

Chapter 2

Issues raised

2.1 The evidence provided to the committee captured a wide range of views on the proposed removal of all Commonwealth restrictions on cannabis. While some inquiry participants strongly supported the bill, others vehemently opposed any relaxation of existing Commonwealth prohibitions.

2.2 This chapter sets out the support for the bill in evidence received by the committee, before outlining the concerns that were raised by some inquiry participants. In turn, this chapter sets out the committee's views and recommendations.

Support for the bill

2.3 Supporters of the bill argued that removing Commonwealth restrictions on cannabis would:

- enhance the civil rights of Australians by allowing greater personal choice for cannabis users;
- balance the current disproportionality between what they considered the minor health harms of cannabis use on the one hand, with the significant costs of criminalising cannabis users and the costs of prohibition and law enforcement on the other; and
- deliver a range of benefits to the Australian economy, including reducing the costs of prohibition and lifting Commonwealth tax revenues from a legal cannabis market.

2.4 These apparent benefits of the bill, as argued by a number of inquiry participants, are considered further below.

Personal choice and civil rights

2.5 The bill is premised in the principle that 'Adults should be free to make their own choices, as long as they do not harm others'.¹ Some submitters strongly supported this position, arguing that the consumption of cannabis should be a choice made by an individual, rather than subject to Commonwealth control.²

2.6 For example, 360 Edge submitted that cannabis use should be a matter of personal choice, arguing that since cannabis only has minor health harms, its use should not be subject to Commonwealth oversight:

Many see cannabis prohibition as an infringement on civil rights, citing the limited harms associated with cannabis use. This includes the relatively low

1 Explanatory Memorandum, p. 1; and Senator David Leyonhjelm, 'Second Reading Speech', *Senate Hansard*, 9 May 2018, p. 2748.

2 See, for example: 360Edge, *Submission 2*, p. 4; Name withheld, *Submission 11*, pp. 1-2; Mr John Reeves, *Submission 30*, p. 2; and Name Withheld, *Submission 35*, p. 2.

rate of dependence and very low likelihood of overdosing on cannabis, as well as the low risk of harms to people using or others.

Many activities that are legal are potentially harmful: driving a car, drinking alcohol, bungee jumping. Rather than making them illegal, there are guidelines, laws and education to make them safer that creates a balance between civil liberties and safety.³

2.7 A submitter whose name was withheld advised the committee that it was not only recreational users whose civil rights were compromised by cannabis prohibitions, but also those who were unable to obtain access to medicinal cannabis to manage chronic medical conditions:

Personal drug use, for whatever reason; whether medicinal or recreational; is a personal health and personal choice matter and therefore, it is a Human Rights matter....The right to [choose] is a basic Human Right now being denied.⁴

2.8 A number of submitters and witnesses argued that there is widespread support the legalisation of cannabis in the Australian community, while suggesting that decriminalisation may help further reduce the stigma of its use, both for recreational and medicinal purposes.⁵ For example, the Eros Foundation observed that '[nearly] 75% of Australians are in favour of decriminalising cannabis and around a quarter support legalisation'.⁶

Disproportionality of health harms and criminal sanctions

2.9 The bill is premised in the assertion that cannabis is less harmful than other substances that are legal to purchase and consume in Australia, particularly alcohol and tobacco. Some evidence received supported this view, and argued the alleged health harms of cannabis use have been over-stated, especially when considered against the real harms done by criminalisation of users.⁷

2.10 For example, Mr Bill Bush, the President of Families and Friends for Drug Law Reform (FFDLR), reflected that:

3 *Submission 2*, p. 4.

4 Name Withheld, *Submission 19*, p. 1. See also Medical Cannabis Users Association, *Submission 16*, p. 4.

5 For example, see: 360 Edge, *Submission 2*, p. 4; Name Withheld, *Submission 25*, p. 2; Families and Friends for Drug Law Reform, *Submission 26*, p. 9; and Mr Mick Palmer AO, *Submission 33*, p. 7.

6 *Submission 9*, p. 1, citing A. Ritter and F. Matthew-Simmons, 'What does the research evidence tell us about what Australians think about the legal status of drugs?' in *DPMP Bulletin*, No. 21 (2018).

