

TRANSCRIPT

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into the use of cannabis in Victoria

Melbourne—Thursday, 25 March 2021

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Mr Lee Tarlamis

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WITNESS

Ms Tamar Todd, Lecturer, Berkeley Law, and Former Legal Director, Drug Policy Alliance (*via videoconference*).

The CHAIR: I declare open the Standing Committee on Legal and Social Issues public hearing for the Inquiry into the Use of Cannabis in Victoria. Could members and witnesses please ensure mobile phones and any other devices are switched to silent.

May I first begin by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the land we are gathered on today, and I pay my respects to their ancestors, elders and families. I particularly want to welcome any elders or community members who are watching here today or who will be coming as witnesses to impart their knowledge of this issue to the committee. We know that whenever we are talking about drug issues our Indigenous populations are always more profoundly affected. Again, welcome to anyone who is watching live via the parliamentary broadcast.

Tamar, I just need to let you know that all evidence taken at this hearing is protected by parliamentary privilege, as provided by our *Constitution Act 1975*, and further is subject to the provisions of the Legislative Council's standing orders. Therefore the information you provide during the hearing is protected by law; however, any comment repeated outside the hearing may not be protected. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament. Given that you are not in the jurisdiction of Victoria, I would just like to note that really you are probably not protected in the United States in a similar way.

All evidence is being recorded, and we will provide you with a proof version of the transcript following the hearing. That will ultimately be made public, so I would encourage you to have a look and make sure that we have not made any substantial errors or misrepresented you in any way. I welcome you to make some opening remarks. Actually, before I do that, let me introduce you to the committee. We have Tien Kieu, the Deputy Chair; Kaushaliya Vaghela; David Limbrick; and Georgie Crozier here today. Thank you, and again, thanks very much for giving your time up today, Tamar.

Ms TODD: Thank you for having me. I will just introduce myself and my background for a little bit. I want to talk about some of the primary reasons that motivated cannabis law reform here. Then I will identify some of the challenges that we faced, the areas where there have been challenges and outcomes, and then open it up for questions, if that sounds agreeable.

So I am a lawyer. I have worked in cannabis law reform for about 15 years in both policy development and drafting of legislation and ballot initiatives and on the regulatory side and assisting with the implementation and rollout of various measures. I also teach courses in cannabis law at UC Berkley school of law and I teach a course in broader drug policy law at UC Davis School of Law, and I am an appointed member on the California Cannabis Advisory Committee, which is a body that was formed as part of California's legalisation law. That is made up with numerous experts and stakeholders to advise the regulators in California as to how to best implement California's cannabis law reform. I will just finally note that I am also the mother of three teenagers, so I do not claim to be an expert in teenagers but I do know something about that issue as it relates to this personally, because I have that perspective as a parent of teenagers as well.

I also just want to point out one thing about the laws in the US that I think are important, especially looking at a very sort of macro perspective on their success or not, and also what the laws substantively look like. That is to remember that nearly all of the state legalisation laws, with the exception of just two at this moment, Vermont and Illinois, were adopted via voter initiative. So that means that it was the voters, the people, in the various states that went around collecting signatures, drafted the law, qualified it, put it on a ballot for election and the voters enacted and adopted the law. It has really been led by public opinion and people's support and rejection of the way the government is handling cannabis and addressing cannabis.

But the interesting thing about it is that we are now 10 years into that experiment for legalisation of adult use—medical has been a lot longer—10 years in the states of Washington and Colorado, which went first. Subsequent to that the elected officials now have embraced the reform; right? The governors of those states at the time it happened were opposed to the legalisation initiatives, but now they fully embrace it and they defend the initiatives, and the lawmakers have actually worked to expand and implement the measures. Additionally,

obviously public support was high enough for the measures to pass, but it has only increased over that time. So I think when you take a really sort of 30 000-foot view of ‘Is this working or not?’, you can look at the states and see they have increased support and they now have elected representative support in a way that they did not initially. I think overall it says something about the benefits on balance that they have brought to the states. Additionally, other states have looked at the experiments other states have done first and have adopted similar measures, and state legislatures are on the cusp of adopting many more. So I just point that out as a sort of holistic view. No state has actually adopted the reform and then moved away from it in the past 10 years, and all the states that have adopted it have maintained it; none have gone on to then reject it or go back to prohibition.

