

**SUBMISSION OF FAMILIES AND FRIENDS FOR
DRUG LAW REFORM TO THE INQUIRY OF THE
SENATE LEGAL AND CONSTITUTIONAL
LEGISLATION COMMITTEE INTO THE CRIMINAL
CODE AND OTHER LEGISLATION AMENDMENT
(REMOVING COMMONWEALTH RESTRICTIONS ON
CANNABIS) BILL 2018**

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SUBMISSION OF FAMILIES AND FRIENDS FOR DRUG LAW REFORM TO THE INQUIRY OF THE SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE INTO THE CRIMINAL CODE AND OTHER LEGISLATION AMENDMENT (REMOVING COMMONWEALTH RESTRICTIONS ON CANNABIS) BILL 2018

Summary

1. Families and Friends for Drug Law Reform welcomes the influence that the Bill will have, removing at the Commonwealth level, the application of the criminal law to people using cannabis and possessing it for their use.
2. Families and Friends for Drug Law Reform has long maintained that currently illicit drugs are far too available. Indeed, our members have lost children, brothers, sisters and partners because of the ready availability of those drugs. Perversely the illegality has made them more available and, agonisingly, put it beyond the power of families to help their loved ones. Our current drug laws have delivered those whom we loved to the mercy of criminals while at the same time disempowering both our loved ones and their families from providing support and assistance. Far too many of our members suffered the agony of watching, disempowered, as their loved ones were sucked into a morass of addiction, crime and isolation. We see this Bill as providing a sound basis for approaching the problems associated with drug use as health and social ones rather than crimes.
3. The first principle of any public policy should be to avoid, as far as possible, the infliction of harm. Members of Families and Friends have experienced at first hand the harms inflicted by a drug policy of maximum restriction – prohibition. Equally, we can envisage that untrammelled liberalisation leading to commercially motivated promotion of psychotropic substances will replicate the harms that have been associated with legal addictive substances like alcohol and tobacco. The aim of public policy is to achieve the sweet spot of minimum harm midway between the extremes of coercion and rampant commercialisation. Families and Friends supports this Bill because it will pave the way for this to be done.
4. Prohibition is at odds with liberal principles in accordance with which the state should not intervene to attempt to stop people from engaging in activities that are likely to harm them but not others. Indeed, for all its good intentions to protect people from their unwise decisions, it ends up harming them and undermines their capacity to take responsibility for their own lives. The criminal law imposes drug-freeness as the paramount priority. Addicted drug users will almost always share that goal but in the day-to-day complexity of their lives other priorities such as holding down a job and caring for dependents are likely to assume greater priority. Prohibition sets up a

tug-of-war between the imperatives imposed by the criminal law and these day-to-day imperatives of drug users. This tug-of-war rarely ends well. Indeed the stresses imposed by the criminal system will almost certainly aggravate the various factors that led to the addiction in the first place. From this point of view, prohibition is an egregious overreach by the state; an extreme form of nanny state paternalism.

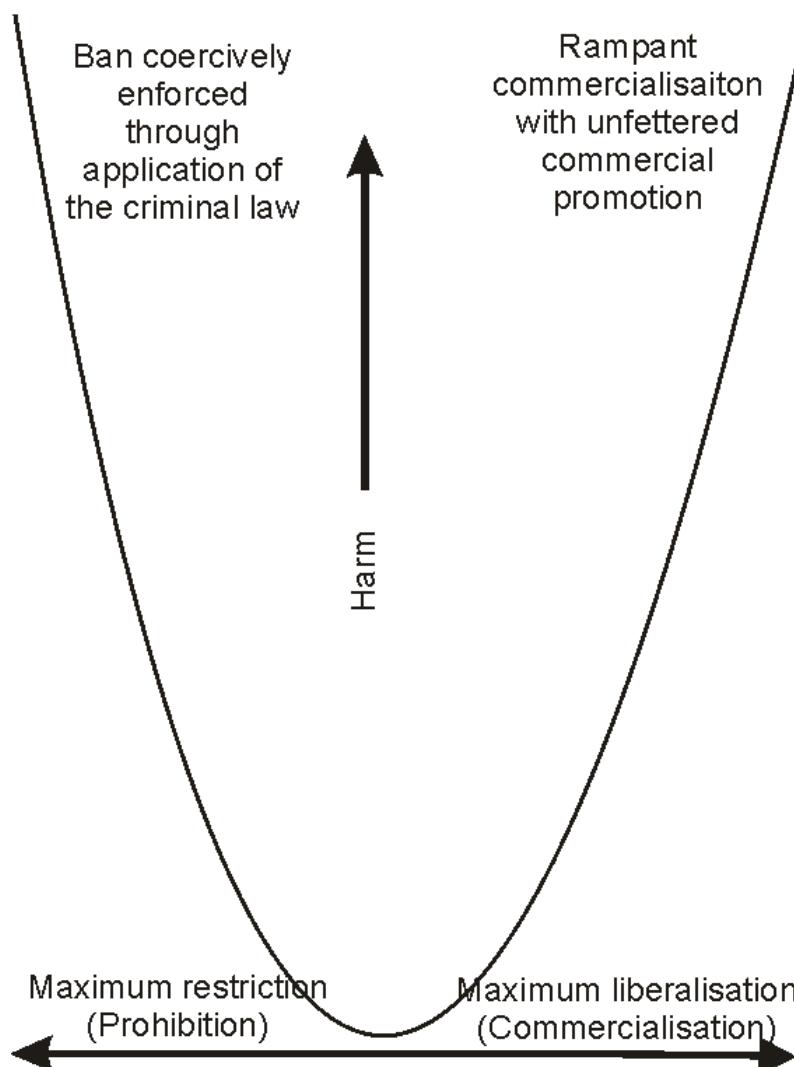
Families and Friends for Drug Law Reform – who we are

