



The case for YES

in the 2020 referendum
on cannabis



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OUR PHILOSOPHY

New problems confront our society and our environment, both in New Zealand and internationally. Unacceptable levels of inequality persist. Women's interests remain underrepresented. Through new technology we are more connected than ever, yet loneliness is increasing, and civic engagement is declining. Environmental neglect continues despite greater awareness. We aim to address these issues in a manner consistent with the values of former New Zealand Prime Minister Helen Clark, who serves as our patron.

OUR PURPOSE

The Foundation publishes research that aims to contribute to a more just, sustainable and peaceful society. Our goal is to gather, interpret and communicate evidence in order to both diagnose the problems we face and propose new solutions to tackle them. We welcome your support, please contact info@helenclark.foundation for more information about getting involved.

In 2020, New Zealanders will have the chance to make a historic decision about whether or not to change the way we regulate personal cannabis use. If we miss this opportunity, the chance may pass for a generation.

Cannabis use is a reality in New Zealand, and the results of our current policy approach damage our health, worsen social equity, and drive crime. This paper argues that the status quo is unacceptable, and seeks to ask how we can do better? Our answer is that we should move to a health-based approach with robust regulation, effective public health education, and adequate service provision.

Our key criteria for any policy are: what will best improve health and equity while reducing harm?

Evidence suggests that up to eighty per cent of New Zealanders will use cannabis at least once before turning 25, making cannabis the most commonly used illicit drug in New Zealand.¹ Yet cannabis remains an illegal drug, and prosecutions for possession and use alone

continue for those unlucky enough to get caught. The current approach to cannabis inflicts excessive punishment on those users who face prosecution who, in turn, are disproportionately Māori.

In this paper, we argue that New Zealanders of all political persuasions should follow the evidence of what works and what doesn't. The evidence points to a vote in support of cannabis legalisation and regulation in 2020.

Our view is that the New Zealand Government should adopt an approach to cannabis use which sees it as a health and social issue and not a criminal one. Regulation should seek to prevent the emergence of major corporate interests in the market which would have a profit motive to undermine public health objectives. In this respect New Zealand can learn from its experience with regulating tobacco and alcohol.

Overall our analysis argues that the disproportionately adverse effects of current policies on cannabis use justify putting in place legalisation and effective regulation.

¹ Boden JM, Fergusson DM, Horwood LJ. Illicit drug use and dependence in a New Zealand birth cohort. <https://www.ncbi.nlm.nih.gov/pubmed/16476134>

We recommend that New Zealanders vote ‘Yes’ in the 2020 cannabis referendum.

In addition, we recommend that the New Zealand Government:

- Expunge prior minor cannabis offences from the record, and also remove past convictions for supply where there was no compounding factor associated with the conviction, such as firearm use or violence.
- Legislate for the regulation of, and access to, a legal cannabis market. Models from both Uruguay and North America should be seriously studied.

- Develop a structure for a legal market which prevents and/or discourages the emergence of large, commercial, for-profit cannabis producers and retailers.²
- Ensure that the needs of the individuals and communities most affected by the current policy of prohibition on cannabis use are carefully considered when implementing and monitoring the legal market, and that these communities have equitable access to becoming producers and retailers within the legal market.



Image credit: Michal Klajban.

² Licence limits should be considered for companies and individuals if New Zealand pursues a North American-style model. The benefits of the Uruguay model (where the government has a monopoly on cannabis supply through registered pharmacies, and some home growing is permitted) in regard to public health should be seriously analysed. The decision about market structure warrants serious consideration.

At present in New Zealand, cannabis is an illegal drug under the Misuse of Drugs Act 1975. Under the Act, cannabis is classified as a Class B or C drug, depending on its form (resin, oil, or dried plant). Penalties linked to the drug range from a \$500 fine for possession to fourteen years imprisonment for supply.³

In late 2020, New Zealanders will vote in a nationwide referendum on whether the personal use of cannabis and its supply should be legalised and regulated. Voters will be presented with draft legislation detailing how the new system would operate, and will be asked to vote ‘yes’ or ‘no’ on that basis.