Some of the primary reasons that drove voters in these states towards reform—there are a number of them but I have put them into some bigger buckets. One is that simply the status quo that we had before, cannabis prohibition, was not working in any meaningful sense. I mean, the use of cannabis was widespread, it just was not regulated.

So the question that we were grappling with—and I just want to still remind us, because you can get into this dialogue about ‘Is cannabis good or bad’ or ‘Is cannabis helpful or harmful?’, cannabis is here; in California cannabis is here; people are using it—was whether it was regulated or not regulated, not whether we were going to have cannabis or not. It was just one of how you want to control it, because in no meaningful sense in the US states was the criminalisation or the prohibition preventing the use, it was just causing a lot of collateral problems.

Second is that in the states the criminalisation—prohibition—was resulting in the criminalisation of large numbers of people who were otherwise law-abiding citizens; right? So it was capturing all of these people. And often there is a big dialogue where people say, ‘Well, you don’t need to legalise it’, because people were not going to jail, people were not spending lengthy prison sentences for low-level cannabis offences, and largely there is some truth to that. There were ways that people were having supervision or parole or probation revoked or in some states being locked up for a long time while they waited for access to court and spending more time in jail. But largely, yes, low-level cannabis possession offences were not leading to a large amount of jail time. But that does not mean that it was not still being used to criminalise people; right? So even the fines, states that had a fine, that was extracting wealth from communities that were vulnerable and, you know, less wealthy. So it was extracting resources from those communities, and in many of the US states and under US federal law just the conviction or the infraction or citation alone can lead to being held back in the context of employment, housing, professional licensing and food assistance programs. So even if it did not lead to jail time it was putting this heavy weight on someone of criminalisation that was then holding them back in all these other systems from succeeding.

And here we have a horrible problem with racially biased enforcement. There was research done that showed in every city in every county in every one of the 50 states gross racial disparities in terms of the rates at which black people are arrested—from white people—for the same offences. Use, very similar levels; sales, very similar levels; but enforcement against black people, extremely disproportionate. And then that enforcement carries over into family law, into employment law, into access to housing, so the racial discrimination and the enforcement by law enforcement infects access to all these other resources and systems in a very negative way. So that was certainly a driver. And I will note it is not just cannabis, it is all drug law enforcement as well. But in the conversation around cannabis that was a central piece.

Additionally, prohibition was just wasting public resources. We were spending time on law enforcement, enforcement of low-level offences, low-level conduct, that did not need to be criminalised, and then at the same time failing to collect large amounts of available tax revenue that could be spent on other projects and could be derived from a legal market, which we have seen subsequent to legalisation. Prohibition was a lot more dangerous than having a regulated market. In the regulated market, the states that have moved forward, the products are tested for contaminants and potency and they are properly labelled and properly packaged. We knew even without legalisation large numbers of people were consuming, but they did not know what they were consuming—what it was combined with, what it might be laced with, how potent it was—so simple consumer safety.

And then additionally we had large markets, completely unregulated markets, for production and distribution that lacked any employment standards, any workplace safety, any environmental standards. In California there was terrible damage to the environment that was done by completely unregulated cultivation. So a regulated

market allowed the institution of all of these systems of regulation that apply in any other industry to apply and be enforced to cannabis as well.

And then finally—although this is counter to the narrative offered by many opponents, it really was a driver for the reform—a regulated market is better for kids. It means, on a very simple level, children's parents are not denied employment or denied custody for minor cannabis-related conduct, which is very harmful for kids. But the legal businesses are very strictly regulated and cannot sell to minors. It removes it to the extent you successfully remove it from an illicit market where a teenager might be interacting with an illegal seller of cannabis who might offer other substances, an unregulated product, who does not care whether the person is a minor or not. There are strict regulations that the products cannot be marketed to young people.

A number of the states are spending the tax revenue on youth programs in a whole variety of ways—from education to counselling to after-school activities—to engage at-risk populations of youth.

Then finally one of the big fears with legalisation before it started was that legalisation would increase use by youth, and we are now 10 years into it and it has not increased youth use at all. Actually the data from all the states shows no increase, and some of it shows a slight decline. The states that have legalised cannabis for adults have not seen sort of that feared increased in youth use.