5. Families and Friends for Drug Law Reform (FFDLR) has advocated since 1995 to reform Australian drug laws that have caused our members more harm than the drugs themselves. We consider, based on extensive research, that prohibition and the “war on drugs” has caused many more deaths than lives saved of the very people it was intended to protect. The history of our organisation, together with commentary on drug law reform, has been encapsulated in the book published by FFDLR entitled “The Drug Law Wars: Twenty years of families fighting at the front”. The book, edited by founding members Brian and Marion McConnell, was published in 2015 and launched in the ACT by senator Katy Gallagher. Both Brian and Marion received Order of Australia Medals for their work. Brian died in 2016 from mesothelioma. Many of the FFDLR members have had the tragic experience of losing family members and friends through drug overdoses. This waste of life is directly caused by the supply of illegal substances being entirely in the hands of criminals. With no possibility of ascertaining the quantity of a drug in a “deal”, its purity or admixtures, then those using the drug are playing Russian roulette. In this context FFDLR strongly supports all measures that move the paradigm from a coercive approach reliant on the criminal law to one that sees drug use as a health and social problem.

Public policy should aim to minimise harm

6. Ideally the goal of public policy, like that of medical practice, should be to do no harm, though in the real world that must needs be translated to reducing harm to the minimum – the sweet spot of least harm. For all its good intention, prohibition lamentably falls far short of that standard.

DRUG POLICY
FINDING THE SWEET SPOT OF MINIMUM HARM



7. Drugs like cannabis were prohibited because they were thought to be harmful but prohibition has turned out to be more harmful than the drugs themselves. A comparison was made between South Australia which has long had an expiation system and Western Australia before a former Labor government introduced it there. The study found that those prosecuted in Western Australia were more likely to report negative employment consequences than those who received an expiation notice in South Australia. The difference was marked. Of the Western Australia group, 32% identified at least one negative employment consequence and 16% of these were sacked as a result of the offence. In South Australia only 1.7% reported such a negative consequence.

8. In personal relationships only 5% of the South Australian group reported negative consequences compared to 20% of the Western Australian group. Whereas 16% of the Western Australian group reported negative consequences in their accommodation, none of the South Australian group did so.

9. In contrast to the marked negative impact of the application of the traditional criminal processes in Western Australia compared to South Australia, the Western

Australian process did not serve as a stronger deterrent against actual cannabis usage. This aspect is mentioned further below (Lenton et al. 1998, x).

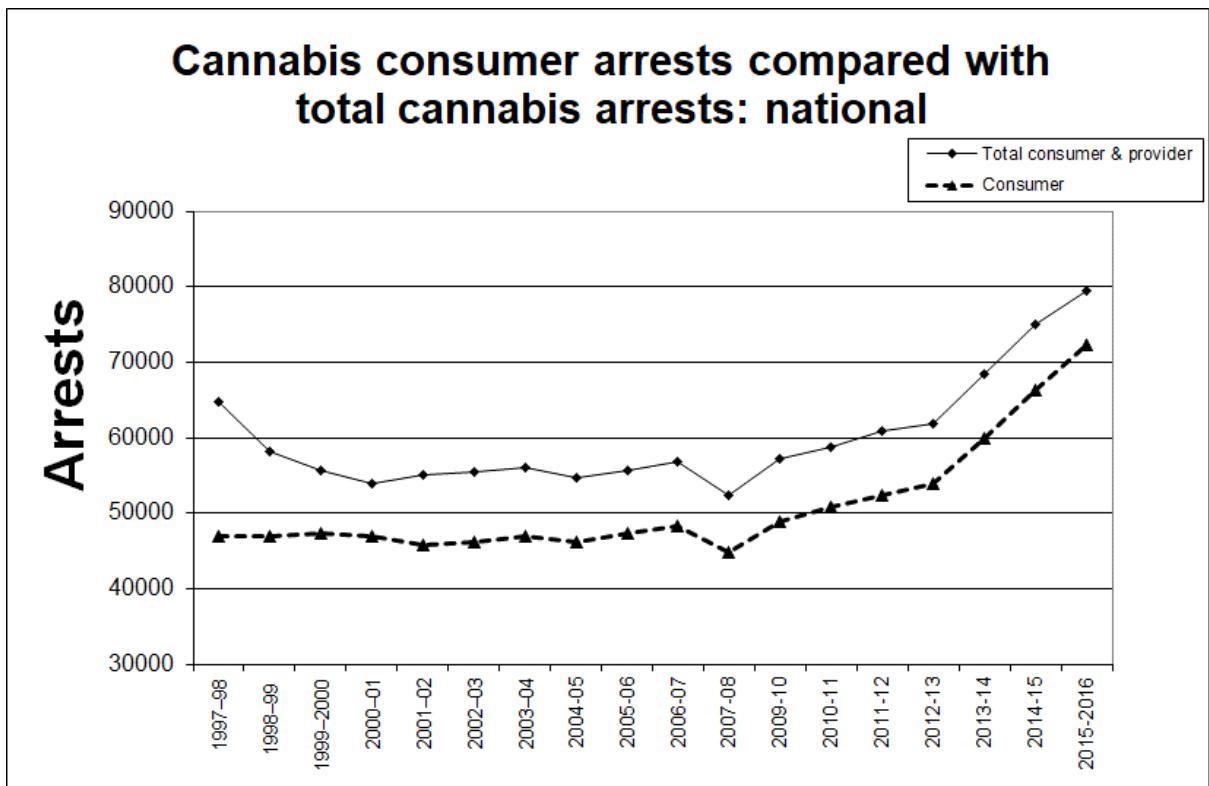
10. The study thus found that the different strategies used to combat cannabis usage had significantly different incidental impacts on cannabis users – impacts that heighten known risk factors for mental illness and drug use such as unemployment, poverty, homelessness, insecurity, divorce and family break-up.

