

The Senate

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Legal and Constitutional Affairs  
Legislation Committee

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

September 2018

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# **Recommendations**

## **Recommendation 1**

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



# Chapter 1

## Introduction and background

1.1 On 10 May 2018 the Senate referred the provisions of the Criminal Code and Other Legislation Amendment (Removing Commonwealth Restrictions on Cannabis) Bill 2018 (the bill) to the Legal and Constitutional Legislation Committee (the committee) for inquiry and report by 17 August 2018.

1.2 The Senate Selection of Bills Committee recommended that the bill be referred for inquiry for the following reasons:

As the first legislation to propose the removal of Commonwealth restrictions on cannabis, there is a case to examine: the merits of legalisation, law enforcement issues, extradition issues, constitutionality, treaty issues, trade rule issues, Commonwealth-state issues, and budget issues.<sup>1</sup>

### Background and purpose of the bill

1.3 The bill is a private members bill introduced into the Senate by Senator David Leyonhjelm.<sup>2</sup> In his second reading speech, he stated that the bill was informed by the principle that:

Adults should be free to make their own choices, as long as they do not harm others.

Accordingly, this Bill removes offences and civil penalty provisions in Commonwealth law for dealings with cannabis.<sup>3</sup>

1.4 The Explanatory Memorandum outlines that the bill 'would allow any State or Territory Government to legalise and regulate cannabis'.<sup>4</sup> It further states that this would address several issues:

The prohibition of cannabis casts otherwise law-abiding citizens as criminals, increases pressure on the criminal justice system and props up organised and violent crime.

Legalising cannabis is estimated to reduce annual Commonwealth law enforcement expenditure by around \$100 million and increase annual GST revenue by around \$300 million...

Cannabis use is less harmful than alcohol use and tobacco use.

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1 Senate Standing Committee for the Selection of Bills, *Report No. 5 of 2018*, 10 May 2018, p. 3 and Appendix 1.

2 *Journals of the Senate*, No. 96, 9 May 2018, p. 3070.

3 Senator David Leyonhjelm, 'Second Reading Speech', *Senate Hansard*, 9 May 2018, p. 2748.

4 Explanatory Memorandum, p. 1.

Legalising cannabis would improve access to cannabis for recreational, medicinal, industrial and other purposes. Access for medicinal purposes is currently hamstrung through excessive regulation.<sup>5</sup>

### **Provisions of the bill**

1.5 The bill would amend a number of Commonwealth laws that currently prohibit and control cannabis, namely the:

- *Criminal Code Act 1995* (Criminal Code) and *Criminal Code Regulations 2002* (Criminal Code Regulations);
- *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990* (Crimes Act);
- *Defence Force Discipline Act 1982* (Defence Discipline Act);
- *Narcotic Drugs Act 1967* (Narcotic Drugs Act); and the
- *Therapeutic Goods Act 1989* (TGA Act).<sup>6</sup>

1.6 In his second reading speech, Senator Leyonhjelm provided an outline of how the bill would amend these Acts. Regarding the Criminal Code Act and Regulations, he stated that the bill:

...prevents cannabis, including any product obtained from a cannabis plant, from being defined as a controlled or border controlled drug. In so doing the Bill excludes dealings with cannabis from the serious drug offences in the Commonwealth Criminal Code. For completeness, the Bill amends the *Criminal Code Regulations 2002* so that cannabis and tetrahydrocannabinols (THC) are no longer listed as controlled and border controlled drugs.<sup>7</sup>

1.7 Regarding the Crimes Act, the Senator commented that the bill would :

...[remove] cannabis and THC from the Act's definition of narcotic drug, and removes dealings in cannabis and THC from the Act's definition of dealing in drugs. Together this serves to remove dealings with cannabis from the Act's offence provisions.<sup>8</sup>

1.8 Further to this, the Senator stated that the bill would remove redundant references in the Defence Discipline Act, while 'maintaining the existing disciplinary consequences for dealings with other drugs'.<sup>9</sup>

1.9 Senator Leyonhjelm noted that the bill would also repeal:

...Chapter 2 of the [Narcotic Drugs] Act, which establishes medicinal cannabis licences and imposes offences and civil penalties for dealings with

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5 Explanatory Memorandum, p. 1.