Some of the big challenges just with regulation that we have seen arise in the states, a lot of those areas that I identified I think have been successful. I think youth are better protected in a legal market. We have raised a lot of tax revenue. We still have racial disparities in the enforcement of laws that still exist, but the total number of arrests has gone down dramatically, and a lot of states have gone back and are expunging old records, so undoing some of that harm that was generated through the enforcement. But the areas where we have faced, I think, the most significant problems have been around the fact that it remains federally illegal in the US, which causes a number of problems, like with access to banking. The industry as a whole is very underserved in terms of banking because many banks do not want to provide services to cannabis businesses when it remains federally illegal. We also have no interstate commerce, so each state has had to set up a completely intrastate market, which means a lot is out of balance. Many states produce more than they can consume within the state and other states would need more production to come in, so it has created this real artificial barrier to the market that allows price manipulation and is not well balanced with production and demand, I would say.

We do not have the same option that Canada has—Quebec—or Uruguay in that our state government cannot be a direct actor in the market, so we do not have the option of the state playing a direct role in selling because of the federal prohibitions, so that is a limitation. Then we continue to have an unregulated market, so some of the harms that existed I think from the lack of regulation still continue to exist where there is a lack of regulation because there is still that illicit market. That is from a variety of factors. I mentioned the lack of federal change, the lack of states not yet legalising. Some states have very strong local control provisions, so there are localities within the state that do not allow for the legal sale, and then that drives the illicit market. Then I think just with a big transition to where there are taxes and regulations and it is still competing with an illicit market, there is a balance that needs to be worked out there in terms of how robust the tax and regulations are, at least during this period of time where it is a transition from the illicit market to the legal market.

And then I will just note one really huge challenge I think in the implementation part of the design of many of the programs was to try and create racial and social equity by reducing the number of arrests and collateral consequences but also by allowing opportunity in the cannabis industry for marginalised groups and individuals who are most harmed by the prior cannabis enforcement and criminalisation to have access into this new industry in terms of ownership and employment. The development of that piece has been very challenging to do in a meaningful, robust way, although the states continue to work on that and to build out those programs and enhance the programs by providing grants and funding and loans. But that is a difficult area.

Then I just want to say one last piece, and then I will open up to questions. That is just about data and kind of the evaluation of different reports and data that come out. I want to highlight for the committee one issue that we have in the US is that there are these reports that are published by these groups called the High Intensity Drug Trafficking Areas, and they have put out a number of reports quite critical of legalisation.

They are an entity of the federal Drug Enforcement Administration, which is opposed to legalisation. The thing that is interesting about these entities and their reports is that they are required by federal statute, so by federal law, to oppose the legalisation of cannabis or any schedule 1 controlled substance, and they are required to only

publish data and information that opposes legalisation. So the law mandates that they come to a conclusion and find evidence to support the conclusion—it is part of the mandate. In the States these reports are pretty widely dismissed. I mean, opponents will bring them up, but they are pretty widely dismissed, from what I have seen, by most of the policymakers within states that are looking at this issue and grappling with it, because of what I mentioned—some of the parameters, sort of the bias—and if you dig into the data and how it is presented, it cherrypicks and it is not really an honest assessment of the data. But I have noticed that internationally, without that context of what these federal drug enforcement groups' aims are, it sometimes carries more weight in the conversation. So I just want to put that out there in consideration of those reports, just so that they are given a critical eye if they come up and if you look at them. They all skew things. Like, when I say no states have seen an increase in youth use, I am drawing from the states' own surveys and sort of the most comprehensive surveys of youth use in those states that those state lawmakers and those state governors would rely on and not a dataset created or put out by one of these federal drug task forces.

The CHAIR: Great. Thank you so much, Tamar. That was really informative. We have got about half an hour for questions, so we will open it up. I will ask my Deputy Chair, Tien Kieu, to open up the questions.

Dr KIEU: Thank you, Chair. Thank you, Tamar. Thank you very much for your time, all the way from California. I have a comment and a quick question for you. In the state of Victoria, where we are, we have just passed a bill for spent convictions, which means that for someone who has a criminal history for certain kinds of criminal offences, after a certain length of time with no offending their record can be hidden, so it hopefully would not affect their employment or housing or education or accessibility. That is a comment.

