



Towards Drug Policy Reform

Considerations and possibilities for
the legalisation of recreational
cannabis in the State of Victoria

Alexandra France

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Prepared for Ms Fiona Patten MLC,
Member for Northern Metropolitan Region

By Alexandra France

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Executive Summary

It is the aim of this report to inform the cannabis policy debate within the State of Victoria. Examining the appropriateness and practicability of a licensed recreational scheme within the State's current drug policy framework, this report looks at key arguments within the legalisation debate, various precedents existing internationally, and regulatory considerations for and barriers to the implementation of such a policy.

Legalisation is the most frequently proposed drug policy alternative to status quo prohibition. Proponents argue that amongst its many benefits, it has the potential to increase government revenue, remove unjust punitive measures, and provide greater scope for public health harm reduction.

To date, five international jurisdictions have fully legalised the cultivation, sale and possession of cannabis for recreational use. However, these are still relatively new developments, the analyses of which have been weak and their results contested.

Barriers to legalisation in Victoria arise in the form of negative public and political opinion, obstructive legislative design, and academic uncertainty. Said barriers present challenges in both determining a regulatory design for and implementing a licensed recreational scheme in the State.

The State's future medical cannabis bill serves as a key point of reference for policymakers seeking to further the cause of drug policy liberalisation.

This report articulates the following findings:

- The current cannabis policy debate is too limited in scope. It is disproportionately influenced by value judgement and moral panic, with arguments tending to focus on deontological concerns rather than substantive evidence. If a fair and effective policy is to be met, lawmakers and the public must commit to a deliberative and rational dialogue on the issue in which all relevant information and arguments are dispassionately and fairly considered.
- Prohibitive Commonwealth and international laws currently pose the greatest barrier to legalisation in Victoria. State policymakers seeking to establish a recreational scheme must gain the approval and assistance of the Federal Government.
- At present it is unclear whether the legalisation of recreational cannabis is an appropriate policy for the State of Victoria. While a tightly regulated, public health-oriented scheme may have potential benefits, barriers imposed by the current social and political climate, obstructive legislative design, and academic uncertainty make implementation, at least in the near future, impractical.
- Decriminalisation may serve as an appropriate "middle ground" policy reform, adopted until greater consensus can be reached on the issue of outright legalisation. In the interim policymakers should rigorously observe the mechanisms and outcomes of both developments overseas and Victoria's future medicinal cannabis bill. These findings can then be used to further inform the current debate.

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Introduction

The legal status of cannabis is a controversial and complex issue that in recent years has become the topic of serious public debate. While the policies adopted to control its use do vary somewhat from country to country, the most common approach is prohibition. However, in spite of this, cannabis remains the most widely used illicit drug in the world.¹ In Australia, 34.8% of those over the age of 14 – more than three times the global average² – admit to having used cannabis in their lifetime, with one in ten having used in the last year.³

This apparent failure in deterring use, combined with concerns surrounding the intrusiveness of the state and the damaging effects of a criminal conviction, has led to increasingly vocal calls for governments to find an alternative policy solution. Amongst the many options proposed is legalisation. Namely, the “creation of a licensed supply of cannabis subject to regulation and taxation on both the supply and demand sides of the market”.⁴ Since 2012, four U.S. states have passed legislation removing prohibition and legalising a commercial marijuana industry, and in 2013, Uruguay became the first country to legalise nationwide. In the State of Victoria, the question of legalisation has once again come to the fore following the Labor Government’s announcement of a bill intended to legalise medicinal use by the end of 2015.

It is the aim of this report to both inform the cannabis policy debate within Victoria, and examine the appropriateness and practicability of a recreational scheme within the State’s current drug policy framework.

Part One gives an overview of the current cannabis landscape. It briefly outlines the history of cannabis policy in Australia, the legislative framework operating within Victoria, and rates of cannabis production and consumption in the State.

Part Two provides an analysis of several recreational cannabis schemes operating within other jurisdictions. These are Uruguay and the U.S. states Colorado and Washington.

Part Three critically examines the cannabis policy debate, canvassing arguments both for and against legalisation.

Part Four outlines key regulatory considerations that would need to be taken into account by any government seeking to legalise marijuana.

Part Five details current barriers to cannabis legalisation in Victoria.

Part Six seeks to draw useful conclusions based on the information discussed and offers recommendations as to what Victoria’s immediate options may be with regards to the future of its cannabis policy.

¹ There are an estimated 227 million users globally, representing 4.9% of the global adult population. United Nations Office on Drugs and Crime, *World Drug Report 2014* (Vienna: United Nations Office on Drugs and Crime, 2014) 41.

² Yamine, Evelyn, ‘Australia has highest users of cannabis in the world’, *The Daily Telegraph*, 6 Jan. 2012, <<http://www.dailytelegraph.com.au/australia-has-highest-users-of-cannabis-in-the-world/story-e6freuy9-1226238091002>>, accessed 31 May 2015.

³ Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2013* (Canberra: Australian Institute of Health and Welfare, 2014) 49.

⁴ Bryan, Mark et al., *Licensing and regulation of the cannabis market in England and Wales: Towards a cost-benefit analysis* (Colchester: Institute for Social and Economic Research, University of Essex, 2013) i.

i. **Methodology**

This report relies primarily upon scholarly literature.

In order to establish legal context, it draws upon Acts of the Parliaments of Victoria and Australia, as well as relevant international conventions.

Interviews with drug policy experts were conducted as a means of framing the debate in an Australian context and exploring policy options for the State of Victoria.

Secondary sources such as media reports were used in areas of inquiry where data and academic research are not yet widely available.

ii. **Limitations**

Scope: Cannabis policy is an incredibly complex issue that encompasses elements as varied as public health, criminal justice, law, economics and ethics. Limitations on time and word length restricted this report's ability to canvass the entire range of relevant arguments.

Uncertainty/Availability of Data: To date, there has been little formal analysis of the projected public health and economic effects that would result from legalisation. International examples from which to learn are few and data regarding their outcomes/impacts remains scarce.

Part One – Cannabis in the State of Victoria

1.1. An Overview of Cannabis Policy

Cannabis became a prohibited substance in Australia in the 1920s. In 1925, the Federal Government signed the *Geneva Convention on Opium and Other Drugs*, a move that prompted the drafting of a legislative model for federal and state drug policy, enacted by the end of the decade.⁵ Prohibitive policy was further entrenched following the signing of the *Single Convention on Narcotic Drugs 1961*, which bound Australia to prohibit the use or production of narcotics for non-scientific or non-medical purposes.⁶

The sixties saw a suburban drug culture develop amongst Sydney's youth, a trend that quickly spread elsewhere as cannabis and other narcotics were introduced by visiting American soldiers during the Vietnam War. Thanks to its association with youth culture and rebellion, cannabis became Australia's first "mass market" illegal drug.⁷

In the seventies, the Australian States began implementing harsher drug penalties. These led to increased arrests for cannabis possession and use, and consequently, increased calls for drug policy liberalisation.⁸ The approach to cannabis has since been relaxed to varying degrees across the different Australian jurisdictions.