6 Senator David Leyonhjelm, 'Second Reading Speech' in *Senate Hansard*, 9 May 2018, p. 2748.

7 Senator David Leyonhjelm, 'Second Reading Speech' in *Senate Hansard*, 9 May 2018, p. 2748.

8 Senator David Leyonhjelm, 'Second Reading Speech' in *Senate Hansard*, 9 May 2018, p. 2748.

9 Senator David Leyonhjelm, 'Second Reading Speech' in *Senate Hansard*, 9 May 2018, p. 2748.

cannabis that are not authorised by such licences. The Bill also amends Chapter 3 of the Act, which establishes drug manufacture licences and imposes offences and civil penalty provisions for dealings with drugs that are not authorised by such licences. Chapter 3 is amended so these licences and the associated offences and civil penalty provisions do not apply with respect to dealings with cannabis.<sup>10</sup>

1.10 Senator Leyonhjelm stated that the bill would amend the TGA Act, so that:

...the Poisons Standard established by the Act does not apply in relation to cannabis. This will be consistent with the non-application of the Poisons Standard to nicotine in tobacco prepared and packed for smoking. It will also ensure that the Act cannot be used as a vehicle to ban cannabis.<sup>11</sup>

1.11 According to Senator Leyonhjelm, the bill would allow states and territories some discretion in regulating cannabis. If passed, the bill would start one year following Royal Assent, which he said would allow time for:

...state and territory governments to choose to maintain or alter their own laws relating to cannabis. They may maintain their bans on cannabis, with exemptions for medicinal use, if they choose. Alternatively, they may legislate to allow broader use and to regulate with respect to various matters such as children and driving.<sup>12</sup>

## States and territories

1.12 Cannabis is controlled and prohibited by Commonwealth laws, including the regulation of cannabis for medical use. Within this framework, all jurisdictions are able to adopt a range of approaches to policing cannabis, including: decriminalising the possession and use of cannabis for personal use; police being able to issue a number of 'cautions' for possession before laying a criminal charge; encouraging attendance at education programs rather than pressing charges; and/or the ability to refer users found in possession of cannabis to mandatory intervention programs.<sup>13</sup>

## Commonwealth approach to cannabis

1.13 The submission made by the Commonwealth Department of Health stated that the Commonwealth's approach to cannabis treated it as both narcotic and medicine, including through the National Drug Strategy 2017–2026 (National Drug Strategy). This approach, they suggested:

...reflects Australia's balanced health and law enforcement approach to reducing the impact of illicit drug use, tobacco use and the harmful use of alcohol. Relevantly, all scheduling decisions include consideration of a

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10 Senator David Leyonhjelm, 'Second Reading Speech' in *Senate Hansard*, 9 May 2018, p. 2748.

11 Senator David Leyonhjelm, 'Second Reading Speech' in *Senate Hansard*, 9 May 2018, p. 2748.

12 Senator David Leyonhjelm, 'Second Reading Speech' in *Senate Hansard*, 9 May 2018, p. 2748.

13 Senate Economics References Committee, *Personal choice and community impacts: Interim report: sale and use of marijuana and associated products (term of reference c)* (May 2016), p. 7.

standard set of factors, to ensure that public health objectives are consistently met and the application of public health risk considerations is consistent within each Schedule.<sup>14</sup>

1.14 The National Drug Strategy describes the use, prevalence and potential harms of cannabis as follows:

Cannabis is a group of substances from the plant *cannabis sativa* and is available in three main forms: flowering heads, cannabis resin (hashish) and cannabis oil. It is usually smoked, either in a hand-rolled cigarette or through a water-pipe.