7 For example, see: 360 Edge, *Submission 2*, p. 4; NW, 5, p. 1; Doogue+George, *Submission 8*, pp. 1–2; Medical Cannabis Users Association, *Submission 16*, p. 2; Name Withheld, *Submission 24*, p. 2; Name Withheld, *Submission 25*, p. 2; and Mr John Reeves, *Submission 30*, p. 2.

Proponents of a tough law-enforcement approach argue that cannabis is harmful, particularly to mental health, but proponents of a hardline [approach] habitually exaggerate these harms. The big bogey is the asserted link between cannabis and schizophrenia and psychosis. But a study of 600,000 patients in the United Kingdom over 11 years when there was a substantial rise in UK cannabis use found stable or declining incidence and prevalence of schizophrenia and psychoses. In short, this study did not find any evidence of increasing schizophrenia or psychoses in the general population from 1996 to 2005.

In contrast, the harms to health directly caused by cannabis use—those flowing from the criminalisation of cannabis—are manifest and severe. Arresting some 73,000 cannabis users a year is certainly not deterring Australians from using cannabis, but it sure uses up a lot of law enforcement resources, wrecks the life chances of many young Australians and wrecks state and territory budgets, which in 2004–05 took a hit of \$2.2 billion for crime costs attributable to illicit drugs.⁸

2.11 Dr Alex Wodak, a physician with over 40 years of clinical experience, submitted that the '[harms] from cannabis are dwarfed by the legal drugs alcohol and tobacco'.⁹ A name withheld submitter who uses cannabis echoed this view:

My experience is that whatever problems cannabis may cause, they pale into insignificance when compared to the issues that prohibition has bought us. Many others suffer the same as myself and because of the demonisation and misunderstanding in the community, we are second class citizens who are treated like lepers and are too afraid to stand up for what is right because of the draconian and heavy hand of the law.¹⁰

2.12 Emeritus Professor Ian W. Webster AO, a physician providing primary healthcare, supported the bill, submitting that current criminal sanctions mean:

1. That already impaired persons are further disadvantaged by the risk of being criminalised when they use cannabis to manage their life problems, and,
2. That in attempting to treat the complex medical problems of patients using cannabis and other substances, primary health care providers (general practitioners) are at risk of jeopardising their professional standing.¹¹

2.13 FFDLR argued that the traditional view of cannabis as a 'gateway drug' for more serious substances had been disproven, and the illegal status of the drug did not act as a deterrent for its use:

One can say with confidence, though, that the illicit status of cannabis does little if anything to dissuade young people from trying it.

8 *Proof Committee Hansard*, 17 August 2018, p. 22.

9 *Submission 21*, p. 4.

10 *Submission 24*, p. 2.

11 *Submission 6*, p. 1.

It is frequently said that cannabis is a gateway drug to other more dangerous ones. This idea is commonly bandied around by those who defend criminal prohibition. Cannabis often does come before use of harder drugs like methamphetamine and heroin but so does alcohol and tobacco. The link is not pharmacological but sociological and psychological...¹²

2.14 Some evidence suggested that rates of cannabis use would not necessarily lift following a relaxation of prohibitions, so a decline in health and social outcomes would not necessarily follow legalisation.¹³ For example, the former Australian Federal Police (AFP) Commissioner, Mr Mick Palmer AO, stated:

I think that, if it was legalised, we wouldn't see user levels move much at all and it would create more incentive for people not to experiment beyond that...There'll always be some people who will do it. Most of those people, in my experience, are the white-collar type who don't expect to get caught if they're not doing it out in public. They're doing it with friends in covert locations and so on, including their work locations. And of course they don't normally come to the attention of police even though most police, as I was in my operational days, are aware of who's doing it and what jobs they hold down, including very responsible ones. But they don't come to notice in a way that allows an apprehension to be made even if we wanted to.¹⁴

2.15 The Alcohol and Drug Foundation did not support the bill, but nonetheless contended there was a need for drug law reform, especially as current penalties, in its view, are not proportionate:

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.¹⁵

Unreliable quality of cannabis products for medicinal users

2.16 A number of submitters spoke very favourably about the benefits of cannabis for managing medical conditions, including for chronic pain, cancer, and other conditions. However, in support of the bill, some of these submitters told the committee that it was difficult for individuals to access medicinal cannabis legally,

12 *Submission 26*, p. 11. See also 360 Edge, *Submission 2*, p. 2; Name withheld, *Submission 10*, p. 1; Name withheld, *Submission 11*, p. 1;

13 For example, see Eros Foundation, *Submission 9*, p. 2.

14 *Proof Committee Hansard*, 17 August 2018, p. 18.

