

# TRANSCRIPT

## LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

### **Inquiry into the use of cannabis in Victoria**

Melbourne—Wednesday, 9 June 2021

*(via videoconference)*

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Dr Samantha Ratnam

Ms Harriet Shing

Mr Lee Tarlamis

Ms Sheena Watt



**WITNESS**

Mr Brendan Hughes, Principal Scientist, Drug Legislation, Support to Policy Sector, European Monitoring Centre for Drugs and Drug Addiction.

**The CHAIR:** Good evening. I declare open the Legislative Council Legal and Social Issues Committee's public hearing for the Inquiry into the Use of Cannabis in Victoria.

Let me begin by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the various lands that the committee is meeting on and the people who are watching tonight are watching from, and I would like to play our respects to their ancestors, elders and families. Of course we very much welcome any people from the community who are watching here today, and we recognise that drug use and drug policies affect some of our Aboriginal brothers and sisters in a far greater way, in a more exponential way. Welcome to everyone who has tuned into this live broadcast of this public hearing.

Let me start by welcoming the committee who is here this evening. We have Dr Tien Kieu, who is the Deputy Chair; Ms Georgie Crozier; and Ms Kaushaliya Vaghela. And I am Fiona Patten, the Chair.

We are very delighted to be joined by Mr Brendan Hughes, who is the Principal Scientist at the European Monitoring Centre for Drugs and Drug Addiction—EMCDDA in short.

Now, Brendan, I just need to give you some preliminary words around the structure of our parliamentary hearings, and that is that all evidence that you provide to us today is protected by our parliamentary privilege, and that is provided by our *Constitution Act* and further by the standing orders of the Legislative Council. Therefore any information you provide during this hearing is protected by law. Of course if you were to repeat those comments outside, they may not have the same protection. I would also add the provision to that that they probably do not mean a lot in the legal circumstances of Portugal, where you are, however.

I will also just let you know that this is being recorded, and we have got Hansard in the background listening to every word you say. You will receive a transcript of this, and we would encourage you to have a look at that. Ultimately it will go up on the committee's website and it will form part of our report.

We are very grateful for you making the time for us today. We have also had a look at the overview that you authored for the EMCDDA. So if you would like to make some opening remarks, we will then move to committee discussion.

**Mr HUGHES:** Okay. Thank you very much. I would like to say thank you so much for the invitation. It is really an honour to appear here, particularly when I have seen some of the really top Australian researchers that you have also invited. So to be amongst them is actually quite flattering in a way. I work for EMCDDA. It is a European Union agency whose task is to monitor objective, reliable and comparable information on the drug situation in Europe. I am the legal analyst. I used to be comparing drug laws in Europe, but I have been looking further more recently, as we have had to, in terms of cannabis. My speciality is legislation. My colleagues work on use, statistics, treatment, demand, seizures, stats. So I might not be able to answer questions that you have like that precisely, but I am happy to take them and find the answers and send them to you later.

But I can tell you that today, and literally right now, our director is launching our annual *European Drug Report* for 2021, and as you are interested in cannabis, I can give you a few figures about that. So for young adults, 15 to 34, the last year prevalence rating, who tried it in the last year, ranges from 3, 5 per cent in Hungary and Greece to over 20 per cent in Italy and France, and that is the range we are dealing with. The EU average, the calculated average, is 15.4 per cent. And it might interest you in this discussion to know that the Netherlands, which of course has had coffee shops running for more than 30 years, has a last year prevalence of 17 per cent. These surveys were over the last five years or so. They are not all from the last year—different countries at different times.

I know you are concerned about youth. We have the ESPAD survey, the European School Survey Project on Alcohol and Other Drugs. That monitors 15- to 16-year-olds, so the numbers are not precisely comparable—I think you have got 12- to 17-year-olds. Again, the range is from about 7 per cent in Cyprus, Norway and Sweden to 27 per cent in Spain and Italy, 31 per cent in France, 37 per cent in the Czech Republic, and, again,

the Dutch report 16 per cent even though they have 500 coffee shops. We will see that there is this disconnect between drug laws, drug policy and youth statistics. Everybody thinks there is a connection, but you will see that it is not that easy. I think the interesting thing is that the weighted average of the ESPAD survey, the teenager survey, is 17.3 per cent, and that is down from 20 per cent in 2011. So it has fallen. Teenage use on average around Europe has fallen.

