

## INQUIRY INTO THE USE CANNABIS OF CANNABIS IN VICTORIA

### TERMS OF REFERENCE

That this House, requires the Legal and Social Issues Committee to inquire into, consider and report, by no later than **1 June 2021**, as amended, into the best means to:

- a. Prevent young people and children from accessing and using cannabis in Victoria;
- b. Protect public health and safety in relation to the use of cannabis in Victoria
- c. Implement health education campaigns and programs to ensure that children and young people are aware of the dangers of drug use, in particular cannabis use
- d. Prevent criminal activity relating to the illegal cannabis trade in Victoria;
- e. Assess the health, mental and social impacts of cannabis use on people who use their families and carers;

And further requires the Committee to assess models from international jurisdictions that have been successful in achieving these outcomes and consider how they may be adapted for Victoria

As a member of the general public, I welcome the opportunity make this submission and commend the Member for Northern Metropolitan, Ms Fiona Patten MLC for instigating this Inquiry, and to Victorian Parliament for paving the way for an honest and open discussion on cannabis use in Victoria.

As the case for limited medical access has now been made for the chronically ill, albeit in particular circumstances, it is now to time to have the broader discussion about its applications for other medical conditions, and recreational use, both of which I support.

I note that submissions are public documents, and I am happy for this committee to publish its contents and appear, if required, to speak to any part of this submission.

With thanks,

Finian Scallan

1. Before responding to the individual matters contained in the terms of reference some consideration should be given to the human rights, and broader constitutional issues that should underpin any discussion on cannabis regulation.

## **International Conventions & Constitution Issues**

### *1.1 - Human rights – The right to health and the case for medical cannabis*

As a signatory to the convention on *International Covenant on Economic Social and Cultural Rights 1966 Art.- 12.1* and implemented by *Human Rights Commission Act 1981*, Australians have a right to the enjoyment of the highest attainable standard of physical and mental health. The UN Committee on social and cultural rights has stated that health is a fundamental right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life of dignity.<sup>1</sup> The right to health covers amongst other matters access to health facilities, goods, including essential medications, and services especially for vulnerable, or marginalised groups. As the right contains both freedoms and entitlements, it expressly covers the right to control one's health and body.

### *1.2 - Proportionality*

There is no doubt that the war on drugs has been a demonstrable failure that has seen millions of lives destroyed on account of arbitrary and unfair application of laws. This position was succinctly summed up by then US President Jimmy Carter when he noted that:

*'The penalties against the use of a drug should not be more damaging to an individual than the use of a drug itself; and where they are they should be changed'*

It is accepted that cannabis, like any other drug, when used incorrectly can be dangerous and that is not in issue, but the wholesale criminalisation of simple possession, or minor cultivation is disproportionate to any inherent dangers that cannabis presents.

### *1.3 - Conflict of laws*

As each state and territory is free to determine its own laws to the extent that they do not conflict Commonwealth laws, cannabis possession and cultivation remain federal offences regardless of each state or territory position on the issue<sup>2</sup>. This dissonance between the national interest and each state and territories' prerogative to make their own laws mean that Federal enforcement agencies can prosecute transgressions of Federal Law as it sees fit. As

---

<sup>1</sup> Attorney General's Department, *Right to health-Public sector guidance sheet*, <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/right-health>

<sup>2</sup> Narcotics Drugs Act 1967-Chapter 2

to the likelihood of such a scenario playing-out in the ACT remains to be seen - despite the Federal Government's disquiet following the enactment of their amending legislation<sup>3</sup>. While such an intervention is possible, it has only occurred a few times and usually only in response to where a territory law has courted enough controversy to warrant such an intervention. However that it is not to say it could not happen in the future.

The reversal of laws in respect of a reclassification has occurred elsewhere and it is worth noting the position in the UK and its decision to reverse cannabis from Class C back to a Class B category drug 5 years after the fact. The same can be seen in the US State of Delaware where access to medical cannabis was suspended in 2012.