15 *Submission 13*, p. 3.

which meant that many of them turned to the unregulated illicit market to self-medicate.¹⁶

2.17 A submitter whose name was withheld told the committee that he and his wife successfully used cannabis to manage their conditions, and observed:

The TGA's [Special Access Scheme] is a complete and utter joke and I can't stress enough how useless and uncompassionate the system is. With now only 1000 people getting access to medicinal cannabis since the scheme started, with estimated hundreds of thousands of Australians trying to get on the scheme is outrageous and should be overturned immediately. It causes the black market to flourish and would be even cheaper still then to get a legal prescription. If [you're] desperate, like us, it's a no brainer. The TGA does more harm [than] good on this issue.¹⁷

2.18 This was confirmed by Professor Webster AO, who suggested that current health services supporting chronic pain conditions were 'inadequate', and so many turned to non-medicinal cannabis to manage chronic conditions.¹⁸

Economic benefits

2.19 Some evidence received by the committee argued that the lifting of Commonwealth prohibitions on cannabis could benefit the Commonwealth Budget, by increasing returns from taxation, driving new areas for employment, and reducing the costs of law enforcement.¹⁹ For example, 360Edge stated that:

Economic analysis of the impact of cannabis legalisation calculate the net social benefit of legalisation at A\$727.5 million per year. This is significantly higher than the status quo at around A\$295 million (for example from fines generating revenue, as well as perceived benefits of criminalisation deterring use).

The Parliamentary Budget Office estimates tax revenue from cannabis legalisation at around A\$259 million.²⁰

2.20 Some submitters argued that the policing of cannabis as a prohibited substance was a substantial drain on Commonwealth resources, considering the costs of the detection, investigation and prosecution of cases, as well as the costs of

16 For example, see: Name withheld, *Submission 5*, p. 2; Professor Ian W. Webster AO, *Submission 6*, p. 9; Name withheld, *Submission 11*, pp. 1–2; and Medical Cannabis Users Association, *Submission 16*, p. 1.

17 Name Withheld, *Submission 11*, p. 2.

18 *Submission 6*, p. 9.

19 For example, see: 360Edge, *Submission 2*, p. 4; AGEM, *Submission 4*, p. 1; Name Withheld, *Submission 5*, p. 1; Doogue+George, *Submission 8*, p. 4; Medical Cannabis Users Association, *Submission 16*, p. 4; Name Withheld, *Submission 28*, p. 8; and Name Withheld, *Submission 35*, p. 2.

20 *Submission 2*, p. 4, citing work undertaken by M. Shanahan and A. Ritter, 'Cost benefit analysis of two policy options for cannabis: Status quo and legalisation' in *PLoS ONE*, vol. 9, 10 (2014), and the PBO work informing this bill as cited in chapter 1 of this report. See also Doogue+George, *Submission 8*, p. 4.

incarceration or other punishment. For example, Mr Palmer argued that the wide usage of cannabis showed that prohibition had not worked, and that its use for personal consumption should be approached as a 'social and health issue' rather than as a criminal behaviour. He noted a range of positive economic and law enforcement outcomes:

If...Australia's current illicit drug policy, was amended to remove the need for police to waste time and resources on the investigation and apprehension of people for personal use and possession of cannabis, the increased capacity for police to focus more strongly on commercial drug cultivation, production and trafficking, would free up significant money and police resources (as identified in the Bill), immeasurably improve relationships between police and the drug using community, and almost certainly result in higher levels of police success against organised drug trafficking.²¹

2.21 One submitter suggested there had been positive effects for the health of Colorado's budget following its legalisation of cannabis:

The experience in Colorado is that something like \$100m of tax revenue is being raised per year and 18,000 jobs have been created from the regulated industry. They are using the revenue to build schools, hospitals and other infrastructure projects. The sky hasn't fallen in and their economy is thriving. Also, the marijuana black market is [dissolving] as the price of the product comes down. The Colorado approach seems to be a great success story when compared with the failure of cannabis prohibition.²²