At present, cannabis regulation largely remains the legislative responsibility of the States and Territories. While there are some consistencies across the jurisdictions – the trafficking of cannabis is a criminal offence in every State and Territory – differences arise in the degree to which personal cannabis offences (possession and use) are punished.⁹ South Australia, Western Australia, the Northern Territory, and the Australian Capital Territory have chosen to adopt civil penalties, whilst Victoria and the remaining states maintain criminal penalties.¹⁰

1.2. Victorian Cannabis Laws

In the State of Victoria, cannabis is regulated under the *Drugs, Poisons and Controlled Substances Act 1981 (Vic)*. When used for recreational purposes, it is categorised alongside heroin, cocaine, amphetamines, LSD and ecstasy as a Schedule 11 Drug of Dependence, the cultivation, distribution, possession and use of which result in criminal sanction.¹¹

The possession of cannabis, defined as its wilful control or custody, is considered an indictable offence.¹² While possession of a trafficable amount (possession with intent to distribute) carries a maximum penalty of five years of imprisonment¹³, simple possession (possession intended for personal use), though officially carrying a maximum penalty of one year of imprisonment¹⁴, is de

⁵ Ritter, Alison et al., *Drug Use in Australian Society* (Oxford: Oxford University Press, 2013) 39.

⁶ Ritter et al., 2013, 22.

⁷ Ritter et al., 2013, 40.

⁸ Ritter et al., 2013, 41.

⁹ Rickard, Maurice, *Reforming the Old and Refining the New: A Critical Overview of Australian Approaches to Cannabis* (Adelaide: Social Policy Research Group, 2001) 6.

¹⁰ Rickard, 2001, 7.

¹¹ *Drugs, Poisons and Controlled Substances Act 1981 (Vic)* ss 71-5.

¹² *DPCSA 1981 (Vic)* s 73.

¹³ *DPCSA 1981 (Vic)* s 73 (1)(c).

¹⁴ *DPCSA 1981 (Vic)* s 73 (1)(b).

facto decriminalised. Under a cautioning scheme adopted by Victoria Police and the Magistrate's Court of Victoria, subject to attendance at a compulsory drug education session, first-time cannabis offenders are issued with a caution or fine rather than being formally charged. However, this option is only available once before criminal charges are laid.¹⁵

Cultivation and trafficking are considered the most severe cannabis offences. Depending upon the amount of cannabis in question, offenders face up to life imprisonment.¹⁶

1.3. Victorian Cannabis Trends

In the period 2013-14, cannabis was Victoria's most frequently used illicit drug. The Australian Institute of Health and Welfare's National Drug Strategy Household Survey found that 9.1% of those over the age of 14 had used cannabis in the past 12 months¹⁷, compared to 2.4% for ecstasy, 2.0% for cocaine, and 1.9% for methamphetamines¹⁸. As was the case in every State, cannabis was more frequently used by men than women, with usage most prevalent in the 20-29 age category.¹⁹

Cannabis related arrests account for the greatest proportion of all illicit drug arrests in the State.²⁰ In 2013-14, there were 8558 cannabis arrests, out of 66 684 nationally; a 3.0% increase from the previous year.²¹ Of these arrests, a total of 87.2% were for personal possession or use.²² In the past decade, total cannabis arrests nationwide have increased by 21.3%.²³

Law enforcement statistics point to Victoria as a major destination for both cannabis imports and cannabis cultivation. Since 2007 Victoria has accounted for the greatest proportion of the weight of national cannabis seizures. In 2013-14, cannabis seized in Victoria constituted 40.4% of the 7 million grams of cannabis seized nationwide.²⁴

¹⁵ Criminal Procedure Act 2009 (Vic) s 59.

¹⁶ DPCSA 1981 (Vic) s 72; DPCSA 1981 (Vic) s 71.

¹⁷ Australian Institute of Health and Welfare, 2014, 52.

¹⁸ Australian Institute of Health and Welfare, 2014, 81.

¹⁹ Australian Institute of Health and Welfare, 2014, 80.

²⁰ Australian Crime Commission, *Illicit Drug Data Report 2013-2014* (Canberra: Australian Crime Commission, 2014) 12.

²¹ Australian Crime Commission, 2014, 68.

²² Australian Crime Commission, 2014, 68.

²³ Australian Crime Commission, 2014, 68.

²⁴ Australian Crime Commission, 2014, 67.

Part Two – The Legalisation Debate

The legal, economic, medical and ethical issues surrounding cannabis policy are remarkably complex. As such, the debate over its legalisation is characterised by an extreme diversity of views. While some arguments focus on moral concerns about the inherent wrongs of using narcotic substances on the one hand²⁵ and libertarian concerns over the imposition of restrictions on individual liberty on the other²⁶, much of the debate revolves around what is known about the practical costs and benefits of both cannabis use and the enforcement of prohibition on such use. These practical consequences will be the focus of the following section.

2.1. A Heavy Handed Approach to the “Failed War on Drugs”

Above all, proponents of legalisation argue that prohibition has “failed”.²⁷ Former Australian Federal Police Chief, Mick Palmer states that policing has had “only a minimal, if any impact at all” on the illicit drug trade.²⁸ In terms of cannabis, research demonstrates that criminal sanctions have no direct impact on rates of production or use. Countries adopting prohibitive measures see similar figures to those who adopt a more liberal approach.²⁹ Nonetheless, year after year cannabis possession produces large numbers of arrests. In the period 1995-2000, cannabis arrests comprised roughly three quarters of all drug arrests nationwide. In Victoria, this figure was just over a half.³⁰ It is argued that in the absence of compelling evidence that these arrests have any measurable impact – on a non-violent, non-malicious crime causing harm only to the user – they are surely unjustified.

Additionally, it is argued that the laws adopted to enforce prohibition impose heavy collateral costs on individuals.³¹ Studies have found that in addition to their period of incarceration, convicted individuals also suffer from more subtle effects that should not be ignored. These include difficulty finding subsequent employment, further contact with the criminal justice system, negative self-perception, relationship problems, and travel and accommodation difficulties.³² Notably, these negative effects do not significantly impact subsequent cannabis use.³³

²⁵ Tertin, Ben, ‘When Pot is Legal, What Do We Say?’, *Christianity Today*, 11 Nov. 2014, <<http://www.christianitytoday.com/le/2013/november-online-only/what-would-jesus-smoke.html>>, accessed 21 April 2015.

²⁶ Husak, Douglas, ‘Do Marijuana Users Deserve Punishment?’, in Mitch Earleywine (ed.), *Pot Politics: Marijuana and the Costs of Prohibition* (Oxford: Oxford University Press, 2007) 189-207.

²⁷ Barns, Greg, ‘Illegal drugs: time for Victoria to abandon failed policies’, *The Age*, 7 Jan. 2015, <<http://www.theage.com.au/comment/illegal-drugs-time-for-victoria-to-abandon-failed-policies-20150106-12iowq.html>>, 27 Mar. 2015>.

²⁸ Palmer, Mick, ‘After 33 years, I can no longer ignore the evidence on drugs’, *The Age*, 7 Jun. 2014, <<http://www.theage.com.au/it-pro/after-33-years-i-can-no-longer-ignore-the-evidence-on-drugs-20120606-1zwpr.html>>, accessed 25 May 2015.

²⁹ Degenhardt, Louisa et al., ‘Toward a Global View of Alcohol, Tobacco, Cannabis and Cocaine Use: Findings from the WHO World Mental Health Surveys’, *PLOS Medicine*, 5:7 (2008) 1053.

³⁰ Room, Robin et al., *Cannabis Policy: Moving Beyond Stalemate* (Oxford: Oxford University Press, 2010) 63.

³¹ Room et al., 2010, 66.

³² Lenton, S. et al., *Infringement versus conviction; the social impact of a minor cannabis offence under a civil penalties system and strict prohibition in two Australian states (Monograph Series No. 36)* (Canberra: Publications Production Unit, Commonwealth Department of Health and Aged Care, National Drug Strategy, 1999) 20-28.

³³ Lenton et al., 1999, 26.

2.2. Economic Costs and Benefits

Another issue in the legalisation debate is the effect of prohibition on government revenue.