Treatment demand—we know that there are more and more cannabis users going to treatment. Fifty-one per cent of first-time entrants to treatment for cannabis reported daily use in the last month, so that is some quite heavy use. We have the time periods; we do not have the amount that they are using. Treatment demand for cannabis seems to have levelled off in Europe from about 2015. It was going up for 10 years before that. It has sort of levelled off. But again, treatment means different things in different countries: it might be a long period, it might be turning up for one counselling session.

Drug law offences—the ones where they have actually recorded what drug is involved, three-quarters of the drug use offences were cannabis and 57 per cent of the supply offences were cannabis. So clearly a dominant substance.

Seizures—the quantity of resin is going down; the quantity of herbal cannabis seized has more than doubled. So basically Europe has been developing a taste over the last 10 years more for herbal cannabis than resin. We have an added confusion there because in the last five years several countries in Europe have started selling low-THC cannabis, so hemp, whether that is for smoking, whether it is in the form of resin or some kind of potpourri—we do not know what they are doing with it, but that is also included. We just cannot really tell how much that is influencing the high-THC cannabis statistics. In terms of strength, cannabis herb is averaging 8 to 13 per cent. Cannabis resin is averaging 20 and 28 per cent, and I think the strength is going up. So those are the key stats from our report.

If I can tell you a bit more about cannabis legislation in Europe, we have various different cannabis policy models. We have got about two-thirds of countries that have incarceration penalties for users—that is not possession. About a third have non-incarceration penalties. So I am not going to call it criminal or decriminalised, because there is a long, long, long discussion about what that means. But let us talk about whether there is incarceration or not, and I think we can all understand that. We have various schemes, whether just on paper or whether very active, to send people to treatment or counselling. I think we are all aware of the Netherlands with their coffee shops, well established over 30 years. People have possibly or probably heard about Spain. In Spain the law says that use and cultivation will be punished if in public—if visible to the public. So that has been interpreted to say that it is not an offence in private, and then you get people gathering together and all cultivating their plants together in private and claiming that that is a social club that is within the law. The Spanish government absolutely does not agree, and the Supreme Court has also looked at some cases, and they have set out situations where that will definitely be considered organised crime—not every situation, but they set out the criteria where they will consider it is organised crime.

Over 20 years the trend in Europe has been to reduce penalties for personal possession of drugs, and interestingly in Europe this is for all drugs, it is not just cannabis. When most countries change their law it refers to all drugs. There are three—there is Belgium, Ireland and Luxembourg—where it is cannabis only, but the rest is for all drugs. So heroin is one. You might like to think that countries with the largest penalties on paper have the lowest rates of cannabis use, but that is not the case, and you might like to think that when countries change their laws and they put the penalties up that the use goes down—or if they change the law and the penalty goes down the use goes up—but again, that cannot be predicted. We have tracked that, and we have seen all different versions. There are probably some good reasons why. For a start we wonder even if the public knows that the law has changed, and we wonder if the public knows what the law has changed to. You may be aware—you personally or some of the committee members—that Portugal changed the law 20 years ago. It did not legalise drugs, but I am afraid that many people still think that it did. So if you do not know what the law is, if the citizens do not know what the law is, they would not necessarily be expected to change their behaviour accordingly.

I listed the countries that changed the law; I did not say why. The reasons are very diverse, and sometimes they are not even to do with drugs. We had at least one country, I think it was Slovenia, who were basically clearing up their criminal code. They said, ‘All penalties of less than one month in prison we are removing. We are

moving them somewhere else'. So there we can list that they reduced the penalty for drug offences, but it is not to do with drugs.

The other thing is we do not know how much police and prosecutors change their behaviour. We would suspect that drug users would react according to how much the authorities react to them. And if police, prosecutors, judges continue in the same arrest pattern, the same sentencing pattern, it is likely that the users are going to continue in the same use pattern. To illustrate the complication of this, the UK changed its law 10 years ago when it raised cannabis from C to B. That had the effect of lifting the penalty from two years to five years in prison for personal possession of cannabis, but the police directive still said 'Don't arrest'—they did not change the police directive. This is an illustration of how complicated it is to monitor laws and behaviour and how you should be very, very careful making assumptions that law will change behaviour, because there are several things in the middle which will also need to be lined up if you want to change the behaviour.

**The CHAIR:** I think that is a really good place to kind of open it up for conversation. The committee, or I personally, will post that report that you have just launched today. Thanks very much for the sort of headlines from it. That is great, that is really up to date. I will start with a question, and then I will move to Tien, then Georgie, then Kaushaliya.

