

The Government's proposal to legalise cannabis in New Zealand: 10 key questions

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A national referendum on the legal status of recreational cannabis use and supply in New Zealand will be held at the next general election in September 2020.¹ The referendum will involve voting to support or oppose the Coalition Government's recently released final draft of the Cannabis Legalisation and Control Bill (CLCB).^{2,3} The Government has indicated that they will conduct a public education campaign in the months leading up to the referendum to inform voters about the details of the proposal.^{2,3} The aim of this editorial is to highlight a number of key questions arising from the final CLCB release, and to raise wider issues relating to the regulation and enforcement of the proposed legal cannabis market that go beyond the Bill. Our purpose is to stimulate public discussion and inform the upcoming public education campaign. We believe the questions raised will be of interest to readers regardless of whether they currently support or oppose cannabis legalisation.

Overview of the Cannabis Legalisation and Control Bill

As proposed by the CLCB, the purchase and use of cannabis will be restricted to those 20 years or older (two years older than the alcohol purchase age). There will be a daily purchase and possession limit of 14 grams of cannabis per user. Sales of cannabis will be restricted to licensed physical stores only (ie, no mail order or internet sales), and there will also be separate licensed public consumption premises for those who cannot consume at home (eg, people in shared living arrangements or renters). Advertising will be banned except for the provision of objective

information (eg, price, product range) and "advice and recommendations" about products from within retail outlets. There will be a home cultivation limit of two cannabis plants per person or four plants per household. Social sharing of up to 14 grams of cannabis will be permitted. The CLCB will prohibit the public consumption of cannabis; the sale of cannabis products with alcohol and tobacco; and any importation of cannabis.

1. What will be the price of legal cannabis?

Alcohol and tobacco research has shown that price is a particularly strong influence on level of consumption and related harm, and, contrary to popular belief, heavy and younger users are particularly sensitive to price.⁴⁻⁶ Cannabis is essentially a basic agricultural crop, and drug policy analysts have suggested that under legal production conditions its price could conceivably fall to a fraction of the current black market price.⁷ The price of legal cannabis in US states has declined by as much as 50% since legalisation, reflecting economies of scale of legal production and growing market competition.⁷⁻⁹ The CLCB includes a provision to set an excise tax on different cannabis products based on weight and THC content, but no indication of the level of the respective product excise rate (cl269(2)). The key question is will the cannabis excise be similar to beer (approx. 10% retail price) and wine (15%), or more like the excise rate on spirits (38%) or tobacco (76%)? A high legal price for cannabis will reduce legal consumption and harm, and may make non-commercial legal home growing more attractive. Conversely, high legal prices

may encourage purchasing from the black market. Yet, the legal cannabis market will provide a range of advantages beyond strictly price, including convenience, safety and the absence of legal risk. Legal cannabis regimes that place too high a priority on reducing the black market will encourage weak regulatory regimes that generate high health costs.¹⁰

One way to address declining prices in legal cannabis markets is to mandate a set minimum price per unit, as has been implemented in some countries for alcohol. The CLCB includes a provision to raise the excise for cannabis for a maximum period of 12 months if the price falls too much (cl263(2)). However, the power is discretionary, time limited, and has no set minimum price for when it would be activated.

2. What will be the maximum potency of products?

Historically, the THC level of cannabis plant material from the black market has been around 5–10%, but enhanced hydroponic cultivation techniques have produced potencies as high as 15–20%.^{11,12} In US legal cannabis markets, new cannabis concentrate products with THC levels of over 50–60% have become increasingly popular.^{9,14} Studies of higher potency cannabis, including concentrates, have found higher risk of psychosis, psychosis relapse and dependency.^{13,14} The CLCB includes a maximum THC potency of cannabis plant of 15% THC (Schedule 8). This cap appears to be at the higher end of the levels currently found in the black market. The CLCB also includes provision for the sale of cannabis edibles and extracts (concentrates), but indicates these products will initially not be approved (Schedule 7). The CLCB includes potency levels for these products (Schedule 8), but they are expressed as milligrams “per unit” and “per package”, and these terms are not defined. Furthermore, the potency caps outlined in the CLCB do not appear to apply to home grown cannabis, creating the potential for social sharing of higher potency products and leakage to the black market. The possibility of future concentrate and edible sales raises the question of what will be the cap on potency on these product

types. Furthermore, given the evidence of cannabis concentrates overseas, are these products consistent with the harm reduction objectives of the CLCB?