Firstly, prohibition prevents the taxation of cannabis production and sale. It is argued that under a licensed system, cannabis could be taxed in a manner similar to alcohol and tobacco.³⁴ Although there is no official projection for the State of Victoria, a recent study conducted for the State of New South Wales estimated that a legalised system could secure direct income as high as \$300 million AUD per annum.³⁵

Secondly, prohibition imposes considerable costs to policing and the criminal justice system. These costs comprise of the following three components:

- policing resources in the form of cannabis arrests,
- judicial and legal resources in the form of cannabis prosecutions,
- correctional resources in the form of cannabis incarcerations.³⁶

Once again, although an exact dollar figure is not known for the State of Victoria, the aforementioned NSW study estimated that these respective costs amount to state expenditure somewhere in the realm of \$80.1 million AUD per annum.³⁷ Legalisation would render this figure void.

It should be noted that although legalisation has a number of economic benefits, it also has certain costs. Implementing and then regulating a licensed regime would require time and resources, the total value of which may exceed Victoria's current expenditure on maintaining prohibition.

2.3. Elimination of Illegal Trade and Associated Crime

Under prohibition, the production and distribution of cannabis are largely controlled by illegal drug syndicates, the majority of whom are closely linked to violent crime.³⁸

It is argued that legalisation, by removing these syndicates from the supply chain, would eliminate (or at least significantly reduce) criminal activity.³⁹ Preliminary statistics out of Colorado appear to support this hypothesis. According to the Denver Police Department, incidences of gang-related

³⁴ Egan, Daniel and Jeffrey A. Miron, 'The Budgetary Implications of Marijuana Prohibition', in Earleywine (ed.), *Pot Politics: Marijuana and the Costs of Prohibition* (Oxford: Oxford University Press, 2007) 17.

³⁵ Shanahan, Marian and Alison Ritter, 'Cost Benefit Analysis for Two Policy Options for Cannabis: Status Quo and Legalisation', *PLOS One*, 9:4 (2014) 6.

³⁶ Egan and Miron, 2007, 18.

³⁷ Shanahan and Ritter, 2014, 6.

³⁸ In Victoria these syndicates include outlawed bikie gangs and Southeast Asian drug smuggling rings. Butler, Mark, 'Victoria has become a refuge for bikie thugs trying to escape much tougher laws across the border', *The Herald Sun*, 16 Mar. 2015, <<http://www.heraldsun.com.au/news/law-order/victoria-has-become-a-refuge-for-bikie-thugs-trying-to-escape-much-tougher-laws-across-the-border/story-fni0fee2-1227263939048>>, accessed 5 Jun. 2015; Mills, Tammy, 'The country drug crop with suspected links to a Vietnamese crime syndicate', *The Age*, 4 Feb. 2015, <<http://www.theage.com.au/victoria/the-country-drug-crop-with-suspected-links-to-a-vietnamese-crime-syndicate-20150204-1361bt.html>>, accessed 5 Jun. 2015.

³⁹ Ritter, Alison, 'Decriminalisation or legalisation: Injecting evidence in the drug law reform debate', *The Conversation*, 12 Apr. 2012, <<http://theconversation.com/decriminalisation-or-legalisation-injecting-evidence-in-the-drug-law-reform-debate-6321>>, accessed 26 May 2015.

violent crime and property crime decreased by 6.9% in the three-month period immediately following the State's enactment of cannabis legalisation.⁴⁰

Critics claim that these findings will not hold in the long run. They argue that drug gangs will simply lower their prices to undercut legal suppliers and thus regain their grip on illicit trafficking.⁴¹

2.4. The Effects of Cannabis Use on Health

Opponents of legalisation argue that prohibition of cannabis is justified on the grounds of the physical and psychological effects that result from its use.

From within a vast body of literature⁴², the most frequently cited of these are as follows:

Acute Health Risks

- Impaired attention, memory and psychomotor performance whilst intoxicated.
- Intense anxiety/panic, especially amongst new and naïve users.
- Doubled risk of car crash if cannabis users drive whilst intoxicated.

Chronic Health Risks

- Cognitive Degeneration
- Respiratory Illness
- Cardiovascular Illness
- Infertility
- Low Educational Attainment and/or Poor Work Performance
- Dependency Syndrome
- Psychosis and Schizophrenia

Illicit drug expert and vocal policy reform advocate Professor David Penington argues that far from justifying prohibition, these negative health effects are evidence of the need for legalisation. He contends that cannabis use requires a public health rather than law enforcement approach and that legalising and regulating cannabis would provide greater scope for harm prevention. Cannabis users would be able to seek assistance for the range of effects described above without fear of criminal repercussion and revenue accrued from of taxation could be channelled into drug education and treatment.⁴³

⁴⁰ Denver Department of Safety, *Crime in the City and County of Denver based on UCR Standards* (Denver: Denver Department of Safety, 2014).

⁴¹ Kushlik, Danny and Neil McKeganey, 'Legalising the Drugs Trade: Reducing Crime or Increasing Addiction?', *Speakers' Corner Trust*, <<http://www.speakerscornertrust.org/4237/legalising-the-drugs-trade-reducing-crime-or-increasing-addiction/>>, accessed 3 Jun. 2015.

⁴² For an exhaustive overview see: Danovitch, 2012; Hall, 2014; Hall and Degenhardt, 2009; Volkow et al., 2014; Williams and Skeels, 2006.

⁴³ Face to Face Interview with Emeritus Professor David Penington AC, Vice Chancellor's Office, The University of Melbourne, Conducted 19 Apr. 2015.

Furthermore, whilst the detrimental effects of cannabis use are undeniable, it is argued that they are nevertheless mild when compared to those of other drugs⁴⁴. There are, for example, no reported fatal overdoses from cannabis.⁴⁵

In any case, adverse health effects do not settle the legal status of a commodity. If they did, alcohol, tobacco and cars, to name a few, would be prohibited.⁴⁶

⁴⁴ Comparative studies find cannabis to be the least inherently harmful amongst intoxicating and addictive substances. Lachenmeier, Dirk W. and Jürgen Rehm, 'Comparative risk assessment of alcohol, tobacco, cannabis and other illicit drugs using the margin exposure approach', *Scientific Reports*, 5:8126 (2015) 1-7.

⁴⁵ Hall, Wayne et al., 'Does cannabis use increase the risk of death? Systematic review of epidemiological evidence on adverse effects of cannabis use', *Drug Alcohol Review*, 29:3 (2010) 318.

⁴⁶ Room et al., 2010, 15.

Part Three – International Recreational Cannabis Schemes

To date, only five international jurisdictions have fully legalised the cultivation, sale and possession of cannabis for recreational use. This section will examine the schemes adopted in Uruguay and the U.S. states Colorado and Washington.

3.1. Uruguay

In December 2013, in keeping with the Latin American trend towards liberalising personal drug use, Uruguay became the first country to legalise a recreational cannabis market nationwide.⁴⁷ This was despite the fact that roughly two thirds of Uruguay’s population stood in opposition to legalisation⁴⁸ and that doing so was in breach of existing United Nations drug control conventions to which it was a signatory.⁴⁹

Uruguay’s approach sees the state closely regulate all cannabis production and consumption. Its model allows for three production streams:

- at-home cultivation which sanctions the growth of up to six cannabis plants per household,
- “cannabis clubs” – cannabis-growing cooperatives permitted to share the yield of up to 99 plants between up to 45 members,
- licensed producers who are permitted to sell cannabis exclusively to the government to then be sold over-the-counter at pharmacies.⁵⁰

In legalising cannabis Uruguay has established the Institute of the Regulation and Control of Cannabis (IRCC) which maintains a confidential register of all cannabis users in the country. In order to obtain cannabis, users must register with the IRCC and must elect a single production stream. Regardless of their chosen stream, each user is only allowed a maximum of 480 g of cannabis a year. Immediate access is further limited to a monthly maximum of 40 g obtained in weekly 10 g increments.⁵¹ In addition to maintaining the user registry, the IRCC also enforces cannabis regulations and advises the government.⁵²

Uruguayan regulations address a number of the regulatory concerns surrounding cannabis legalisation. The minimum age for cannabis use is set at 18, advertising and promotion are banned, and a price has been set at \$1.00 USD/gram.⁵³ However, certain considerations as of yet remain

⁴⁷ Watts, J., ‘Uruguay legalises production and sale of cannabis’, *The Guardian*, 11 Dec. 2013, <<http://www.theguardian.com/world/2013/dec/11/uruguay-cannabis-marijuana-production-sale-law>>, accessed 15 May 2015.

