

THE HIGHS AND LOWS OF CANNABIS LAW REFORM

Presented by the Equal Justice Project Access Team
2020



Written By:

Hurya Ahmad, Greer Bonnette, Jonathan de Jongh, Vivian del Carpio, Gwen Hamilton, Jungwon Jo, Amanda Joshua, Jayna Lee, Tanzeel Patel, Kannu Sachdev, Jess Thwaites-Hardy and Helena Wiseman

Special thanks to the Equal Justice Project Communications team for their assistance in editing and compilation

This work was undertaken by several volunteers of the Equal Justice Project based on personal research from a variety of official and unofficial sources. No information within this symposium paper will be understood as official. The Equal Justice Project makes no representations as to the accuracy or completeness of any information on this site or found by following any link on this site. The Equal Justice Project will not be liable for any errors or omissions in this information nor for the availability of this information.

CONTENTS

1

Historical Development on the Law
on Cannabis in New Zealand

2

Current Legislation

3

Current Policy

4

International Comparison

5

Recreational Use and Regulation

6

Arguments for the Bill

1. Regulation
2. Improved Justice Outcomes
3. Economic Benefits

7

Arguments against the Bill

1. The Black Market
2. Adverse Effects on Youth
3. Employment Issues

HISTORICAL DEVELOPMENT

The history of cannabis legislation in New Zealand reveals various paradigm shifts in the law over time. The country was one of the very few areas where the United Kingdom discouraged industrial hemp production, as the harakeke plant was thought to be an adequate alternative for fibre. The lack of its presence in the community may explain why recreational cannabis use was relatively rare for most of the 20th century. Interestingly, cannabis was classified as a controlled drug under the Dangerous Drugs Act 1927, enabling its use as prescription medication.¹

However, to follow its international obligations under the Single Convention on Narcotic Drugs 1961, Parliament passed the Narcotics Act in 1965, banning cannabis use both medicinally and recreationally.² Cannabis use today is governed by the Misuse of Drugs Act 1975 which imposes penalties ranging from a \$500 fine to 3 months' imprisonment.³

In 2016, the Green Party stated that if it formed government in the 2017 election, it would legalise recreational cannabis. Consequently, talks of reform followed the 2017 general election in which the confidence and supply agreement between the Green and Labour parties imposed an obligation for the government to propose a referendum on the matter at, or by, the 2020 general election.

In December 2019, the Misuse of Drugs (Medicinal Cannabis) Regulations 2019 Act was passed. This established the approval of commercial cultivation, and prescription of cannabis for medicinal purposes only.⁴ Furthermore, since the passing of the amendment, there is now a statutory defence to possess and use cannabis for those requiring palliative relief.⁵

¹ Dangerous Drugs Act 1927, section 25(2).

² Greg Newbold. *Crime, Law and Justice in New Zealand*, Routledge, pp. 153.

³ Misuse of Drugs Act 1975, section 7(2)(b).

⁴ Misuse of Drugs (Medicinal Cannabis) Regulations 2019, section 10.

⁵ Misuse of Drugs (Medicinal Cannabis) Regulations 2019, section 7.

CURRENT LEGISLATION

Cannabis is regulated by the Misuse of Drugs Act 1975. It is primarily a Class C drug, although cannabis oil is a Class B drug. Any person who imports, produces, or supplies cannabis is liable to imprisonment for up to 8 years, or 14 years for cannabis oil.⁶ Any person who possesses cannabis is liable for a maximum fine of \$500, or imprisonment of up to 3 months. However, prison sentences are only given out if the situation is more egregious than simply possessing cannabis. There is a presumption that anyone possessing over 28 grams of cannabis is a supplier, which means they are liable for up to 8 years imprisonment.⁷ This presumption has been discussed in the Supreme Court as inconsistent with the NZ Bill of Rights Act 1990, however it remains law.

Currently, the law allows for a medical practitioner to prescribe or supply medicinal cannabis to a person.⁸ The only cannabis-based pharmaceutical approved in New Zealand is Sativex, which is used for treatment of multiple sclerosis (MS).⁹ Other cannabis medicinal products may be approved by the Minister of Health on a case-by-case basis.¹⁰

The law currently allows police the discretion to prosecute crimes involving cannabis. However, there are exceptions in the law, such as a defence being available to cannabis offences if the defendant took the drug to stop a crime from being committed and did so as soon as possible. In addition, a person who requires palliation will not be prosecuted for possessing or using cannabis to ease suffering of a terminal illness or chronic pain, even if they do not have a medical prescription for cannabis.

⁶ Misuse of Drugs Act 1975, section 6.

⁷ *R v Hansen* [2007] NZSC 7.

⁸ Misuse of Drugs Act 1975, section 8.