A Cabinet paper released by the Minister of Justice, Hon Andrew Little, provides an outline of what the draft legislation will contain.⁴ Its provisions include:

- A minimum age of twenty for the purchase and personal use of cannabis
- Regulations and commercial supply controls
- Limited home-growing options
- A public education programme
- Stakeholder engagement

Around the world there is a steady shift away from the ‘war on drugs’-style prohibitionist approach which seeks to deter drug use through criminal penalties. While the precise number of countries with formal decriminalisation or legalisation policies is not clear, it is likely to be slightly above thirty, depending on which definitions are used.⁵

³ Misuse of Drugs Act 1975

⁴ Andrew Little. “New Zealanders to make the decision in cannabis referendum.” Beehive Press Release, (May 7, 2019)

⁵ Niamh Eastwood, Ari Rosmarin and Edward Fox, 2016. *A Quiet Revolution: Drug Decriminalisation across the Globe*, page 6.

⁶ <https://www.nytimes.com/2015/11/05/world/americas/mexico-supreme-court-marijuana-ruling.html>

⁷ Ministry of Justice statistics, Cannabis offences, <https://www.justice.govt.nz/justice-sector-policy/research-data/justice-statistics/data-tables/#offence>

⁸ Misuse of Drugs (Medicinal Cannabis) Amendment Act 2018

Additionally, at the time of writing, Mexico is exploring decriminalisation of cannabis, in the wake of a supreme court ruling.⁶

Slowly, New Zealand’s approach to drug policy has been taking small steps away from simple prohibition. Prosecutions for cannabis use or possession alone have fallen over the past decade, despite there being no evidence of an actual decline in use.⁷ For those requiring palliation, medicinal cannabis is being made somewhat more accessible following legislation passed in 2018 which makes palliation a legal defense to possession charges.⁸ Furthermore, quality standards for medicinal cannabis are currently under review.

Prosecution, conviction, and imprisonment numbers for cannabis use and possession should drop further following the passage through Parliament of the Misuse of Drugs Amendment Act in August. It directs police not to prosecute for possession and use of drugs unless there is a public interest in doing so. The legislation essentially formally affirms the police discretion that already exists.

The emphasis on police discretion, however, means that prosecutions for cannabis use or possession would still remain possible.

Without legalisation, ethnic disparities in arrest, prosecution, and conviction are likely to persist.

At this critical juncture, New Zealand should take heed of drug policy successes and failures domestically and in other jurisdictions as it looks to reform.

As stated above, cannabis is the most commonly used illegal drug in New Zealand, and the third most widely used recreational drug after alcohol and tobacco.⁹ New Zealand has attempted to prohibit cannabis use for decades. In recent years the policy approach has softened somewhat, although in an uneven manner which rests heavily on police discretion.

Harms to Health

1. Current policies overwhelmingly fail to prevent widespread cannabis use, including by young people

Despite more than five decades of policy approaches based on prohibition, many New Zealanders have used cannabis. It is not always easy to collect accurate data on use, as that usually involves people having to confess during a survey to a stranger that they have committed a crime. Existing data, however, is consistent in showing that cannabis use is widespread in New Zealand, although estimates of the extent of its use vary.

In 2013, eleven per cent of people aged fifteen and over reported using cannabis at least once in the previous twelve months, and 34 per cent of cannabis users reported using cannabis at least weekly in the previous twelve months.¹⁰

Evidence from longitudinal studies done in New Zealand tracking people regularly throughout their lives shows that, by the age of 25, **eighty per cent of New Zealanders** will have tried cannabis at least once.¹¹ This is an especially rigorous data set.

Other data shows different levels of use; for example, a Ministry of Health survey in 2008 showed that almost half of New Zealanders aged sixteen to 64 have tried cannabis.¹²

In short, while the details differ, available data supports the conclusion that cannabis use is widespread in New Zealand. These data gaps are linked to the nature of prohibition. Legalisation and regulation allow for better data collection and analysis, and for multidisciplinary scientific monitoring.

Most – nearly ninety per cent – of cannabis users do not become dependent on the drug.¹³ The vast majority of adult cannabis users – 87 per cent – did not report any concern from others about their use.¹⁴ There are no recorded deaths from toxic cannabis overdose.¹⁵

That is not to say that cannabis is a harmless drug. In the current context, however, where use is deemed illegal, there is no reliable way of identifying who users are, who is a heavy user, how old users are, and how strong the products are. This also means that there is no way to enforce age limits on consumption.

