

Chapter 2

Support for deregulation and decriminalisation of marijuana

2.1 A number of submissions to the inquiry were strongly critical of the restriction of cannabis products in Australia, arguing that it was a denial of an individual's personal choice to use the substance. Those arguing this point were of the opinion that the legislation and regulations controlling marijuana were disproportionate to the risks posed by the substance to users and the community at large, and that relaxing restrictions on marijuana use would result in positive outcomes at an individual and societal level.

Personal choice to use marijuana

2.2 Laws prohibiting recreational marijuana use were identified as an infringement on personal liberty and the freedom to choose whether or not to consume the substance.¹ Many submitters noted the connections between personal choice and the principles of liberal democracy, ethics and morality. Mr Mark Hoffman argued that the state should not intervene in the personal choices of a citizen provided that the person involved was a 'responsible adult'.² Mr Hoffman emphasised the connection between individual choice and the libertarian principles of democracy, stating that 'an individual living in a modern, free democracy should have the choice to enjoy the use of Cannabis, and any other substance that they choose'.³

2.3 Mr Gabriel Buckley concurred with this viewpoint, arguing that the restriction of personal choice relating to marijuana was immoral. Mr Buckley argued, when compared with the evidence of success in jurisdictions internationally which have decriminalised marijuana, that:

[T]here are no legitimate, moral, ethical, economic or social grounds on which the prohibition of cannabis can be predicated. And, as such, any laws that seek to prohibit the use of cannabis or the sale of cannabis between consenting adults are without basis. In any society that is attempting to be a fair and equitable society, laws without basis should simply be struck off the books.⁴

2.4 Some submitters argued that the individual's personal choice to consume marijuana should be permitted providing that harm was not caused to others. An example was provided to the committee of a working father using marijuana to relax at the end of a work week. It was argued that an individual in this situation causes no

1 Mr Mark Hoffman, *Submission 136*, p. 1; Mr Gabriel Buckley, *Submission 79*, pp 1-2.

2 Mr Mark Hoffman, *Submission 136*.

3 Mr Mark Hoffman, *Submission 136*, p. 1.

4 Mr Gabriel Buckley, private capacity, *Committee Hansard*, 11 March 2016, p. 4.

harm to anyone else, and only affects the person consuming the substance. If the individual's actions affect no-one but themselves, it was claimed, it should not be a matter for the state to legislate upon.⁵

2.5 The use of marijuana was argued to be similar to other personal choices made by citizens which do not attract government regulation. Mr Mark Hoffman contended that the personal choice to consume marijuana was no different from the personal choice to belong to a particular religion, the clothes a person wears, or the food a person consumes.⁶

Disproportionality

2.6 Submitters and witnesses in favour of allowing marijuana to be used freely argued that the threat of any harms from marijuana use should not be met with a disproportionately harsh legislative response. Dr Samuel Douglas told the committee that the balance between the principles of harm reduction and retaining personal choice should be the goal in policy making, but that this balance has been lost in relation to marijuana:

I put it to the committee that, in the case of cannabis, as a society we have tried the approach of restricting individual choice. This approach has failed to protect the individual from harm. This failure is not only practical; it cuts to the core of why we make laws in the first place.⁷

2.7 The majority of those arguing in favour of relaxing the prohibitions on marijuana use suggested that it posed significantly less harm to users than other drugs. It was noted that marijuana had a historical basis, having been used by humans for thousands of years in various forms.⁸ Mr Mark Hoffman argued that:

Cannabis is a natural product and is proven to cause much less harm to both the user and community as a whole than Alcohol and Tobacco products which are currently legally available to adults in Australia ... There are virtually no adverse impacts to the community which are caused by Cannabis users, other than the impacts which are a direct result of the illegal status of the substance.⁹

2.8 Other submitters agreed with Mr Hoffman that marijuana causes far less individual and social harm than tobacco and alcohol, and that it should not be subject to the same legal treatment as more harmful drugs such as heroin.¹⁰ It was also

5 Mr Gabriel Buckley, *Submission 79*.

6 Mr Mark Hoffman, *Submission 136*.

7 Dr Samuel Douglas, *Committee Hansard*, 11 March 2016, p. 2.

8 Mr Gabriel Buckley, *Committee Hansard*, 11 March 2016, p. 9.

9 Mr Mark Hoffman, *Submission 136*, p. 1.

10 Mr Seppy Pour, *Submission 255*, p. 5; Professor Wayne Hall, *Committee Hansard*, 11 March 2016, p. 4.

pointed out that there have been few deaths directly attributable to marijuana.¹¹ According to these arguments, the substance itself poses no danger to the individual or the community at large. Instead, the harm is caused by the disproportionate legislative response and the resulting illegal status of the substance which cause further harm.