3. How strictly will retail outlets be regulated?

Alcohol and tobacco research has shown that higher outlet density and longer opening hours are associated with higher levels of consumption and harm.^{5,15,16} Similar results have been found for proximity to medicinal cannabis dispensaries.^{15,17,18} New Zealand’s recent attempt to establish a regulated commercial market for so-called “legal highs” under the *Psychoactive Substances Act 2013* (PSA) highlighted a number of issues with retail outlets.¹⁹ The PSA required the development of Local Approved Products Policies (LAPP) that set minimum physical distances between stores and sensitive sites such as schools (often 500 metres), but the PSA did not include any limits on the number of outlets or opening hours.¹⁹ As a consequence, some central Auckland legal high stores operated on a near 24-hour basis.²⁰

Under the CLCB, the central government Cannabis Regulatory Authority is tasked with developing local license premise policies for every district and city council in the country (ie, 67 territorial authorities in total). These policies will provide guidance with respect to the location and opening hours of retail outlets (cl16(2)) and must take into account the characteristics of the territory, location of sensitive sites (eg, schools, churches, sports facilities) and whether a retail outlet will reduce the “amenity and good order” of the territory (cl16(3)). The Authority is required to “consult” with “local persons and groups who may be affected” and local government authorities (cl16(6)(7)), but it is not clear what role local government will play and the influence these local groups will have. During the PSA, there were a number of instances where there was a clear disconnect between central government licensing of legal high outlets and local government and community concerns about these outlets, indicating the need for early engagement and communication of policy aims between central and local government.^{19,21,22}

4. Which government agency will administer the new sector?

The CLCB establishes the Cannabis Regulatory Authority to regulate the new regime but does not state which government agency will administer the new legal recreational cannabis sector. This will be key to how the sector is perceived and regulated.²³ Government agencies with any kind of economic development mission (ie, business, innovation or tourism agencies) will place greater emphasis on facilitating cannabis business growth and jobs. For example, the gaming machine regime is regulated by the Ministry of Internal Affairs and they have shown a willingness to respond to the needs of the gaming industry.²⁴ Alternatively, a health agency is more likely to focus on the adverse health outcomes from cannabis use.

5. How will the cannabis infringement scheme be operated?

The CLCB includes provisions for civil infringement fees of \$200–\$500 (NZD) for exceeding the 14-gram personal possession or purchase limit, exceeding the personal plant cultivation limit, and for public use and public cultivation (Part 3). Higher court fines of up to \$1,000 are also included for these offences. Criminal penalties remain for supplying cannabis to underage people (ie, 19 years or younger in this case) (maximum four years imprisonment), selling without a license (up to two years imprisonment), cultivating 10 or more plants (up to three months imprisonment), importing more than 14 grams (up to two years imprisonment), and “dangerous” production of cannabis concentrates without a license (up to two years imprisonment).

The CLCB could thus potentially contribute to the Government’s wider aspirations to reduce conviction and imprisonment rates, particularly among Māori.² Progress towards this objective will crucially depend on how the infringement scheme is applied, and the willingness of offenders to pay infringements and thereby avoid further punishment through the courts.

In Australia, the introduction of infringement schemes for minor cannabis offences initially resulted in a counterintuitive “net widening effect” where police actually penalised *more* rather than less cannabis users as it was easier for police

to issue an infringement notice than proceed with an arrest under the previous approach.²⁵ Cannabis users were also continued to be convicted and imprisoned for non-payment of infringement notices.^{26,27} One way the CLCB could improve the likelihood of payment of infringement fees is to lower the fees set for infringements and/or provide non-financial resolution options, such as attending a cannabis education session or completing community work.

6. How will purchase and possession limits be enforced?

The CLCB proposes a daily cannabis purchase limit of 14 grams per day (considered by officials to be sufficient for a week of regular use) (cl29). It is not clear how such a daily purchasing limit will be enforced in practice without a real-time retail system that includes all retail outlets and collects personal identifying information from buyers to prevent them purchasing the maximum daily quantity from multiple retail outlets. In Uruguay, a biometric system requires registered buyers to submit a thumbprint before making a purchase.^{28,29} In New Zealand, police already give cannabis use and possession offences a very low priority,³⁰ and following cannabis legalisation it is likely that the monitoring of purchase limits will likewise receive low police priority.