Now, you mentioned that in the last 10 years of data there is no noticeable increase in the use of cannabis, even though it has been legalised in certain states. Is there any data pointing to whether those who are using or have been using cannabis may graduate, in a sense, to harder drugs in a larger proportion or not? That is the first part. I may as well ask the second part of my question. Because the state may legalise the use of cannabis and the federal government does not, is there any potential problem there, and how can you handle that? Take, for example, the FBI in the US may have a sting operation to interrupt a shipment of cannabis. People who may buy it as a consumer rather than as a supplier may get caught in that sting operation and could potentially be charged with the federal law even though the state may not want to do that. How do you handle the differences there and the different jurisdictions there?

Ms TODD: Yes, it is challenging. So first of all, on the first question, I just want to clarify the data is very strong that there has been no increase in youth use. I think it is less clear what is happening with use among the entire population including adults. I think there probably are more novice users or people who try cannabis who maybe did not try it before or pockets of adults where use is going up. Like, actually among much older adults, if there is increased use of cannabis, they would be populations that were not as open to using it when it was illegal but now are. But the data is very strong that youth use, so use by minors, has not increased.

And then to suggest that—although I think they are still figuring out always this question about causation and correlation—actually people are not stopping to use cannabis to use other substances but rather people may be using cannabis instead of alcohol, or where it is most striking, it seems like there are people who are using cannabis to reduce reliance on opioids to manage pain. A number of our states have a very serious problem with opioid overdose and opioid use rates, and there is a body of evidence that is emerging that people are replacing some of that use with cannabis and it is helping people reduce use, and there are some strong correlations between cannabis legalisation and availability and overdose deaths going down in some of those states.

On the second question, about the federal enforcement, that is a big problem, and it has plagued the diversion that we have between state policy and the direction states are going and federal policy and the way the federal government is going for a long time. Even from the time when states had just started legalising medical cannabis there were periods of time where there was federal enforcement because it remains federally illegal and the federal government has the power to enforce. It is also true that the federal government relies very heavily on states' cooperation in enforcing even federal law, and under our federal structure and our constitution the states are not obligated to assist the federal government in any way and the federal government cannot commandeer or ask state law enforcement or state officials to assist them in any way, so there is actually some diminished power of the federal government to do that. But what is most substantively in place is that starting in 2014 the federal government actually passed a law—it was part of a big budget; it was a rider that was included in the budget—that said the federal department of justice cannot use federal resources, cannot use

its budget, to interfere with state laws. It applied just to medical laws. It said with the state medical legalisation of cannabis laws, the federal government is restricted from using any resources to enforce against it. So that took a big piece out of sort of their enforcement ability.

Then following that we have had guidance by the federal department of justice that advises federal prosecutors and federal law enforcement to not interfere with the state regulatory programs. So even in the absence of a change in federal statute that would legalise cannabis or align the law with state laws, they have taken a policy approach in enforcement to try and work cooperatively with states that are regulating rather than at cross purposes, and it has been fairly successful at preventing the type of enforcement scenario that you mentioned. It is less helpful at addressing things like the interstate commerce restriction or to convince banks that they should jump in and provide banking services. So there are still a lot of problems, but it has lessened the enforcement piece as being a major risk.

Dr KIEU: Thank you.

The CHAIR: Thank you. Kaushaliya.

Ms VAGHELA: Thanks, Chair. And thanks, Tamar, for your time today and for joining us virtually from California. Now, I had quite a few questions, but it felt like you read my mind and you answered all the questions that I had during your comprehensive presentation that you have done today. But the question that I have is that you mentioned that out of all the states that have decriminalised cannabis, none of them have gone back to prohibiting again: are there any reasons why the other states are not decriminalising cannabis, then? If there are benefits, has the number increased in terms of the other states decriminalising it? So that is the first part of the question. And the other one is: in terms of the data, have you got the data where we know what sort of impact the use of cannabis has on overall health and mental health of the users, whether they are the young users or the adults?

Ms TODD: Right. Okay. So on the first question—I mean, it is a complicated question—more and more states are legalising cannabis. Each election there are additional states. So even this past election cycle we saw some of our more conservative—we call them red—states legalise: Montana and South Dakota.