⁹ New Zealand Government, 'Sativex® Oromucosal Spray' medsafe.govt.nz/profs/riss/sativex.asp

¹⁰ New Zealand Government, 'Medicinal Cannabis Agency' www.health.govt.nz/our-work/regulation-health-and-disability-system/medicinal-cannabis-agency

CURRENT POLICY

The National Drug Policy 2015 - 2020 sets out the government's objectives for addressing cannabis use. This policy sets guidelines for government action within the community. It is different to legislation because it reflects intentions rather than binding regulations. The overarching goal of the Drug Policy is to minimise harm from drug use, and promote and protect health and wellbeing.¹¹ Importantly, alcohol and drug problems are recognised as being primarily health issues; it follows that the policy responses are more health-centred, rather than imposing criminal sanctions. The paramount priority is creating a people-centred intervention system, acknowledging that services need to be structured to provide fast and effective responses to people.¹²

The policy aims to delay the uptake of cannabis, calling upon evidence which suggests that earlier use of cannabis exposes young people to an increased risk of mental health issues, respiratory problems, and pneumonia.¹³ This means barriers to access for treatment and support for drug abuse should be removed. However, some increase in criminal law enforcement is also recommended as a strategy to achieve the objectives.¹⁴

¹¹ National Drug Policy 2015-2020 page 4.

¹² Page 18.

¹³ Page 8.

¹⁴ Page 17.

INTERNATIONAL COMPARISON

The international experience of cannabis legalisation is instructive for New Zealand's own decision. In terms of the social and medical outcomes, the evidence from the United States, Uruguay and Canada is relatively consistent: legalisation does not greatly increase the rates of consumption.¹⁵

Uruguay, Canada and several states in the United States are all useful comparators for New Zealand because they have decriminalised recreational cannabis use as well as medicinal use.¹⁶ In 2012, Uruguay became the first country in the world to do so. The state of Colorado followed later that year. The underlying rationale of the legislation in the States, Uruguay and Canada is a fundamental move away from the 'War on Drugs' way of thinking: that prohibition would yield the best social and health outcomes. Rather, recreational legalisation, in those countries that have adopted it, aims to reformulate cannabis use as a health issue by decriminalising it.

As in New Zealand, the theoretical shift in drug policy overseas was met with concerns that legalisation would increase rates of youth consumption of cannabis, thereby exposing young people to the health risks of the drug. However, there is almost no evidence to suggest that legalisation increases youth cannabis consumption. The United States National Survey on Drug Use found only a slight increase in the immediate post-legalisation period in Colorado, which researchers call a "novelty blip" as opposed to a sustained trend.¹⁷ Similarly, there has been no significant increase in adolescent use in Uruguay. What does change is the ability of a state to regulate how adolescents consume cannabis.¹⁸

Regulation and legalisation of cannabis is therefore not simply a health issue. Legalisation also presents justice issues for Parliament to consider, which have been highlighted by overseas examples. Critically, provision must be made for those who have existing convictions for an act that would no longer be considered criminal. The approach to retrospectively expunging those convictions has raised difficulties in Canada.¹⁹ The initial legalisation bill did not make provision for expungement, but a later bill, C-93, was passed for the specific purpose of addressing previous convictions. C-93 has been criticised for its inefficiency — 500,000 people in Canada still had criminal convictions for cannabis on their record a year after legalisation²⁰ — but also because it merely suspends, rather than expunges the conviction. As

¹⁵ Liberty Vittert, 'Here's what the numbers show about legalizing marijuana' <https://www.marketwatch.com/story/heres-what-the-numbers-show-about-the-impact-of-legalizing-marijuana-2019-04-09>

¹⁶ John Collins, 'Why are so many countries now saying cannabis is OK?' <https://www.bbc.com/news/world-46374191>

¹⁷ Wayne Hall and Michael Lynskey, 'Assessing the public health impacts of legalising cannabis use: the US experience', *World Psychiatry*, June 2020, 19 (2), pp. 179-186.

¹⁸ Hannah Laqueur et al, 'The impact of cannabis legalization in Uruguay on adolescent drug use' *International Journal of Drug Policy*, June 2020, 80.

¹⁹ Transform Drug Policy Foundation, 'Legalisation in Canada one year on' <https://transformdrugs.org/cannabis-legalisation-in-canada-one-year-on/>

²⁰ Ibid.

such, the conviction still exists.²¹ This is problematic because although cannabis use is no longer criminal in Canada, the stigma of criminal convictions continues to have a lasting harmful effect on people's lives. Therefore, New Zealand's approach to prior cannabis convictions will need to be well-considered to avoid the shortcomings of Canada's approach.

²¹ Ibid.

RECREATIONAL USE AND REGULATION

The purpose of the Cannabis Legislation and Control Bill is to regulate and control cannabis in New Zealand. It aims to reduce harm to the community that has been caused by cannabis.²² This Bill applies to the recreational use and thus decriminalisation and legalisation of cannabis.

Currently, cannabis is a Class C drug in New Zealand, on a tier with codeine and other drugs of a ‘moderate risk’. The Bill would make cannabis legal in restricted circumstances. The proposed Cannabis Legislation and Control Bill sets the age for purchasing and using cannabis at 20 years old. Cannabis will be restricted to use in private homes and licensed premises. It will only be available from specialised stores.

The Bill provides that those under the age of 20 will continue to be prohibited from possessing and consuming cannabis.²³ A person under 20 found in possession of cannabis would receive a health-based response or be fined, they would not be convicted. Under existing legislation, those found growing, possessing or consuming cannabis can be convicted.²⁴

The Bill allows people over 20 years old to buy up to 14 grams of dried cannabis per day from licensed outlets.²⁵ They are also permitted to have up to 14 grams of dried cannabis in their possession in a public place.²⁶ Penalties can apply if cannabis is sold or supplied to those who appear to be impaired or intoxicated, as with alcohol.²⁷ The Bill also allows those over 20 years of age to grow up to 2 plants, with a maximum of 4 per household. There are a number of provisions in place to control the potency of the product being sold to reduce harmful outcomes.

