legislative and social change

1.21 Since the introduction of laws restricting the sale and possession of marijuana in Australia in 1926, there have been significant changes in public opinion and legislative responses to marijuana use.²² Changing community views are reflected in legislative reforms as indicated by the decriminalisation of 'minor' marijuana offences in South Australia in 1987, the Australian Capital Territory in 1993, and the Northern Territory in 1996. Notwithstanding this, no state or territory is yet to fully decriminalise marijuana possession and use for recreational purposes.

1.22 Further significant change has occurred in relation to marijuana used for medicinal purposes. The committee notes that there has been a prolonged public debate regarding marijuana use specifically for medicinal purposes. A number of federal, state and territory government parliamentary inquiries which have considered this issue.²³ There have also been several attempts in the past by legislatures at the

22 Library Council of New South Wales, *History of drug laws – Australia*, 2015, http://www.legalanswers.sl.nsw.gov.au/guides/hot_topics/drugs/history_drug_laws_Australia.html (accessed 12 January 2016).

23 Senate Legal and Constitutional Affairs Legislation Committee, *Regulator of Medicinal Cannabis Bill 2014*, August 2015; Standing Committee on Health, Ageing, Community and Social Services, *Inquiry into the exposure draft of the Drug of Dependence (Cannabis Use for Medical Purposes) Amendment Bill 2014 and related discussion paper*, Legislative Assembly of the ACT, Report No. 6, August 2015; General Purpose Standing Committee No. 4, *The use of cannabis for medical purposes*, Parliament of NSW, Report No. 27/48, May 2013. Further examples can be found in other state and territory parliaments.

state, territory and federal levels to establish regulatory bodies or schemes for the medicinal or scientific use of cannabis.²⁴

1.23 On 10 February 2016, the Minister for Health, the Hon Susan Ley, presented the Narcotic Drugs Amendment Bill 2016 to the House of Representatives. The bill was designed to facilitate the production of medicinal cannabis for medicinal trials, treatment for patients, and scientific research.²⁵ The legislation passed both Houses on 24 February 2016, and it received Royal Assent on 29 February 2016.

1.24 These changes to the *Narcotic Drugs Act 1967* are yet to be fully implemented, and the long-term policy implications of the new regime will require further analysis. However, as community support appears to be strong for medicinal marijuana, legislative change in this area has the potential to serve as a barometer on community attitudes in relation to the use of marijuana more broadly, including for recreational purposes.

1.25 The committee suggests that public opinion in relation to medicinal marijuana may serve to inform future attempts to deregulate the substance if further reforms are to be considered.

24 Most recently, the Regulator of Medicinal Cannabis Bill 2014 was debated in the Senate as a potential pathway for regulation, culminating in a Senate committee inquiry which recommended that the bill be passed with some amendments to facilitate the scientific study of cannabis. See: Senate Legal and Constitutional Affairs Legislation Committee, *Regulator of Medicinal Cannabis Bill 2014*, August 2015, pp 71-73.

25 Department of Health, 'Narcotic Drug Amendment Bill 2016, Public Information Paper', 10 February 2016, [https://www.health.gov.au/internet/ministers/publishing.nsf/Content/5E437BF8715C3EBACA257F540078A07A/\\$File/Public%20Information%20Paper.pdf](https://www.health.gov.au/internet/ministers/publishing.nsf/Content/5E437BF8715C3EBACA257F540078A07A/$File/Public%20Information%20Paper.pdf).