Just to follow on from where I kind of rudely interrupted you, you were saying that the law does not necessarily seem to affect the use or even the availability—well, certainly the use of cannabis, so therefore the availability. Have there been any trends on what might affect the use? I mean, I look at you saying that the Netherlands—which has had I suppose a quasi-legal system, a no-prosecution system, for decades, and that does not seem to have increased use. Are there any theories that you have to what affects use in various countries?

**Mr HUGHES:** Between adults and teenagers—because I know one of your concerns is youth, so I checked a bit with one of my colleagues who works on prevention program, and we have something called a 'best practice portal', where we try and look at different interventions and see how much research and how much good research there is to show what works and what does not.

One of the things that they seem to be quite clear about is this idea about providing information on the risks and dangers of drug use. There is not evidence to show that that is effective. People know that things are dangerous, and they still continue to do it. I see it many times and my colleague sees it many times—that we need to tell children this is dangerous. That has not been shown to work by itself. On the other hand, social influence approaches—what do your friends think, what do your family think—and developing social competences like that do appear to be effective. So those and I think, my colleague insists, manualised programs—manualised means that they are delivered in a standard fashion and are not open to many different interpretations—are important if you want to have some kind of effect there.

The other thing is, as I mentioned, is the cannabis users need to feel that something is going to happen to them. They need to be monitored. You know, ask them. There are very few programs that I have seen that have actually asked the opinion of cannabis users on a law change. They need to know that something is going to happen. The French did, and the interesting thing there was that I think one of the responses was that the counselling course that the French government were trying to push forward itself did not have so much of an effect on people, but being caught and sent to it and realising that there was something that was going to happen to them already made some of them change their mind and say, 'Well, I'm not going to do this in the future'.

**The CHAIR:** Right. We have certainly had lots of submissions from cannabis users, and their position to us has been pretty categorically regulate it. Regulate and control the market, but don't try and prohibit it. I have got a follow-on question, but we have got limited time. Tien.

**Dr KIEU:** Thank you, Chair. Thank you, Brendan, for your time and your submission here today. According to what you just said, there is no causal correlation between the law, the penalties and usage or even change of behaviour. So I would like to dig deeper into that. We have been talking about and the witnesses to this inquiry have been presenting different levels of legalisation, of decriminalisation and of regulatory schemes. So the law that you mentioned, the penalties and the change of law not necessarily leading to the change of behaviour, so what kind of change is it? Does it belong to one of the three categories I just mentioned?

**Mr HUGHES:** So whenever I was talking about those, they were talking about increasing or reducing the penalty. So there is still a penalty. None of those examples talked about removing the penalty, which is where you then get into the idea of legalisation. So the only ones that we can study are reducing or increasing, and I insist again: those were talking about the law on the books. They were not necessarily talking about prosecutor guidelines, which are more likely to have a direct effect.

The different policy models that we have seen, whether it is, for example, home use or whether it is social clubs, state shops or private shops—we addressed those in a report that we have got. It is called ‘Insights from the Americas’. That was published at the beginning of January 2020, it is on our website and that is the big literature review trying to look at all the published scientific literature, not the grey literature, from the US states, Canada and Uruguay. There you will see the different forms of policy change: you have got the state-provided cannabis in Uruguay, you have got certain models in Canada where some territories opted for like a state alcohol shop control model and then you have got the US models which are much more a commercial model. For those, have a look. We have described all the different results.

We have not come out in favour of one or another, because you will find that the science involved is imperfect. Many of these countries set up laws by voting of the citizens and the monitoring systems were not in place. Colorado said, ‘Right, tell us immediately: have we had an increase in children missing school due to cannabis?’. But nobody had ever tracked children missing school due to cannabis before, so they were not able to tell whether it had gone up or down. You know, things like an increase in organised crime—well, what are your indicators for organised crime? These are all questions that you and everybody else want to know, but if people are not monitoring them, then I am afraid we have trouble giving the information. Again, I come from a monitoring centre, but that is what we really insist on.

Make a change. Decide why you are doing it as well. The objective needs to be clear. Sometimes the objective is not clear and then when anybody comes along two or three years after that and says, ‘Did it work?’, the academics are going to turn around and say, ‘Well, what was it supposed to do? What do you mean by “work”?’. Was it supposed to reduce access by children? Was it supposed to reduce use? Was it supposed to reduce harm? Was it supposed to reduce opioid use, which is what some of the people are claiming in the US? And so what we would say is: when you are designing your policy, whatever policy it is you go for, it needs to be coherent. It needs to be clear, it needs to be coherent. Of course there will be unintended effects or unwanted effects, and you monitor those as well.