Advertising is banned under the legislation, and the product’s packaging would focus on discouraging cannabis consumption, similar to the packaging of cigarettes. Packaging would not be targeted to appeal to children and young people in any way.²⁸

²² New Zealand Government, ‘Cannabis Legalisation and Control Draft Bill’

<https://www.beehive.govt.nz/sites/default/files/2019-12/Cannabis%20Legalisation%20and%20Control%20Bill.pdf>

²³ New Zealand Government, ‘Summary of the proposed Cannabis Legalisation and Control Bill’

<https://www.referendums.govt.nz/cannabis/summary.html>

²⁴ New Zealand Government, ‘Summary of the proposed Cannabis Legalisation and Control Bill’

<https://www.referendums.govt.nz/cannabis/summary.html>

²⁵ New Zealand Government, ‘Summary of the proposed Cannabis Legalisation and Control Bill’

<https://www.referendums.govt.nz/cannabis/summary.html>

²⁶ New Zealand Government, ‘Cannabis Legalisation and Control Draft Bill’

<https://www.beehive.govt.nz/sites/default/files/2019-12/Cannabis%20Legalisation%20and%20Control%20Bill.pdf>

²⁷ New Zealand Government, ‘Cannabis Legalisation and Control Draft Bill’

<https://www.beehive.govt.nz/sites/default/files/2019-12/Cannabis%20Legalisation%20and%20Control%20Bill.pdf>

²⁸ New Zealand Government, ‘Summary of the proposed Cannabis Legalisation and Control Bill’

<https://www.referendums.govt.nz/cannabis/summary.html>

Medicinal cannabis is covered by existing laws. The Misuse of Drugs (Medicinal Cannabis) Regulations 2019 have been in effect since 1 April 2020.²⁹ These laws allow for medicinal cannabis products to be available for patients on prescription from a doctor. This allows greater access to quality medicinal cannabis products for patients. The Bill relevant to the upcoming referendum does not in any way impact the availability or legality of medicinal cannabis.

²⁹ Ministry of Health, 'About the Medicinal Cannabis Scheme'
<https://www.health.govt.nz/our-work/regulation-health-and-disability-system/medicinal-cannabis-agency/about-medicinal-cannabis-scheme>

ARGUMENTS FOR THE BILL

1. Regulation

Legalising cannabis would bring it within the ambit of government regulation. Its consumption, supply, and marketing would therefore be subject to a regulatory framework. The status quo of blanket prohibition – and the resulting regulatory deference to the black market – has resulted in substantial social and health harms.³⁰ In legalising cannabis, the government would have the ability to directly control the type of cannabis available, regulate how it's marketed, restrict who has access to it, and vet who supplies it.³¹ Legalisation would also realign cannabis laws to be consistent with other regulated goods like alcohol and tobacco.³² Regulation would therefore undermine the illicit market while also helping reduce health harm through product safety regulation,³³ and facilitating public education campaigns to encourage responsible use.³⁴ Ultimately, regulation would help achieve the harm-reduction objective of the Bill.

How does the Bill regulate cannabis?

The Bill would establish a regulatory body responsible for the implementation of cannabis laws.³⁵ The Cannabis Regulatory Authority would be the primary policy instrument that would regulate the supply and consumption of cannabis in Aotearoa. Its mandate, like its responsibilities, would be wide.

The object of the Authority is to regulate cannabis in a way that promotes the well-being of New Zealanders, reduce the harm of cannabis use, and ultimately reduce the use of cannabis over time.³⁶ The functions of the Authority reflect this objective. For example, it must limit the amount of cannabis purchasable by an individual. This is currently set at 14 grams per day.³⁷ Similarly, the Authority regulates the supply chain. This allows them to set maximum potency limits and validate the safety profile of the substances being sold. As part of the Authority's supply chain regulation, they issue licenses to authorised suppliers. The criteria for this is onerous, with applicants needing to demonstrate that they are "fit and proper" for the purposes of the Bill. This requires them to satisfy police vetting, and demonstrate that they have the expertise to comply with the obligations of supplying cannabis.³⁸ These robust

³⁰ Office of the Prime Minister's Chief Science Advisor "Legalising cannabis in Aotearoa New Zealand: What does the evidence say?" (2020) <https://www.pmcasa.ac.nz/topics/cannabis/>.

³¹ Katherine Errington, Paul Smith and George Lala "The Case for Yes in the 2020 Referendum on Cannabis" (September 2019) Helen Clark Foundation <https://helenclark.foundation/wp-content/uploads/2019/09/the-case-for-yes-in-the-2020-cannabis-referendum.pdf/> at 16.

³² Errington, Smith and Lala, above n 31 at 19.

³³ Chief Science Advisor, above n 30.

³⁴ Cannabis Legalisation and Control Bill 2020 s 12(j)(i).

³⁵ At s 10.

³⁶ Above n 34 at s 11(1).

³⁷ At s 31(1).

³⁸ At s 75.

regulations allow the Authority to control what is sold, to whom it's sold, and by whom it's sold.

Why is regulation important?