Data from the longitudinal cohort studies shows that for those under eighteen cannabis use is associated with welfare dependence, increased risks of psychotic symptoms, depression, increased risks of motor vehicle accidents, increased risks of other illicit drug use, and respiratory impairment.¹⁶

The issue of risk to mental health has drawn particular media attention. Yet this data is inherently difficult to disentangle – are the mental health issues caused by cannabis, or do people take cannabis to self-medicate for poor mental health? It is beyond the scope of this paper to offer a definitive conclusion to this question, and it needs further research.

Prohibition of cannabis, however, has impeded in a serious manner access for pharmacologists and researchers to the substance and those who use it. Internationally, access to the substance for research can be costly and time consuming. Therefore, while cannabis is the most-used illegal drug in New Zealand and globally, existing scientific literature about it is limited.

What we can be sure of is that current policies do not prevent usage by young people or potential harm to health. Putting a legal and regulatory regime around the drug, including a legal age for consumption, and ensuring access to services people may need, will be a much more constructive approach.

“If all users of cannabis in 2012/13 had been successfully prosecuted, this would have led to close to 397,000 people convicted.¹⁷ To be convicted for cannabis possession or use in New Zealand one needs to be extraordinarily unlucky.”

2. Current policies encourage riskier, higher potency products

Since June 2017, New Zealand has witnessed several dozen deaths related to synthetic cannabinoids' use, as reported by the coroner.¹⁸ The legalisation and regulation of cannabis actually has the potential to reduce the use and harms related to potent synthetic cannabinoids.

The “iron law of prohibition” refers to how the criminalisation of drugs leads to the consumption of more potent substances, with both suppliers and users not willing to take risks with the law for low-potency substances. They may prefer to carry smaller and more easily

9 Ministry of Health, National Drug Policy 2007–2012. Ministerial Committee on Drug Policy, (2012). Pg.30

10 Ministry of Health. Cannabis Use 2012/13: New Zealand Health Survey. <https://www.health.govt.nz/publication/cannabis-use-2012-13-new-zealand-health-survey> Page ix

11 Boden JM, Fergusson DM, Horwood LJ. Illicit drug use and dependence in a New Zealand birth cohort. <https://www.ncbi.nlm.nih.gov/pubmed/16476134>

12 Ministry of Health. 2010. Drug Use in New Zealand: Key results of the 2007/08 New Zealand Alcohol and Drug Use Survey. Page xix.

13 Boden JM, Fergusson DM, Horwood LJ. Illicit drug use and dependence in a New Zealand birth cohort. <https://www.ncbi.nlm.nih.gov/pubmed/16476134>

14 Ministry of Health. 2012/13 New Zealand Health Survey.

15 <https://www.drugfoundation.org.nz/matters-of-substance/october-2017/cannabis-causes-32-deaths-each-year/>

16 Boden JM, Fergusson DM, Horwood LJ. Illicit drug use and dependence in a New Zealand birth cohort. <https://www.ncbi.nlm.nih.gov/pubmed/16476134>

17 Ministry of Health. 2012/13 New Zealand Health Survey. <https://www.health.govt.nz/publication/cannabis-use-2012-13-new-zealand-health-survey>, page 2

18 Synthetic cannabinoids mimic the effects of cannabis and are frequently more potent. “Synthetic cannabinoids”, UNODC, <https://www.unodc.org/LSS/SubstanceGroup/Details/ae45ce06-6d33-4f5f-916a-e873f07bde02>

concealable substances.¹⁹ Thus, more potent illegal drugs appear on the market, such as has been the case with fentanyl and its derivatives as street opioids in the United States and Canada, the emergence of the synthetic cannabinoid “spice” in the UK to replace plant-based cannabis, and the levels of THC reaching seventeen per cent in Europe (up from eight per cent a decade earlier).²⁰

We think that a yes vote in the referendum in 2020 will allow for the sale of quality-controlled cannabis, will help to lift the stigma and discrimination which pushes people into risky behaviours and into buying more potent, if smaller, quantities of synthetic cannabinoids, and, most importantly, will allow for better scientific research and findings on problematic use of synthetic cannabinoids.