2.9 Public health organisations presented counter-claims to these arguments, which will be explored in Chapter 3.

Effects of criminalisation

2.10 Submitters commented on the effects of the current regulatory system prohibiting recreational marijuana use, including a lack of control over marijuana production and use, the impact on the lives of users who are subject to law enforcement, and difficulties associated with furthering cannabinoid research.

Lack of control over marijuana production and use

2.11 Submitters argued that the criminalisation of marijuana results in consumers obtaining marijuana from black market sources with no assurances regarding ingredient quality or safety. For example, Drug Policy Australia contended that the current approach of criminalising illicit drugs and thus rejecting the normal drug control mechanisms applicable to legal drugs 'has the effect of ceding control of illegal drugs to the organised crime syndicates, and preventing governments properly controlling how they are produced, distributed, marketed, taxed and used'.¹²

2.12 Mr Mark Hoffman commented further on the issue of quality control for marijuana products in his submission:

Production is in the hands of criminals and clandestine growers whose sole motivation is financial gain. They have little regard for the health and safety of the users of their products. There are no standards for production as there are for food and medical crops, and no guarantee that dangerous pesticides and fungicides have not been used which may adversely affect the health of users.¹³

2.13 Mr Gabriel Buckley concurred, arguing that unlike alcohol drinkers, cannabis consumers 'enjoy none of the consumer protections in place to ensure drinkers receive a product of known quality and potency'.¹⁴

Use of synthetic cannabinoids

2.14 Additionally, it was suggested that those seeking a legal alternative to marijuana may instead opt for synthetic cannabinoid products, which may be unsafe.

11 Mr Gabriel Buckley, Professor Wayne Hall, Dr Samuel Douglas, *Committee Hansard*, 11 March 2016, pp 5-6.

12 Drug Policy Australia, *Submission 480*, p. 2.

13 Mr Mark Hoffman, *Submission 136*, p. 2.

14 Mr Gabriel Buckley, *Submission 79*, p. 3.

A number of witnesses expressed their concern with the proliferation of synthetic cannabinoid products and the safety risks they posed.¹⁵ Mr Hoffman stated:

With regard to the synthetic cannabinoids, I think the biggest danger is that there is absolutely no labelling as to what is contained within these products. The formulations of the different chemicals that are used can vary greatly, and there is absolutely no research because of the novel aspect of these chemicals. They are brand-new research chemicals for all intents and purposes. There is very little data as to the safety of them, and the user does not know what they are getting themselves into by using them.¹⁶

2.15 Dr Samuel Douglas argued that these products are used 'just to avoid the potential criminal sanction of using cannabis'.¹⁷ Dr Douglas contended further that while marijuana use does not directly cause the death of users, there have been instances of deaths due to the use of synthetic cannabinoid products which were potentially preventable if marijuana were legal.¹⁸

Impact of law enforcement activities on recreational users

2.16 The impact of criminalising marijuana use on the lives of individuals who use the drug recreationally in the privacy of their own home was highlighted in evidence. Mr Mark Hoffman noted that, due to approximately 10.2 per cent of the Australian population having used the substance in the past 12 months, there is widespread civil disobedience occurring in relation to marijuana laws. As a result, this makes a significant proportion of the Australian population criminals in the view of their government.¹⁹

2.17 Several submitters noted that the criminalisation of marijuana use has harsh effects on the lives of those who are prosecuted for possession or use. By possessing or consuming marijuana, an individual may attract a penalty that can substantially affect their employment, ability to travel and other areas of their personal life.²⁰ If a person is charged with a cannabis offence, this can result in a criminal record, if not jail time and a pecuniary penalty. Mr Gabriel Buckley expanded on this point in his submission:

A criminal record for drug crimes relegates the user to a second-class citizen in many aspects of life. Convicted cannabis users experience difficulty gaining and/or keeping some jobs, obtaining clearance-based qualifications such as the "Blue Card" and travelling internationally. The stigma associated with having a criminal record can—in itself—be a major

15 Mr Gabriel Buckley, Professor Wayne Hall, Mr Mark Hoffman, Dr Samuel Douglas, *Committee Hansard*, 11 March 2016, pp 5-6.