A regulated market is preferable to the status quo. Currently, there are no restrictions on whom cannabis is available to. A 2018 study concluded that one in three high school students have used cannabis before they leave school.³⁹ Moreover, there are no limits to the quantity, and indeed quality, available. Regulation would restrict access to those over 20 years old and limit the amount that can be purchased. United States jurisdictions that have legalised cannabis tend to favour less regulated markets. Despite this, young people were 8% less likely to use cannabis than before, and 9% less likely to become frequent users.⁴⁰ Whereas the status quo enables untested, potentially contaminated and high-potency products to be proliferated to young people,⁴¹ regulation would be dose-controlled, and quality checked. Regulation therefore does not increase usage for young-people, and ensures that the substances available are safe. Regulated markets enable the collection of tax and levies that will then be funnelled into funding public education campaigns; currently, the illegal supply of cannabis funds organised crime,⁴² and information regarding safe-use practices are stigmatised because of its criminal status.

Conclusion

Cannabis prohibition has resulted in sustained social harm. Its criminal status has not deterred from its usage, with most New Zealanders trying cannabis at some point in their lives.⁴³ Although Aotearoa's cannabis laws have tentatively shifted away from a punitive approach, the status quo has enabled untested substances to be proliferated without restriction. Regulation, however, would ensure that the access to products *already* being used is limited, safe, produced and supplied with harm minimisation in mind.

³⁹ NZ Drug Foundation "Taking Control of Cannabis – A Model for Responsible Regulation" (September 2019). <https://www.drugfoundation.org.nz/assets/uploads/2019-uploads/Taking-control-of-Cannabis.pdf> at 4.

⁴⁰ NZ Drug Foundation, above n 10 at 4.

⁴¹ Office of the Prime Minister's Chief Science Advisor "Legalising Cannabis: At a Glance Summary" (2020) <https://cpb-ap-se2.wpmucdn.com/blogs.auckland.ac.nz/dist/f/688/files/2020/01/Cannabis-at-a-glance-summary-v5.pdf> at 4.

⁴² Chief Science Advisor, above n 41 at 3.

⁴³ Chief Science Advisor, above n 41, at 2.

2. Improved Justice Outcomes

Justice Outcomes for Disadvantaged Communities

We cannot ignore that substance use occurs within wider political, social and economic determinants such as colonisation, oppression and economic hardship.⁴⁴ Poor, racialised and otherwise marginalised people suffer the most when drugs are illegal. The legalisation of Cannabis has the potential to improve justice outcomes for these disadvantaged communities in our country. Primarily, it will allow us to take a rehabilitative approach that focuses on helping rather than punishing victims of intersectional oppression. Imprisonment currently costs our justice systems millions of taxpayer money every year, and has even more devastating long-term consequences.

Balancing the Racist Scales of Justice

Our colonial history and its ongoing socio-political and intergenerational consequences mean that Maori as the indigenous people of Aotearoa, bear the brunt of harm currently associated with Cannabis. School boards respond dispassionately to cannabis use due to its illegal status, and it is a common reason for expulsion. Since Māori students are more likely than any other ethnic group to be suspended, this broadens the social disconnect for Maori youth.⁴⁵ Maori are also disproportionately targeted, prosecuted and imprisoned by a systematically racist criminal justice system. Records of conviction and incarceration follow them throughout their lives, negatively affecting their chances of gaining employment, as well as their health and wellbeing. This will further contribute to widening inequalities in New Zealand.⁴⁶ Legalisation will mean that these students can be treated more equitably, allowed to finish school and attain higher forms of education. This will lead to the higher Maori representation in the workforce and legal system which is so desperately needed.

Education

If it were legalised, the barrier to providing education around cannabis in schools would be removed. If children are educated about its effects they will be better qualified to make informed decisions and will be less likely to use it.⁴⁷ It will also provide parents and guardians with the information and resources needed to safeguard their children and get help for them if necessary. Raised awareness and education will also evoke a better understanding of the role of factors like deprivation in offending. This will aid in reducing implicit bias in all cogs of the justice system, from police officers to judges.

⁴⁴ Reremoana Theodore, Mihi Ratima, Kāti Māmoe, Tuari Potiki. “Cannabis, the cannabis referendum and Māori youth: a review from a lifecourse perspective”, *Kōtuitui: New Zealand Journal of Social Sciences Online* (2020).

⁴⁵ Crengle S, Robinson E, Ameratunga S, Clark T, Raphael D. “Ethnic discrimination prevalence and associations with health outcomes: data from a nationally representative cross-sectional survey of secondary school students in New Zealand”, *BMC Public Health*, (2012)

⁴⁶ Massoglia M, Pridemore WA, “Incarceration and Health” *Annual Review of Sociology*, (2017).

⁴⁷ New Zealand Drug Foundation, “Preparing students to live in a world where alcohol and drugs exist” *NZ Drug Foundation Drug Checking Brief*, (2016).

Providing and Seeking Help

Criminalising drug use can also deter users from seeking and attaining appropriate help.⁴⁸ 30% of high school students in New Zealand with substance abuse issues have reported that they felt unable to access the healthcare they needed and only 5% reached out for drug help services.⁴⁹ Legalisation will make it easier to offer early prevention, intervention efforts and accessible addiction treatments for victims who need it. It will also ensure that those who need help feel safer in seeking it. A portion of tax income from cannabis sales under the proposed legislation will also be used for this harm reduction and treatment.