The criminal law as gatekeeper and enforcer of existing diversion schemes

11. The inappropriateness, and indeed harmfulness, of applying the criminal law to address the problem of certain illicit drugs has been recognised by a string of adjustments that have, over time, ameliorated to some extent the rigours of the criminal law. Thus a number of jurisdictions in addition to South Australia have adopted expiation notice systems for minor cannabis offences, the Howard government encouraged various diversion schemes and more recently expensive specialist drug courts have been established in New South Wales where drug dependent people whose offending is connected to their addiction may be placed under court supervised treatment. There is an element of discretion and chance in all these approaches: discretion in the hands of police, prosecutorial authorities or courts and chance in terms of whether one happens to be in a locality where such schemes operate or, where they don't, as is the case in most of regional Australia. All the schemes though have in common the processes of the criminal law as gatekeepers of those who may participate in the scheme and ultimate enforcers if they fail to fulfil the conditions of the scheme. In other words the heavy and expensive hand of the criminal law is brought to bear to achieve an objective (recovery from addiction) that American research tells us may well be achieved "naturally" which is to say "without recourse to specialist treatment interventions such as detoxification regimes or psychological therapies" (Best (2012) p. 40). During the Vietnam war "approximately 20% of the enlisted men were dependent on heroin while in Vietnam. Upon return, only 10% of those addicted in Vietnam reported using heroin or other opiates between the time of their return and the interview, and only 1% became re-addicted . . . Only 2% (8% of those who were dependent users in Vietnam) reported continued drug use" (Best (2012) pp. 39-40). Addiction is far from being a life sentence. "Epidemiologic studies show that, on average, 58 percent of individuals with chronic substance dependence achieve sustained recovery." (CSAT 2009 p. 21). All too often the criminal law has derailed drug users from recovery. The Bill is to be commended in that it removes an obstruction to dependent drug users regaining control of their life.