16 Mr Mark Hoffman, *Committee Hansard*, 11 March 2016, p. 6.

17 Dr Samuel Douglas, *Committee Hansard*, 11 March 2016, p. 6.

18 Dr Samuel Douglas, *Committee Hansard*, 11 March 2016, p.6.

19 Mr Mark Hoffman, *Committee Hansard*, 11 March 2016, p. 1.

20 Mr Mark Hoffman, *Submission 136*, p. 2; Mr Tim Nixon, *Submission 210*; Mr Stephen Flood, *Submission 206*; Mr Andrew Toft, *Submission 236*; Mr Seppy Pour, *Submission 255*, p. 5.

driver behind an individual's descent into poverty or further criminality. The war on drugs does not target criminals, it creates them.²¹

2.18 The inconsistency between the penalties associated with marijuana offences in different states and territories (as noted in Chapter 1) adds a further layer of complexity in how different individuals may be treated under the law for the same activities.

Stalling research and the uptake of cannabis-related therapies

2.19 Several submitters argued that the blanket prohibition on marijuana use has prevented it being used as a medical treatment, sometimes using their own personal experiences with chronic pain to illustrate the point.²² One submitter noted in their evidence that the legal restrictions surrounding marijuana has significantly impacted on the ability of scientists to conduct medical research into the substance's possible therapeutic effects, stating:

Australia has an opportunity to be a leader in the field of cannabinoid research, clinical trials, and an export of cannabis plant and processed cannabinoid based pharmaceuticals of the future. This has been addressed by the "medical cannabis bill" already discussed in the senate with the provision of medical research licences.²³

2.20 This position was shared by public health organisations who support medicinal cannabis and associated research. The Public Health Association of Australia advocated the legalisation of the drug for the purposes of medicinal research and treatment. It argued that its position was supported by evidence from studies and clinical experience suggesting that the substance was beneficial in alleviating pain and countering side-effects from certain types of medicinal treatment.²⁴ The Australian Drug Foundation similarly supported the availability of medicinal cannabis for those suffering intense pain or severe disability due to medical conditions.²⁵

2.21 It should be noted that the majority of submissions regarding marijuana were submitted prior to the legislative changes regarding medicinal marijuana that occurred in February 2016 (see Chapter 1). The arguments posed here therefore reflect the law prior to the reforms. However, future scrutiny of the effects of the new legislation will require consideration of the issues raised by submitters in relation to barriers that hinder research and innovation.

Options for decriminalising or regulating marijuana

2.22 Submitters calling for legislative change regarding marijuana discussed a range of issues, including whether marijuana should be legalised under a system

21 Mr Gabriel Buckley, *Submission 79*, p. 4.

22 Mr Stephen Flood, *Submission 206*; Mr Andrew Toft, *Submission 236*.

23 Name withheld, *Submission 248*.

24 Public Health Association of Australia, *Submission 172*, p. 16.

25 Australian Drug Foundation, *Submission 291*, p. 16.

where its cultivation and supply is still regulated by government, or instead fully legalised and decriminalised with no (or extremely limited) regulation or restrictions.

Benefits of a regulated industry

2.23 Some submitters argued that it was critical to have a government-regulated industry when decriminalising marijuana. Mr Mark Hoffman suggested that production and sale of cannabis should be licenced and regulated, resulting in a safer product. He suggested a system of licencing for producers and retailers, with product standards applied similarly to the food industry.²⁶ Professor Wayne Hall agreed with this view, calling for a regulatory regime akin to the tobacco industry which would take into consideration the risks associated with the product. In this scenario, Professor Hall argued:

We should tax the product to deter heavy use, we should put bans on advertising and the promotion of use, and we should have reasonable restrictions on availability so that it is not too accessible to people under age.²⁷

2.24 Professor Hall also noted that further regulations on product packaging would be required, displaying THC content and health warnings.²⁸ These measures would ensure that users would maintain their independence in choosing to use marijuana while ensuring that accurate information and warnings regarding excessive use were in place.

2.25 Some submitters argued that creating a regulated industry would reduce harm to users and the community caused by other harmful substances. Mr Timothy Nixon emphasised that by promoting the safe production and sale of marijuana, it would reduce the market share of the tobacco and alcohol industries, which he argued were more harmful in terms of illness and death caused.²⁹

Eliminating the role of organised crime

2.26 Mr Mark Hoffman noted that a consequence of decriminalisation would be that those choosing to use marijuana would be able to do so 'without fearing prosecution and the implications associated, and could purchase from safe premises without being exposed to violent criminals or without fear of being criminalised themselves'.³⁰ This would also reduce the negative impacts of criminalisation, such as the impact of a criminal record on users' lives, reduce the demand on the law enforcement and justice system, and reduce the ability of criminal organisations to proliferate in the drug industry.