## **Assumption(s)**

### *1.4 - Existing / Proposed Licensed Operations*

Beyond infrequent media reports, there is little information in the public domain on the number of local licensed medical cannabis growers currently operating to the service the state's medical needs either now, or into the future. However, for the purpose of this submission it is assumed, and indeed hoped, that the medical cannabis market could exist in parallel, and separate to any initiative to relax the state's cannabis laws for possession, and limited cultivation for recreational purposes. If it is accepted that one size does not fit all, it should therefore follow that that individuals with specialised medical needs who might need for example a clinically clean, high CBD, low psychoactive strain should have their needs catered for accordingly, and those that do not, are able to cater to their own needs elsewhere. This is not an unreasonable proposition. A possible analogy, though not ideal, might be that of the brewing industry and its coexistence with vintners, distillers, homebrewers, and associated supporting business.

It is unknown what assurances, if any, have been made by Victorian Government to medical cannabis businesses in this regard, but it would be unfortunate if those who wished to cultivate their own cannabis would for this reason be denied a right to do so.

The most recent figures from the National Drug Strategy 2019 indicate that 11.6 per cent of the population aged 14 and over, or 2.4 million used cannabis in the previous 12 months, which is an increase from 10.4 per cent, or 2.1 million people since the last reporting period. While the overall trend seem to be trailing downward since 1998, where it reached a high of 17.9 percent recent, figures are showing signs of an upward trend again. However, times

---

<sup>3</sup> Arkell et al, (2019) *Detection of Delta 9 THC in oral fluid following vaporised cannabis with varied cannabidiol (CBD) content: An evaluation of two point collection testing*

have moved and it is clear that there are markets within markets for cannabis in the same way there are for many other drugs and commodities.

**a. Prevent young people and children from accessing and using cannabis in Victoria**

**A.1** It is true that cannabis, like alcohol and tobacco, and indeed many prescription meds, is not without risk, and preventing young people from accessing any of these products is critical to the development of sound minds and strong bodies. However, there is no silver bullet, and no single solution on its own will deter young people and children from seeking out and trying to access the above before they are capable of making informed decisions for themselves.

**A.2** There is a wealth of information on how this should be done, but meaningful engagement can go a long way to ensuring that risks are known, and that there can be consequences, good and bad, for using anything without knowing what those implications are. A suggested approach could involve the following:

**A.3** *For parents and (schools where appropriate)*<sup>4</sup>

- Speaking regularly and not assuming that this is a matter best left for school to solve;
- Being present - in the sense that children can feel comfortable coming forward to talk about drug use and why some decide to get involved with drugs - not just cannabis;
- Talk about risks;
- Dispel the myths;
- Remain involved with their lives beyond childhood and early adolescence and don't assume that just because a child is about to turn 18 that they already have all the facts;
- Encourage independent reasoning and dealing with peer pressure;
- Know who they're hanging out with and why;
- Think about how alcohol and drugs are used at home and why;
- Establish rules and set limits;
- Understanding that there are consequences for their actions;
- Access on line resources such as the ACT's *Effective Weed Control* for further useful background information to aid in discussions about cannabis with children and adolescents.

**A.4** If, or when the legal status of cannabis changes the following should be considered:

---

<sup>4</sup> Very well mind, T Buddy, (13 April 2020) How to prevent a child from using marijuana  
<https://www.verywellmind.com/how-to-prevent-a-child-from-using-marijuana-63561#:~:text=%20How%20to%20Prevent%20a%20Child%20From%20Using,staying%20involved%20in%20you>

1. Minimum age requirement of 18 years of age to consume, or enter upon a premises where cannabis is being sold;
2. Complete ban on overt public consumption;
3. Complete ban on promoting cannabis use and cannabis containing products across all media;
4. For outdoor growing activities:- demonstrable security measures that ensure that cultivated plants are not detectable either by sight, or smell from public locations;
5. For indoor growing activities: - Where outdoor cultivation is either insecure, impractical, or inappropriate, that indoor growing with artificial light is permitted, but subject to security measures that prevent children from entering into growing cultivation areas, and specific limitations on the capacity of lighting rigs, the type of lights, the number plants cultivated, and possibly limitations of the type of cultivars grown.

## **B.1 Protect public health and safety in relation to the use of cannabis in Victoria**

While the regulation of cannabis can solve a number of social ills, it does raise important questions about public health in particular what steps need to be taken to mitigate negative public health impacts in this area. The following are some basic preliminary matters that should be considered in advance of any proposed changes to legislation. Some of these are clearly obvious, others are not - especially the half-life of cannabis in RDT situations.