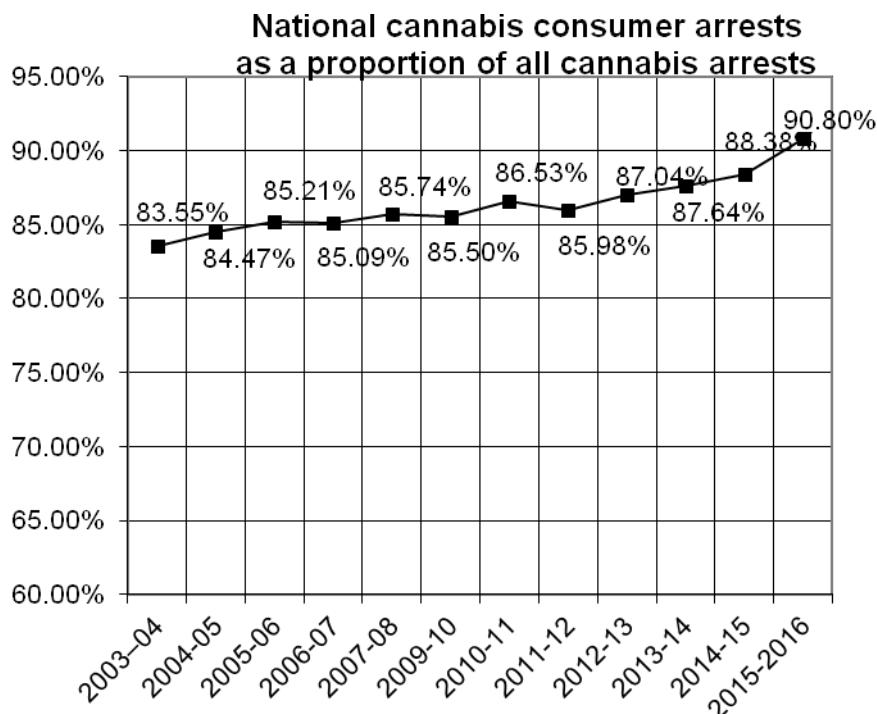
Arrests for cannabis offences

12. The long-standing process of amelioration of the rigours of the criminal law gives rise to the impression that the police do not target drug users but this impression is quite wrong: illicit drug data reports reveal that more and more Australians are being arrested for drug offences. In 2015 – 16 alone some 73,000 were arrested for offences of possession of cannabis for personal use. This absorbs a lot of police resources, a trend the following chart shows is steadily increasing.



SOURCE: Tables of Cannabis arrests by state and territory in Illicit Drug Reports & Illicit Drug Data Reports.

13. The extent of fruitless, harmful harassment of cannabis users is illustrated by comparing the proportion of cannabis consumer arrests to the total number of arrests for all cannabis offences whether of suppliers or consumers. According to the latest figures, mere consumers now amount to over 90% of all cannabis arrests.



SOURCE: Tables of Cannabis arrests by state and territory in Illicit Drug Reports & Illicit Drug Data Reports

Drug policy based on deterrence undermines the capacity of users of illicit drugs to take responsibility for their own lives

Why law enforcement cannot suppress drug use.

14. For all the very considerable effort that is put into drug law enforcement, it is a fantasy to believe that it would ever be successful in suppressing the drug trade. The reasons for this are clear:

- (i) With two willing parties to drug transactions, drug dealing is not reported. Transactions in the marketing of illicit drugs are unlike most crimes where there is a willing perpetrator and unwilling victim. In the trading of drugs both parties have a strong interest in keeping the transaction secret. Like corruption and in contrast to the victims of most crimes, those engaged in drug dealing are unlikely to report the offence. In other words, the drug trade exists under the radar.
- (ii) The direct, peer to peer marketing system of the retail and other lower levels of the drug trade is as, say, Amway shows, a highly effective marketing strategy;
- (iii) Consensual direct marketing schemes of addictive substances are highly resistant to police penetration.
- (iv) Higher prices brought about by drug law enforcement fail to deter most dependent users whose demand for substances to which they are addicted is largely inelastic.
- (v) The very high profit margins allow criminal enterprises to outspend law enforcement agencies in hiding their tracks and facilitating their trade by money laundering, corruption and violence to intimidate witnesses and competitors (ACC 2015 pp. 8 & 9). Thus, money laundering, violence and corruption thus support and conceal “serious and organised activity” (ACC 2015 p. 5). It is therefore very hard to detect and catch those near the top of the distribution pyramid. In the words of a retired Tasmanian Police Commissioner and member of the Board of Control of the Australian Bureau of Criminal Intelligence, Mr John Johnson:

“I don't think [police action is] having any effect on the supply in Australia. I think that [what] we do quite regularly when we catch some of the Mr Bigs is that we make life much easier for some of the other Mr Bigs who haven't been prosecuted and caught. We've put their competition in prison and left the world open for them and they're extremely difficult to catch and they go on with their business”
(APGDLR 1997).
- (vi) Motivated by the prospect of quick and easy money, there is an endless supply of middle level dealers prepared to run the risk of apprehension in return for wealth. The addicted user who deals to feed a habit is the disposable bottom layer of the distribution pyramid, the cannon fodder of the drug war. At most, local policing merely displaces the market.

- (vii) There is only a small chance that drug users will ever be arrested. For a deterrence to be effective, it should be swift and certain. Drug law enforcement is neither (Kleiman, 2009). Based on the most recent Australian usage and arrest rates, there is less than a 2% chance of ever being caught;
- (viii) Drug law enforcement and drug dealers both aim to maximise the price of drugs, law enforcement in order to put them out of reach of drug users and dealers in order to maximise their profit. In other words the objectives of law enforcement and dealers coincide, ensuring a continuing supply of drugs.
- (ix) In addition to deterrence, drug law enforcement aims to put drugs out of reach of consumers by raising their price. Given that demand from dependent drug users is relatively inelastic, raising the price of drugs, far from moderating demand and thus supply, serves as an incentive to supply. The Australian Crime Commission is well aware that profit attracts further supply: “ . . . the price paid for methylamphetamine in Australia is among the highest in the world, making the importation of the drug and its precursor chemicals an attractive target for transnational crime groups” (ACC 2015, p.3);
- (x) law enforcement is never able to seize more than a small proportion of the profits of the drug trade. The Australian Bureau of Statistics has supported research into the estimation of the size of the Australian illicit drug trade. This study estimated that in 2010 the trade in illicit drugs was worth \$7,574 million of which “cannabis” represented \$4,889 million (Cullen & Gajewski 2012 p. 12). Even if all the \$93.3 million that the AFP confiscated in 2016 – 17 (AFP 2016-17 p. 30) represented drug proceeds, this represents a mere 1.23 percent of the estimated annual value six years before of the black market economy for all illicit drugs and 1.91 percent of the cannabis market.
- (xi) For risk taking young people the illicit status of certain substances is a challenge that they rise to. Drugs have the attraction of forbidden fruit. Other countries with a better grasp of adolescent psychology have successfully made illicit drugs boring.
- (xii) Other less confident young people try drugs to avoid pain or, in the words of the household survey, to “improve [their] mood/to stop feeling unhappy”
 - This is a form of self medication combating unhappiness or social awkwardness.