One of the reasons, though, that I mentioned is that the laws so far have been brought by voters as part of voter-enacted initiatives, and there is broad support in all the states by the voters for the sake of reform. However, many of the states do not allow for direct democracies or voter initiatives, so it is not on the table for reforming it there that way. Of the states that do not allow for voter initiatives, there is one category of states where legalisation of cannabis bills is pending and they are moving. A number of them are not held up, like in New York and Pennsylvania and other states, by a disagreement about legalising cannabis or not legalising cannabis. A lot of them are fighting about issues about how exactly to do it and how to create the market that is going to allow for equitable access by the communities that were harmed by prohibition. So it has majority support for legalisation moving forward, but figuring out how to structure and create the industry is causing the lag, although they are going to get there. Like, those bills are pretty far along in a number of states. And then I think we have a handful of states that are just ideologically very conservative and will not let go of sort of a war on drugs mentality of, like, prohibition of all drugs regardless of the evidence that is put in front of them—you know, evidence that is dismissed. But even in Colorado the elected senator, Cory Gardner, who opposed legalisation, then became a big defender of it for his state once it happened within his state. And we actually see bills even now introduced in a number of quite conservative states legislatively, like North Dakota and Wyoming, and bills moving forward, so it is happening slowly.

On the mental health piece, there is also, you know, different research, different conflicting research reports. There are a lot of anecdotal reports about it. In anticipation of this question I just pulled up from our National Academy of Sciences, which conducted a review of the overall research on marijuana and mental health in 2017, so five years into legalisation but not as current today, and they concluded that there is some connection between marijuana use and the development of psychotic disorders—right, like triggering them. Certainly there is some research that underscores that. But they said the relationship may be multidirectional and complex, right? So it is not fully understood whether the cannabis use triggers that psychotic episode or someone who is prone to developing a psychotic disorder may be using cannabis to help mitigate it or self-treat it. And then they concluded that the relationship between marijuana use and other mental health outcomes is mixed, and it is also frequently compounded with alcohol use, and that is actually true of the data in a lot of our outcomes—it is compounded with alcohol use and hard to separate apart. It is also important to note that association is not

causation and mental health conditions might drive—this is what I just mentioned—some people to use cannabis rather than cannabis use causing mental health conditions. There is a lot of research into that and there is research underscoring that for some people who are vulnerable to having a psychotic episode the cannabis could trigger it, but at the same time I do not think they have separated out or concluded that it is causal.

The CHAIR: Thank you. David Limbrick.

Mr LIMBRICK: Thank you, Chair, and thank you, Ms Todd, for appearing today all the way from California. I have got a couple of questions. The first question I would like to ask is: what are the benefits of prohibition? Are there any benefits of prohibition that have been lost since legalisation?

Ms TODD: It is hard for me to pull out honest benefits of prohibition. I do not view these as benefits. I think for law enforcement one of the reasons why some law enforcement is very invested in cannabis prohibition is not because of the belief that cannabis is bad but it is because it can be a very useful policing tool in a number of ways—to justify warrants, to seize assets, as the basis for a search. It is very easy to say, ‘I smell cannabis smoke. Based on the odour I can search this car’ or ‘I can search this person’.

It is a very useful policing tool, which is why I think there are some entrenched reasons why certain groups do not want to shift to a different structure. I will say I do not think this is a benefit of prohibition, but I do think there is a valuable conversation in the ways that cannabis can be legalised and regulated and how commercial it has to be, how large the corporations involved have to be and what types of restrictions are placed on it. Those to me are conversations once you have come to the idea that ‘Yes, we should regulate cannabis’ versus ‘We should just prohibit it’, because I do not think that there were many good outcomes that we saw under prohibition and there were a fair number of significant harms.

I guess I will just add one little piece to that, and I do not know if this is applicable in Victoria but it is in areas in the US. If you do not figure out the part about creating an equitable market, under cannabis prohibition it was an industry. It was illicit, but it was providing some wealth and opportunity to different communities on a low scale. In the US there are growing communities in California where people were supporting their families growing, there were people who sold cannabis illicitly in different areas and brought income and wealth to their communities. So if you do not create an equitable structure for doing it, you could say that you are removing that wealth from communities that have relied on it for several generations in a way that is now not allowing them opportunity into the legal industry. That is maybe something that was lost, but that came with huge risk of arrest and criminalisation and harm.

Mr LIMBRICK: Thank you, Ms Todd. That sort of leads directly into the next question that I was going to ask. There have been varying approaches to legalisation in different states in the US, and my understanding is in some states, I think you mentioned in your presentation, there still remains a significant illicit market. What could Victoria learn from that, because one of the terms of reference points for this inquiry is to remove the illicit market? What sorts of factors have led to the retention of those illicit markets in states where they are significant in the US?