3. The current approach fails to recognise the complexity of cannabis use

The current approach to cannabis does not recognise or respond effectively to the range of reasons why someone may use or supply drugs. Many people involved in the cannabis supply market are not hardened criminals; drug use and sale are often linked to a mixture of economic, social, psychological, and physical factors.

Legalisation and regulation would allow for better prevention approaches, and have the potential to bring in resources through taxing

drug sales to address the socioeconomic challenges of less affluent areas which are most affected by the current approach.

We also note the assessment of weighted scores for harms of drugs which indicate that the harms of cannabis are relatively low, as cited in the graphic on page 14 of this report.

Harms to Equity

1. Our current policies fail to provide just and proportionate consequences

Contrary to popular perception, cannabis charges for use and possession alone are not rare, although they are declining in number as attitudes change and prohibition is somewhat eased by police practice. Between 2009 and 2018, the number of people charged with cannabis offences decreased 61 per cent from 10,195 to 3,969 people.²¹ This decline could not be explained by any documented decrease in use.

In 2018, 54 per cent of all cannabis charges were for possession and/or use offences (3,492 charges), 28 per cent were for dealing or trafficking offences (1,787 charges) and eighteen per cent were for cultivation offences (1,144 charges).²² In 2018, 59 per cent of people charged with cannabis offences had possession and/or use as their most serious offence (2,325 people),

23 per cent had cultivation (894 people) and nineteen had dealing or trafficking (745 people) as their most serious offence.²³

Many New Zealanders are living with cannabis-related convictions, and the implications of those can be grossly disproportionate to the offence committed. A criminal conviction in New Zealand may impact future employment and housing opportunities because of the discrimination and stigma associated with it. It will also have implications for travel abroad. Custodial sentences for drug offences break up families, increase the risk of an individual reoffending, and expose otherwise law-abiding citizens to criminal networks operating in the prison system.

Even if a cannabis user who is arrested and prosecuted is not convicted, there can still be life-changing penalties for him/her. Users may be evicted for drug use on the grounds of a private rental or Housing New Zealand property,²⁴ and some users may lose their current employment.

As it stands, the penalties applied to drug use can be judged to be more damaging to an individual than the use of the drug itself.

2. The current approach fails Māori

For a drug used so widely, Māori communities are disproportionately impacted by the existing uneven legal prohibition on cannabis with regard

to criminal justice penalties. As well, in the event that they struggle with substance abuse, Māori do not enjoy equitable access to health services, a problem identified in the July 2019 report *Hauora* from the Waitangi Tribunal.²⁵

The criminal justice disparities impacting on Māori are stark. As stated by a Department of Corrections report in 2007, “independently of self-declared cannabis use, Māori are more likely to be arrested and convicted.”²⁶

What this means is that in a population where the vast majority of New Zealanders at some point use cannabis, Māori are more likely to be stopped, searched, arrested, and convicted for minor drug offences than are non-Māori. Young Māori, in particular, face excessive attention from the justice system, with Māori aged 17 to 25 accounting for 37 per cent of all convictions for drug possession.²⁷

Evidence shows that Māori have rates of police contact which are nearly three times higher than rates for non-Māori. This disparity is only partly explained by recorded differences in offending. When self-reported offending (and social background) is held constant, Māori offenders are still twice as likely to be subject to police attention, relative to non-Māori offenders.²⁸

Relative to their numbers in the general population, Māori are over-represented at every

19 Regulation: the Responsible Control of Drugs”, Global Commission on Drug Policy, 2018, http://www.globalcommissionondrugs.org/wp-content/uploads/2018/09/ENG-2018_Regulation_Report_WEB-FINAL.pdf

20 In Europe, the estimated mean potency of herbal cannabis doubled from 5% to 10% THC and cannabis resin potency increased from 8% to 17% THC from 2006 to 2016. “Developments in the European cannabis market”, EMCDDA, 2019, <http://www.emcdda.europa.eu/publications/emcdda-papers/developments-in-the-european-cannabis-market>

21 Ministry of Justice statistics, Cannabis offences, <https://www.justice.govt.nz/justice-sector-policy/research-data/justice-statistics/data-tables/#offence>

22 As above.

23 As above.

24 Housing New Zealand evictions, 2018. <https://www.hnzc.co.nz/assets/Publications/OIAs-Official-Information-Act/October-2018/OIA-2-October-2018-evictions.pdf>

25 *Hauora* 2019, <https://www.waitangitribunal.govt.nz/news/report-on-stage-one-of-health-services-and-outcomes-released/>

26 Department of Corrections 2007, Over-representation of Māori in the criminal justice system, https://www.corrections.govt.nz/_data/assets/pdf_file/0004/672574/Over-representation-of-Maori-in-the-criminal-justice-system.pdf, page 14.