In 2016, 10.4% of Australians over the age of 14 had used cannabis in the last 12 months and 34.8% had used cannabis in their lifetime. As the most widely used of the illicit drugs in Australia, cannabis carries a significant burden of disease. The use of cannabis can result in various health impacts, including mental illness, respiratory illness, and cognitive defects. In particular, cannabis dependence among young adults is correlated with, and probably contributes to, mental disorders such as psychosis.<sup>15</sup>

1.15 The National Drug Strategy outlines the 'harm minimisation' model that is central to the Commonwealth's approach to illicit drugs and drug abuse. This consists of three pillars: demand reduction, supply reduction and harm reduction (see figure below).<sup>16</sup>

#### A Balanced Approach Across the Three Pillars of Harm Minimisation



14 *Submission 32*, p. 3.

15 *National Drug Strategy 2017–2026*, p. 33.

16 *National Drug Strategy 2017–2026*, p. 3.

1.16 On law enforcement matters, the Strategy includes Crimtrac data indicating that the police issued 11,809 diversions for cannabis-related offences in 2014–15.<sup>17</sup>

### **Use of illicit cannabis in Australia**

1.17 The National Drug Household Survey 2016 indicated that cannabis is the most widely used illegal drug in Australia, with 10.4 per cent of respondents saying they had used it at least once in the past 12 months, well above the usage rates of other illicit substances. The survey indicated that around 35 per cent of Australians would use cannabis at least once in their lifetime (6.9 million people).<sup>18</sup>

1.18 The Survey also indicated that cannabis was often used in combination with other illicit substances, particularly:

...among users of hallucinogens (88%), ecstasy (79%), synthetic cannabinoid (78%) and meth/amphetamines (74%). However, cannabis users and people who misused pharmaceuticals were the most likely to only use those substances in the same 12-month period and not use any other illicit drug, while users of other psychoactive substances had used at least 1 other illicit drug, with quite high usage among this group—over half had used cannabis, ecstasy and hallucinogens.<sup>19</sup>

1.19 The survey also noted a general decline in the use of cannabis among the Australian population between 2001 and 2016, with users being older on average (34 years in 2016 compared with 29 in 2001).<sup>20</sup> This decline was especially apparent among younger Australians, when compared to previous generations:

While there were no significant declines among 14–19 year olds in recent illicit drug use between 2013 and 2016, use was considerably lower than in 2001—[including that the] use of cannabis has halved....<sup>21</sup>

### **Commonwealth laws on medicinal cannabis products**

1.20 The Commonwealth facilitates access to medicinal products for appropriate patients for 'medical conditions where there is evidence to support its use'. This is implemented by the Department of Health, through the Therapeutic Goods Administration (TGA) and the Office of Drug Control (ODC). The TGA states on its website that:

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17 *National Drug Strategy 2017–2026*, p. 4.

18 The National Drug Household Survey is the leading survey of licit and illicit drug use in Australia, undertaken by the Australian Institute of Health and Welfare every 2–3 years since 1985. Its sample in the 2016 survey was 23,772 respondents from households, so it does not include homeless or institutionalised individuals—which means actual prevalence of drug use may be greater than the survey indicates. See *National Drug Strategy Household Survey 2016: Detailed Findings*, p. 3 regarding the survey and its methods and p. 61 for statistics on cannabis use and trends.

19 *National Drug Strategy Household Survey 2016: Detailed Findings*, p. 10.

20 *National Drug Strategy Household Survey 2016: Detailed Findings*, pp. 58 and 61.

21 *National Drug Strategy Household Survey 2016: Detailed Findings*, p. 11

Medicinal cannabis products are regulated as medicines in Australia and are therefore subject to legal requirements. Generally, medicines imported into, supplied in, and exported from Australia must be entered in the Australian Register of Therapeutic Goods (ARTG), which is administered by the TGA. Medicinal cannabis products not on the ARTG can be supplied through alternative pathways until more clinical evidence is gathered through clinical trials to support its registration. These alternative pathways make reference to Special Access Scheme (SAS) and Authorised Prescriber (AP).<sup>22</sup>

