Cannabis Regulation in Australia.

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What is it?

Cannabis is the most commonly used illicit drug in Australia, with 41% of Australians reporting having ever used it, and 11.5% reporting use in the past 12 months.[1]

It is currently illegal to produce, distribute, or sell cannabis for non-medical reasons. And, in most Australian jurisdictions possession for non-medical use is illegal.

In the last few decades, however, there have been global shifts away from criminalisation of cannabis towards regulation.

> In Australia, the ACT, South Australia, and the Northern Territory have all 'decriminalised' the personal possession of cannabis (up to a certain threshold), with people generally facing a fine or a health referral, rather than a criminal charge. Additionally, in the ACT an individual or household is able to grow two or four cannabis plants for personal use respectively, though using cannabis in public is a criminal offence.[2]

Internationally, reforms have gone further.

In the USA, many states have altered legislation to allow legal commercial cannabis markets to develop, with varying degrees of regulation.

Canada has legalised the production and sale of cannabis, though the specifics of the regulation vary between provinces.

Other countries, such as Uruguay, Germany, and Spain, have alternative approaches to regulate the production and supply of cannabis, ranging from sales through social clubs and pharmacies to legal home-grow and government monopoly.[3]

The different models of cannabis regulation affect health, legal, economic, and other social outcomes in different ways, demonstrating that cannabis regulation is not simply a choice between total prohibition or a laissez faire free market approach.

Instead, there is a full spectrum of policy options with differing impacts on individuals and society which need to be explored.

Why?

Criminalisation of cannabis use and possession is limited in preventing related harms.

In Austalia, cannabis use is widespread and becoming more normalised.

And, the legalisation of medicinal cannabis has begun to shift the availability of cannabis in the community away from illicit markets to legal supply chains.

The benefits of moving to a regulated market may include: reducing the power of organised crime; clarifying the role of the medicinal cannabis system; improving product safety and standards; and, better managing access to prevent harm.

Eighty per cent of Australians support possession of cannabis not being a criminal offence, with 45% of Australians now supporting legalisation of cannabis - up from 25% in 2010.[1]

There is a growing opportunity to consider alternative regulatory approaches to minimise harms.

Shortfalls of diversion schemes

Police-run drug diversion schemes can provide some pathways for people to avoid criminal charges by offering referrals to health services. These schemes have inclusion and exclusion criteria which can limit their effectiveness, and often mean that those who may be at greater risk of harm from their cannabis use are less likely to have access to them as they may not fit the criteria.

These measures also do nothing to address the large illicit market for cannabis in Australia, where products are unregulated, sold to people underage, and are of unknown strength and quality.

Harms from criminalisation

Criminalisation of cannabis use and possession leads to many harms, including social harm due to criminal activities, legal harm to people exposed to the criminal justice system, and the marginalisation of communities targeted by enforcement efforts.

In NSW, non-Indigenous Australians are four times as likely to be offered diversion for cannabis – instead of a criminal charge - compared with Indigenous Australians. This demonstrates that while criminalisation continues to exist, it can cause harm to people already experiencing systemic discrimination.[4]

Criminalisation also reinforces stigma surrounding cannabis use, which can prevent individuals from seeking help for related health issues, and from receiving quality care.[5, 6]

Ineffectiveness and cost of current approach

Despite significant spending on cannabis-related law enforcement in Australia there has been limited impact on use and availability.[7]

Close to 90% of people accessing illicit drugs like cannabis find it 'easy' or 'very easy' to obtain.[8]

This 'easy' access indicates that criminalisation has instead created a large illicit market.

While some evidence suggests that making cannabis legal may influence some young people to try it, other data shows that for deterrence to be effective, the likelihood of being caught must be high.[9-11] But in Australia, the likelihood of detection is less than 0.01%.[12]

Harms of an illicit market

The unregulated cannabis market poses several risks, including the flow of profits to organised crime groups, unknown potencies of products, and no way of preventing sales to minors.[13]

In an illicit market, the product that consumers access is of varying quality, potency, and specific impacts – meaning more harms can occur than in a market where products are regulated.