Economic Benefits

Illicit cannabis production is unfortunately a significant part of the economy for those who are marginalised. Legalisation is an opportunity to regulate a legal cannabis market so that communities who have suffered under prohibition can benefit economically and socially from the licit market.⁵⁰ It allows self-determination for communities to benefit legally from a system that has kept them down for so long.

Legalisation would not be necessary to protect disadvantaged communities if the law were always enforced and policed equitably. However this is not our reality. Khylee Quince puts it bluntly; “cops should not be racist, but they are”. Cannabis use cannot be divorced from the context of people’s lives. There are issues such as income levels and deprivation that must be considered. This cannabis referendum is an opportunity for ensuring Maori rights to equity in health and parity outcomes. This is a government responsibility under the Treaty of Waitangi, and a vital consideration as we cast our vote. Legalisation of cannabis is the starting point in a much larger and necessary systemic overhaul in the justice system.

⁴⁸ Human Rights Council, “Study on the impact of the World Drug Problem on the enjoyment of human rights”, Report of the United Nations High Commissioner for Human Rights ,(2015).

⁴⁹ Fleming T, Lee AC, Moselen E, Clark TC, Dixon R “Problem substance use among New Zealand secondary school students: findings from the national youth health and wellbeing survey”, The Adolescent Health Research Group, The University of Auckland, (2014).

⁵⁰ Horwood LJ, Fergusson DM, Hayatbakhsh MR, Najman JM, Coffey C, Patton GC, Silins E, Hutchinson DM, “Cannabis use and educational achievement: findings from three Australasian cohort studies”, Drug and Alcohol Dependence, (2014).

3. Economic Benefits of Legalisation

Bringing the cannabis market into legal boundaries, where it can be regulated and taxed, has been highlighted as a benefit of cannabis legalization. Exact numbers vary across the economies in which cannabis has been legalized, but noteworthy examples can be found in Colorado in the United States, Canada, the Netherlands and South Africa.

The economic boon of cannabis legalization has been highlighted by organisations such as New Zealand Institute for Economic Research, but these recommendations come with warnings.⁵¹ Legalising cannabis must go hand in hand with tight regulations to prevent adverse health or economic outcomes. In the United States, the legal cannabis industry is worth an estimated \$6.2 billion USD across eight states that have fully legalized recreational use,⁵² but has been criticized as the money pools at the top where ‘Big Cannabis’ benefits the most.⁵³ Regular citizens and small businesses, who arguably should be reaping the economic benefits of legalization, are deprived of these in economies where monopolies run rampant due to poor regulation. Encouraging illegal drug vendors to engage in legal markets could also be an issue where such small businesses could fail to survive. The Cannabis Legalisation and Control Bill aims to provide such a regulatory framework as to avoid the monopoly issue, using cultivation caps established by the Cannabis Regulatory Authority to limit any one entity’s control over the market.⁵⁴

The most obvious potential benefit of cannabis legalization is increased tax revenue for the Government. Colorado has surpassed \$1.4 billion USD in tax revenue from medical and recreational marijuana sales as of 2020, which has gone a long way towards improving health and education outcomes in the state, according to its Governor.⁵⁵ ⁵⁶ For Canada, the effects were felt almost immediately, with a reported influx of \$186 million CAD of tax revenue in the first five months after legalisation.⁵⁷ Different frameworks and levels of legalization have affected the successes of these tax initiatives, but the economic benefits of taxing recreational cannabis in New Zealand have been noted and affirmed by some sources.⁵⁸ ⁵⁹ As always, this

⁵¹ Peter Wilson, NZIER, “NZ’s cannabis referendum 2020: Some facts and recommendations about the process of cannabis legalization”, 2020. https://nzier.org.nz/static/media/filer_public/68/bc/68bc4d23-bf82-4c9e-b3ef-09d540ff1442/nzier_wp_2020-01_cannabis_referendum_paper.pdf

⁵² Pat Evans, Business Insider, “8 incredible facts about the booming US marijuana industry”, 2019. <https://markets.businessinsider.com/news/stocks/weed-us-marijuana-industry-facts-2019-5-1028177375#see-also-9>

⁵³ Kris Krane, Forbes, “Monopoly Vs. Risk: Why Operations Matter in Cannabis”, 2019. <https://www.forbes.com/sites/kriskrane/2019/05/03/monopoly-vs-risk-why-operations-matter-in-cannabis/#6b81df1354c4>

⁵⁴ Cannabis Legalisation and Control Bill, s 22. <https://www.referendums.govt.nz/materials/Cannabis-Legalisation-and-Control-Bill-Exposure-Draft-for-Referendum.pdf>

⁵⁵ Carina Julig, Denver Post, “Colorado surpasses \$1 billion in marijuana tax revenue”, 2019. <https://www.denverpost.com/2019/06/12/colorado-marijuana-revenue-one-billion/>

⁵⁶ Colorado Department of Revenue, “Marijuana Tax Data”, 2020. <https://www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data>

⁵⁷ Kelsey Johnson, Reuters, “Cannabis generates C\$186 million in tax revenue in Canada in first months of legalization”, 2019. <https://www.reuters.com/article/us-canada-cannabis-idUSKCN1TK2YV>

⁵⁸ Peter Wilson, NZIER, “NZ’s cannabis referendum 2020: Some facts and recommendations about the process of cannabis legalization”, 2020. https://nzier.org.nz/static/media/filer_public/68/bc/68bc4d23-bf82-4c9e-b3ef-09d540ff1442/nzier_wp_2020-01_cannabis_referendum_paper.pdf

⁵⁹ Sense Partners, Prepared for the NZ Drug Foundation, “Estimating the impact of drug policy options: Moving from a criminal to a health-based approach”, 2018. <https://www.drugfoundation.org.nz/assets/uploads/Cost-benefit-analysis-drug-law-reform.pdf>

comes with certain caveats, especially in regards to how well the legal market can compete with the black market to provide a price-competitive, safer, but similarly effective product.