15. That prohibition works to the advantage of drug dealers is illustrated by its history:

When prohibition was imposed in the United States a hundred years ago, many of those who had developed a heroin dependency as a result of medical treatment quickly turned to the illicit market for their drugs after they ceased to be able to secure a supply from doctors; and

The same has also happened recently in the United States and more recently now in Australia with patients who have become dependent on prescribed pain killing opiates like oxycodone turning to the illicit market for their supplies;

After the closure of opium dens in Pakistan (Seccombe 1995) and elsewhere in Laos (McCoy 2003 p.382).

Californian drug dealers actually bribed officials to close down a clinic in California. "The man who launched the drug crackdown in California did it because he was paid to – by the drug dealers themselves" (Hari 2015, p. 40).

One needs to be aware of the possibility that not all voices calling for the perseverance and intensification of drug law enforcement will be motivated by a sincere wish to reduce drug use.

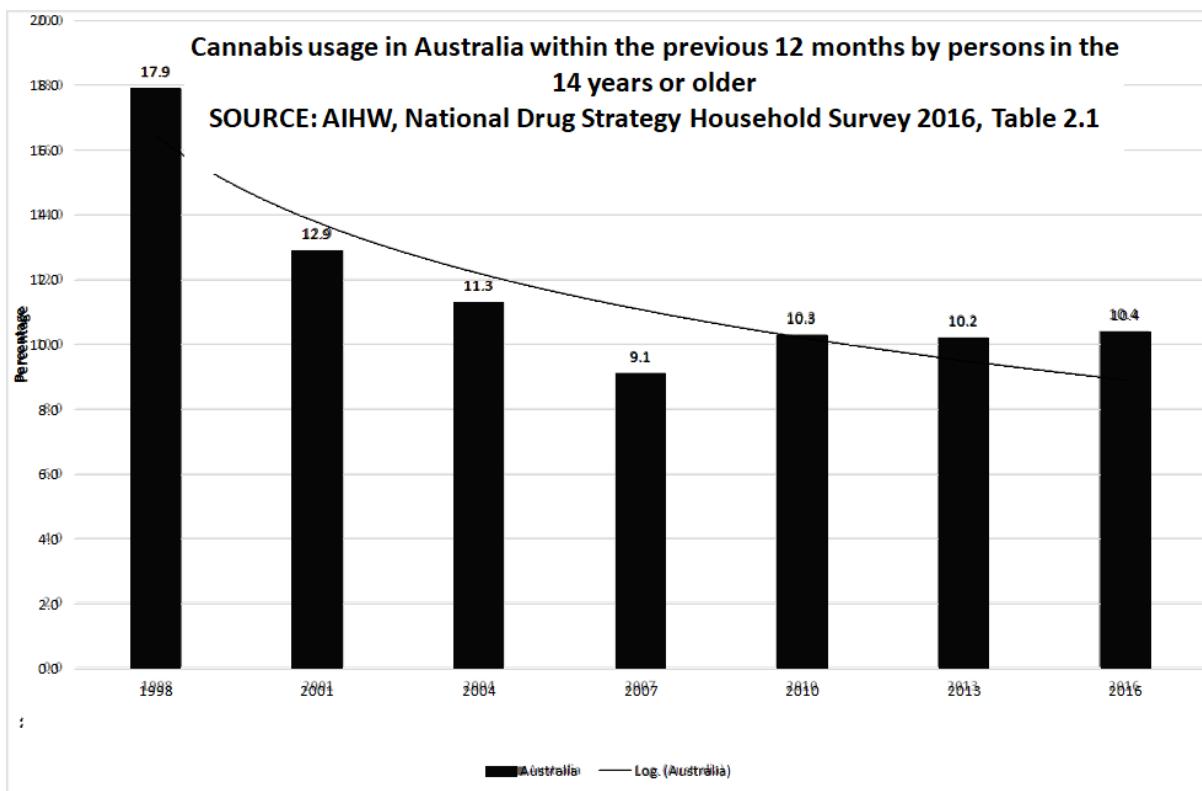
16. Leading British, American and Australian researchers of drug policy have summarised the futile harmfulness of criminal law enforced drug policy in the following terms:

"Drug prohibition increases the price of drugs, stigmatizes drug use, and prevents large-scale corporate entities from promoting drug sales through modern marketing techniques. After these structural consequences of illegality are attained and maintained through routine levels of enforcement, increased enforcement against drug dealers produces diminished returns. That is, even if very large numbers of people are incarcerated, drug prices do not rise and availability does not decline much beyond what could be expected from routine enforcement of drug laws. Further, there may be perverse effects if law enforcement resources are diverted to arresting and incarcerating drug dealers when other crimes that would otherwise claim police attention are neglected" (Babor *et al* 2010, p. 255).