Opposition to the bill

2.22 The committee also received evidence that strongly opposed the bill for a number of reasons, on the basis that it would:

- increase harm for users, including through already-established health risks of cannabis use and an increased availability and use of poorer quality cannabis;
- exacerbate health and safety risks for the families and children of users, and poor outcomes for communities more generally;
- seriously compromise Australia's medicinal cannabis industry, including removing Commonwealth oversight of quality, availability and market regulation, which would also affect medicinal cannabis users; and
- contravene Australia's international treaty obligations, compromising our capacity to export medicinal cannabis and undermining the local industry producing and processing poppies to make medicinal opiates for global markets.

21 *Submission 33*, pp. 3–4. See also Doogue+George, *Submission 8*, p. 4; and Name Withheld, *Submission 35*, p. 2.

22 Name Withheld, *Submission 35*, p. 2. See also Name Withheld, *Submission 28*, p. 8.

2.23 A number of other issues were also raised in evidence, including: civil liberties, freedom of choice for Australians and community expectations on cannabis use; that the bill may not lead to a reduction of law enforcement costs; potential difficulties for jurisdictions in implementing the provisions of the bill; the perception the bill is based on flawed economic modelling; and, broadly put, that the bill is premature.

Negative health outcomes

2.24 A number of submissions argued that cannabis use had serious health effects, not only for users themselves, but on their families and society more generally.²³ In this regard, there was a widespread disagreement with the premise of the bill that cannabis use 'is less harmful than alcohol use and tobacco use'.²⁴

2.25 The Department of Health (department) set out the current Commonwealth position on the health harms of cannabis in its submission, emphasising the burden that cannabis use has on the healthcare system:

While many Australians may view cannabis use as harmless, almost a quarter of Australia's drug and alcohol treatment services are being provided to people identifying cannabis as their principal drug of concern (roughly the same number of treatment episodes as for amphetamine use). Cannabis use has been demonstrated to have significant negative health outcomes, including problems with memory and learning, addiction, decreased motivation, and concentration, anxiety, increased risk of respiratory diseases, paranoia and in some cases psychosis.²⁵

2.26 The RACGP submitted that, while there were benefits for some patients using medicinal cannabis, its recreational consumption had poor outcomes in several ways:

It is also important to recognise the negative health aspects of cannabis when used recreationally, including the risk of mental health problems and cannabis use disorder. Legalising the recreational use of cannabis can also have a significant negative impact on public safety issues, especially driver impairment and work health and safety problems [which] have to be carefully considered against the potential benefits that regulating the sale of cannabis might bring. On balance, the RACGP cautions against the legalisation of recreational cannabis as this will most likely encourage use of a drug that will result in increased demands on the Australian Healthcare system.²⁶

23 See, for example, Australian Christian Lobby, *Submission 22*, p. 5; Dalgarno Institute, *Submission 12*, pp. 2–4; Drug Advisory Council of Australia, *Submission 15*, p. 4; Western Australia Police, *Submission 23*, p. 1; Name Withheld, *Submission 27*, p. 2; and Royal Association of General Practitioners, *Submission 29*, p. 1.

24 Explanatory Memorandum, p. 1.

25 *Submission 32*, p. 4.

26 *Submission 29*, p. 1. The Rural Doctors Association of Australia also highlighted not only the health risks for users, but also the risks of impaired driving, *Submission 14*, p. 3.

2.27 Some submitters and witnesses argued that drug use inevitably harmed not only the substance user, but also others around them. For example, Drug Free Australia stated:

The notion that illicit drug use is a victimless crime and that everyone should be free to do what they want with their body disregards the web of social interactions that constitute human existence. Affected by an individual's illicit drug use are children, parents, grandparents, friends, colleagues, work, victims of drugged drivers, crime victims, elder abuse, sexual victims, patients made sicker by medical marijuana etc. Illicit drug use is no less victimless than alcoholism.²⁷

2.28 Some noted that there were particular risks for vulnerable cohorts. For example, Dr Elisabeth Taylor, Director of Research for the Australian Christian Lobby (ACL), highlighted greater health and safety risks for children and adolescents:

The consequences of parental cannabis use for young children are also significant. Drug and alcohol use are known to be major factors associated with family violence, physical abuse, neglect of children and children being taken into care, and these consequences may be both severe and lifelong.