7. How will home cultivation be monitored?

The limits outlined in the CLCB on number of plants permitted for home cultivation have been established to prevent exploitation of home-grown production for resale on the black market. In South Australia, organised crime groups sponsored individuals to grow the maximum home grow limit and then combined the crop for sale on the black market.^{26,27} The CLCB home plant restrictions will only be credible with some plan of enforcement, but it is not clear what is planned or what agency will carry out this enforcement. Enforcement does not have to be as intrusive as routine home inspections and could involve responding to evidence of syndication and selling of combined crops on the black market. Enforcement of home plant limits also needs to be flexible enough to take account of the requirement for seedlings to maintain two adult plants over the longer term.³¹

8. What health warnings will be required?

The CLCB requires all cannabis products to include mandated health warnings (cl172(1)a). Tobacco research has shown these health warnings can reduce initiation and encourage smoking cessation.⁶ The size, text and graphics of the health warnings have been found to be key to their effectiveness for tobacco products.⁶ The question is will the same effective standards be applied for legal cannabis products.

9. How will production be monitored?

A key objective of cannabis legalisation is to shrink or even eliminate the black market. One component of this effort is to ensure legal cannabis production is not leaking into the black market and vice-versa.²⁹ Significant black markets for cannabis have persisted in jurisdictions that have legalised cannabis. For example, in Canada, 40% of cannabis users report purchasing from the illegal market.³² The most effective way to monitor legal cannabis production is a seed-to-sale system, as established in many US states, which tracks each cannabis plant from seedling to retail sale. This system also provides excellent data to measure total production, illicit diversion, project tax revenue, and track prices and product types.²⁹ Uruguay has taken this further by requiring users to register and then monitoring their purchases.^{29,33} Given the limited data available on cannabis use and markets in New Zealand,³⁴ these options could be considered, with the appropriate privacy protections, to provide important data to refine regulatory responses. The CLCB includes provisions for a “tracking and recall” system (cl265(h)), but it is not clear whether this will be as comprehensive as a “seed to sale” system that involves tracking individual plants or will be routinely used to monitor production and illicit diversion.

10. What will be the role for non-commercial suppliers?

Experience from the alcohol, tobacco, gambling and most recently, “legal high” sectors indicates commercial operators will focus on expanding sales and targeting key

demographics, including youth and heavy users.^{5,6,15,35} Commercial cannabis companies in the US have already recognised that daily users are the “backbone” of the industry.³⁶ There are examples of alternatives to commercial supply of legal cannabis around the world including government monopoly at some level of the market,^{33,37} not-for-profit trusts operating retail outlets^{24,38} and even cannabis social clubs providing both production and consumption places.^{39,40} The advantages of non-commercial suppliers is that they are not focused on expanding the market and have wider social aspirations.

The CLCB largely outlines a “commercial”, albeit highly regulated, cannabis sector, but does include options for non-commercial and not-for-profit supply options. These including home cultivation for personal use (cl. 23–28); separate licensing for “micro-cultivation” producers (referred to as “small scale cultivation”) (cl58 and cl64); prioritising licensing for cultivators who partner with communities disproportionately harmed by cannabis to generate social benefit and employment (cl85(2)(a-c)); and prioritising, “where practicable”, licensing retail distributors who are “not-for-profit applicants that can demonstrate a commitment to delivering social benefit to the community” (cl88(a)). However, it is not clear at this stage what priority and support these social benefit operators will actually receive, and consequently, what the proportion of the larger market they will supply.

It appears the CLCB would not permit cannabis social clubs similar to those that operate in Uruguay, Spain and Belgium.^{33,39,40} The CLCB allows home cultivation for personal use and social sharing of up to 14 grams of cannabis with others, but restricts home cultivation to a maximum of four plants per household, seemingly preventing the larger communal crops required for a cannabis social club. New Zealand has a longstanding sub-culture of hobbyist cannabis growers³¹ who, as has been seen in Uruguay and Spain,³³ will likely embrace cannabis social clubs, and in doing so, will assist in the transition from black market to legal regime.

Conclusions

This editorial has identified a range of issues related to the CLCB on which the Government could provide further information, including the level of the cannabis excise tax, maximum potency of edibles and concentrates, the government agency to be tasked with administration of the new sector, the proposed production monitoring

system, product labeling requirements, and the priority and support that will be given to non-commercial and social benefit suppliers. We recommend the inclusion of a formal minimum price for cannabis, the lowering of the cap on the THC potency of cannabis plant products, a set proportion of licenses for social benefit operators, and a framework to allow the emergence of cannabis social clubs.

Competing interests:

Nil.

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