27 Mava Enoka. “How our drug laws disproportionately affect Māori.” Radio NZ, (December 12, 2016)

28 Fergusson, D.M., Horwood, L.J., & Lynskey, M.T. Ethnicity and bias in Police contact statistics. *Australian and New Zealand Journal of Criminology*, 26, 193-206,

stage of the criminal justice process.²⁹ Māori males with a previous record are especially vulnerable to arrest and prosecution for cannabis possession, consistent with ‘labelling theory’; that is that they are perceived as ‘criminal’ by the justice system, and their behaviour more closely policed as a result.³⁰ **This is unjust and needs to be addressed.**

The above analysis raises broader systemic issues of discrimination which fall beyond the scope of this paper. In the case of cannabis, however, this serious equity problem can be solved through legalisation, rather than through the current approach which leans heavily on police discretion to reduce (but not eliminate) prosecutions. Given the disparities in police contact between Māori and non-Māori, and even taking into account the Misuse of Drugs Amendment Act of August 2019 which formalises the use of police discretion where it is deemed to be in the public interest, ethnic disparities in prosecutions are likely to persist, or even worsen, if the total number of prosecutions declines.

3. Current approaches waste government resources

The justice sector alone could save an estimated six to thirteen million dollars each year as a result of cannabis legalisation, as it would reduce the number of people going through the court system and being incarcerated.³¹ It is too early to say to what extent the latest Misuse of

Drugs Amendment Act will reduce the numbers, although in any case supply prosecutions for cannabis will persist as the Act’s provisions do not address that. Other direct and indirect costs of criminalisation, including those for police operations and health, and social welfare expenses, would be reduced most effectively through legalisation of cannabis.

4. Current approaches are a barrier to public health campaigns

Informative and even-handed public health campaigns are an important part of reducing potential harm from cannabis use. Prohibition decreases the efficacy of such campaigns – it is not straightforward to advise users on health issues when use remains illegal.

The Government should ensure that a comprehensive public health campaign is launched alongside cannabis legalisation, including a first-tier of information on prevention of cannabis use, a second-tier aimed at delaying the age of first use, and a third-tier aimed at prevention of cannabis dependency.

The Canadian safer use guidelines for cannabis are a useful model for New Zealand to follow with respect to public health messaging.³²

The impact of prohibition: Kelly’s story

“(it was) horrific...I felt like somebody else had just taken my whole life away”

In 2015, Kaikohe community leader Kelly van Gaalen was sentenced to two years in prison for the possession of cannabis from two plants with no evidence of commercial supply. No complaint was made - the police came to the home after Kelly’s husband reported a violent home invasion by three armed men. When police officers arrived, they found a bucket of dried cannabis weighing 684g.

As the upper limit set by Parliament for possession for personal use is only 28g, Kelly’s case was treated as possession for supply.

Kelly was a member of the Kaikohe-Hokianga Community Board, the chair of the Kaikohe Community Arts Council, and promotions manager for the Kaikohe Business Association.

In 2014, she was honoured with a Local Hero medal in the run-up to the New Zealander of the Year Awards. Kelly’s defence lawyer provided 32 references demonstrating good character, including from a former mayor, a principal, and a pastor.³³

Despite Kelly’s role as a leader in her community, and no evidence suggesting intent to distribute, Judge McDonald sentenced Kelly to two years in prison. The harshness of the sentence was widely criticised. Kelly spent three months in jail before the Court of Appeal quashed her conviction and granted a retrial. She was ultimately sentenced to 300 hours of community work and five months’ home detention.³⁴ Kelly maintains she did not possess cannabis for supply but pleaded guilty to possession for sale because she ran out of money and wanted the experience to be over. She described the ordeal as, “horrible...I felt like somebody else had just taken my whole life away, you know? Took my kids from me. They’re everything.”³⁵

29 Department of Corrections 2007, Over-representation of Māori in the criminal justice system, https://www.corrections.govt.nz/__data/assets/pdf_file/0004/672574/Over-representation-of-Maori-in-the-criminal-justice-system.pdf, page 14.