Adolescents are another particularly vulnerable group. Adolescence is an important period of neurodevelopment where educational achievement is essential and long-term life outcomes are affected. Smoking cannabis has been shown to negatively affect attention, memory and learning. Reduced intellectual function can last for days or even weeks after the acute effects of the drug have worn off. Somebody who smokes marijuana daily may be functioning at a reduced intellectual level all or most of the time. This then manifests in measurably lower educational outcomes for students who smoke cannabis compared to their non-smoking peers.²⁸

2.29 A number of submitters drew the committee's attention to the serious effects of even moderate cannabis use on unborn children.²⁹ Professor Dr Albert Reece submitted that evidence from Colorado indicated a significant rise in anomalies in newborns following legalisation in 2014, which he argued would rise in the future:

[D]ata emerging from our still on-going analysis of the rates of deformed babies in Colorado show that most of the cannabis related anomalies are rising, which includes all of the fastest growing anomalies, and that the overall rate of congenital heart defects and total defects has almost doubled [over the period] 2000-2013; Cannabis was only fully legalized in Colorado in 2014!!! That is the good news—for it has also been shown that cannabis interferes with the basic processes of brain formation also. The babies born

27 *Submission 7*, p. 26, and also see p. 10.

28 *Proof Committee Hansard*, 17 August 2018, p. 27. See also Professor John Whitehall, *Submission 36*, p. 1.

29 For example, see: Professor Dr Albert Reece, *Submission 3*, p. 2; Australian Medical Association, *Submission 17*, p. 2; Professor John Whitehall, *Submission 36*, p. 1 and Dr Elisabeth Taylor, Director of Research, ACL, *Proof Committee Hansard*, 17 August 2018, p. 27.

to drug dependent parents are very obviously very far from normal in most cases – certainly when the addictions are severe—when indeed children are lucky to survive even until birth! So cannabis is a known teratogen and its widespread use is likely to cost the community very dearly in the years to come.³⁰

2.30 The Western Australian Police Force provided data to the committee that indicated that following cannabis legalisation in Colorado, youth use of cannabis had increased around 20 per cent, cannabis-related traffic deaths had increased by 48 per cent, and cannabis-related emergency department rates increased by 49 per cent.³¹

Compromising Australia's medicinal cannabis and opiate industry

2.31 The department set out a number of ways that the bill would not only negatively affect Australia's domestic medicinal cannabis regime, but also compromise our international treaty commitments and our medicinal opiate industry.³²

2.32 The department noted that the removal of cannabis from the Narcotic Drugs Act would drastically alter the Commonwealth's oversight of our medicinal cannabis production, manufacture and distribution:

The effect would be to, first, leave the matter of cannabis regulation and control almost entirely to the states and territories. Enactment would not...legalise cannabis for recreational use, but may lead to the states and territories considering such a move separately. Individual jurisdictions may also take different approaches to authorising cannabis and cannabis-derived products for medical and scientific use.³³

2.33 The department commented that the Australian community expects there to be a 'licit source of cannabis for medicinal use', and that the bill could:

...theoretically mean there are no levels of control on the availability of cannabis. For example, medicines have advertising, labelling and packaging requirements designed to improve consumer safety and manage medical dosages.

In removing cannabis from the Poisons Standard cannabis would become unscheduled. While untested in law, it could become a listed complementary medicine. However, listed complementary medicines can only contain certain low risk ingredients (some cannabis therapeutically active substances would not fall into this category) and can only make claims such as health maintenance and health enhancement or for non-serious, self-limiting conditions. As a result, medicines containing cannabis would not be able to be marketed for palliative care, chemotherapy-induced nausea and vomiting, chronic pain, multiple sclerosis and epilepsy.³⁴

30 *Submission 3*, p. 2 and p. 5.

31 *Submission 23*, p. 2.

32 See also Department of Home Affairs, *Submission 34*, p. 4.

33 *Submission 32*, p. 1.

34 *Submission 32*, pp. 2–3.