Increasing access through the medicinal market

In recent years there has been a significant increase in the number of people obtaining cannabis via prescription in Australia.[1]

Peak medical bodies are concerned that the current approach to prescribing cannabis is likely to lead to poor outcomes because of lack of clarity around reasons for prescribing cannabis and new business models emerging that are focused solely on medicinal cannabis prescribing.[14]

Additionally, some experts suggest that the medicinal supply of cannabis, while the evidence for cannabis treatment remains mixed for many conditions, may undermine the broader medical system.[15]

Alternatives to commercial models of regulation

Highly commercialised models of legalisation are characterised by limited regulation of availability (e.g. outlet density, online sales, trading hours), product types (including potency, e.g. vapes, concentrates, edibles, etc.), promotion, and advertising. Alternative models of regulation exist that restrict commercial influences.

Evidence

Alternative approaches to regulating cannabis may address many of the harms associated with the current approach.

Regulation may also provide opportunities to implement harm reduction strategies, improve public health outcomes, and reduce the influence of organised crime in the cannabis market. It may also allow for the development of safer consumption practices and reduce stigma.[16-18]

However, there may also be risks associated with a legalised market, including the risk of increased use and harm due to easier access.

Research from the regulation of alcohol and tobacco demonstrates policy options that can significantly alter the level of related harm in the community. These considerations relate to how the product is made available, such as how it's sold, who to, in what forms, how it's promoted, how it's priced, and so on.

There is a tension between commercial interests and public health outcomes.

Experience from alcohol and tobacco regulation suggests that minimising commercialisation factors through regulation will be the most effective way to reduce harms associated with a legalised model of cannabis regulation.

Evidence from jurisdictions where cannabis has been legalised, and learnings from the regulation of alcohol and tobacco, suggest that a more highly commercialised model is associated with greater harms.

Non-commercial models of regulation

Non-commercialised, or minimally commercial, models can have several advantages.

In a non-commercial model, public health can be prioritised through appropriate market structure and regulation that restricts the known commercial drivers of harm, including availability, pricing, and promotion.

A regulatory approach designed to maximise its harm minimisation effect, emphasising public health and safety will lead to better outcomes, rather than attempting to find public health

benefits in a market model designed for maximising profits.

In fact, commercial interests can influence policy processes in a manner that can be damaging to public health. Adopting a non-commercial model avoids this by ensuring commercial interests are not developed and entrenched in political and policy spaces.

Not-for-profit models

A not-for-profit cannabis regulation model can include not-for-profit retail or wholesale, or a government monopoly over retail or wholesale.

It can also include cannabis social clubs (CSC) where members grow and supply cannabis for personal use by members at a designated venue.

Limited evidence from countries where CSCs exist, such as Spain and Uruguay, suggests that community control of production and sales may minimise the commercial impacts on public health outcomes, as profit incentives are removed.[3]

CSCs may be effective in disrupting illicit cannabis markets and reducing their associated harms. However, this model would generate less tax for the government compared to for-profit models. It is also restricted to people with the contacts to join invitation-only CSCs, potentially excluding marginalised populations from accessing this licit market.

Government monopoly model

Under this model, the government holds a monopoly on retail and/or wholesale of cannabis products, allowing for strong regulation of product types, promotion and availability.

In Quebec, the government monopoly on selling cannabis products has been very effective at moderating public health impacts by regulating the types of products that can be sold. For example, it prohibited sales of certain types of edibles (e.g. cannabis brownies, gummies or chocolates) that may appeal to children.[19]

This model can also result in financial gains for government which can be used to enhance alcohol and other drug harm reduction and treatment services. In Quebec, profits and taxes from cannabis sales are channelled in full to a government-run cannabis education and

prevention fund. In 2022-23, more than CA$200 million was redirected to this initiative.[20]

A government retail monopoly can also increase control over the supply chain, reduce the variety in product types and potency. It can also limit outlet density, which is associated with higher levels of harm.[21]

Early evidence from Quebec shows that past 12 months and regular use of cannabis has remained stable since the legislation was introduced in 2018.