⁴⁸ CIFRA, *La regulación del cultivo y consumo de marihuana y el impacto esperado en el narcotráfico [The regulation of the cultivation and consumption of marijuana and the hoped-for impact on drug trafficking]* (Montevideo: Reported on Telemundo, 29 Jul. 2013).

⁴⁹ Bewley-Taylor, Dave and Martin Jelsma, *The UN Drug Control Conventions: The Limits of Latitude – Series on Legislative Reform of Drug Policies Nr. 18* (Amsterdam: Transnational Institute, 2012) 16.

⁵⁰ Room, Robin, ‘Legalising a Market for Cannabis for Pleasure: Colorado, Washington, Uruguay and Beyond’, *Addiction*, 109 (2013) 346.

⁵¹ Pardo, Bryce, ‘Cannabis Policy Reforms in the Americas: A Comparative Analysis of Colorado, Washington and Uruguay’, *The International Journal of Drug Policy*, 25 (2014) 734.

⁵² Room, 2013, 346.

⁵³ Montevideo Portal, ‘Se firma decreto de marihuana: Papelito para armar [Marijuana decree signed: draft to be assembled]’, *Montevideo COMM*, 5 May 2014, <<http://www.montevideo.com.uy/auc.aspx?233213>>, accessed 1 Jun. 2015.

unconfirmed. The issue of taxation was unaddressed in the initial legislation passed in 2013. Later regulations refer to a Value Added Tax (VAT) though without specifying the rate at which it should be levied. The number of state licensed producers and the total quantity of cannabis to be purchased by the government also remains undecided.⁵⁴

Uruguay's cannabis policy cannot yet be completely assessed as it has neither been fully implemented nor produced measurable results. Despite this, aspects of its legislation have already been identified as problematic. For instance, the compulsory registration of cannabis users could, to some, represent an invasion of privacy significant enough to justify continued involvement with the illicit market.⁵⁵ Regardless of these concerns, the precedent set by Uruguay in licensing its entire national cannabis market is of extreme interest to any jurisdiction looking to do the same.

3.2. Colorado and Washington

Referendums held in 2012 saw both Colorado and Washington vote to legalise the production, sale and possession of cannabis. While 20 U.S. states already allowed the medicinal use of cannabis, Colorado and Washington became the first to legalise their recreational markets.⁵⁶ Both referendums were supported by the States' pre-existing medical marijuana industries.⁵⁷

Unlike Uruguay's system of highly regulated, state-supplied pharmacies, Colorado and Washington have taken a more laissez-fair approach. Both have legislated for open retail markets by granting licenses to commercial cultivators, processors and retailers.⁵⁸

Washington's regulations are demonstrably more concerned with limiting market growth and preventing adverse public health outcomes than those of Colorado. Firstly, production licenses and retail licenses cannot be held simultaneously. Producers may only sell to retail outlets rather than directly to consumers.⁵⁹ Regulations also restrict the state's total number of retail outlets to 334, as well as the total area of cannabis crop that can be cultivated in the state to 2 million ft².⁶⁰ In contrast, Colorado imposes no limit on state-wide cultivation nor on the total number of retail outlets. It also allows firms to act simultaneously as cultivators and retailers (vertical integration).⁶¹

In most other areas the two schemes are very similar. Both states limit the maximum amount of cannabis allowed per retail purchase to 28.5 g and assign a minimum age of 21.⁶² Neither state maintains a user registry. Additionally, both regimes tax cannabis on an ad valorem basis, rather than by weight, though Washington's tax rate of 25% is significantly higher than Colorado's rate of 15%.⁶³ Both states assign the regulating and overseeing of cannabis markets to the same government bodies that regulate alcohol and tobacco.⁶⁴

⁵⁴ Pardo, 2014, 733.

⁵⁵ Pardo, 2014, 734.

⁵⁶ Smith, Aaron, 'Marijuana legalization passes in Colorado, Washington', *CNN Money*, 8 Nov. 2012, <<http://money.cnn.com/2012/11/07/news/economy/marijuana-legalization-washington-colorado/>>, accessed 15 May 2015.

⁵⁷ Room, 2013, 345.

⁵⁸ Pardo, 2014, 731.

⁵⁹ Washington Initiative Measure No. 502 s 5.

⁶⁰ Pardo, 2014, 731.

⁶¹ Colorado Amendment 64: Use and Regulation of Marijuana s 4.

⁶² Revised Code of Washington ch 69.50.360 s 3; Colorado Amendment 64: Use and Regulation of Marijuana s 2.

⁶³ Revised Code of Washington ch 69.50.535 s 3; Colorado Amendment 64: Use and Regulation of Marijuana s 16 ss 5(d).

⁶⁴ Pardo, 2014, 728-9.

As with Uruguay, Colorado and Washington's schemes are still too recent to allow for conclusive analysis. Early assessments of Colorado's regime are indicative of potential problems, but indeterminate as to their scale of seriousness. One study published in the *Journal of the American Medical Association* stated that hospitals in Colorado have seen an increase in admissions for cannabis intoxication, but failed to quantify the scale of the trend.⁶⁵ At present, assessments regarding the outcomes of Washington's recreational scheme are almost non-existent.

⁶⁵ Monte, Andrew et al., 'The Implications of Marijuana Legalization in Colorado', *Journal of the American Medical Association*, 313:3 (2015) 241.

Part Four – Regulatory Considerations

The following section outlines regulatory considerations that would need to be taken into account by any government pursuing cannabis legalisation. These regulations have the potential to directly shape how and by whom cannabis is produced and consumed, and may have consequences for both public health and public revenue.

From both sides of the legalisation debate there is consensus that any regulatory regime should aim to:

- minimise overconsumption, dependence and/or addiction,
- minimise access and use by youths,
- minimise consumption of products with uncertain potency and/or unwanted contaminants,
- minimise concurrent use of cannabis and alcohol.⁶⁶

4.1. Cultivation and Distribution

The primary concern in the implementation of any legal cannabis scheme is determining how cannabis will be supplied.⁶⁷

A major study conducted by Caulkins et al. identifies twelve potential cultivation/distribution frameworks.⁶⁸ This report will detail the three most frequently discussed in an Australian/Victorian context.

4.1.1. 'Grow Your Own' Model

The 'grow your own' model of cultivation/distribution allows individuals to grow a personal supply of cannabis within their own home. It is a scheme commonly implemented in jurisdictions allowing the medicinal use of cannabis, particularly in the United States.⁶⁹ In these cases, regulations usually stipulate a maximum number of mature plants allowed for possession, with an extra allowance for seedlings.⁷⁰

This model, though arguably the simplest to implement, is nonetheless subject to criticism. Firstly, it does not allow for the collection of taxation revenue, and secondly, provides little scope for product quality control.⁷¹ Additionally, evidence from the United States has shown that cultivation within people's homes as opposed to within purpose-built growing facilities poses safety risks. Home

⁶⁶ Pacula, Rosalie et al., 'Developing Public Health Regulations for Marijuana: Lessons from Alcohol and Tobacco', *American Journal of Public Health*, 104:6 (2014) 1022.