1.21 Regarding the cultivation of cannabis, the TGA states:

On the 30 October 2016, legislation came into effect to allow legal cultivation, production and manufacturing of medicinal cannabis products in Australia. The legislative changes forecasted an increase availability of medicinal cannabis products available to suitable patients. The ODC administers this scheme and works in collaboration with therapeutic goods legislation and state and territory legislation. The ODC is responsible for the regulation of domestic cultivation and harvest, as well as other aspects of manufacture of medicinal cannabis, under the [Narcotics Drug Act].<sup>23</sup>

1.22 The TGA notes that individual consumers cannot apply to obtain approval to import and access unapproved medicinal cannabis products, but have to go through an Australian registered doctor with 'appropriate qualifications and/or expertise for the medical condition requiring treatment' who can make approvals on a case-by-case basis. Regarding the obligations of doctors wishing to apply for cannabis products for their patients, the TGA notes the requirement to:

- Gain informed consent from the patient in relation to the proposed use of the unapproved product. The doctor and patient, patient's parents or guardian accept responsibility for any adverse consequence of therapy.
- Notify/apply on a patient's behalf for approval/authorisation to supply these products through the available Commonwealth access schemes...
- Ensure State/Territory requirements are satisfied.
- Obtain an import license/ permit to import the product through the Office of Drug Control. Please note this may not be applicable if a product is currently being held in Australia.
- Monitor patient outcome and report any suspected adverse drug reactions.<sup>24</sup>

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22 Therapeutic Goods Administration, 'Access to medicinal cannabis products' at [www.tga.gov.au/access-medicinal-cannabis-products-1](http://www.tga.gov.au/access-medicinal-cannabis-products-1) (accessed 12 July 2018).

23 Therapeutic Goods Administration, 'Access to medicinal cannabis products' at [www.tga.gov.au/access-medicinal-cannabis-products-1](http://www.tga.gov.au/access-medicinal-cannabis-products-1) (accessed 12 July 2018).

24 Therapeutic Goods Administration, 'Access to medicinal cannabis products' at [www.tga.gov.au/access-medicinal-cannabis-products-1](http://www.tga.gov.au/access-medicinal-cannabis-products-1) (accessed 12 July 2018).

## Senate inquiry into personal choice and community impacts of cannabis

1.23 On 25 June 2015, the Senate referred an inquiry into personal choice and community impacts to the Senate Economics References Committee for inquiry and report by 13 June 2016. Due to the general election on 2 July 2016, this inquiry lapsed and was subsequently not re-referred in the 45<sup>th</sup> Parliament.

1.24 The committee tabled an interim report into the sale and use of marijuana and associated products in May 2016, which recommended that:

...the Australian Government, in conjunction with the states and territories, undertake an objective assessment of prohibition, decriminalisation, limited deregulation and legalisation, including a full cost-benefit analysis, based on the outcomes of these options in other parts of the world.<sup>25</sup>

## Financial implications of the bill

1.25 The Explanatory Memorandum states that the bill would have a positive impact on the Commonwealth Budget, improving the fiscal balance of the Commonwealth Budget by \$342 million, as well as lifting its underlying cash balance by \$292 million over the forward estimates.<sup>26</sup>

1.26 The Explanatory Memorandum includes a policy costing undertaken by the Parliamentary Budget Office (PBO) for Senator Leyonhjelm, which was completed on 21 September 2016. This costing summarises the financial aspects of the bill as follows:

The proposal would legalise all marijuana/cannabis/hemp use by adults, as well as possession, cultivation, processing, transport, trade, import and export. No excise would be imposed on marijuana.

This proposal would also reduce the budgets of relevant federal agencies including the Australian Federal Police (AFP), Australian Criminal Intelligence Commission (ACIC), and the Australian Border Force (ABF) by the level of funding directly associated with marijuana law enforcement.

An estimate of the effect of this proposal on total marijuana usage was also requested.<sup>27</sup>

1.27 The PBO provided a comprehensive list of underlying assumptions used for the modelling of these costings, but advised this 'costing is considered to be of low reliability', as:

...[there] is uncertainty regarding the price and quantity of marijuana currently consumed, and the price and quantity of marijuana that would be

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25 Senate Economics References Committee, *Personal choice and community impacts: Interim report: sale and use of marijuana and associated products (term of reference c)* (May 2016), p. 20.

