

# Regulating cannabis – a challenge we are more than up to

To legalise or not to legalise. It's often presented as a yes/no question, but in reality, there are countless policy options, each meeting a range of competing goals. **Kali Mercier** sets out some options and debates some of the key contentious issues.



KALI MERCIER



**D**espite the potential for getting lost in the detail, we think it will actually be pretty easy to come up with a coherent model that meets the most important goals of our communities. We've plenty of examples to choose from (and steer clear of) from jurisdictions that have legalised overseas. And we can also draw heavily on our own successes and failures in Aotearoa regulating alcohol, tobacco and psychoactive substances.

The government has announced that a referendum on legalising cannabis for personal use will be held alongside the 2020 general election. The referendum will be binding. And it will hopefully be backed up by a bill setting out the proposed regulatory model so people know the detail of what they are voting for. As the government designs the model, we will be doing everything we can to influence it from the perspective of our underlying principles for reform.

We'd like to see extensive consultation and public education programmes take place as part of this process. It's vital that we have the contentious debates early on to ensure the proposed model has wide-ranging public support.

## Public health-focused principles for the regulation of cannabis

The best way towards a coherent model is to be clear upfront about the principles we want to follow. Once we have those in black and white, many of the policy choices that need to be made will follow logically. We're encouraging the government to lay out its principles for regulation clearly before it starts drafting anything. In the meantime, here are ours:

- **Keep health considerations central.** Choose a model that minimises the harm caused by cannabis use, especially to young people and those who use heavily or are dependent. Ensure access to healthcare for those who need it.
- **Protect young people,** through strict enforcement of purchase age limits, for example.
- **Prevent development of a Big Cannabis industry** with a lobby voice. This is essential if we want to keep health considerations rather than business interests central.
- **No advertising,** promotion or sponsorship of events.
- **Value community interests,** especially those of vulnerable groups, rural and/or Māori communities. By ensuring profits go to communities that have suffered under punitive drug laws, we can redress historical damage.
- **Build provision for education,** prevention, harm reduction and treatment into the model. Earmark taxes to support these programmes.
- **Don't create new criminal penalties** to replace old ones. Especially avoid criminal penalties for personal use and possession of cannabis.
- **Equity for Māori.** Whānau, hapū and iwi Māori, as Te Tiriti partners, need to be central in designing the regulations.
- **Choose the simplest bureaucracy possible,** while ensuring health-focused regulations are consistently enforced.
- **Minimise harm caused by drug driving** through public culture change and other measures.
- **Invest in healthcare over enforcement** – we need to flip the scales.
- **Start cautiously,** monitoring health and other effects as we go. Regulations can be loosened over time if desired.

## Growing and selling cannabis

Public conversations about options for cannabis regulation often compare our current tough drug law with a completely free market. In fact, there are a range of responsible options in between these two extremes, flowing from completely non-commercial to highly regulated profit-driven options.

### Non-profit/small scale

#### MODEL

No commercial sales. Simply allow adults to grow their own to use themselves or gift to others.

#### PROS AND CONS

This is currently the case in Washington DC, though they seem likely to allow legal sales in the future. The big advantage would be no industry lobby urging people to consume more or targeting new users. It would be the simplest system to administer, and it would reduce criminal convictions. On the downside, it wouldn't provide levers to improve public health nor impact the black market much. And it wouldn't generate taxes to help pay for health interventions.

#### MODEL

Non-profit communal models, such as cannabis clubs where people pool together to grow cannabis and distribute the finished product to their members.

#### PROS AND CONS

These exist in a number of countries, including Spain, Belgium and Uruguay. The model provides a route for non-commercial supply of cannabis, but it may also encourage increased use as people sign up to receive an ongoing supply. There are also equity issues as not everyone will be willing or able to join a club.

#### MODEL

Government or a public authority operates the whole supply chain or part of the supply chain.

#### PROS AND CONS

For example, in British Columbia, all the cannabis grown in the province comes through a central government warehouse. Most is then sold in government-run shops. It would be easy to ensure products meet quality requirements and keep the focus on public health. On the downside, it may not benefit small-scale producers as governments usually prefer to deal with fewer, bigger contractors. It would also be a lot of work for government and may not be a top choice for politicians.

#### MODEL

Non-profit organisations operate the supply chain or part of it.

#### PROS AND CONS

For example, small-scale growers might send their crops to non-profit wholesale hubs for testing and packaging. The products could then be retailed through government or non-profit-run retail outlets. Hubs would provide the advantages of economies of scale, while also allowing profits to filter back to smaller-scale producers. The challenge would be to ensure any profits go where the community wants them to go and that a profit motive doesn't develop as communities become reliant on funding.

#### MODEL

For-profit businesses operate part or all of the supply chain alongside government and/or non-profits (a mixed market).

#### PROS AND CONS

Many Canadian provinces have chosen a version of this, where licensed producers and retailers are allowed to operate alongside government, with strict controls. The advantage is a more efficient market, but private companies will inevitably focus on increasing consumption at the expense of health considerations.