Legalising cannabis may theoretically lead to increased savings in the justice and law enforcement sectors, saving costs by reducing the number of drug operations and criminal trials associated with cannabis.⁶⁰ The Police will still have a role in enforcing the rules and regulations in any cannabis legalization scheme, which may result in similar budgetary requirements. Such savings, combined with increased tax revenue from the industry, can help support better healthcare and health education. However, if cannabis use should increase post-legalisation, more healthcare may be required to cope with increased health issues associated with cannabis, such as respiratory or brain issues.⁶¹ This interplay is complex and dependent on the law in place, the culture and discourse on cannabis amongst the public, and the success (or lack of success) of harm reduction through health campaigns and strict regulation.

⁶⁰ Office of the Prime Minister’s Chief Science Advisor, “Legalising cannabis in Aotearoa New Zealand: What does the evidence say?”, 2020. <https://www.pmcsa.ac.nz/topics/cannabis/>

⁶¹ Office of the Prime Minister’s Chief Science Advisor, “Legalising cannabis in Aotearoa New Zealand: What does the evidence say?”, 2020. <https://www.pmcsa.ac.nz/topics/cannabis/>

ARGUMENTS AGAINST THE BILL

1. Can Legal Cannabis Beat the Black Market?

Despite several claims made by drug advocates that black market activity will reduce when cannabis is legalised, empirical evidence from countries such as Canada and the United States—where cannabis has recently been legalised—proves how erroneous this claim is. The black market still remains a significant concern in terms of illegal cannabis growing and sale.

Research shows that one of the primary reasons for the growth and continuation of black-market activity is because the legalised market involves heavy regulation which typically requires farmers to pay heavy taxes, undergo testing and complete several other regulatory requirements.⁶² The natural business-minded response to this type of regulation is to adjust the prices accordingly. However, hiked prices are unattractive for buyers and pushes them to seek out avenues such as the black market where they can get their hit for much less. Indeed, this was the experience in California—the biggest and most complex of the legal US markets—where, despite all of the innovation and energy into the legalised market, the black market continued to boom. Only 3% of cannabis farmers in California obtained licenses to grow cannabis because regulated cannabis costs significantly more than that sold on the black market. Because the black market is attractive for both buyers and sellers due to tax avoidance,⁶³ there are explicit difficulties in disincentivising black market activity through cannabis legalisation, unless regulatory requirements such as taxation are not onerously imposed on the legal market.

Another issue with the government regulation that comes with a legalised market is the restriction on the variety of cannabis products available. Evidence from Canada's recent cannabis legalisation shows that only two-weeks into the era of legal cannabis, the black market appeared to have infiltrated the legal supply chain; 40% of weed users in the country have admitted to obtaining the drug illegally since legalisation.⁶⁴ This is because Canada had restricted its licensed retailers to only being allowed to sell fresh or dried cannabis, seeds, plants and oils.⁶⁵ Unlike the legal market, the black market is not subject to legal sector demands and therefore has more on offer to consumers.

⁶² Blood, R. M. *California Pot Taxes Lag as Illegal Market Flourishes*. (2019): US News.

<https://www.usnews.com/news/best-states/california/articles/2019-01-10/california-pot-taxes-lag-as-illegal-market-flourishes>. Fuller, T. (2019). *Now for the Hard Part: Getting Californians to Buy Legal Weed*. The New York Times. <https://www.nytimes.com/2019/01/02/us/buying-legal-weed-in-california.html>

⁶³ Ibid.

⁶⁴ Statistics Canada. *What Has Changed Since Cannabis Was Legalized?* (2020).

<https://www150.statcan.gc.ca/n1/daily-quotidien/200219/dq200219c-eng.htm>.

⁶⁵ Bilefsky, D. *Vancouver, Canada's Marijuana Capital, Struggles to Tame the Black Market*. (2018): The New York Times. <https://www.nytimes.com/2018/10/29/world/canada/marijuana-cannabis-vancouver-legalization.html>

It is evident that one of the biggest enemies of the black market is the heavy regulation that comes with selling cannabis legally. Where regulatory regimes for legal cannabis trade impose harsh taxes and restrictions on product variety, retailers and consumers who have been trading on the black market would unquestionably be unmoved in their decision to continue trading on the black market. However, reconciling these issues would prove difficult for the government because a legal market will always mandate a degree of regulation. Even if the New Zealand administration chooses to minimally involve itself, it would still be competing with an illicit market that is completely unregulated and committed to keeping its trade. Rosemary McLeod makes a point of this, commenting that; *“Underpinning such experiments around the world is a belief that criminal gangs will quietly accept losing their markets and give up illegal dealing. There’s a fantasy for you...”*⁶⁶

⁶⁶ Mcleod, R. (2017). *Rosemary Mcleod: Money Will Decide Legal Marijuana Debate*. Stuff. <https://www.stuff.co.nz/national/politics/opinion/94615996/rosemary-mcleod-money-will-decide-legal-marijuana-debate>

2. Adverse Effects on Children

The proposed cannabis legislation and control bill raises concerns into the adverse effects on youth. The primary fear entails the consequences of normalisation and contamination made by adults onto children.