26 Note this advice was given in 2015, and so the relevant forward estimates period was for 2016–20. These costings were disputed by some evidence received, which is discussed further in chapter 2.

27 Explanatory Memorandum, p. 11.

consumed in a newly legalised market. It is also difficult to separately identify marijuana law enforcement activities, as these are often integrated within broader law enforcement activities.<sup>28</sup>

### **Compatibility with human rights**

1.28 The Explanatory Memorandum states that the bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Explanatory Memorandum sets out some of the human rights implications implicit in the bill:

Adults should be free to make their own choices as long as they do not harm others.

The Bill protects the right of self-determination, the right to freely pursue one's economic, social and cultural development, and the right to freely dispose of one's natural wealth and resources. These rights are recognised in Article 1 of the International Covenant on Economic, Social and Cultural Rights and Article 1 of the International Covenant on Civil and Political Rights.<sup>29</sup>

### ***Senate Scrutiny of Bills Committee***

1.29 The Senate's Scrutiny of Bills Committee (Scrutiny Committee) commented on the bill's reversal of the legal burden of proof, noting that:

The bill seeks to amend the *Defence Force Discipline Act 1982* (the Act) to insert five offences relating to defence members or defence civilians dealing in, possessing or administering prohibited drugs. It also seeks to provide that it would be a defence to each of these offences if the person proves that he or she had lawful authority for engaging in the relevant conduct. The defendant would bear a legal burden of proof in relation to each of these defences, ensuring that the defendant would need to prove, on the balance of probabilities, that he or she had lawful authority for engaging in the relevant conduct. The proposed offences carry maximum penalties ranging from a fine of three penalty units to imprisonment for 10 years. The proposed section largely mirrors existing section 59 in the Act, with the exception that provisions setting out specific penalties where the conduct involves cannabis have been removed.

At common law, it is ordinarily the duty of the prosecution to prove all elements of an offence. This is an important aspect of the right to be presumed innocent until proven guilty. Provisions that reverse the burden of proof and require a defendant to disprove one or more elements of an offence, interfere with this common law right.<sup>30</sup>

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28 Explanatory Memorandum, p. 12. See tables A1 and A2 in Appendix 3 of this report for the PBO's breakdown of this modelling.

29 Explanatory Memorandum, p. 10.

30 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest No 5 of 2018*, 20 June 2018, p. 17.

1.30 The Scrutiny Committee further argued:

As the reversal of the burden of proof undermines the right to be presumed innocent until proven guilty, the committee expects there to be a full justification in the explanatory memorandum each time the burden is reversed, with the rights of people affected being the paramount consideration. In this instance, the explanatory memorandum does not address the fact that proposed section 59 seeks to reverse the legal burden of proof in relation to the lawful authority defences set out in proposed subsections 59(2), (4), (5A), (6A) and (8).<sup>31</sup>

1.31 After noting these concerns, the Scrutiny Committee left the decision about the appropriateness of the bill's reversal of the legal burden of proof to the Senate as a whole.<sup>32</sup>

### **Conduct of the inquiry**

1.32 Details of the inquiry were advertised on the committee's website, including a call for submissions to be received by 15 June 2017. The committee also wrote directly to a number of individuals and organisations inviting them to make submissions.

1.33 The committee received 36 submissions, all available on the committee's website. A list of all submissions received is at appendix 1 of this report.

1.34 The committee held a public hearing in Canberra on 17 August 2018. A full list of all witnesses who gave evidence to the committee at this hearing is at appendix 2 of this report.

### **Structure of this report**

1.35 This report consists of two chapters:

- This chapter provides a brief background and overview to the bill, as well as the administrative details of the inquiry; and
- Chapter 2 discusses the evidence received by the committee supporting and opposing the bill, and sets out the committee's views and recommendation.

### **Acknowledgements**

1.36 The committee thanks all organisations and individuals that made submissions, as well as those that appeared at the public hearing.