Ms TODD: Right. Well, it is difficult to combat if you are an isolated jurisdiction within a larger sea of prohibition. One of the challenges that our states have is that there is still an illicit market out of the state—that is, a market that products can be diverted and distributed to—so that can help the illicit market thrive. Then we have pockets within the states, as I mentioned, where there will be local control provisions that do not allow for the legal sale within that jurisdiction, so then that creates an opportunity for the illicit market. So that piece is challenging if you do not have the ability to legalise throughout the jurisdiction. But I think one lesson there that we are still trying to figure out the balance to is how to balance basically the barriers to entry into the legal market, so the cost associated with shifting from the illicit market to the legal market in terms of taxation and regulation, and then also like whether you are going to keep people out of the legal market. Here you cannot get a licence to be a barber if you have a prior criminal conviction, so if you say, ‘You can’t get a licence to sell marijuana, be in the legal industry, if you have a prior cannabis conviction’, then you have a whole category of people that you are forcing to stay in the illicit market.

I think what we have learned is that you should have open doors. You should try to bring in and allow legal opportunity to as many as you can, capture as many people as you can under the umbrella of legal regulation and taxation, make it initially a very easy entry, and then as the illicit market becomes less viable and goes away, at that point then you can increase regulation and increase taxation. We can effectively do that here with

tobacco because it has long been a legal industry and there is not a thriving illicit industry—or there is actually still some illicit industry to evade taxes; we have very high taxes—but if we start out with cannabis with very high taxes and make it pretty difficult for people to enter, they will just stay in the illicit market and that will thrive. But it is a challenge; I think it is figuring out the right balance.

Mr LIMBRICK: Thank you so much, Ms Todd.

The CHAIR: Thank you. Georgie Crozier.

Ms CROZIER: Thank you very much, Chair. Thank you, Ms Todd, for appearing before us this morning. We appreciate your time and your very interesting remarks and evidence that you have provided to the committee. I am very interested in the health impacts, and particularly the adverse health impacts. We know that the THC component in cannabis has increased by 30 per cent, or the potency has increased by 30 per cent, over recent years and decades. You spoke about the psychosis elements, but I am interested in depression, I am interested in the issues around adverse health outcomes in pregnancy or brain changes and I am really interested in that data—Dr Kieu raised it—about the youth uptake of using cannabis in those areas that you spoke about. There is so much analysis and so many studies going on around the world. I know here in Australia our national drug bodies are looking at this and they have got real concerns about health outcomes, so I am just wondering if you could provide the committee with that data that you spoke of but also those mental health impacts—the depression rather than psychotic episodes. Have you got a comment on that—and your observations as well.

Ms TODD: Yes. So I have not seen a lot of research that is about the correlation with depression—I mean, except for people maybe using it as medicating themselves with cannabis for depression, although I am sure that there is some research there. I think overall, and this goes to my very first comment about the choice is not cannabis or not cannabis; it is regulated cannabis or not regulated cannabis. So here in the US we actually had an increase before legalisation. Under prohibition we saw the start of the increase in THC—

Ms CROZIER: Sorry to interrupt. I am really interested in that point. What does ‘regulated’ in terms of the THC potency mean? Or what does that look like in those states that you are advising?

Ms TODD: Yes, sure. So what it means to me is: let us say it is a completely illicit market, and I am going to go out and I am going to buy on the illicit market cannabis for myself to consume later. I go out and buy the product. I have no idea what the THC concentration is. I might have no idea what the cannabinoid concentration is. I do not know any of that information—how it was produced or what is in it or how potent it is—versus I go into a regulated retail outlet in California and I purchase a product. First of all, I have a range of choices, like I can choose to get a 20 per cent THC product or I can choose to get a 5 per cent THC product. I can choose what I want the potency to be. I know it has been standardised and tested to meet that potency. I know what a serving is—when I ingest a piece of it I know how much THC is ingested. So as the consumer, you are being provided access to a product that is tested and properly labelled and also has proper warnings attached to it, like, as you mentioned, about pregnancy or impairment or any other health effects that we want the consumer to know. It can come with that in addition to the requirement that I am given information or education about how to most safely consume it, how much to take at one time. So to me it is like equipping the consumer with a product that has an assurance of what it is, a range of choice in products to me as a consumer, and accurate labelling and a warning about what the product is.