⁶⁷ Caulkins, Jonathan et al., *Considering Marijuana Legalization: Insights for Vermont and Other Jurisdictions* (Santa Monica: RAND Corporation, 2015) 49.

⁶⁸ For a comprehensive overview see: Caulkins et al., 2015, 49-74.

⁶⁹ 'Grow your own' schemes for medicinal cannabis currently operate within 20 US states. The states of Alaska and Colorado also allow home cultivation for recreational use.

⁷⁰ For example, the state of Oregon allows for a maximum of six mature and 18 immature plants. Oregon Revised Statutes s 475.320.

⁷¹ Caulkins et al., 2015, 58.

growers place themselves at increased risk of break-in and robbery and may suffer fire, electrical damage, or the build-up of toxic mould.⁷²

4.1.2. State Monopoly Model

A state monopoly model would see either the government or a singular public authority assume exclusive control of all cannabis cultivation, processing and distribution. It tends to be the model most preferred by policy experts as it is believed to provide the greatest scope for public health protection.⁷³

Research on state alcohol monopolies shows that monopolies are overall better for public health than less regulated options. They limit market size, keep the price of goods high through reduced competition⁷⁴ and allow for the strict control of product composition (uniformity, potency, contaminants etc.).⁷⁵

The main argument against such a model is that monopolies tend to be inefficient and unimaginative. Freed from the constraints of market competition, they have little incentive to innovate, or indeed provide a quality product.⁷⁶

This was previously an issue in Canada where prior to 2014, medicinal cannabis was produced and sold exclusively by the federal government.⁷⁷ Surveys found that satisfaction with the government-supplied cannabis was very low. Users' complaints focused on poor product quality and lack of product variety.⁷⁸ Ultimately, very few users (only 8.2% of those surveyed) chose to obtain their cannabis from the government, preferring instead to either grow their own, or purchase from the illicit market.⁷⁹

4.1.3. Standard Commercial Model

A standard commercial model would see cannabis treated like any other retail good, its production, distribution and sale left to the private market.⁸⁰ Implementation would likely entail the removal of current legal prohibitions followed by the issuing of licenses to commercial operators.⁸¹

Professor David Penington states that if such a model were to be implemented, a laissez-faire approach would be unwise. In order to avoid adverse public health outcomes, a free market scheme

⁷² CBS Denver, 'Hidden Danger: Mould in Pot Grow Houses Threatens Workers, Law Enforcement', *CBS Denver*, 25 Mar. 2015, <<http://denver.cbslocal.com/2015/03/25/mold-in-pot-grow-houses-threatens-workers-law-enforcement/>>, accessed 29 May 2015.

⁷³ Caulkins et al., 2015, 61.

⁷⁴ Multiple studies on alcohol and tobacco show that a small market combined with high product prices reduces consumption and related health and social harms. See: Chaloupka et al., 2012; Chaloupka and Xu, 2011.

⁷⁵ Pacula, et al., 2014, 1023.

⁷⁶ Caulkins et al., 2015, 63.

⁷⁷ Marijuana was cultivated and processed by Prairie Plant Systems, under contract to Health Canada. Vandermeer, Jeremiah, 'Prairie Plan System's Medical Marijuana Monopoly is Back', *Cannabis Culture*, 23 Sept. 2013, <<http://www.cannabisculture.com/content/2013/09/23/Prairie-Plant-Plant-Systems-Medical-Marijuana-Monopoly-Back>>, accessed 15 May 2015.

⁷⁸ Lucas, Phillippe, 'It Can't Hurt to Ask: A Patient-Centered Quality of Service Assessment of Health Canada's Medical Cannabis Policy and Program', *Harm Reduction Journal*, 9:2 (2012) 9.

⁷⁹ Lucas, 2012, 7.

⁸⁰ Caulkins et al., 2015, 52.

⁸¹ Caulkins et al., 2015, 53.

would need to adopt a heavily regulated, public health-oriented approach. In his view this would likely entail a comprehensive list of health-related safeguards and restrictions⁸², a users' register, a high tax rate, the banning of vertical integration, restrictions on the total number of licensees allowed within the state, and the restriction of sales to speciality cannabis stores only^{83,84}.

4.1.4. Comparable Cultivation Schemes

Several Australian jurisdictions have implemented schemes for the cultivation of plants seen to pose health and safety risks similar to those of cannabis. Namely, the cultivation of opium poppies⁸⁵, and the cultivation of hemp⁸⁶.

It is likely that these schemes could provide useful regulatory insights for the cultivation of recreational cannabis.

4.2. Harm Minimisation

Another key concern in the implementation of a licensed cannabis scheme is the minimisation of harm to users and the public.

With a view to this, Caulkins et al. suggest that safeguards similar to those implemented in the regulation of alcohol and tobacco be adopted for the purposes of marijuana.⁸⁷

Cannabinoid Content

Tetrahydrocannabinol (THC) is the main psychoactive ingredient found in cannabis. As the substance that gives cannabis its "intoxicating punch", it is widely used as a measure of product potency and quality.⁸⁸ High-THC products are consumed at a greater rate than low-potency alternatives.⁸⁹

This is a concerning trend as research suggests that harm from cannabis is most directly related to its chemical composition. In particular, higher concentrations of THC have been shown to lead to greater incidences of psychosis and schizophrenia.⁹⁰ In light of this, the question for policymakers would be whether to regulate the level of THC found in commercial products.

Caulkins et al. suggest that, as is the case with the percentage concentration of alcohol allowed for sale, jurisdictions should establish a THC maximum.⁹¹ However, this method could prove problematic as, given the effects of THC depend largely on body weight, method of ingestion and learned

⁸² See section 4.2.

⁸³ This would primarily serve to keep marijuana sales separate from alcohol and tobacco sales.

⁸⁴ Interview with Professor David Penington, 2015.

⁸⁵ Currently grown by Tasmanian Alkaloids, GlaxoSmithKline and TPI Enterprises in Tasmania and Victoria.

⁸⁶ Currently grown in Tasmania, Victoria, New South Wales and Queensland.

⁸⁷ Caulkins et al., 2015, 101.

⁸⁸ Caulkins et al., 2015, 107.

⁸⁹ Swift, Wendy et al., 'Analysis of Cannabis Seizures in NSW, Australia: Cannabis Potency and Cannabinoid Profile', *PLOS One*, 8:7 (2013) 1-9.

⁹⁰ Di Forti, Marta, 'Proportion of patients in South London with first-episode psychosis attributable to high potency cannabis: A case-control study', *The Lancet Psychiatry*, 2:3 (2015) 233-238.

⁹¹ Caulkins et al., 2015, 107.

tolerance⁹², an ideal maximum would be hard to determine. Additionally, the setting of a THC ceiling may incentivize a residual illicit market for higher-potency products.⁹³

Drug policy expert and Director of the Centre for Youth Substance Abuse Research Professor Wayne Hall suggests that given these concerns, a more prudent approach may be to regulate THC through taxation, whereby higher potency equates to a more expensive product.⁹⁴

Permissible Product Variations

While the primary method of marijuana consumption remains the smoking of buds through joints and pipes⁹⁵, alternative product types are becoming increasingly popular in jurisdictions that have liberalised their cannabis laws. These include products that are appealing to children. For example, in Colorado and Washington, retail stores have begun to sell sweetened marijuana products including THC infused lollipops, candies, biscuits and colas.⁹⁶ Since legalisation in 2012, Colorado hospitals have reported a dramatic increase in the number of children admitted for accidental marijuana ingestion.⁹⁷

Consequently, in a licensed cannabis market, policymakers would need to determine the range of products suitable for sale, giving specific reference to child safety.