Decrease in perceived harm

A decrease in the perceived risk of harm occurs to a product that experiences increased commercialisation. The primary marketing point for cannabis is its perception as a ‘natural’ product which is less harmful than traditional tobacco cigarettes. Dr Baddock, chair of the New Zealand Medical Association, presents how exposure to cannabis from a young age may give to issues such as psychosis, schizophrenia and inhibit brain development.⁶⁷ The Dunedin Multidisciplinary Health and Development Study illustrated how the use of cannabis was directly associated with educational delay, welfare dependence and respiratory impairments. These consequences were most prominent within youth populations under 18 years old. Legalisation influences an individual’s perception of cannabis and potentially other illicit drugs which are yet to be legal.⁶⁸

Increase in accessibility

Legalisation correlates to an increase in accessibility. As illustrated through Colorado and Washington, a positive association with evident between and rise in recreational use after the legalisation of marijuana. The data presented how cases of cannabis use disorder (CUD) grew 25% following legislation and marijuana use among 12 to 17-year olds increased at a steady rate of approximately 3.5% each year.⁶⁹ Just like any other substance, there is the risk of experiencing an addiction.⁷⁰ By making cannabis more readily available, youth are more prone to getting their hands on the substance despite the age restriction. In turn, there is a greater opportunity for them to drop out of school and experience subsequent unemployment as a result of the addiction.⁷¹ Youth are likely to experience a lack of education around its use, given that a person must be aged 20 years or older to purchase or possess cannabis.⁷² Therefore, they are most vulnerable to hospitalisation as experienced in Colorado, where the number of teenagers sent to the emergency rooms more than quadrupled after legalisation of cannabis.⁷³

⁶⁷ Burrows, M. *Cannabis Referendum: Four Experts Weigh up the Pros and Cons of Legalising Marijuana*. (2020): Newshub. Retrieved from <https://www.newshub.co.nz/home/politics/2020/08/cannabis-referendum-four-experts-weigh-up-the-pros-and-cons-of-legalising-marijuana.html>.

⁶⁸ *Young People- Say Nope to Dope*. Say Nope to Dope. (2020). Retrieved from <https://saynopedope.org.nz/2020/05/01/control/>.

⁶⁹ *State Data Tables and Reports from the 2017-2018 NSDUH | CBHSQ Data*. Samhsa.gov. (2020). Retrieved from <https://www.samhsa.gov/data/nsduh/state-reports-NSDUH-2018>.

⁷⁰ *The Pros and Cons of legalizing drugs*. The Week UK. (2020). Retrieved from <https://www.theweek.co.uk/59417/should-cannabis-be-legalised-the-pros-and-cons-of-decriminalising-drugs-general-election-2019>.

⁷¹ Burrows, M., 2020.

⁷² Cannabis Legislation and Control Bill, s20.

⁷³ *More teens are showing up in a Denver ER after using marijuana*. NBC News. (2020). Retrieved from <https://www.nbcnews.com/health/health-news/er-visits-kids-rise-significantly-after-pot-legalized-colorado-n754781>.

Mental health issues

The debated potency limit stands at 15%; this is at the higher end of what is currently sold on the black market. A higher potency limit is directly associated with worse health outcomes and a greater chance in the development of mental health issues. Research undertaken by the National Drug and Alcohol Research Centre at the University of New South Wales highlights how daily marijuana use of children below 17 years old are seven times more likely to commit suicide.⁷⁴ This is a particular alert to New Zealand where the suicide rates are currently among the highest in the world.⁷⁵

⁷⁴ Silins, E., Horwood, L., Patton, G., Fergusson, D., Olsson, C., & Hutchinson, D. et al. (2014). Young adult sequelae of adolescent cannabis use: an integrative analysis. *The Lancet Psychiatry*, 1(4), 286-293. [https://doi.org/10.1016/S2215-0366\(14\)70307-4](https://doi.org/10.1016/S2215-0366(14)70307-4)

⁷⁵ Bateman, S., & Bracewell-Worrall, A. (2020). *New Zealand's suicide statistics increase on last year*. Newshub. Retrieved 3 September 2020, from <https://www.newshub.co.nz/home/new-zealand/2019/08/new-zealand-s-suicide-statistics-increase-on-last-year.html>.