2.34 The department also submitted that the bill would allow anyone to produce cannabis legally, which would remove Commonwealth oversight of the supply chain for cannabis growing:

...the ND Act scheme of carefully considered controls on the supply chain would be non-existent. The ND Act presently limits the grant of a licence to manufacture medicinal cannabis products to an applicant who is able to demonstrate a legitimate supply route; cultivators may only obtain a licence by demonstrating the ability to supply to a licensed manufacturer. The purpose of the scheme's design to remove the possibility of oversupply or excess production and the risk of diversion, would, should the Bill be passed, be destroyed—presenting the attenuated risk.³⁵

Effects for users of medicinal cannabis

2.35 Pain Australia noted that the Commonwealth oversees a regulatory framework for medical cannabis, including conducting research and informing consumers and practitioners. It argued that the bill's provisions could lead to unintended negative consequences for individuals using cannabis to manage chronic conditions:

The removal of the Commonwealth from the regulation of these products would leave a chasm in providing a strategic framework to understand what role they can play in pain management....

While PainAustralia supports current efforts to enable quicker access to medicinal cannabis where it has been prescribed, we are concerned the removal of the Commonwealth from the regulation of medicinal cannabis could have a range of unintended consequences. At worst, this could see millions of Australians living with chronic pain offered 'false hope' of a treatment option that does not work and that diverts them from seeking and accessing best practice pain management that offers their best chance for a good quality of life and return to function.³⁶

2.36 The department also noted that loosening the restrictions of the Narcotic Drugs Act could negatively affect the safety and quality of cannabis grown in Australia, as:

...[through] its interaction with therapeutic goods regulation, the application of the Therapeutic Goods Order 93 (Standard for Medicinal Cannabis) controls the level of heavy metals, fungal infections and other contaminants permitted in medicinal cannabis in Australia. The removal of that standard may lead to adverse health effects, or would require state and territories to regulate for safety and quality.³⁷

International obligations

2.37 Regarding our international obligations, the department submitted that the bill could compromise our growing industry producing medicinal opiates, which is

35 *Submission 32*, p. 2.

36 *Submission 20*, p. 7.

37 *Submission 32*, p. 4.

dependent on Australia's adherence to the UN's *Single Convention on Narcotic Drugs 1961* (Single Convention).³⁸ Under this convention, Australia must report annually on its compliance with its obligations to the International Narcotics Control Board (INCB).³⁹ The department stated that assertions made by the Explanatory Memorandum were erroneous and the bill's provisions would have negative effects:

Australia's cultivation and production of cannabis and manufacture of cannabis products for medicinal and scientific purposes would not be compliant with its international treaty obligations as provided for by the Single Convention....

Without Commonwealth regulation consistent with Australia's international obligations, states and territories providing for cultivation of cannabis for medicinal purposes will affect Australia's ability to present itself as compliant with the Single Convention. In turn, this could have adverse reputational implications for Australia's licit poppy industry with medium term risks to Australia's approved status as a major supplier of poppy straw in a timely controlled manner.⁴⁰

Civil liberties and community views on cannabis

2.38 Some submitters criticised the idea that cannabis use was a matter of civil liberties, and questioned whether a large number of Australians supported change.⁴¹ On civil liberties, Drug Free Australia submitted:

The idea that one should always have the freedom to do whatever one wants without regard to the common good is belied by the plethora of social agreements which make a society cohesive. Notably, democracy limits the freedom of individuals, particularly the freedom of individuals who are not in accord with the majority beliefs as to what promotes the common good.

...The argument that illicit drug use is an unalienable human right rests on a faulty assumption of individual freedom that fails to balance freedom with responsibility to others in the community.⁴²

2.39 Some other evidence suggested that supporters of cannabis legalisation had greatly over-exaggerated community support. For example, citing the statistics of the 2016 National Drug Strategy Survey, Drug Free Australia argued that:

With legalisation of drugs producing more drug use, Australian legislators need to legislate for the majority of Australians, not the minority 10% who use cannabis.⁴³

38 See also Department of Home Affairs, *Submission 34*, p. 4.

39 *Submission 32*, pp. 1–2.