On the THC potency, although a number of the states have the authorisation, I think, to cap potency, I am trying to think—I do not think any of them have put a cap on the potency of all products. There is a big dialogue that—

Ms CROZIER: Why is that, do you think?

Ms TODD: That they haven’t?

Ms CROZIER: Yes.

Ms TODD: Well, there are two issues. One is—I am just thinking for a minute to see if there is any difference, because I know in some states there is definitely an interest on the medical side—the medical patients do not want a cap in potency, and I do not think any state has exercised a cap, just an overall limit on the adult use side.

I think it is a number of reasons. One, I think there is the feeling still of competing with the illicit market, so not wanting to make products that are currently available in the illicit market not available legally that have gone through that regulation. So I think that is a piece of it. I think there is not an agreed-upon understanding or maybe a shared understanding among regulators of the science about what would be the appropriate potency level—is it necessarily better to have someone consuming more or smoking more of a lower-potency product than a smaller amount of a higher-potency one? So not yet ready to cut that off from I guess competition with the illicit market and to make those choices, although all the states have regulations requiring, obviously, the labelling of the potency and the serving size and also just the amount. They all have strict regulations about the amount a consumer can purchase in a day and can legally possess at one time. It is very different, I would say, to alcohol or tobacco or any other product. You can only actually legally possess or purchase at a time a fairly small amount. But I know Quebec does have a potency cap and other jurisdictions outside of the US states have explored an overall potency cap.

Ms CROZIER: Thank you.

The CHAIR: Thank you. We are actually out of time, but I just have one quick last question, Tamar. One of our terms of reference is really looking around young people, and we know with young people with developing brains if we can keep those brains free of psychoactive substances—alcohol, cannabis et cetera. Is there any jurisdiction that has legislated any education programs or legislated that programs be implemented in those states?

Ms TODD: Yes. Well, one, there is the question about youth education, but I think there is also a very important question about just public education generally as you shift towards a legal framework. And in some of these states—and we saw this in Colorado—it was not as true with medical cannabis legalisation, because I think the people who moved into the medical cannabis space were more experienced cannabis users and consumers initially. But certainly with the shift towards legalisation there were more novice users or people who did not understand how to most safely use it or mitigate potential harm, and there would be rules about the new laws. So in all the states—and some more than others—an important component is a very robust public education campaign. That is like, ‘This is legal cannabis, it’s still dangerous in these ways; if you use an edible, wait a couple of hours before your second bite’. Because there is not that shared cultural understanding, where people here generally know, like, you are not going to chug a whole bottle of Jack Daniels, because you are going to die, right? People just know that because we have a cultural relationship with alcohol in a way that did not necessarily exist with cannabis. So that is an important piece.

A lot of the states, while they did not obviously legalise it for minors, they also did not want to criminalise minors. So they removed substantially all the penalties but said that the minor has to go to drug education or counselling—depending on the needs of the minor—to address the situation. And then in some states, like in California 70 per cent of the revenue bucket actually goes to youth drug education. It is very broadly defined. It is also diversion programs, which can include after-school activities, which is when youths use illicit substances. So it is a replacement of time to education, and it is also expansive; it is not limited to cannabis. It includes alcohol and other substances to make the education more holistic, but a big focus is on that and of investment in drug treatment resources generally with some of the cannabis revenue.

The CHAIR: Thank you so much. And as a question, just putting it on notice, if there are any particularly good education programs that you are aware of, if you could send us links, we would be very grateful.

Ms TODD: Okay. Yes. I will look around and follow up with that. It requires a change in the conversation about how you talk about cannabis with youth, because you are no longer saying, ‘This is bad. You can never use it. It is against the law,’ to ‘Don’t use this until you’re an adult,’ and then ‘If you do, you need to use it safely in these ways’. So it requires a shift in the dialogue.

The CHAIR: Absolutely. And I think even those general education campaigns would be of interest to the inquiry. Thank you so much for your time today and really for the level of expertise that you have been able to provide to us. We greatly appreciate it. As I mentioned at the start, you will receive a transcript of today, so please check through it. Make sure we did not misrepresent you or misunderstand a word that you might have said in the process. So thank you again. And for those listening out via the broadcast, we are going to break for a couple of minutes just to reset for our next witness. Thank you, everyone.

Ms TODD: Thank you for having me.

Witness withdrew.