Zoning Restrictions

In jurisdictions where medicinal marijuana is permitted, users are frequently subject to restrictions regarding the manner and locations in which they may use cannabis products. These restrictions tend to prohibit the use of cannabis in certain public spaces, in places where children are present, and in places where its use could have an exaggerated detrimental effect on others.

In the US states of Maine and Vermont, users are prohibited from carrying and/or using cannabis in the following locations:

- schools and universities
- correctional facilities
- drug rehabilitation facilities
- workplaces
- public transport
- in the presence of minors.⁹⁸

Arguably, the same restrictions could be applied in jurisdictions allowing recreational use.

⁹² Hall, Wayne and Louisa Degenhardt, 'Adverse health effects of non-medical cannabis use', *The Lancet*, 374:9698 (2009) 1383.

⁹³ Caulkins et al., 2015, 108.

⁹⁴ Email Interview with Professor Wayne Hall, Centre for Youth Substance Abuse Research, The University of Queensland, Conducted 1 May 2015.

⁹⁵ Hall and Degenhardt, 2009, 1384.

⁹⁶ Caulkins et al., 2015, 106.

⁹⁷ Rochman, Bronnie, 'More Kids Accidentally Ingesting Marijuana Following New Drug Policies', *Time*, 28 May 2013, <<http://healthland.time.com/2013/05/28/more-kids-accidentally-ingesting-marijuana-following-new-drug-policies/>>, accessed 31 May 2015.

⁹⁸ 10-144 Code of Maine Rules ch 122 s 2.12; 18 Vermont Statutes Annotated s 4474 cf (a)(3).

Restrictions on Advertising

Commercialisation calls for profit-motivated selling and as such often entails advertising that actively encourages consumption. Consequently, if unrestricted, the commercialisation of cannabis could significantly affect existing drug-use behaviours.⁹⁹

In the Netherlands, the extent of additional cannabis use following decriminalisation largely depended on commercial promotion. The country's rise in cannabis use did not immediately follow decriminalisation, but rather coincided with the evolution of 'coffee shops' that freely advertised their goods.¹⁰⁰

Professor Wayne Hall suggests that as is the case with tobacco, a total ban on cannabis advertising and promotion should be implemented.¹⁰¹

Road Safety: Blood THC Content

Studies show that cannabis consumption, by impairing cognitive function, increases the risk of being involved in a traffic accident. Specifically, it slows reaction time and information processing, and impairs motor performance, attention, and signal detection.¹⁰² Surveys find that drivers who use cannabis are more likely to report being involved in an accident than drivers who do not.¹⁰³

In this case, the role of policymakers would be to determine a blood THC level at which individuals were no longer permitted to drive. For example, in both Colorado and Washington, driving with a blood THC concentration of 5.00 or above is an offense.¹⁰⁴

4.3. Taxation

Taxation, though in essence a straightforward way to raise revenue and offset the costs of regulation, when applied can have unintended collateral consequences. In the case of marijuana, it has the potential to impact existing rates of use and levels of black market activity.¹⁰⁵

Adopting a rate of tax that sets the price of legal cannabis above its illicit price, though potentially reducing rates of use, or at the very least preventing additional use, could incentivize illicit dealers to remain in the marketplace. Conversely, a low rate of tax, one that sets the legal price below its illicit price, while undercutting illicit dealers, may unintentionally create an increase in consumption.¹⁰⁶

Policymakers would also need to determine the base for any taxes, and decide how and what stage of production they would be collected.¹⁰⁷

⁹⁹ United Nations Office on Drugs and Crime, 2014, 43.

¹⁰⁰ MacCoun, R. and P. Reuter, 'Evaluating Alternative Cannabis Regimes', *British Journal of Psychiatry*, 178 (2001) 126.

¹⁰¹ Interview with Professor Wayne Hall, 2015.

¹⁰² Ramaekers, J. et al., 'Dose related risk of motor vehicle crashes after cannabis use', *Drug and Alcohol Dependence*, 73 (2004) 113.

¹⁰³ Asbridge, Mark et al., 'Motor vehicle collision risk and driving under the influence of cannabis: Evidence from adolescents in Atlantic Canada', *Accident Analysis and Prevention*, 37 (2005) 1032.

¹⁰⁴ Revised Code of Washington 46.61.502; Colorado Revised Statutes Annotated 42.4.1301 (1)(a)-(c).

¹⁰⁵ Caulkins et al., 2015, 75.

¹⁰⁶ Caulkins, Jonathan et al., 'Design considerations for legalizing cannabis: Lessons inspired by analysis of California's Proposition 19', *Addiction*, 107 (2011) 868.

¹⁰⁷ For a comprehensive list of suggestions see: Caulkins et al., 2015, 75-87.

An ad valorem tax (one based on sales value), though simple to implement, would place revenue at the mercy of potentially volatile market prices.¹⁰⁸ Conversely, a tax on the weight of cannabis sold, though less susceptible to price fluctuations, could incentivize producers to “pack as much THC as possible into as little plant material as possible”, thus giving market advantage to high potency forms of cannabis¹⁰⁹, which as previously discussed are viewed as more harmful to health.

¹⁰⁸ Caulkins et al., 2015, 77.

¹⁰⁹ Caulkins et al., 2015, 77.

Part Five – Barriers to Legalisation

5.1. Public and Political Opinion

Public opinion influences public policy. Although “evidence-based” policy is the purported goal of lawmakers, the realities of the democratic process command that policy decisions be supported by the majority of the voting population, particularly when an issue has salience.¹¹⁰ Consequently, public opinion in Australia, which opposes cannabis legalisation, constitutes a significant barrier.

A nationwide survey conducted in 2014 found that although over the last decade, the proportion of the population in favour of legalisation has increased (from 26.8% in 2004 to 31.8% in 2014), support still falls well below majority consensus.¹¹¹

Professor David Penington contends that such figures are the result of the widespread and simplistic community view that drugs are “bad”. He argues that public discussion surrounding cannabis use is largely dominated by insubstantial value judgements and moral panic, with arguments tending to focus on extreme deontological concerns rather than practical outcomes. As a result, policymakers, reluctant to appear “soft on drugs”, repeatedly back away from any suggestion of their legalisation.¹¹² For example, despite a recent marked increase in calls for cannabis legalisation¹¹³, Premier of Victoria, the Hon. Daniel Andrews has explicitly stated that the government has no intention of pursuing any degree of recreational cannabis reform.¹¹⁴

Notably, although public opinion does not support legalisation per se, nor does it appear to support outright criminalisation. A recent nationwide study found that participants, when asked to rank their preferences for various cannabis-policy options, expressed a considerable aversion to status quo prohibition, indicating instead a strong preference for decriminalisation in the form of civil penalties.¹¹⁵ This finding was replicated in the most recent National Drug Strategy Household Survey, in which more than 80% of Australians supported decriminalisation approaches to cannabis.¹¹⁶

5.2. Legislative Design Issues

In addition to the *Drugs, Poisons and Controlled Substances Act 1981 (Vic)*, recreational cannabis is regulated under legislation found at the national and international levels. This legislation, which

¹¹⁰ Burnstein, P., ‘The impact of public opinion on public policy: A review and an agenda’, *Political Research Quarterly*, 56 (2003) 36.

¹¹¹ Roy Morgan Research, ‘To legalise or not to legalise? How Australians feel about marijuana’, *Roy Morgan Research*, 28 Jan. 2015, <<http://www.roymorgan.com/findings/6026-how-australians-feel-about-marijuana-201501272145>>, accessed 11 May 2015.

¹¹² Interview with Professor David Penington, 2015.