40 *Submission 32*, p. 1. See also evidence given by Adjunct Professor John Skerritt, Deputy Secretary, Health Products Regulation Group, Department of Health, *Proof Committee Hansard*, 17 August 2018, p. 33.

41 For example, see: Drug Free Australia, *Submission 7*, pp. 26–27; Drug Advisory Council of Australia, *Submission 15*, p. 2; and National Drug Research Institute, *Submission 18*, p. 3.

42 *Submission 7*, pp. 26–27, see also p. 10.

The costs of law enforcement

2.40 Some evidence indicated that jurisdictions that have legalised cannabis still have to deal with established criminal networks that cultivate cannabis for illegal sale.⁴⁴ For example, the Western Australia Police Force submitted that:

...organised crime networks are heavily involved in cannabis cultivation and distribution. Counterparts at the United States of America (US) Drug Enforcement Agency have advised in places where cannabis has been legalised it has enabled organised crime networks to either legitimise their cannabis business and/or continue to sell/traffic cannabis on the unregulated black market where it remains cheaper and avoids being subject to tax.⁴⁵

Potential jurisdictional issues

2.41 Some evidence indicated that the bill would lead to complex cross-jurisdictional matters for Australian law enforcement bodies, as well as legal and health service providers. For example, The Department of Home Affairs submitted that, if the bill were enacted before state and territory laws had been amended, then it:

...would effectively allow an individual to legally import cannabis but this individual could then be guilty of an offence of possessing cannabis under a state or territory law. This outcome would frustrate state and territory law enforcement's ability to reduce supply within their own jurisdictions, creating a legal highway by which drugs can be imported into state and territory jurisdictions even where these drugs are prohibited.

This disconnect between Commonwealth, state and territory law would lead to a greater financial impost on state and territory law enforcement, as confusion arising from inconsistencies between Commonwealth, state and territory legislation will be exploited by organised criminal entities seeking to sell cannabis products in the Australian market.⁴⁶

2.42 The Rural Doctors Association of Australia suggested that the bill:

...could conceivably result in legalisation in some States and territories and maintenance of illegality in others. This could give rise to cross-border issues in relation to the provision of legal and health services among others.⁴⁷

2.43 Professor Simon Lenton, Director of the National Drug Research Institute (NDRI), questioned whether states and territories had sufficient resources and

43 *Submission 7*, p. 10.

44 For example, see Dr Elisabeth Taylor, Director of Research, Australian Christian Lobby, *Proof Committee Hansard*, 17 August 2018, p. 28. See also Dalgarno Institute, *Submission 12*, p. 10.

45 *Submission 23*, p. 1.

46 *Submission 34*, p. 3.

47 *Submission 14*, p. 4.

expertise to effectively implement import and customs controls for cannabis and cannabis-based products.⁴⁸

Problematic modelling and assumptions underpinning the bill

2.44 Some witnesses questioned the assumptions of the modelling used to support the bill. For example, the AMA noted that:

...the costings associated with the proposal are of low reliability and take a very simplistic view of the situation. Budget cuts have been proposed for several authorities, while no discernible investment in treatment has been included. Investment in drug and alcohol treatment services is vital.⁴⁹

2.45 The NDRI noted some other flaws in the economic analysis of the bill's potential benefits:

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...⁵⁰

2.46 The Dalgarno Institute noted that the overseas example had shown that any financial benefits of legalisation were outweighed by other social and healthcare costs:

The health care costs, loss of productivity, insurance and WorkCover claim increases, mental health issues and the long term (often permanent) damage from drug use more than negate any promised financial rewards.

The alleged reduction in law enforcement and justice expenditure have not been realised overseas, with crime increasing (even though the crime of possession is statistically negligible) and the costs of added regulation for non-compliance add to rather than decrease the state deficit. Furthermore, there are shortfalls in the budget estimates that do not cover the additional health and education on cannabis harms and the fact that the illegal drug trade will inevitably continue to thrive under more regulation and taxation.⁵¹

The premature nature of the bill

2.47 Some submitters argued that the bill was premature, even if a wider debate on cannabis legislation reform was timely. For example, the AMA submitted that the bill:

48 Professor Simon Lenton, Director, National Drug Research Institute, Curtin University, *Proof Committee Hansard*, 17 August 2018, p. 25.

49 *Submission 17*, p.2.