30 As above

31 Estimating the impact of drug policy options: Moving from a criminal to a health-based approach. Sense Partners, (October 31, 2018), page 4

32 <https://www.camh.ca/-/media/files/pdfs---reports-and-books---research/canadas-lower-risk-guidelines-cannabis-pdf.pdf>

33 Jack Tame. “Kaikohe mum hit by jail term.” Northern Advocate, (August 3, 2015)

34 “There’s something wrong with the sentences.” New Zealand Drug Foundation, (November, 2016)

35 “Northland mum describes ‘horrible’ drug charge ordeal.” Newshub, (April 15, 2015)

FIGURE 4 Weighted scores for harms of drugs



This graphic is based on the scientific modelling made by David Nutt et al. 'Drug harms in the UK: a multicriteria decision analysis', *The Lancet*, [https://doi.org/10.1016/S0140-6736\(15\)00000-0](https://doi.org/10.1016/S0140-6736(15)00000-0), and their assessment of the various harms of drugs used for recreational purposes in the UK, using multicriteria decision analysis (MCDA).

If we accept that the current model inflicts unacceptable harm to health and social equity in New Zealand, how do we ensure that better results will come from legalisation and regulation?

It will be important to move to a health-based approach with robust regulation, effective public health education, and adequate service provision.

Decriminalisation is not enough.

An alternative to legalisation is decriminalisation. Experts don't agree on the terminology and there is much confusion about exactly it means. In essence, decriminalisation refers to not applying legal penalties. That could be done by applying civil penalties, such as fines, or by diverting people who use drugs away from the criminal justice system and towards health and social services.

Decriminalisation has largely applied to drug use and possession offences, rather than to the sale or supply of drugs.

There are a variety of ways in which this is done around the world. In simple terms, we could say that there is a choice to be made between the commercial model of Canada and some states in the USA and that of state monopoly adopted by Uruguay in South America.

Decriminalisation has the potential to reduce the burden on police and the criminal justice system. It also removes the negative consequences (including stigma) associated with criminal convictions for drug use.

Yet, crucially, it doesn't address the illicit markets and criminal networks of drug selling. Many of the benefits of an increasingly regulated market can only come about if the whole supply chain is above board. That also applies for collection of government revenue – the government can only collect tax on cannabis sales if they are legal.

Using either the commercial models from North America or the Uruguayan models of legalisation, New Zealand could apply regulation to all elements of a legal drug market, including to:³⁶

- The price, potency, packaging, and preparation of products.
- The business model, licensing, vetting and training of vendors.
- The location, appearance and opening hours of outlets.
- The marketing, advertising, branding, and promotion of cannabis.

The North American Model – a regulated commercial market

Regulated commercial markets, which we term the 'North American model', allow for licensed retailers to sell cannabis to take at home or licensed premises to sell it for onsite use. A small amount of home growing is usually permitted alongside the commercial market.

Licensing would make vendors accountable for the potency, packaging, and preparation of cannabis products. If people choose to consume legal cannabis, they would know with confidence what they are buying, how much, and how strong it is. Vendors would also become responsible for ensuring that they are not selling product to those under the lawful age.

Legalisation in this manner would also allow the government to tax revenue from cannabis sales as it does for any other legal product. Strict

controls on advertising and packaging could be applied, similar to those which apply to tobacco. Local communities should be consulted on the nature of service provision in their area.

Case Study 1: Canada

Cannabis was banned in Canada from 1923 until 2001, when regulated medicinal cannabis was legalised. In 2018, Canada legalised cannabis for personal use through a **licensed retail and licensed premises** model. Those over the age of eighteen can possess up to thirty grams of dried cannabis on their person, and households are allowed to grow up to four cannabis plants.

The structure of the legal cannabis market varies across Canadian provinces and territories. In Alberta, for example, cannabis can be purchased from one of seventeen private retailers. In Ontario, sales must take place exclusively online. It is too early to draw conclusions from Canada's very recent experience with legalisation.

The Uruguay model – a government monopoly on cannabis sales

This model acts as a middle ground between prohibition and a commercial for-profit cannabis market.