¹¹³ Patten, Fiona, ‘Victoria election: Call to tax and regulate recreational marijuana’, *The Age*, 23 Nov. 2014, <<http://www.theage.com.au/comment/victoria-election-call-to-tax-and-regulate-recreational-marijuana-20141123-11s5ho.html>>, accessed 18 May 2015.

¹¹⁴ Quotes attributable to Mr Andrews: “An Andrews Labor Government will... specifically rule out legalising marijuana for recreational use”. “Labor will not legalise the smoking of marijuana for recreational purposes”. Victorian Labor, ‘Labor News Archive 2014: Medical Cannabis Should Be Legal’, *Victorian Labor*, <<https://www.viclabor.com.au/news/labor-medical-cannabis-should-be-legal/>>, accessed 12 May 2015.

¹¹⁵ Shanahan, Marian and Alison Ritter, ‘Preferences for policy options for cannabis in an Australian general population: A discrete choice experiment’, *The International Journal of Drug Policy*, 25:4 (2014) 687.

¹¹⁶ Australian Institute of Health and Welfare, 2013.

prohibits any form of legal cannabis market, severely limits the range of policy options available to the State of Victoria.

Commonwealth Laws

Any law reform establishing a recreational cannabis scheme within Victoria would need to take the following Commonwealth Acts into account:

- *The Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990 (Cth)*
- *The Commonwealth Criminal Code Act 1995 (Cth)*

Under the Acts, the following are considered federal drug offences:

- trafficking/sale of cannabis
- commercial cultivation or manufacture of cannabis
- importation/exportation of cannabis
- possession of cannabis.¹¹⁷

The case in the United States provides an example of the possible outcomes of inconsistency between federal laws criminalising cannabis on the one hand, and state laws allowing its recreational use on the other.¹¹⁸ In the U.S., state governments have chosen to overlook issues of federal illegality in the establishment of retail cannabis businesses.¹¹⁹ The consequence of this has been that said businesses have experienced difficulty opening accounts with and obtaining finance from banks weary of breaking federal law. As a result, many are forced to operate on a cash-only basis, putting them at high risk of robbery and break-in.¹²⁰

Arguably, if Victoria did not wish to contravene federal law and if outcomes similar to those experienced in the United States were to be avoided, a recreational cannabis scheme could only be established with the approval and assistance of the Commonwealth.

International Conventions

Further complications arise in the form of Australia's obligations as signatory to the following UN conventions:

- *The Single Convention on Narcotic Drugs 1961*
- *The Convention on Psychotropic Substances 1971*
- *The Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988*

¹¹⁷ The Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990 (Cth) part 2 divs 9-15; The Commonwealth Criminal Code Act 1995 (Cth) part 9.1 divs 302-310.

¹¹⁸ Garvey, T. and C. Doyle, *Marijuana: Medical and Retail – Selected Legal Issues* (Washington DC: Congressional Research Service, 2015).

¹¹⁹ Rogers, Phil, 'Feds Must Look the Other Way in Acquisition of First Marijuana Seeds', *NBC Chicago*, 4 Dec. 2014, <<http://www.nbcchicago.com/news/local/Seeds-for-Medical-Marijuana-Must-Magically-Appear-in-State--284818031.html>>, accessed 25 May 2015.

¹²⁰ Anderson Hill, Julie, 'Why Won't Banks Dance With Mary Jane?', *The Conversation*, 27 Oct. 2014, <<http://theconversation.com/why-wont-banks-dance-with-mary-jane-32725>>, accessed 25 May 2015; Dokoupil, Tony and Bill Briggs, 'High Crimes: Robber Gangs Terrorize Colorado Pot Shops', *NBC News*, 4 Feb. 2014, <<http://www.nbcnews.com/storyline/legal-pot/high-crimes-robber-gangs-terrorize-colorado-pot-shops-n201111>>, accessed 25 May 2015.

The conventions of 1961 and 1971 both require member states to “limit exclusively to medical and scientific purposes” the “production, distribution of, possession and use” of illicit drugs.¹²¹ Cannabis, classed under the conventions as a Schedule 4 Illicit Drug, is therefore prohibited for recreational use. Under the 1988 convention, Australia is subsequently required to establish penalties for the possession and use of drugs prohibited under the 1961 and 1971 conventions for use recreationally.¹²²

Professor Wayne Hall asserts that if any Australian state sought to legalise cannabis, these international conventions would either need to be changed, with the agreement of member states, or Australia would have to denounce them (as Bolivia has done with respect to coca leaf) and re-accede with a reservation on cannabis use. However, given the strength of international opinion in favour of these conventions, it is unlikely that they will be amended and very unlikely that Australia would risk the international stigma that would follow an abrogation.¹²³

5.3. Unpredictability

At present there is a high degree of uncertainty surrounding many of the important issues involved in legalising a cannabis market. Whilst there has been much speculation, there has been limited formal analysis of the projected social and, in particular, economic costs and benefits that would result. Accurate evaluation has proven difficult given the clandestine nature of the illicit drug market.¹²⁴

To date, only two formal cost-benefit analyses have been conducted in Australia¹²⁵, neither of which specifically apply to the Victorian context. Additionally, the available experiences from which to learn are few. Professor Wayne Hall contends that although Uruguay and the U.S. states to have legalised do serve as examples, it is still too early to determine exactly how their policy changes will play out. What little evaluation of their impacts there has been, has been weak and many of the results contested.¹²⁶

A key UK study has found a particular need for further investigation into the following:

- The nature of the demand behaviour that underpins cannabis consumption.
- The effect of price changes on cannabis consumption.
- The cross-effects of variation in cannabis prices on the demand for related substances such as alcohol, tobacco and other drugs.¹²⁷

Until further evidence has been accrued, most arguments for legalisation are likely to be based largely on opinion¹²⁸ rather than substantive evidence.¹²⁹ At this stage, the implementation of a licensed scheme would effectively represent a leap into the unknown.

¹²¹ The Single Convention on Narcotic Drugs 1961 art 4; The Convention on Psychotropic Substances 1971 art 7.

¹²² The Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 art 3.1 (a)(i).

¹²³ Interview with Professor Wayne Hall, 2015.

¹²⁴ Ritter, Alison, *A Review of Approaches to Studying Illicit Drug Markets* (Melbourne: Turning Point Alcohol & Drug Centre, 2005) 1.

¹²⁵ See: Shanahan and Ritter, 2014 (a); Williams and Bretteville-Jensen, 2014.

¹²⁶ Interview with Professor Wayne Hall, 2015.

¹²⁷ Bryan, Mark et al., 2013, ii.

¹²⁸ As previously discussed neither public nor political opinion currently supports cannabis legalisation.

¹²⁹ Ritter, Alison, ‘Assessing the costs and benefits of legalising cannabis’, *The Conversation*, 23 Apr. 2014, <<http://theconversation.com/assessing-the-costs-and-benefits-of-legalising-cannabis-25669>>, accessed 27 May 2015.

Part Six – Victoria’s Options

Arguably, a rational, effective drug policy would be one that “minimised the harms of both cannabis use and the legal policies adopted to control that use”.¹³⁰ While a tightly regulated, public health-oriented recreational scheme could potentially achieve this, the barriers discussed in the previous section of this report make implementation, at least within the near future, both impractical and improbable.

However, that isn’t to say that there is no path forward whatsoever. The following section suggests somewhat more attainable options for the State of Victoria with a view to ongoing liberalisation of its recreational drug policy.

6.1. Choosing a Middle Ground Option: Decriminalisation

Cannabis policy reform need not entail an immediate black-and-white choice between total legalisation of production, sale, and possession on the one hand, and continued prohibition on the other. A prudent option may be for the Victorian Government to adopt an interim “middle-ground” alternative¹³¹ with a view to creating a more gradual transition towards eventual legalisation within the State.