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31 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest No 5 of 2018*, 20 June 2018, p. 18.

32 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest No 5 of 2018*, 20 June 2018, p. 18.



# 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'.<sup>1</sup> 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.<sup>2</sup>

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

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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.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup> For example, the Eros Foundation observed that '[nearly] 75% of Australians are in favour of decriminalising cannabis and around a quarter support legalisation'.<sup>6</sup>

### ***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.<sup>7</sup>

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

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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.<sup>8</sup>

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'.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup>

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.

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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...<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup>

### ***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,

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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.<sup>16</sup>

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.<sup>17</sup>

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.<sup>18</sup>

### ***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.<sup>19</sup> 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.<sup>20</sup>

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

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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.<sup>21</sup>

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.<sup>22</sup>

## **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.

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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.<sup>23</sup> 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'.<sup>24</sup>

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.<sup>25</sup>

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.<sup>26</sup>

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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.<sup>27</sup>

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.<sup>28</sup>

2.29 A number of submitters drew the committee's attention to the serious effects of even moderate cannabis use on unborn children.<sup>29</sup> 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

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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.<sup>30</sup>

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.<sup>31</sup>

### ***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.<sup>32</sup>

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.<sup>33</sup>

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.<sup>34</sup>

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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.<sup>35</sup>

#### *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.<sup>36</sup>

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.<sup>37</sup>

#### *International obligations*

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

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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).<sup>38</sup> Under this convention, Australia must report annually on its compliance with its obligations to the International Narcotics Control Board (INCB).<sup>39</sup> 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.<sup>40</sup>

### *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.<sup>41</sup> 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.<sup>42</sup>

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.<sup>43</sup>

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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.<sup>44</sup> 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.<sup>45</sup>

### ***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.<sup>46</sup>

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.<sup>47</sup>

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

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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.

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expertise to effectively implement import and customs controls for cannabis and cannabis-based products.<sup>48</sup>

### ***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.<sup>49</sup>

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...<sup>50</sup>

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.<sup>51</sup>

### ***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:

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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.<sup>52</sup>

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.<sup>53</sup>

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.<sup>54</sup>

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.<sup>55</sup>

### **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.

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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.

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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**

## **Dissenting Report–Liberal Democrats**

1.1 The inquiry into this bill heard no evidence that would justify a recommendation for the bill to not be passed. Furthermore, the evidence confirmed that the status quo is untenable.

1.2 The intent of the bill is to remove Commonwealth offences and civil penalty provisions for dealings in cannabis, leaving it to State and Territory governments to legalise and regulate cannabis. As the inquiry heard, widespread domestic cultivation generally makes the trafficking of herbal cannabis into Australia unnecessary and unprofitable.

1.3 Passage of the bill would not make recreational cannabis legal, but would allow genuine competitive federalism as each jurisdiction determined its own course and learnt from each other's experience.

1.4 The policy of prohibition is a failure. Cannabis is the most widely used illicit drug in Australia, as confirmed by the Australian Institute of Health and Welfare (AIHW) 2016 household survey which showed for people aged 14 and over in Australia, 35 per cent (or approximately 6.9 million people) had used cannabis in their lifetime and 10.4 per cent (or 2.1 million) had used cannabis in the prior 12 months.

1.5 The futility of a crime-based approach was confirmed by Mr Mick Palmer, former Commissioner of the Australian Federal Police, whose submission stated:

...the reality is that, contrary to frequent assertions, drug law enforcement has had little impact on the Australian drug market or for that matter, on the drug markets of most, if not all, countries in the world.

Australian police are better resourced, better trained, and more effective than ever and yet their impact on the drug trade, on any objective assessment, has been minimal.<sup>1</sup>

1.6 It is not necessary to approve of cannabis or to recommend it, in order to accept the futility of the current policy.

1.7 Supporters of the bill pointed to the cost of maintaining a policy of prohibition - the resources committed to law enforcement, lives damaged by criminal convictions (80,000 cannabis arrests in 2015-16), profits for organised crime, and links to criminals who sell more harmful illegal drugs. They also claim more consideration should be given to relative harm, for example in comparison with alcohol.