The extent of cannabis use in Australia

17. The 2016 household survey discloses that 10.4% of Australians 14 years or older used cannabis recently. In other words "2.1 million of our compatriots took it upon themselves to defy the law by consuming this drug. Their average age was 32 (NDS 2016, p. 61). What possible concern is it of the State to seek to prevent these adults consuming what they like? Such widespread flouting of the law brings it into contempt. As far as we know, the vast majority if not all of these 2.1 million Australians lead an otherwise law-abiding and responsible life. Prosecuting them, if they were ever able to be caught would serve no good purpose but most likely disrupt their life.

CANNABIS BILL: FFDLR SUBMISSION



Cannabis consumption by children

18. Of far greater concern is the high level of cannabis use among schoolchildren. Inapplicable here, is the liberal principle that moves one to consider, when no third-party is harmed, that what an adult of full capacity does is his or her business alone and not that of the state.

19. Surveys are conducted from time to time of consumption by secondary school students of illicit drugs (as well as alcohol and tobacco and over-the-counter medications) (White & Williams 2016). The latest such survey, carried out in 2014, revealed that close to 20% of male students between 12 and 17 had consumed cannabis.

Table 6.8: Cannabis: Percentage of students using cannabis in each recency category, by age and sex, Australia, 2014[#]

	Age (years)						
	12 (%)	13 (%)	14 (%)	15 (%)	16 (%)	17 (%)	12-17 (%)
Never used							
Males	95.6	92.9	87.8	80.6	72.4	65.5	82.9
Females	96.5	94.8	90.2	82.2	76.3	72.0	85.6
Total	96.0	93.8	89.0	81.4	74.4	68.7	84.2
Ever used							
Males	4.4	7.1	12.2	19.4	27.6	34.5	17.1
Females	3.5	5.2	9.8	17.8	23.7	28.0	14.4
Total	4.0	6.2	11.0	18.6	25.6	31.3	15.8
Past year							
Males	2.2	5.6	9.9	16.6	24.5	30.2	14.4
Females	2.2	4.4	8.9	16.1	21.6	23.9	12.7
Total	2.2	5.0	9.4	16.3	23.1	27.1	13.6
Past month							
Males	0.6	3.3	5.0	10.0	14.1	18.0	8.3
Females	1.3	2.3	5.4	7.3	9.2	10.0	5.8
Total	1.0	2.8	5.2	8.6	11.7	14.0	7.1
Past week							
Males	0.5	1.9	3.1	6.7	8.4	10.2	5.0
Females	0.9	1.1	3.3	3.3	4.5	4.6	2.9
Total	0.7	1.5	3.2	5.0	6.4	7.4	4.0

Prevalence estimates are within ± 3.2 of population values (see section 2.6). See Appendix 4 for 95% confidence interval estimates for different percentages for each age and sex group.

SOURCE: Victoria White, Tahlia Williams, *Australian secondary school students' use of tobacco, alcohol, and over-the -counter and illicit substances in 2014* (Prepared for the Drug Strategy Branch, Australian Government Department of Health, October 2016).

20. Families and Friends do not wish to downplay the worrying significance of the high level of cannabis use by Australian schoolchildren. Having said that, the direct harms associated with cannabis are less than those resulting from the consumption of alcohol and tobacco. Effective measures should be put in place to dissuade young people from trying any addictive substance.

21. One can say with confidence, though, that the illicit status of cannabis does little if anything to dissuade young people from trying it.

22. It is frequently said that cannabis is a gateway drug to other more dangerous ones. This idea is commonly bandied around by those who defend criminal prohibition. Cannabis often does come before use of harder drugs like methamphetamine and heroin but so does alcohol and tobacco. The link is not pharmacological but sociological and psychological:

Peers who flog cannabis to their mates will typically have access to a smorgasbord of other illicit drugs and peer pressure from one drug using mate to another.

Indeed as the household survey has revealed, peer pressure was a factor that influenced first use of 54.5% of those who have ever used a illicit drug (NDS 2004 table 6.2, p. 37).

Curiosity and risk-taking are important factors that influence first use of any illicit drug. The influence that these prevalent normally commendable and adolescent characteristics place at high risk a high percentage of young Australians.