One such alternative is *de jure*¹³² decriminalisation. Decriminalisation refers to a system in which cannabis use and possession, though still explicitly illegal, are not subject to criminal sanction. Rather, a non-criminal punishment (e.g. an infringement notice), a monetary penalty, or some other form of administrative sanction (e.g. temporary revocation of one’s driver’s license) is imposed. Decriminalisation is not generally applied to the production or supply of cannabis.¹³³

Proponents argue that decriminalisation is a politically attainable, less radical reform option that still fulfils many of the goals of legalisation. Various studies have shown that under the system drug use rates don’t rise significantly, there are considerable savings to the policing and criminal justice systems, and the punitive impacts resulting from criminal convictions are removed.¹³⁴

Most importantly, decriminalisation is not affected by the barriers outlined in the previous section of this report. It is permissible under the UN drug control conventions¹³⁵, supported by a public

¹³⁰ Hall, Wayne and Michael Lynskey, ‘The challenges in developing a rational cannabis policy’, *Current Opinion in Psychiatry*, 22 (2009) 258.

¹³¹ For a comprehensive overview of various “middle ground” alternatives see: Room et al., 2010, 75-106; Caulkins et al., 2015, 57-67.

¹³² There is a distinction between *de jure* decriminalisation which is achieved through reforms to a jurisdiction’s legal framework, and *de facto* decriminalisation which is achieved through non-enforcement of criminal laws that officially remain in force.

¹³³ Room et al., 87.

¹³⁴ Hughes, Caitlin and Alex Stevens, ‘What Can We Learn From the Portuguese Decriminalization of Illicit Drugs?’, *The British Journal of Criminology*, 50:6 (2010) 999-1022; Single, Eric et al., *The Impact of Cannabis Decriminalisation in Australia and the United States* (Adelaide: Drug and Alcohol Services Council: South Australia, 1999).

¹³⁵ Bewley-Taylor and Jelsma, 2012, 4.

majority¹³⁶ and has numerous, well-documented precedents both internationally and more importantly within Australia¹³⁷.

The main argument against decriminalisation is that it does not address the black market and criminal networks of drug selling.¹³⁸ There is also evidence suggesting that a “net-widening” effect may occur, in which contrary to the aims of the scheme, more users come into contact with the criminal justice system than would under prohibition due to the relative ease with which police can issue infringement notices/fines as opposed to convictions/arrests.¹³⁹

Professor David Penington contends that of all the decriminalisation schemes currently in operation, Portugal offers the best example from which to learn.¹⁴⁰ Portugal has successfully combined its decriminalisation with a public health initiative that directs excess funds towards drug treatment and education. Those caught in possession of cannabis are referred to a ‘dissuasion board’ that either issues a warning or fine, or refers the individual to treatment if the need is identified.¹⁴¹ The result of this has been a significant increase in the uptake of drug treatment and reduced usage amongst problematic/dependant users.¹⁴²

6.2. Victoria’s Medical Marijuana Bill

In December 2014, newly elected Premier, the Hon. Daniel Andrews announced the Labor Government’s intention to legalise medicinal cannabis in the State of Victoria. Supported by all major parties, the issue was quickly referred to the Victorian Law Reform Commission with a view to presenting a bill to Parliament by the end of 2015. If passed, the bill will see cannabis made available to treat patients suffering terminal and life-threatening illnesses.¹⁴³

Although Mr Andrews has stated that the bill is not an indication that the Government is looking to relax laws on recreational cannabis use¹⁴⁴, Professor Penington argues that if passed, it would nonetheless set an important precedent. Specifically, medical cannabis would be the first example of a licensed supply of an illicit drug in Victoria, the successful regulation of which would serve as a perfect point of discussion/stepping stone for further drug policy reform and eventual outright legalisation.¹⁴⁵

¹³⁶ See Section 5.1.

¹³⁷ In addition to an estimated 25-30 countries internationally, decriminalisation schemes currently operate within South Australia (since 1987), the Australian Capital Territory (since 1992), the Northern Territory (since 1996), and Western Australia (since 2004).

¹³⁸ Ritter, 2012.

¹³⁹ Christie, P. and R. Alie, ‘Offences under the Cannabis Expiation Notice Scheme in South Australia’, *Drug and Alcohol Review*, 19:3 (2000) 252.

¹⁴⁰ Interview with Professor David Penington, 2015.

¹⁴¹ European Monitoring Centre for Drugs and Drug Addiction, *Drug Policy Profiles – Portugal* (Lisbon: European Monitoring Centre for Drugs and Drug Addiction, 2011) 17.

¹⁴² Hughes and Stevens, 1017.

¹⁴³ ABC News, ‘Victorian government moves ahead with plans to legalise medical marijuana’, *ABC News*, 19 Dec. 2014, <<http://www.abc.net.au/news/2014-12-19/victorian-government-moves-ahead-with-plans-to-legalise-medical/5980636>>, accessed 11 May 2015; Desloires, Vanessa, ‘Victoria to legalise medicinal marijuana’, *The Age*, 19 Dec. 2014, <<http://www.theage.com.au/victoria/victoria-to-legalise-medicinal-marijuana-20141219-12ary3.html>>, accessed 11 May 2015.

¹⁴⁴ Victorian Labor, ‘Labor News Archive 2014: Medical Cannabis Should Be Legal’, *Victorian Labor*, <<https://www.viclabor.com.au/news/labor-medical-cannabis-should-be-legal/>>, accessed 12 May 2015.

¹⁴⁵ Interview with Professor David Penington, 2015.

This argument is given weight by the fact that this was exactly what transpired in Colorado and Washington. Both states chose to legalise recreational use following the successful implementation and regulation of medicinal cannabis schemes.¹⁴⁶

¹⁴⁶ Pardo, 2014, 728.

Conclusion and Findings

At present it is unclear as to whether the legalisation of recreational cannabis is an appropriate policy for the State of Victoria. While a tightly regulated, public health-oriented scheme could potentially serve to increase government revenue, remove unjust punitive consequences and provide greater scope for harm prevention, barriers posed by the current social and political climate, obstructive legislative design, and academic uncertainty make immediate implementation impractical.

Though Victoria could cast caution aside and simply ignore these barriers as Uruguay has done, a more prudent approach may be to take a “watching brief”¹⁴⁷. Policymakers should ‘look and learn’, allowing time for further research and the outcomes of Victoria’s medicinal cannabis bill and overseas developments to shed further light on the issue. Then, if the evidence supports such a move, the State can employ these findings to inform the design of a licensed model for recreational cannabis.

This report articulates the following recommendations:

- The current cannabis policy debate is too limited in scope. It is disproportionately influenced by value judgement and moral panic, with arguments tending to focus on deontological concerns rather than substantive evidence. If a fair and effective policy is to be met, lawmakers and the public must commit to a deliberative and rational dialogue on the issue in which all relevant information and arguments are dispassionately and fairly considered.
- Prohibitive Commonwealth and international laws currently pose the greatest barrier to legalisation in Victoria. State policymakers seeking to establish a recreational scheme must gain the approval and assistance of the Federal Government.
- Decriminalisation may serve as an appropriate “middle ground” policy reform, adopted until greater consensus can be reached on the issue of outright legalisation. In the interim policymakers should rigorously observe the mechanisms and outcomes of both developments overseas and Victoria’s future medicinal cannabis bill. These findings can then be used to further inform the current debate.

¹⁴⁷ Lenton, Simon, ‘Look before we leap’, *Of Substance: The National Magazine on Alcohol, Tobacco and Other Drugs*, 11:2 (2013) 15.

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