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1 *Submission 33*, p. 3.

1.8 The reservations of the Therapeutic Goods Administration (TGA) regarding the bill warrant a specific response.

1.9 The TGA claimed the proposed amendments to the Narcotic Drugs Act would mean Australia was no longer compliant with its international treaty obligations, which would affect its ability to cultivate opiates for medicinal use and compete with countries such as Turkey, Portugal, Spain and India.

1.10 The legalisation of cannabis would have no impact on the cultivation of opium poppies in Tasmania and it is difficult to believe the International Narcotics Control Board would fail to recognise that. Moreover, cannabis is already legal in Spain, deregulated in Portugal, and freely available in Turkey and India. In the largest producer of legal opium, the Czech Republic, up to 180g of cannabis dry matter can be legally obtained on prescription from pharmacies.

1.11 In any case, Australia should not base its policies on the potential for an irrational application of international treaties.

1.12 The TGA argued that passage of the bill, with its provision preventing cannabis from being listed on the Poisons Standard, would result in an absence of quality controls on medicinal cannabis and an inability to approve therapeutic claims for cannabis extracts.

1.13 The concern in relation to quality controls is not valid; existing consumer safeguards would continue to apply. However this concern, as well as the issue of registered claims, can be easily addressed through a minor amendment to the bill to allow those products to be scheduled (much like nicotine in patches and gums) while otherwise excluding cannabis from the Poisons Standard (much like nicotine prepared and packed for smoking).

1.14 The concern of the Scrutiny of Bills Committee, which says the bill introduces drug offences relating to the defence force that involve a reversal of the onus of proof, is not correct. In fact, the bill merely removes cannabis from existing drug offences. The confusion arises from the fact that the bill achieves this by first repealing the existing offences and then reinserts identical offences but with references to cannabis removed.

1.15 The Liberal Democrats believe public policy on drugs should not be based on disapproval, but on harm. A growing number of countries agree and it is time Australia did as well.

**Recommendation 1**

**1.16 That the bill be passed subject to a minor amendment to allow therapeutic claims to be made for cannabis extracts.**

**Senator David Leyonhjelm**



# Appendix 1

## Submissions

- 1 Emeritus Professor Laurie Mather
- 2 360Edge
- 3 Professor Dr Albert Reece
- 4 AGEM Australian Gratuitous Economical Metabolic
- 5 Name Withheld
- 6 Emeritus Professor Ian W Webster AO
- 7 Drug Free Australia
- 8 Doogue + George Defence Lawyers
- 9 Eros Association
- 10 Name Withheld
- 11 Name Withheld
- 12 Dalgarno Institute
- 13 Alcohol and Drug Foundation
- 14 Rural Doctors Association of Australia
- 15 Drug Advisory Council of Australia
- 16 Ms Gail Hester, Medical Cannabis Users Association of Australia Inc.
- 17 Australian Medical Association
- 18 National Drug Research Institute
- 19 Name Withheld
- 20 Painaustralia
- 21 Australian Drug Law Reform Foundation
- 22 Australian Christian Lobby
- 23 Western Australia Police Force
- 24 Name Withheld
- 25 Name Withheld
- 26 Families and Friends for Drug Law Reform
- 27 Name Withheld
- 28 Name Withheld
- 29 The Royal Australian College of General Practitioners
- 30 Mr John Reeves

- 31 Northern Territory Government
- 32 Department of Health
- 33 Mr Mick Palmer AO APM
- 34 Department of Home Affairs
- 35 Name Withheld
- 36 Professor John Whitehall, Western Sydney University

### **Answers to questions on notice**

- 1 Dalgarno Institute - answer to question on notice taken at the public hearing on 17 August 2018 (received 22 August 2018).
- 2 Department of Health - answer to question on notice taken at the public hearing on 17 August 2018 (received 3 September 2018).