50 *Submission 18*, p. 4.

51 *Submission 12*, pp. 14–15.

...is premature and fails to recognise that efforts to decriminalise cannabis may be detrimental to some groups within the population. More nuanced deliberations must occur in relation to the benefits of ending criminal penalties associated with personal cannabis use, as well as the need to better protect the groups of people who are vulnerable to the deleterious effects of cannabis. The AMA also has significant concerns about the lack of capacity within the drug and alcohol treatment sector in Australia. Many individuals have difficulty in accessing the treatment and support they require at the right time.⁵²

2.48 The Alcohol and Drug Foundation agreed that the bill was 'premature' and that:

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.⁵³

2.49 Professor Lenton of the NDRI, also made it clear that, while he opposed the bill, he welcomed a wider debate about cannabis use:

I am recommending that, in its current form, the bill should not be passed, although I am very supportive of a discussion and an investigation into a non-prohibition model for cannabis in Australia and in the states and territories.⁵⁴

2.50 Similarly, the Northern Territory Government submitted that more research into best practice and management of 'harmful or other effects of cannabis' is needed before laws relating to cannabis are changed.⁵⁵

Committee view

2.51 The committee understands that there are passionate advocates on both sides of the debate on Australia's approach to cannabis, with some advocating for full legalisation of cannabis use, while others are calling for tighter prohibition and more stringent law enforcement.

2.52 Noting this diversity of opinion, it is clear to the committee that the removal of all Commonwealth prohibitions on cannabis, as proposed by the bill, would have serious consequences in several areas.

52 Australian Medical Association, *Submission 17*, p.1.

53 *Submission 13*, p. 4.

54 Professor Simon Lenton, Director, National Drug Research Institute, Curtin University, *Proof Committee Hansard*, 17 August 2018, p. 26.

55 *Submission 31*, p. 1.

2.53 Cannabis clearly presents serious physical and mental health risks to casual users. Although this committee recognises the importance and value of Australia's medicinal cannabis regime, the risks to the health of casual and regular recreational users cannot be easily ignored when considering a legislative change to make cannabis a more widely available legal substance. The committee is particularly concerned about any increased availability of cannabis to young and vulnerable Australians.

2.54 Moreover, evidence showed that the use of cannabis can present direct health risks not only to users, but also those around them. This includes recognised health dangers to cannabis users' families and children, as well as risks for the broader community, most seriously from drug driving and work health and safety issues.

2.55 The removal of all Commonwealth prohibitions on cannabis would also compromise our recently-established system that provides medicinal cannabis to Australians suffering from chronic conditions. While the committee acknowledges that this system could be improved, as is clear from evidence, it is also clear that removing Commonwealth oversight of the medicinal system, while legalising all forms of cannabis, is not the answer.

2.56 In regards to Commonwealth oversight and control of both medicinal and illicit cannabis, the committee considers that the harm minimisation approach to cannabis as contained in the National Drug Strategy currently strikes a good balance and so should be maintained.

2.57 On other matters, the committee received evidence that indicated that the bill would seriously compromise our international obligations, damaging not only our fledgling domestic medicinal cannabis regime, but also our local industry producing medicinal opiates for export.

2.58 The removal of all Commonwealth prohibitions could also lead to complex issues of law enforcement and control of cannabis for Australia, not only between jurisdictions, but also regarding import and export of cannabis and cannabis products. It is also not clear from international experience that legalising cannabis would, in fact, reduce the influence or profitability of criminal networks, or stop the black market sale of cannabis, including to young and vulnerable Australians.

2.59 It is apparent to the committee that the modelling underpinning the proposed benefits of the bill is uncertain at best. In providing estimates of the bill's effects, the PBO itself noted that there was uncertainty about the costs and consumption of cannabis following legalisation, as well as the costs of law enforcement. Additionally, evidence indicated that PBO models had not incorporated a consideration of rising healthcare costs coming from increased consumption.

2.60 In conclusion, the committee agrees with many of the submitters that argued this bill is flawed and premature, and considers that the known risks of illegal cannabis use greatly outweighs the potential benefits of legalisation as contained in the bill.

Recommendation 1

2.61 The committee recommends that the Senate not pass the bill.

Senator the Hon Ian Macdonald

Chair