## **B.2 Public health warnings on products and at points of sale**

Similar to those associated with tobacco, alcohol, and gambling, it should be expected as a matter of procedure, and certainly from a product liability perspective, that any ready-to-consume-products and even raw product available in retail environments should advise of any known health implications at the time of purchase. Even where health impacts are currently unknown, the precautionary principle of gradual consumption should be advised. Where health effects are known, as with drinking during pregnancy, these should be stated from the outset, which has long been the case with alcohol and it would not be unreasonable to expect this to be a legislated requirement going forward, should its legal status change.

Harm reduction should be the key message and where usage does become problematic, as it will for some, information on where help can be found is now standard, and as can be seen in all gambling venues. For the nascent cannabis industry getting this right from the outset will be key to its survival.

Public Health warnings are now mandatory requirement on all cannabis products in Canada and look quite similar to the plain packaging regime here in Australia.<sup>5</sup> The guide details specifically the type of packaging required and labelling requirements needed to demonstrate compliance with their laws.

## **B.3 THC concentrations percentages by weight**

This is a useful tool to gauge the potency of cannabis products when determining how much to dose. As certain hybridised herbal cannabis cultivars can reach levels of up to 32 per cent THC such as Gorilla glue #1 and many of the Haze cultivars, it is critical information to include on any packaging. CBD percentages should also be included also. The same should also apply to any concentrates including shatter and budder type products also, which on appearance can look quite innocuous, but typically range from 70 – 80 per cent THC by

---

<sup>5</sup> Health Canada, (30 August 2019) Packaging and labelling guide for cannabis products, [https://www.canada.ca/content/dam/hc-sc/documents/services/cannabis-regulations-licensed-producers/packaging-labelling-guide-cannabisN-products/CURRENT\\_PUBLISHED\\_Packaging\\_and\\_labelling\\_guide\\_for\\_cannabis\\_products.PDF](https://www.canada.ca/content/dam/hc-sc/documents/services/cannabis-regulations-licensed-producers/packaging-labelling-guide-cannabisN-products/CURRENT_PUBLISHED_Packaging_and_labelling_guide_for_cannabis_products.PDF)

volume. A THC percentage count is standard information when purchasing seed stock from overseas and this information is readily available.

#### **B.4 Standardised product regimes**

Given the recent advances in breeding processes in recent years, it is not only possible to determine the THC as a percentage of content from the outset, there now exists stable strains with reproducible results that could be made available to ensure consistent results from clone to flower, crop after crop. For the purpose of ongoing research into the physical mental and social impacts of cannabis use over time, standardised product regimes could go some way to addressing some of the known unknowns in cannabis research, and even possibly identify other potentially useful cannabinoids.

#### **B.5 Roadside Drug Testing RDT & the half-life of cannabis**

It would be disingenuous to consider regulating cannabis without considering RDT as has sadly happened in the ACT. While progressive, it does give with one hand and take back with the other, but in reality take can potentially much more. These testing standards are arbitrary in the extreme and do not definitively determine impairment, unlike the BAC testing standards. The important points to note are that drink and drug driving are strict liability offences, or offences in which the prosecution does not have to prove the mental element to make out the offence - other than that a certain state of affairs exists at the time of testing. Secondly, and more perversely there is significant evidence to suggest that existing testing equipment is not up for the job. The Securetec *Drug Wipe* and Draeger *Drug Test 5000* have returned both false positive and negative results 9 per cent and 16 percent of tests respectively. In fact the study found that the accuracy, specificity and sensitivity of the two devices fell below accepted levels recommended by the European Union<sup>6</sup>. Notwithstanding these concerns, the NSW Police intends conducting a further 200'000 tests in 2020<sup>7</sup>. While some drivers have pleaded not guilty and challenged the veracity of presented evidence, many have not, and have been subsequently prosecuted for cases that were inherently defensible.

The pernicious and discriminatory nature of the drug driving testing regime becomes evident when considering what is tested for and what is not. With the exception of NSW there is no

---

<sup>6</sup> Ben Knight, (2019) *Roadside drug tests for cannabis return results, research shows*. (ABC News Corporation) <https://www.abc.net.au/news/2019-09-12/police-roadside-cannabis-drug-testing-devices-questioned/11502436>

<sup>7</sup> David Halpern (2020) *Drug Driving laws are destructive and ineffective*, Sydney Morning Herald (9 News), <https://www.smh.com.au/politics/nsw/drug-driving-laws-are-destructive-and-ineffective-20200630-p557sj.html>

RDT for cocaine testing taking place in Australia<sup>8</sup>. Various inferences can be made as to why this might be the case, but that is beyond the scope of this submission.