I thought it was really interesting that there was a literature review done by Ayden Scheim, published earlier this year in *BMJ Open*, where they looked at impact evaluations of what he says—drug decriminalisation and legal regulation—and found that virtually all of the research focused on the prevalence of use. They focused on the use rates. So if you are declaring that you want to legalise in order to concentrate law enforcement resources on serious crime, why is it then that the main headline is whether use goes up or not? The main headline should be whether you manage to concentrate your resources on serious crime. That was a really interesting finding from that review, and it was a gut feeling that I had had as well. There are all the different reasons for changing, but can people actually track those reasons?

**Dr KIEU:** Thank you very much.

**The CHAIR:** Yes, exactly. Do you reduce crime? Do you reduce youth use? You have got to be able to measure it. Georgie.

**Ms CROZIER:** Thank you very much—a very interesting discussion. I am interested in a couple of things. You have spoken about the European Union. I am wondering if you have got anything on the UK and what is happening there. And I am also interested in the comments you made around ‘teenage use has fallen’—going from I think 20 per cent to 17 per cent. Why are more going into treatment? What is the driver for those young people going into treatment?

**Mr HUGHES:** I am not saying that young people are going into treatment; I am saying that adults are going into treatment, and that was a separate statistic that was saying that the youth use is falling slightly. Again, remember that is an average across whatever it was, 25 countries. That is the overall—

**Ms CROZIER:** So just on that, did I misunderstand you say that teenage use has fallen?

**Mr HUGHES:** The overall average statistic has it, yes.

**Ms CROZIER:** And is there a basis for that? I mean, are they going to other drugs instead of cannabis? Is there an uptake in other drugs because they are not using cannabis? Or is there multidrug use—so it is not just cannabis?

**Mr HUGHES:** I am not an expert on that survey. I mean, just write down the initials ‘ESPAD’—E-S-P-A-D—and dig in. From what I remember, talking to colleagues, I think there is less. Alcohol use is going down, cannabis use apparently is going down, cigarette use is going down. It appears to be some kind of megatrend that there is healthier behaviour amongst teenagers over the last eight or 10 years. As I said, that peaked around 2011. That survey has been done every four years, I think, since 1995, so it is quite comparable, and obviously it is interesting to watch the trend. Whether we can dig into any particular country and identify a reason for a trend in that particular country, I do not know. But the other thing, the other point I think I wanted to make about use when we talk about laws, is that drug use rates go up and down anyway.

**Ms CROZIER:** Sorry to interrupt—do they go up and down whether it is regulated, legalised, prohibited?

**Mr HUGHES:** We do not really have regulated—legalised—in Europe. As I say, the only one is the Netherlands, and they did theirs so long ago that I am not sure how much we have got comparative statistics. I remember they did a review of the strategy in about 2010, but that is really the only one where we have retail outlets selling cannabis. In all other countries effectively cannabis use is prohibited.

**Ms CROZIER:** Okay. Thank you.

**Ms VAGHELA:** Thanks, Mr Hughes, for your submission and your presentation today with some very interesting facts. And you have given us data with different percentages. In your experience is there any model we should be looking at which is the ideal model for us to prevent the harms associated with cannabis use?

**Mr HUGHES:** That is a huge question which I really cannot answer. I appreciated what one colleague, a professor who is way more intelligent than me, said. He said, ‘You choose your drug policy problems. Any model that you choose will have its advantages and its disadvantages’. And that can be frustrating to you as politicians to hear, but this is why the drug problem has been with us for so long—because there is not an easy solution. So it is prioritising what you want and trying to minimise what you do not want. There are various ways to do that. Ten years ago nobody discussed legalisation. That was off the table. Now some countries are looking at it. We know that the Netherlands are just starting to implement a project where they will officially supply the coffee shops with cannabis, where previously they were supplied by organised crime. And they are going to monitor that for four years and see how that goes. Switzerland have just started a project in I think it is five cities, where the cities requested, ‘Please can we try, effectively, you know, coffee shops, cannabis retail outlets’, and they have just started that now. The Luxembourg government three years ago when it got elected stated that it was going to look into a system of regulated cannabis supply to residents. That has moved much slower than they expected because all of the ministry of health is looking at the coronavirus pandemic. Similarly in Malta they stated that they were going to look at what could be an interesting form of distribution.