## **Appendix 2**

### **Public hearings and witnesses**

#### **Friday, 17 August 2018 – Canberra**

BUSH, Mr William Murdoch (Bill), President, Families and Friends for Drug Law Reform

CHRISTIAN, Mr Gary, Consultant, Dalgarno Institute

CROZIER, Mr Peter, Acting Assistant Commissioner, National Manager, Organised Crime Division, Australian Federal Police

DALE, Ms Erin, Assistant Commissioner, Strategic Border Command, Australian Border Force

FRANCIS, Ms Jenny, Principal Legal and Policy Adviser, Health Products Regulation Group, Department of Health

GEOGHEGAN, Mrs Clara, Research Officer, Australian Christian Lobby

LEE, Professor Nicole, Director, 360Edge

LENTON, Professor Simon, Director, National Drug Research Institute, Curtin University

PALMER, Mr Michael John (Mick), Private capacity

SENGSTOCK, Ms Elsa, Coordinator, Legislation Program Branch, Australian Federal Police

SKERRITT, Adjunct Professor John, Deputy Secretary, Health Products Regulation Group, Department of Health

SPENCER, Ms Ciara, Assistant Secretary, National Security and Law Enforcement Policy Branch, Department of Home Affairs

TAYLOR, Dr Elisabeth, Director of Research, Australian Christian Lobby

VARCOE, Mr Shane, Executive Director, Dalgarno Institute

WESTAWAY, Ms Joan, Volunteer, Family and Friends for Drug Law Reform



## Appendix 3

### Parliamentary Budget Office: financial implications of legalising cannabis<sup>1</sup>

**Table A1: Legalising marijuana—Fiscal balance<sup>(a)(b)</sup>**

(\$m)	2016–17	2017–18	2018–19	2019–20	Total to 2019–20
GST revenue	-	350.0	300.0	250.0	900.0
GST expenses to the states and territories	-	-297.0	-297.0	-248.0	-842.0
Departmental expenses - Australian Taxation Office	-	-3.0	-3.0	-2.0	-8.0
<b>Net GST impact</b>	-	<b>50.0</b>	..	..	<b>50.0</b>
Departmental expenses - AFP	-	52.0	51.0	51.0	154.0
Departmental expenses - ABF	-	46.0	46.0	46.0	138.0
<b>Net law enforcement impact</b>	-	<b>98.0</b>	<b>97.0</b>	<b>97.0</b>	<b>292.0</b>
<b>Total</b>	-	<b>148.0</b>	<b>97.0</b>	<b>97.0</b>	<b>342.0</b>

(a) A positive number for the fiscal balance indicates an increase in revenue or a decrease in expenses or net capital investment in accrual terms. A negative number for the fiscal balance indicates a decrease in revenue or an increase in expenses or net capital investment in accrual terms.

(b) Figures may not sum to totals due to rounding.

.. Not zero but rounded to zero.

- Indicates nil.

**Table A2: Legalising marijuana—Underlying cash balance<sup>(a)(b)</sup>**

(\$m)	2016–17	2017–18	2018–19	2019–20	Total to 2019–20
GST receipts	-	300.0	300.0	250.0	850.0
GST payments to the states and territories	-	-297.0	-297.0	-248.0	-842.0
Departmental expenses - Australian Taxation Office	-	-3.0	-3.0	-2.0	-8.0
<b>Net GST impact</b>	-	-	-	-	-
Departmental expenses - AFP	-	52.0	51.0	51.0	154.0
Departmental expenses - ABF	-	46.0	46.0	46.0	138.0
<b>Net law enforcement impact</b>	-	<b>98.0</b>	<b>97.0</b>	<b>97.0</b>	<b>292.0</b>
<b>Total</b>	-	<b>98.0</b>	<b>97.0</b>	<b>97.0</b>	<b>292.0</b>

(a) A positive number for the underlying cash balance indicates an increase in receipts or a decrease in outlays or net capital investment in cash terms. A negative number for the underlying cash balance indicates a decrease in receipts or an increase in outlays or net capital investment in cash terms.

(b) Figures may not sum to totals due to rounding.

- Indicates nil.