**B.6 Ban on public consumption;**

Nothing further to add here as the public consumption should be treated the same as that of alcohol in public settings.

**B.7 Prohibition on promoting cannabis containing products use across all media;**

A possible exception may exist for seeds and other non-cannabis containing genetic materials for breeding and research projects.

---

<sup>8</sup> Vivienne Moxham-Hall & Caitlin Hughes, (May 2020) Drug Driving Laws in Australia what they are and why they matter? (UNSW Sydney) Table 1 Page 5  
[https://ndarc.med.unsw.edu.au/sites/default/files/ndarc/resources/DPMP\\_Bulletin\\_29.pdf](https://ndarc.med.unsw.edu.au/sites/default/files/ndarc/resources/DPMP_Bulletin_29.pdf)

**C. Implement health education campaigns and programs to ensure that children and young people are aware of the dangers of drug use, in particular cannabis use**

This is covered in Part A above.

**D. Prevent criminal activity relating to the illegal cannabis trade in Victoria;**

A major driver towards a regulated cannabis market is to see the removal of organised crime elements and the closing off of a significant revenue stream for these organisations. As we have seen in recent years criminal groups have access to vast resources and have demonstrated incredible ingenuity when working around federal, state and territory laws. This is evidenced in the explosion of synthetic cannabis between the years 2008/15. As each was criminalised there was another to fill the space almost immediately, altered at the molecular level, and therefore not captured by any legislation at that time. It was estimated that about 160 iterations of these drugs came out of China during the above period netting these organisations huge profits. Now their attention has been directed toward even cheaper production methods to make MDMA and amphetamines *via* P2P, bypassing the need for the usual organic precursors to make these drugs netting even greater sums of money for these groups. It does not stop there and attention is also now directed to synthetic heroin, via Fentanyl and Carfentanyl, the latter so dangerous, it is listed as a weapon of mass destruction.

Removing control of the market for cannabis from these organisations is a sound move.

**E. Assess the health, mental and social impacts of cannabis use on people who use their families and carers;**

A move towards regulation of both medical and recreational cannabis presents an ideal opportunity to collect much needed data to assess the physical and mental impacts of cannabis use over time. Revenues generated from whichever potential regulatory option is decided upon could be used to fund this research. As noted earlier at B.4, the opportunity now exists to access consistent stable strains of cannabis that could be used within longitudinal or even longitudinal/randomised studies of various risk groups depending on the variables chosen. This information and assumptions made from this data could go a long way to determining the efficacy of harm reduction measures, answer long standing questions about the impacts of cannabis use, and meaningfully inform social policy in this area.

**And further requires the Committee to assess models from international jurisdictions that have been successful in achieving these outcomes and consider how they may be adapted for Victoria**

The responses of different international jurisdictions differ considerably in how they have responded to regulating cannabis *vis a vis* from a total prohibition stance to others that tacitly accept some level of possession, or limited cultivation practices. From personal experiences in Holland Spain and here in Australia, no particular model is perfect, but each do have their own merits, and which are possible to reproduce in Victoria, but subject to some type of modification. It is suggested that a middle ground position that: ensures adequate supply to consumers; restricts access to minors; respects public health, removes financial incentives for criminal elements to profit is considered a pathway forward and captures and reflects the social limiters set out in these terms of reference.

A hybrid model described under Assumptions above that provides for the coexistence of both medical and recreational usage should cover off:

1. Licensing and enforcement arrangements for commercial growers;
2. Retail sales for those that would prefer not to cultivate their own cannabis, but would purchase as they had under illegal conditions; and
3. Supply through licenced commercial growers

***Legislative prohibition with an expediency principle***

*The Dutch Model*

Despite its perceived laxness around soft drugs, cannabis is actually illegal Netherlands. The Dutch authorities tolerate the use of cannabis under strict criteria, and allow individuals to purchase up to 5g of cannabis per day in a coffee shop for consumption on premises, or in designated locations. The rationale behind the coffee shop model, a fact that is not that well understood, was to separate out cannabis from all other drugs and were introduced in 1976 to protect cannabis users from exposure to harder drugs. This underlying principle, the separation of markets principle, is strictly enforced and coffee shops found in breach of this rule are closed down and penalties applied - usually permanent closure.