In this model cannabis is sold as an over-the-counter product by pharmacists or similarly licensed and trained professionals. The government is the sole buyer of licensed cannabis production and sole supplier for pharmacy-only licensed sales. Users can be

³⁶ Global Commission on Drug Policy, (2018). Page 11

registered at the pharmacy, allowing for data to be collected about who users are and how much they use. A small amount of home growing is allowed alongside the government-controlled market.

A strength of this model is that it prevents the emergence of large, commercial, for-profit cannabis retailers who have a commercial incentive to sell more cannabis to more people, and only adult residents are allowed to buy it.

Case Study 2: Uruguay

Uruguay became the first country in the world to legalise the entire supply chain of cannabis in 2013. The country previously decriminalised drug possession for personal use in 1974. Now, Uruguayan citizens over the age of eighteen who register with the Government can access cannabis through one of three methods:

- **Home growing:** Registered households may grow up to six plants.
- **Cannabis clubs:** Registered groups of fifteen to 45 people can grow up to 99 plants per year.
- **Pharmacies:** Registered individuals can purchase up to forty grams a month from select pharmacies without a prescription.

In a short discussion paper such as this one, there is insufficient time to analyse comprehensively the advantages and disadvantages of each model. Experience with them is relatively recent and the evidence not conclusive. Some commentators argue that a North American-style commercial market is more likely to displace the illegal market, while a Uruguay model is more likely to prevent the emergence of corporate cannabis interests. The choice of regulatory structure **is a central decision** to be made by New Zealand policy makers, and we strongly encourage more expert and civil society engagement on this topic.



People queuing to buy marijuana outside a pharmacy in Montevideo. Image credit: Santiago Soravilla @santisoravilla

What principles should a legal market incorporate under either model?

Regulation where there is potential for problematic use of a product is a core government function, and indeed is the norm across areas of policy.³⁷ To regulate cannabis is to apply the same regulatory principles and tools which are routinely applied to substances like tobacco and alcohol and to behaviours like gambling and driving.

At the time that this report was written, the draft legislation containing the proposed structure of the legal market was yet to be released for public consideration. The Government should consider several key principles when devising the legal market structure, whichever model is chosen.

1. Access to the legal market should be straightforward:

Some of the potential harm of cannabis use is reduced when users can shift from an illegal to a legal market. To ensure that they can make that shift, access to cannabis should be straightforward for those who meet the relevant age criterion. The legal market should not be able to be easily undercut by illicit market structures.

Equity of access to being a cannabis producer or retailer is also important. Those with a previous conviction for a cannabis-related offence should not be barred from participation in the market. Licence fees should be affordable if a North American model is chosen.

2. Regulation should be robust:

The government must put robust regulation in place, as it does for other products and behaviours. Commercial efforts which could increase overall cannabis use should be prohibited. Advertising and sponsorship should not be allowed. As is already done for tobacco, plain packaging requirements can be a useful tool for protecting public health.

3. Strong consideration should be given to equitable outcomes during and after legalisation:

Previous convictions for cannabis possession and/or use should be expunged, and convictions for supply where no armed or other violence was involved should also be removed from the record. The widespread nature of cannabis use in New Zealand makes these convictions arbitrary and unjust.

³⁷ Regulation: The Responsible Control of Drugs. Global Commission on Drug Policy, (2018). Page 7

Policies which uplift and empower disadvantaged communities can also be integrated into all stages of the transition to legalisation and regulation. International approaches have often included measures to address issues of equity; for example, priority producer licences for members of communities historically disadvantaged by cannabis prohibition have been offered in Los Angeles.³⁸ The particular form which these efforts and policies take should be guided by the unique New Zealand context.

4. Legalisation should be accompanied by public health education

With current policy approaches, lack of investment in research and the difficulty of access for researchers mean that knowledge about the health-related harms of cannabis remains incomplete and fragmented. This might lead some to believe that the substance is risk-free, and others to exaggerate its potential risk. Legalisation would allow for prevention and education programmes to be based on evidence and monitored to correct course if or as needed. As previously outlined in the above analysis, legalisation is an opportunity to invest in guidelines regarding safe use, and to promote accurate and educative information about cannabis use and its potential effects.