23. The Howard government in a pamphlet drew these influences to the attention of the nation in warning parents not to be complacent about the likelihood of their children dabbling in illicit drugs. The influences challenge the common assumption that young people use drugs only if they are having problems at home or at school. At the top of the list was "Availability and acceptability of the drug" which points to peer group pressure as much as existing drug use in the family. Otherwise the factors listed in the pamphlet were common psychological characteristics:

- Curiosity and experimentation.
- Wanting to be accepted by peer groups.
- Rebellion.
- Depression.
- As a way to relax to cope with stress, boredom or pain.
- To experience a high or a rush" (Abetz 2001).

24. The 2013 household survey reported that of people aged 14 or older, the most common reason that an illicit substance was first used was curiosity (66%), followed by wanting to do something exciting (19.2%) and wanting to enhance an experience (13.3%) (NDS 2013 Online Table 5.27)

How to respond to youth drug use

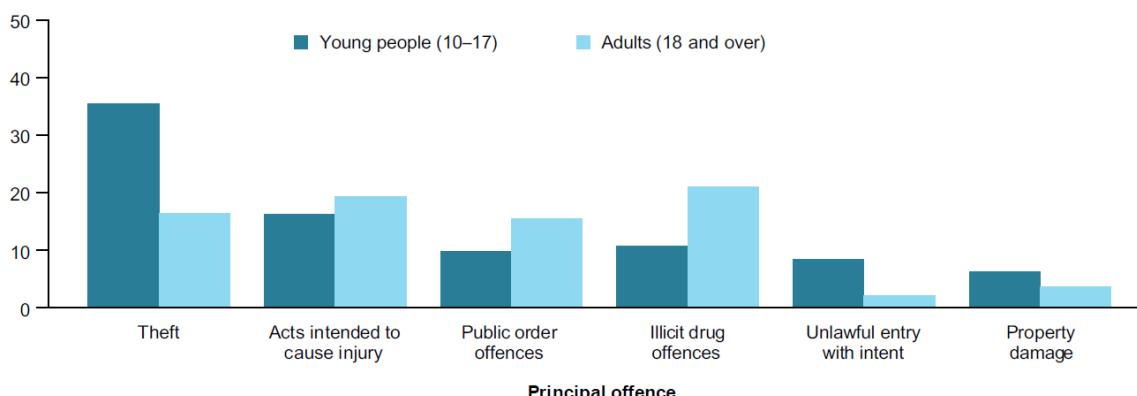
25. According to the latest household survey, at least 6.9 million Australians (or 30% of the population) have used cannabis at least once in their life (NDS 2016 p. 61). For the vast majority of those the experience was something from which they moved on leaving no untoward impact. The situation would have been altogether different if they had become caught up in the criminal justice system. A dynamic of mutually reinforcing factors would very likely torpedo their life chances:

association with a criminal, dysfunctional peer group that may have motivated them to make a quick buck on the side by dealing to their mates and engaging in property and other offences;

exclusion from school thus depriving them of the capacity to fully participate in the economy and society

experience in the juvenile justice system enhancing the likelihood that they will graduate to an adult prison.

Figure 9.1: Young people and adults proceeded against by police, by selected principal offence, 2016–17 (%)



Sources: ABS 2017a, 2018b.

SOURCE: AIHW 2018 p.34.

26. The legalisation of cannabis at the Commonwealth level would send a clear message to state and territory governments that they should adjust their drug policy to remove the criminal burden from those who choose to use cannabis and to formulate a suite of policies such as Portugal has shown is possible. These exclude the harmful processes of the criminal law from impacting upon youth without boosting drug use. Indeed, after its groundbreaking reforms in 2001, Portugal experienced "notable reductions in 15 – 19 age group" (Hughes & Stevens (2012) p. 105). "The latest data indicate that in Europe, Portugal continues to be one of the countries with the lowest lifetime prevalence of cannabis, but it is by no means the lowest country. A more pertinent statistic is that compared to other European and non-European countries . . . , Portugal has low annual prevalence of cannabis and cocaine use . . ." (Hughes & Stevens (2012) p. 109)

27. The Bill before the committee will:

- enable states and territories to fashion their own approaches to the regulation of cannabis in ways that undermine the influences described above that motivate first use.
- destroy the business model of organised crime; and
- serve to deprive cannabis of its allure as enticing forbidden fruit.

Research into cannabis

28. In spite of the exception written into art. 2(5)(b) of the single convention in favour of "medical and scientific research", scientific research has been another victim of the demonisation of cannabis with researchers stymied in their efforts to look into the potential medical benefits of the drug rather than an obsessive focus on its harms. The Bill will thus complement legislation authorising the medical use of cannabis.