26 Mr Mark Hoffman, *Submission 136*, p. 3.

27 Professor Wayne Hall, *Committee Hansard*, 11 March 2016, p. 8.

28 Professor Wayne Hall, *Committee Hansard*, 11 March 2016, p. 8.

29 Mr Timothy Nixon, *Committee Hansard*, 11 March 2016, p. 8.

30 Mr Mark Hoffman, *Submission 136*, p. 3.

Potential for tax revenue from sales of marijuana products

2.27 Some submitters and witnesses argued that a regulated industry would also provide benefits to the community at large in the form of revenue generated by the application of the goods and services tax (GST) or other specific taxes to sales of marijuana.³¹

2.28 This argument is supported by modelling conducted by the Parliamentary Budget Office (PBO), which suggests that the application of the GST on legalised marijuana would lead to \$259 million generated per annum.³² The PBO included in its calculations that \$104 million per annum would be saved due to reduced demand for law enforcement from the Australian Federal Police and the Australian Border Force in relation to policing marijuana offences.³³ The PBO, however, noted that these figures were of 'low reliability', and that the uncertainty of price and quantity of consumption (currently and in an environment where marijuana was legal) cast doubt on their analysis.³⁴ Additionally, the analysis was conducted on the basis of marijuana being fully legalised as opposed to decriminalised and regulated, and thus does not provide modelling on partial deregulation.

Arguments in favour of fully legalising marijuana

2.29 Unlike those who conceded a need for government regulation, some submitters to the inquiry called for the total decriminalisation of the drug barring some exceptions. Mr Gabriel Buckley argued that any restrictions on marijuana would be tantamount to a state overreach into the personal choices of those wishing to use the substance, with the exception of children.³⁵ Mr Buckley argued that creating a regulated industry for marijuana would still cause harm to the individual and in the community due to restrictions still remaining on cultivation, possession and use:

The whole idea of setting up these schemes, labels and warnings—the idea that we somehow need to curtail grown adults from taking responsibility into their own hands and making decisions about which drugs they would like to consume smacks, to me, of the old puritan fear that somewhere someone out there might be having a good time.³⁶

31 Mr Mark Hoffman, *Submission 136*, p. 2.

32 This figure relates to the fiscal balance as opposed to the underlying cash balance which does not accommodate for the lag of accrual of GST revenue; Parliamentary Budget Office, *Legalising marijuana*, 17 December 2015, p. 5, <http://www.aph.gov.au/~media/05%20About%20Parliament/54%20Parliamentary%20Depts/548%20Parliamentary%20Budget%20Office/Publicly%20released%20costings/17122015%20%20PBO%20%20Legalising%20marijuana.PDF?la=en> (accessed 11 March 2016).

33 Parliamentary Budget Office, *Legalising marijuana*, 17 December 2015, p. 5 (accessed 11 March 2016).

34 Parliamentary Budget Office, *Legalising marijuana*, 17 December 2015, p. 2 (accessed 11 March 2016).

35 Mr Gabriel Buckley, *Committee Hansard*, 11 March 2016, p. 9.

36 Mr Gabriel Buckley, *Committee Hansard*, 11 March 2016, p. 9.

International examples of marijuana decriminalisation and regulation

2.30 Many submitters pointed to overseas examples of marijuana deregulation as models that could potentially be adopted in an Australian context. The Public Health Association of Australia suggested that Australia could adopt a similar system to the Portuguese model, which focusses on regulation of the substance rather than criminalisation.³⁷ It also suggested that the ability to regulate marijuana would assist in reducing usage, incorporating a regulatory system similar to what is currently used for tobacco.³⁸

2.31 Mr Seppy Pour noted the example of the State of Colorado in the United States of America, which has successfully regulated the substance. He highlighted that the state collected an additional US\$53 million in tax revenue in the first year since legalising recreational marijuana, not including the savings made by the state in not investigating and prosecuting offenders for cannabis-related crimes.³⁹

2.32 Other models suggested included the Spanish system of regulation, which allows 'clubs' to be established for the cultivation and distribution of marijuana amongst paying members.⁴⁰

37 Public Health Association of Australia, *Submission 172*, p. 16; Mr Timothy Nixon, *Committee Hansard*, 11 March 2016, p. 8.

38 Public Health Association of Australia, *Submission 172*, p. 16.

39 Mr Seppy Pour, *Submission 255*, p. 5.

40 Dr Samuel Douglas, *Committee Hansard*, 11 March 2016, p. 8; Gareth Platt and Marc Vargas, *Cannabis clubs of Spain: Inside the legal weed dens which are turning Barcelona into Amsterdam*, 15 May 2015, <http://www.ibtimes.co.uk/cannabis-clubs-spain-inside-legal-weed-dens-which-are-turning-barcelona-into-amsterdam-1501531> (accessed 15 March 2016).