Is New Zealand ‘ready’ to have a mature attitude towards marijuana use? What kinds of cultural changes, if any, are needed?

Despite its prohibition, cannabis use in Aotearoa New Zealand has been stagnant at around ten to eleven per cent of the population since we’ve been collecting data.

The only real indicators of a juvenile attitude towards cannabis are apparent in the moral posturing of certain commentators and political figures who would prefer to indulge in fear mongering to capture attention rather than in meaningful discussion to reduce harm. Alongside that, under prohibition we know that most New Zealanders use cannabis in their formative years, which is when any substance (including alcohol) can be most damaging for the developing brain. Decades of fear mongering hasn’t slowed that. As such, the only real opportunity I see to reverse that trend is genuine education on drug harms that isn’t riddled with easily disprovable hyperbole, but provides facts about potential harms, and of course, legal regulation with correlating duties of care on suppliers.

I believe, based on my experience talking to New Zealanders, that many have seen the harms of cannabis prohibition, and are more than ready and willing to engage in the important discussion about legal regulation. Most want to avoid the huge mistakes made in legal regulation of alcohol, which err too much in favour of corporate sales over government intervention to reduce harm.

What is most important to make sure that legalisation doesn’t lead to more harm?

We need to be sure not to glamourise the substance, which is the biggest failing in alcohol regulation. Multiple reviews and reports of the alcohol industry have pointed to the need to regulate further the advertising of and sponsorship by alcohol companies, but to date the mainstream political will has been lacking to do that.

As has been said by many involved in cannabis regulation in Canada, the best thing to do is start with where we have reached on the regulation of tobacco.

³⁸ Social Equity Program. City of Los Angeles Department of Cannabis Regulation



Image credit: Phil Walter/Getty Images AsiaPac

There is some concern that legal access to marijuana may lead to increased rates of mental illness. Is this likely, and what can we do about it?

The evidence doesn't bear it out - in most studies, it's difficult to infer causation, which has led some academics to theorise that it's highly likely those experiencing mental trauma may be self-medicating with substances like cannabis, hence the correlation.

However, I can empathise with those who've seen loved ones experience mental health issues alongside cannabis use. I've personally experienced how those conversations with flatmates or family members can be particularly hard, because it's difficult to know where or how to intervene.

This is why I find it so crucial to take any potential issues out of the shadows and into the light where they can be treated and solved, instead of hidden or criminalised.

Through legal regulation, we also have the opportunity to identify far more easily problematic usage patterns because of the data collected. We also have the ability to control potency, and to inform consumers meaningfully about potential harms and how to minimise them responsibly.

What happens to people who have convictions for something that is no longer a crime?

The Greens are of the view - as we have been for decades - that when something that was illegal becomes legal, and somebody has served their time, it makes no sense for them to continue to carry the burden of that conviction.

We are in active and ongoing negotiations with other political parties to achieve this.

CONCLUSION

We believe that the evidence backs a ‘Yes’ vote in 2020 for legalising and regulating the cannabis market in New Zealand. Doing so will advance public health objectives and support greater social equity.

Prohibition-based policy approaches have not eradicated and cannot eradicate cannabis consumption and supply in New Zealand. Criminalising these is an inappropriate use of justice system resources, and there is significant evidence that the current approach is profoundly unjust to Māori.

Efforts to date to decrease the number of cannabis convictions have relied on police discretion. We believe it is better to take that burden from the police by legalising and regulating.

New Zealand needs to treat cannabis use as a public health and social issue rather than a criminal one.

- **Decriminalisation:** This means removing the criminal penalty for possession of cannabis. It could be replaced with a civil charge, or an on-the-spot fine, but you wouldn't get a record or jail time over cannabis.
- **Legalisation:** Allowing the sale and consumption of cannabis as a legal product, subject to some form of regulation, as is already the case for alcohol, tobacco or pharmaceuticals. This can take different forms.
- **Medicinal:** The intent of cannabis-use is to treat, or assist in the treatment, of a medical condition. This can often be a controlled pharmaceutical preparation (like an oil or spray) instead of (herbal) cannabis flower (bud).
- **Personal use:** Personal use is when cannabis is used for its pleasurable properties. Here, the cannabis flower (or bud) is smoked, or eaten in food stuffs like brownies.

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