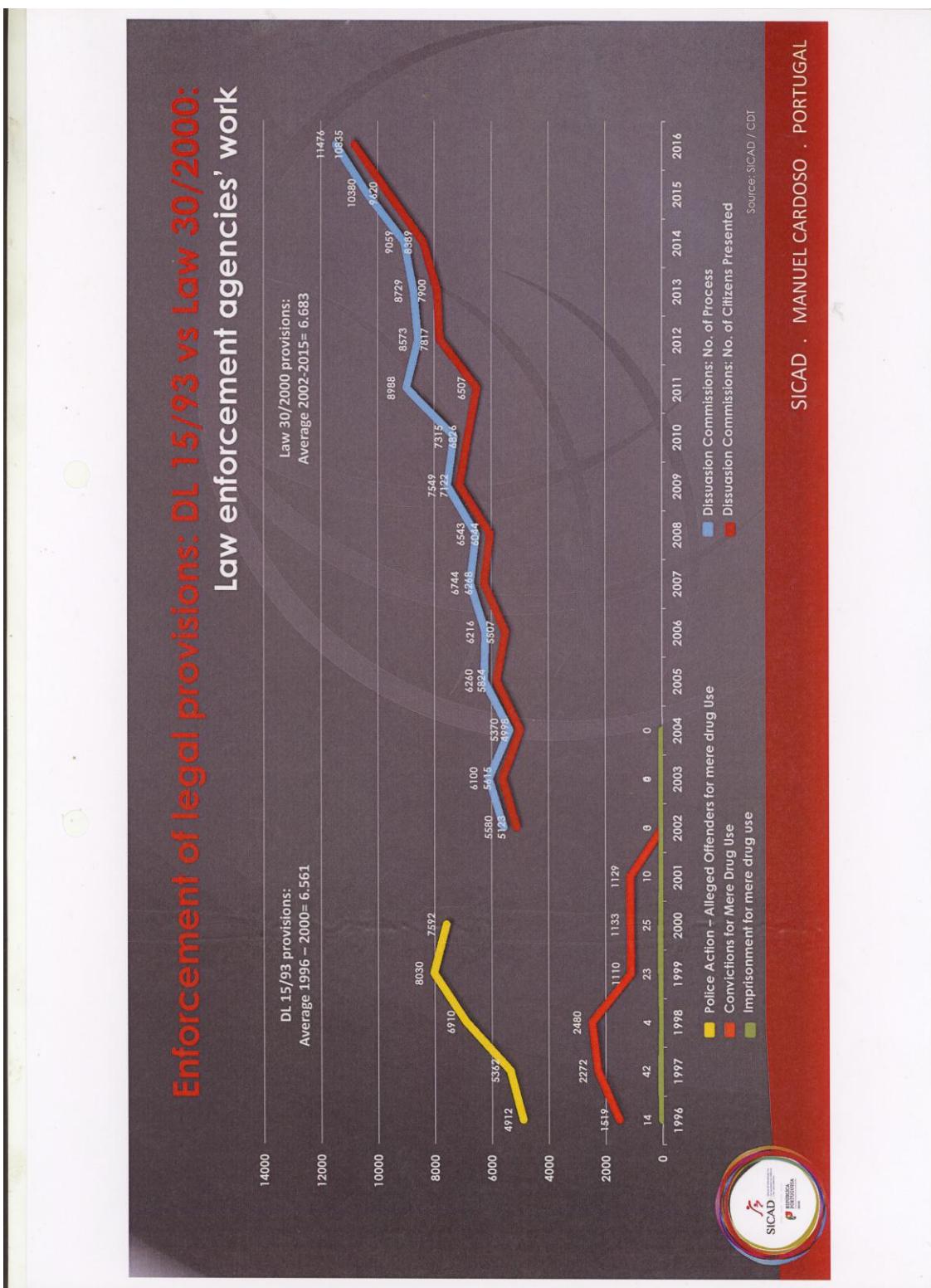
Note on the compatibility of the Bill with Australia's treaty obligations

29. The Bill will not cause Australia to be in breach of its obligations under either the 1961 Single Convention on Narcotic Drugs or the 1988 Illicit Trafficking Convention. This is because the Bill of itself is framed so as not to change the law of states and territories. It is these laws that provide the legislative basis that enable Australia to give effect to its obligations under the multilateral drug conventions. Australia often implements its international obligations through the application of state and territory law. A breach of treaty would, therefore, come about only if states and territories also moved to legalise cannabis. But they need not go to that length in order to lift the burden of criminal sanctions from the back of drug users. Portugal and other countries like Norway that are moving to follow it remain compliant if they substitute a civil penalty for a criminal one – a penalty that may be little more than nominal.

30. On 5 June Dr Manuel Cardoso, an architect and leader of Portugal's drug policy, informed a large Sydney audience that his country's reforms were consistent with the drug conventions. He showed the following chart which illustrates that police action against drug users and conviction of drug users ended in 2002 after the adoption of reforms in the previous year. Thereafter the work of dissuasion commissions consisting of psychologists, social service workers, lawyers and officials has evaluated the suitability of users to undergo treatment and referred them to an appropriate support network. For all practical purposes, so far as drug users are concerned, the criminal law is out of the picture. Portugal has demonstrated how flexible the drug conventions really are. So successful do the Portuguese regard their reform that it has survived successive changes of government of various political persuasions and a very severe recession triggered by the global financial crisis. The reforms have long since become an uncontroversial, accepted feature of Portuguese drug policy.

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18/06/2018



SOURCE: overhead displayed by Dr Manuel Cardoso at his address in Sydney on 5 June 2018.

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