The problem with this model is that while a coffee shop can possess up to 500 grams of various cannabis products for sale, shop owners are not allowed not to purchase from growers, and the importation of cannabis remains illegal. This is referred to the as the back door policy thus criminalising the complete supply chain - other than from shop to patron.

With some refinements, a model like this could work in Victoria but supply is obtained through local licenced suppliers thus closing off the loop for criminal elements.

A possible template for establishing a similar model already exists through Victoria the Business Licensing Authority (BLA) who determine brothel licence applications, which with minor modification could be repackaged for this purpose. Under this proposed model local city councils could determine the suitability of licence applications from a planning perspective as they do for liquor licensing, which if deemed suitable could then be referred on the BLA for final approval.

### ***Partial Prohibition***

#### *The Spanish Model*

Cannabis social clubs (CSCs) are private, non-profit organisations in which cannabis is collectively grown and distributed to registered members. With no profit motive to increase cannabis consumption or initiate new users, the clubs offer a more cautious, public health-centred alternative to large-scale retail cannabis markets dominated by commercial enterprises. The growth of the CSC model in Spain demonstrates that cannabis legalisation does not have to mean commercialisation. As CSCs show, it is entirely possible to restrict the availability and promotion of cannabis while at the same time making the drug legally available to adult users.

Additionally, the UN drug conventions have been interpreted as permitting CSCs, on the basis that they are an extension of decriminalisation policies. Because of this, the CSC model avoids many of the political and diplomatic obstacles associated with more far-reaching systems of legal regulation.

An interesting feature of this type of model is that it stands or falls on the performance of its members. That is, if a club comes to the attention of the police for any infractions of the law by any one member can result in closure of the whole club. As such, it is the responsibility of each member to police their own membership.

#### *Establishment in Victoria*

There are some merits to this type of model. CSCs operate as unincorporated associations, which in Victoria is currently overseen by Consumer Affairs Victoria. Enforcement and licensing would still be covered by Victoria Police and the applicable City Council respectively.

## Partial Prohibition with civil penalties

### *The Australian Capital Territory*

The ACT model is included here because it includes the possibility for limited cultivation by and individual without reliance on clubs, or the presence of licenced growers to supply a retail outlet. The individual is therefore their own supplier and would operate as a closed loop without any other participants involved, but it is not without its limitations, which are that:

- Weight limitations of 50g of dried or 150g of wet material over two plants. This is problematic and save for one particular type of growing scenario it seems unworkable because specialised seed is unavailable without ordering from overseas, which places potential cultivators in breach of federal laws as the importation of seed is still illegal in Australia<sup>9</sup>;
- Growing under artificial light is excluded despite that being the securest way to cultivate cannabis. Unfairly, for apartment dwellers without access to adequate sunlight, cultivation is not possible to do at all;
- 50g or a little under 2oz is a just a couple of months supply and will return consumers to the black market for the remainder of the year; and
- As there has been no amendment to the RDT testing regime, a zero tolerance approach to cannabis is still in effect, the impacts of which are described at B.5 above.

While this is an advance for cannabis cultivators, it is a pyrric win that is in need of significant overhaul. However, with some refinements it could be workable if limited indoor growing under artificial light was an allowed option. This could be achieved by allowing the use of new generation of LED technologies that while expensive are now viable alternatives to High Pressure Sodium (HPS) and High Intensity Discharge (HID) lighting rigs. There have been significant advances with these technologies in recent years and use significantly less power than the HPS or HID lights, therefore producing less heat, and consequently reduce some of the risks of fire associated with lighting HPS and HID options. A workable compromise would be to leave the outdoor regime as is and allow indoor cultivation with specialised seeds stock but one plant at a time. That would ensure that amounts available are strictly for personal

---

<sup>9</sup> Auto-flower feminised seeds are single use pre-sexed plants that use *Cannabis Ruderalis* genetics to induce early flowering that which is not dependent on reduced lighting to achieve this end. This type of plant typically cannot be cloned and produce small plants, with yields between 30 and 50g per plant. These seeds were developed for novice window box growers.

consumption only, but it would necessitate accessing this seed from Europe or the US, which would necessitate changes to Federal Law.