Growing and gifting

Growing and gifting models enable adults to cultivate a certain number of plants and gift, but not sell, cannabis leaf to other adults.

Currently in the ACT, an individual aged over 18 years can grow up to two plants in their home (with a maximum of four per household), with some restrictions on how they can be grown (artificial cultivation is prohibited) and requirements that they are not accessible to the public or under 18s. There has been no increase in cannabis use in the ACT since these changes, or broader decriminalisation, have been introduced.[1]

Overseas experience shows that allowing growing cannabis at home can aid in the transition away from an illicit market by offering a low-cost option to access cannabis while a regulated supply chain develops.

However, illegal home growing is already widespread, despite prohibition, and consequently enforcing a growing and gifting model would be very difficult. The need for restrictions must be balanced with the difficulty of enforcement, as overly tight restrictions would likely lead to a situation where all regulations are ignored.

A sensible set of restrictions on home growing, that is clearly identifiable with their stated public health purposes, is likely to be the most effective approach.[13] Such restrictions may include requirements that plants are not accessible to the public and under 18s and growing and selling seeds to minors is prohibited.

The Alcohol and Drug Foundation (ADF) has an existing position supporting the removal of all criminal penalties for the personal possession and use of all illicit drugs, including cannabis. Home-grow provisions, such as those in the ACT, go a small step further in specifically allowing the presence in the home of a limited number of cannabis plants.

ADF Positions

1. The ADF supports the removal of all criminalisation of personal use and possession, as well as home-growing and gifting of cannabis.

2. The ADF will not hold a position on a particular model of regulation of cannabis until further evidence has emerged.

3. The ADF supports public debate on models which consider the role of regulating availability, marketing, potency, product diversity, and revenue models on minimising harm.

4. The ADF does not support a highly commercialised model of cannabis regulation and notes the need for regulation to limit evidence-based commercial drivers of harm.

5. The ADF supports further research into alternative and non-commercial models of cannabis legalisation and their outcomes.

The ADF will continue to engage with future evidence when determining which specific regulatory elements are preferred. Where evidence is unavailable, we will use the best available evidence from other fields - like the regulation of alcohol and tobacco - while taking into consideration the specifics related to cannabis use, harms, and regulation.

References

1. Australian Institue of Health and Welfare. National Drug Strategy Household Survey 2022-23. Department of Health; 2024. [cited 6/8/24]; Available from: https://www.aihw.gov.au/reports/illicit-use-of-drugs/national-drug-strategy-household-survey/contents/about.

2. ACT Government. Cannabis. 2022. [cited 20/8/24]; Available from: https://www.act.gov.au/cannabis/home.

3. Pardal M, Kilmer B, d'Auria S, Strabel T, Galimberti S, Hoorens S, et al. Alternatives to profit-maximising commercial models of cannabis supply for non-medical use. Santa Monica, CA: RAND Corporation; 2023. [cited 27/7/24]; Available from: https://www.rand.org/pubs/research_reports/RRA2190-1.html.

4. Teperski A, Rahman S. Why are Aboriginal adults less likely to receive cannabis cautions? Sydney: NSW Bureau of Crime Statistics and Research; 2023. [cited 15/8/24]; Available from: https://www.bocsar.nsw.gov.au/Publications/CJB/CJB258-Report-Cannabis-cautioning-2023.pdf.

5. Alcohol and Drug Foundation. Alcohol and other drugs: Stigma. A background paper. Melbourne: Alcohol and Drug Foundation; 2019. [cited 15/8/24]; Available from: https://cdn.adf.org.au/media/documents/ADF_Stigma_background_paper.pdf.