What I have noticed is that they all seem to limit it to residents. Certainly Luxembourg and Malta are limiting theirs to residents because they want to avoid cannabis tourism, which was one of the problems. I believe that they are going regulate the production of cannabis so they do not get these horrifically high THC numbers that you see emerging from the free market in the US. And there as well they will be regulating—I think it was Canada that stated that the reason they were legalising was to protect youth and to protect consumers. Look at me—five years ago I went to Denver, Colorado, and went into I think six different cannabis shops to interview them. I got asked for my proof of ID and age ID. So they really do not want kids in those shops. I think Colorado was sending in underage buyers just to check. The one report I saw said they had no more underage buyers than in alcohol shops.

Do you want to allow people to grow cannabis in their own homes? You can have a homegrown home-use model. Do you want to regulate the supply of cannabis? In that case you need to get access to it. You cannot regulate the supply by testing what is in the shops. The Dutch wanted to do that for six years, and it is just impossible. You have to regulate the plant itself before it is sent out. Do you want to get taxes? In that case probably you need some kind of sales model. If you want to keep cannabis out of sight of people, then you do not want sales outlets, so once again perhaps you bring it back either to the social clubs or to the homegrown

model. Again, in the US people look at it like a kind of before and after, but they had this really loosely regulated medical cannabis for some years before and they had sales outlets of medical cannabis for some years before, so the population was already used to cannabis shops on the street, basically, and I think again this is important when we look at before or after. So there are different models. There are combinations of models. Uruguay operate three different types: they have got home grow, they have got social clubs and they have got state supply. Colorado has got home grow and commercial supply. Washington state has commercial supply but no home grow. So they have chosen different models, and they are gradually finding advantages or disadvantages.

The other thing in the Americas which I remember is that they have this law—it is not just freedom of speech but the courts have developed it to commercial freedom of speech, and that basically makes it very difficult for the state to limit any kind of commercial advertising. So they have their own context and their own challenges as well which I think Canada just does not have and Europe does not have. You have to understand your own context. So I can tell you the different models and the pros and cons that people are seeing, but I certainly cannot choose one for you.

**Ms VAGHELA:** Thank you.

**The CHAIR:** Thank you. Just to finish up on that and touching on what Georgie and Kaushaliya have both been talking about, I guess looking at two European models, which would be the Netherlands and Portugal, where Portugal went to depenalisation, it seems that has been around 20 years and the Netherlands has been around 20 years. Is there any difference in usage in those two communities? I suppose you cannot talk about criminal activity because both of them still rely on criminal activity, but are there any indicators on use in general and use amongst young people?

**Mr HUGHES:** I do not have the statistics in front of me, but I would say that rather than looking at that, think broader. Portugal is a small, centrally controlled country with a history of a dictatorship and strong police control and being hidden from the rest of the world. It was one of the poorer countries in Western Europe—obviously it has grown since then—and it is strongly Catholic, which usually means fairly conservative, but there were drugs and then there was a vote for abortion as well a few years later, so that does not always hold. The Netherlands, on the other hand, have a tradition of liberalism, and so they operated out of that. They do not really culturally believe in strongly controlling people in their own private settings. So it is not so much what the law says as where it came from. The Portuguese as well—the original idea was to get heroin users into treatment. A heroin user would see a policeman and run, and it was the police who were supposed to direct them to treatment. So the government decided, ‘We need to break this mistrust, and that is why we are decriminalising’. In the Netherlands it is weird because in fact personal drug possession still is a criminal offence, but they have got guidelines. Again, it is this pragmatic, Dutch approach. They have guidelines that say, ‘Listen, unless there are major problems, don’t bother’. I think the expression is, ‘Treat it as the lowest prosecution priority’. So if they see problems, they will move forward and take action, but if they don’t, they don’t.

**The CHAIR:** I think that is a really good basis to consider when we look at those statistics. But we will be able to get those statistics from your latest report.

Brendan, on behalf of the committee, thank you so much for giving us the time today; we really appreciate it. I think the nuances that you have added to this conversation—it is not a black-and-white prohibition versus regulation issue and we very much appreciate that. As I mentioned at the outset, this hearing has been recorded. It will be transcribed and we will send you a copy of that, so please have a look and make sure that we have not misheard you or misrepresented you.

**Witness withdrew.**