#### MODEL

A standard commercial model, with profit-driven growers, distributors, wholesalers and retailers.

#### PROS AND CONS

If there is political will, regulatory tools can be used to provide a strict focus on health priorities under a privately run model. However, industry will inevitably lobby to loosen regulations over time, at the expense of public health. This is the common model in American states that have legalised cannabis. A particularly worrying example is Nevada, which prioritises revenue gathering over other interests. Early cannabis sales there topped other states that have larger populations.

Each of the options on the spectrum has advantages and disadvantages. If we do legalise cannabis here, the model we end up choosing will depend on how we balance competing goals and priorities. One of the key tensions will be around how we promote

community development and reward small-scale enterprise, while also maintaining quality control over products. Another will be around the balance between public health and the profit driven market.

<p><b>Public health</b> – minimise the harm caused by drug use by encouraging people to consume less heavily, less frequently and put off consumption as long as possible in life. This means restricting the market by regulating what products can be sold, when, where and to whom. It means strict rules around sponsorship, advertising, packaging, health warnings and age limits.</p>	<p>VS</p>	<p><b>Profit-driven market</b> – the goal is to increase consumption. The biggest profits can be gained by marketing to the 20 percent of people who use 80 percent of the product – these are also the people who suffer the most harm. Profit-driven markets actively lobby to reduce health-focused regulations. For example, the alcohol industry lobbies for longer opening hours for bars and off-licences, lower taxes and no minimum pricing. The more large scale and profit-driven a model is, the harder it will be to keep the central focus on reducing drug harm.</p>
<p><b>Community development</b> – keeping growers small-scale to promote community development and redress some of the harms caused by prohibition.</p>	<p>VS</p>	<p><b>Keeping the system simple</b> and easy to administer, with good quality control over products and strict regulations around packaging and labelling.</p>

Finding a way to navigate these kind of tensions will be key to developing a cannabis model that minimises harm and promotes community development – but is also workable. Some of the issues that are already taking centre stage are whether or not we should allow people to grow cannabis at home, how we can

ensure Māori equity, where to set the age limit and whether we should allow edibles and other cannabis products. We address each of these below, looking at the key tensions, and asking what we can learn from Canada and the USA.

## Should we allow home grow as part of a regulated market?

The question of whether or not to allow people to grow their own cannabis at home was one of the big topics in Canada before adult use became legal there last October. These are the key arguments either way:

<p><b>Prohibit home grow because:</b></p> <ul style="list-style-type: none"> <li>products may be diverted to the black market</li> <li>plants are not subject to quality control or public health regulations – we can't focus as easily on reducing harmful use</li> <li>it would be difficult for police to enforce limits on plant numbers and size at home.</li> </ul>	<p>VS</p>	<p><b>Allow people to grow a small number of plants because:</b></p> <ul style="list-style-type: none"> <li>they will do this regardless of the law and it's better not to criminalise people</li> <li>home growing will decrease as legal products become available – most people would rather buy than grow anyway</li> <li>Police would enforce plant restrictions in the same way as they already enforce prohibition – no extra resources would be required, just a different rule on how many plants are allowed.</li> </ul>
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In Canada, the deciding factor became a question of equity. Some people will continue to grow cannabis despite the law, and they are likely to be some of our most vulnerable citizens. Is it right to penalise them for growing what is essentially now a legal product?

All Canadian jurisdictions except two decided to allow people to grow up to four plants at home, with strict rules in place, for example, including that plants cannot be visible from the street.

In contrast, Washington State prohibits home grow entirely.

In New Zealand, equity questions apply, especially for Māori and for people who use cannabis for health reasons.

Whichever way we jump on home grow, it's essential we don't apply criminal penalties to those growing for personal use.

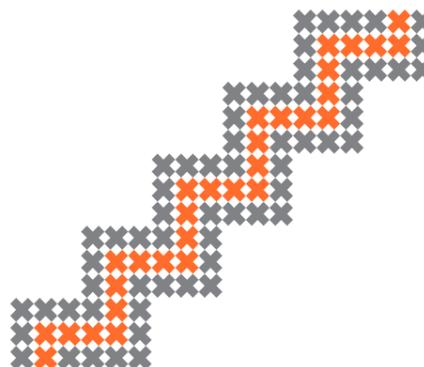
### How do we ensure Māori equity?

As Te Tiriti partners, whānau, hapū and iwi Māori need to be front and centre in designing the regulatory model for legal cannabis. The Canadian experience shows us that indigenous communities need to be involved at every step to ensure a model that fits their needs.

Current drug penalties disproportionately affect Māori, and cannabis charges are often a pipeline into the criminal justice system. Adding insult to injury, Māori are disproportionately impacted by health harms from cannabis and also find it harder to access treatment, so a key focus of a cannabis model needs to be both guaranteeing equity and reducing harm.

We should ensure that the economic position of Māori communities currently involved in the illicit market is improved by regulation, not weakened. A model that favours community-based and smaller-scale regional and rural operations would enable those Māori communities that wish to do so to access opportunities.