6. Hatzenbuehler ML, Phelan JC, Link BG. Stigma as a Fundamental Cause of Population Health Inequalities. American Journal of Public Health. 2013;103(5):813-21 [cited 12/8/24]; Available from: https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2012.301069.

7. Penington Institute. Australia's Annual Overdose Report 2023. Melbourne: Penington Institute; 2023.

8. Sutherland R, Karlsson A, King C, Uporova J, Chandrasena U, Jones F, et al. Australian Drug Trends 2023: Key Findings from the National Ecstasy and Related Drugs Reporting System (EDRS) Interviews. Sydney: National Drug and Alcohol Research Centre US; 2023.

9. Tomlinson KD. An examination of deterrence theory: Where do we stand. Fed Probation. 2016;80:33.

10. Pratt T, Cullen F, Blevins K, Daigle L, Madensen T. The Empirical Status of Deterrence Theory: A Meta-Analysis Taking stock: The status of criminological theory (pp. 367–395). Piscataway, NJ, US: Transaction Publishers. 2006.

11. Leung J, Chiu V, Chung JYC, Hall WD, Chan GCK. How many more young Australians say that they would use cannabis if it were legal? Drug and Alcohol Review. 2020;39(6):768-72 [cited 13/8/24]; Available from: https://onlinelibrary.wiley.com/doi/abs/10.1111/dar.13124.

12. Lenton S. Cannabis policy and the burden of proof: is it now beyond reasonable doubt that cannabis prohibition is not working? Drug and Alcohol Review. 2000;19(1):95-100.

13. Transform Drug Policy Foundation. How to Regulate Cannabis: A Practical Guide 3rd edition: Transform Drug Policy Foundation; 2022. Available from: https://transformdrugs.org/assets/files/PDFs/How-to-Regulate-Cannabis_3rd_ed.pdf.

14. Sato K, O'Toole K. Telehealth medicinal cannabis providers are under-regulated, medical bodies AMA and RACGP warn. ABC Radio Brisbane. 2024.

15. Shover CL, Humphreys K. Six policy lessons relevant to cannabis legalization. The American Journal of Drug and Alcohol Abuse. 2019;45(6):698-706 [cited 7/8/24]; Available from: https://doi.org/10.1080/00952990.2019.1569669.

16. Fischer B, Robinson T, Bullen C, Curran V, Jutras-Aswad D, Medina-Mora ME, et al. Lower-Risk Cannabis Use Guidelines (LRCUG) for reducing health harms from non-medical cannabis use: A comprehensive evidence and recommendations update. International Journal of Drug Policy. 2022;99:103381 [cited 12/8/24]; Available from: https://www.sciencedirect.com/science/article/pii/S0955395921002863.

17. Lee C-R, Lee A, Goodman S, Hammond D, Fischer B. The Lower-Risk Cannabis Use Guidelines' (LRCUG) recommendations: How are Canadian cannabis users complying? 2020; 20. Available from: https://adf.on.worldcat.org/oclc/8653557296.

18. Hammond D, Corsetti D, Fataar F, Iraniparast M, Danh Hong D, Burkhalter, R. International Cannabis Policy Study - Cananda 2022 Summary. 2023. [cited 13/8/24]; Available from: https://cannabisproject.ca/wp-content/uploads/2024/01/2022-Canada-Report-June-26.pdf.

19. Slade H. Capturing the Market: Cannabis Regulation in Canada. Transform Drug Policy Foundation; 2020. [cited 20/6/24]; Available from: https://transformdrugs.org/assets/files/PDFs/capturing-the-market-canada-fulltext-2020.pdf.

20. Société québécoise du cannabis. The SQDC reports net income of $94.9 million for fiscal 2022-2023. Newswire. 2023.

21. Manthey J, Jacobsen B, Hayer T, Kalke J, López-Pelayo H, Pons-Cabrera MT, et al. The impact of legal cannabis availability on cannabis use and health outcomes: A systematic review. Int J Drug Policy. 2023;116:104039.