3. Employment Issues

Cannabis is currently a drug that employers test for regularly, particularly in safety-sensitive industries. If recreational cannabis is legalised, there are major concerns as to how it will affect an employee's level of impairment and ability to make judgements in unsafe environments.⁷⁶ Within the states of America where cannabis is legalised, employers have faced higher risks of strict liability claims when a cannabis-related injury or accident takes place on-site.⁷⁷

Cannabis has shown to cause cognitive impairment with long term effects on reaction time, attention, fatigue and knee jerk reactions.⁷⁸ However, the effects of Cannabis are more subtle, therefore employers need to look for smaller behavioral factors such as mood impairment, irritability, impulsivity or low motivation. These factors can result in an altered state of neurological activity which may contribute to unsafe work practices.⁷⁹

An example of the effects of impairment due to cannabis use can be seen through driving a vehicle. This activity involves complex motor skill and significant neurocognitive processes. A study in Toronto discovered that 13.9% of drivers admitted to the regional trauma unit showed cannabis usage in their system. It also showed an increase in variability of lane changes, following distances, speed functions, responding to information and the driver's ability to handle unexpected pedestrian movement.⁸⁰ Compared to that of driving a car, driving heavy vehicles such as diggers, cranes and logging trucks involve higher levels of complexity and awareness. Therefore, impairment of employees in heavy industrial industries possess a serious threat as high levels of safety is paramount to protect people from injury or death.

The consumption of cannabinoids can stay within the human body for up to 90 days,⁸¹ along with building up in fat tissues of frequent users, which slowly spreads through the blood. Consequently, plasma and blood predictive models are unable to be considered reliable in determining a chronic cannabis users last use.⁸² This demonstrates that cannabis impairment is difficult to drug test for. For example, cannabis THC can spike and then leave the bloodstream in less than three hours despite impairment which could last for 6-8 hours. By the time that the blood is tested, 90% of the drug is lost, therefore new testing innovations must be conducted. Employers currently use urine testing for a more reliable and accurate detection of cannabis, however it does not test levels of impairment.⁸³ It is likely that employers will need to make assessments based on the level of cannabis in the employers system which could be used to determine the likelihood of impairment relevant to that point in time.

76 Amanda Douglas (Partner at Wynn Williams) “*Will drug testing be thrown out the window?*” June 2020.

77 Say Nope To Dope, “Effect on the Workplace”. https://2uy2kj3oe6hq2ui8ef2c6xnl-wpengine.netdna-ssl.com/wp-content/uploads/sites/3/2019/03/BRIEFING_workplace.pdf

78 Sherratt, F., Welfare, K., & Hallowell, M. (2018). Legalized Recreational Marijuana: safety, Ethical, and Legal Perception of the Workforce. *Journal of Construction Engineering and Management*, 144(6), Jun 2018, Vol.144(6).

79 Dr. Brendan Adams “*Marijuana and the Safety Sensitive Worker*” at 3.

80 Sherratt, F., Welfare, K., & Hallowell, M. (2018). Legalized Recreational Marijuana: safety, Ethical, and Legal Perception of the Workforce. *Journal of Construction Engineering and Management*, 144(6), Jun 2018, Vol.144(6).

81 Richmond, M., Page, K., Rivera, L., Reimann, B., & Fischer, L. (2013). ‘*Trends in Detection Rates of Risky Marijuana Use in Colorado Health Care Settings. Substance Abuse*’, 34(3), 248-255.

82 Huestis, M., & Smith, M. (2017) “*Cannabinoid Markers in Biological Fluids and Tissues: Revealing Intake*” at 4

83 Ibid

If recreational cannabis legalisation comes into force, greater responsibility will fall on employers to honour their workplace health and safety obligations. Civil Contractors New Zealand surveyed 200 civil contracting companies and discovered that 66% were worried that recreational cannabis use will impact them negatively. The construction industry has expressed particular concerns over the increase in accessibility to recreational cannabis which will compromise employment opportunities. Construction employers have stated that the hiring pool is already limited, and will further decrease due to a higher number of failed drug tests.⁸⁴ Failed drug tests in high-risk industries generally result in immediate dismissal as it is common for high risk environments to contain zero-tolerance policies.

To conclude, there is no clear extent as to the major costs employers will incur due to recreational cannabis legalisation. It can range from seeking legal Counsel for complex policy and contract amendments to covering absenteeism, accidents, health care, rehabilitation, insurance premiums and training.⁸⁵ However, the largest concern is user impairment which is a real threat to safety sensitive environments.

84 New Hub, "Cannabis referendum: Why the construction industry is worried weed will be legalized". July 2020. <https://www.newshub.co.nz/home/politics/2020/07/cannabis-referendum-why-the-construction-industry-is-worried-weed-will-be-legalised.html>

85 Say Nope To Dope, "Effect on the Workplace". https://2uy2kj3oe6hq2ui8ef2c6xnl-wpengine.netdna-ssl.com/wp-content/uploads/sites/3/2019/03/BRIEFING_workplace.pdf

Cannabis has had a long and complicated history not only in New Zealand, but jurisdictions across the world. Its kaupapa and understanding has been formed and shaped not only by its health effects, but by its standing in the minds of politicians and the public. The proposed Cannabis Legalisation and Control Bill brings a critical choice to New Zealand voters - whether cannabis harms are best assessed and reduced under a prohibition, decriminalisation, or regulation model. Various sources across academia, politics and organizations have provided arguments for and against the provided Bill, which will ultimately inform one of the biggest decisions regarding illicit drugs in New Zealand's recent history. Whatever decision is made, not only in the New Zealand General Election 2020 but in the future of drug law reforms and regulations, will have potent effects in health, education, justice, economic, and social spheres.