We should also quash previous cannabis convictions and resist the urge to create new criminal penalties for those producing, using or selling cannabis outside of the new legal framework. Local authorities should be required to negotiate with Māori on the location of outlets, and Māori should get to decide how money set aside for healthcare is spent in their communities.



### How should we decide on an age limit?

Where we decide to set the legal purchase age for cannabis is likely to have a big impact on public health. Young people are the most vulnerable to the negative health effects of cannabis so we want to make it harder for them to access. Equally, there are compelling arguments for setting the legal age at 18, so young people can benefit from the public health protections of a regulated market.

**Set the age low**, at 18 for example, to deal with the reality that young people already use and will continue to use cannabis. We don't want to keep criminalising young people.

Ensure all consumers are covered by the public health benefits of the legal system, such as portion control, health warnings on packaging and access to healthcare without fear of stigma. We can influence behaviour most easily inside a legal model.

VS

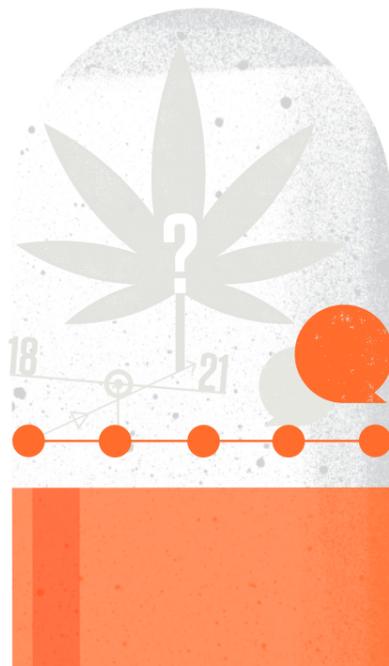
**Set the age high**, at 20 or 21, to align with research on the effects of cannabis on brain development. The longer we delay people from using cannabis the better, because brain development doesn't stop until the mid-late 20s.

We can see from our experience with alcohol that, the lower we set the age, the earlier people will start consuming and the greater the harms.

Canadian federal law requires a minimum purchase age of 18 years, but most provinces and territories have settled on a purchase age of 19 years to match their alcohol laws. Manitoba is the only exception, with a purchase age of 18 years for alcohol and 19 years for cannabis.

American states that have legalised cannabis all have 21 as the minimum purchase age to align with their alcohol purchase age.

If we were to align our cannabis purchase age with alcohol, we'd set it at 18. We could work to limit use by young people using techniques such as banning advertising and keeping prices high. However, there are plenty of good arguments that our alcohol limit is set too low, causing a lot of harm for individuals and communities. Thinking about the right age for cannabis use might help us clarify where we want to be with alcohol.



### Do we allow edibles and other products?

Cannabis has moved on from its early days - the list of products now on the market overseas is limitless. The great thing is that we can plan for that, and legislate to get exactly the system we want to see. That might be just raw cannabis, or it might be a full range of food, beverages and concentrates.



**Allow edibles and other products** to move people away from smoking cannabis. Smoking is harmful to health, especially when combined with tobacco.

VS

**Restrict the market to unprocessed cannabis** - if not, you encourage people to use cannabis who otherwise wouldn't have especially young people.

Eating cannabis isn't great either. It can lead people to consume too much, too quickly, because it's hard to judge when you've had enough.

American states with legal cannabis contend with unlimited cannabis-based products, including edibles, concentrates and topicals. Most don't restrict the range of cannabis products available, though some prohibit products containing additives such as nicotine, alcohol or caffeine. Some of the more contentious products to hit the market from a public health standpoint include cannabis beer, coffee and lollipops.

In contrast, Canada is introducing new products to the market slowly so they can closely monitor any harms. They currently regulate raw and dried cannabis, with regulations on edibles and concentrates being developed now. The proposed guidelines will limit edibles to 10mg of THC per serving, with just one serving per packet.

However, Canada already had a booming black market in cannabis-based products to deal with. We don't. There are good public health arguments for keeping the range of products available in New Zealand to an absolute minimum, especially in the initial stages. One option is to start by allowing unprocessed cannabis only, with the possible addition of unflavoured oils and tinctures for vaping and drinking.

### Other issues ... watch this space

This article focuses on some of the key issues that need addressing as we develop a regulatory model for cannabis that puts public health first. But there are many other issues we couldn't include here that will need careful thought. These include drug driving, how we deal with previous convictions, the intersection between personal use and medicinal use, how we tax and price cannabis, how we ensure harm reduction and treatment is adequately funded and how we monitor and evaluate the model as we go on.

Depending on the outcome of the referendum, we have an unprecedented

opportunity to reduce the harm that prohibition has caused in Aotearoa. As we go forward, let's make sure we keep firmly in mind our goals. This is our chance to design a system that will minimise the harm caused by cannabis and other drugs, protect young people, increase Māori equity and keep people out of the criminal justice pipeline. It won't be perfect and will no doubt require tweaking over time, but we can ensure it's a significant improvement on what we have now.

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