

## Context to the Regulatory Impact Assessment: Cannabis regulatory model

1. A Regulatory Impact Assessment (RIA) accompanies a Cabinet decision-making paper regarding regulatory change. It typically provides a high-level summary of the problem being addressed, the options, their associated costs and benefits, the consultation undertaken, and the proposed arrangements for implementation and review.
2. This RIA was produced by the Ministry of Justice in May 2019. It was provided to Cabinet along with the May 2019 Cabinet paper, “2020 Cannabis Referendum – legislative process and overarching policy settings for the regulatory model”. This Cabinet paper contemplated several potential process options to facilitate the referendum. The purpose of the RIA was to support Cabinet decision making at that time.
3. The Cabinet paper has been proactively released and is available here: <https://www.justice.govt.nz/assets/Documents/Publications/Proactive-release-Cabinet-paper-2020-Cannabis-Referendum-7-May-2019.pdf>.
4. The RIA articulates anticipated high-level impacts of the status quo (a policy of complete prohibition) versus that of a tightly-regulated regime of legal access to cannabis. It focuses on the creation of a legal regime for cannabis, overarching policy settings for a regulatory model and key regulatory settings. As a result of this process, Cabinet decided that these regulatory settings would be presented in the form of an exposure draft Bill and would be provided to the public ahead of a referendum.
5. The RIA reflects the Ministry of Justice’s best advice on the impact of legalisation at the time, following Government direction that a referendum would be held on legalising cannabis. The RIA does not reflect all settings within the draft Cannabis Legalisation and Control Bill made available to the public to inform the referendum, as further work and consultation has since been undertaken to develop the draft Bill.
6. Should an incoming Government decide to introduce legislation to legalise cannabis, a RIA will be produced to inform the decisions that Cabinet would have to make to implement the change sought.

# Coversheet: Cannabis regulatory model

|                     |   |
|---------------------|---|
| Advising agencies   | <i>Ministry of Justice</i>  |
| Decision sought     | <i>A binding referendum on legalising the personal use of cannabis will be held at the 2020 General Election. This regulatory impact assessment sets out the overarching settings for the proposed regulatory model for the personal use of cannabis.</i> |
| Proposing Ministers | <i>Minister of Justice</i>  |

*Cabinet has agreed to consider the proposed regulatory model for legalising personal use of cannabis over a number of months. This will enable the Ministry of Justice to design the regulatory model within the limited time available, beginning with key regulatory decisions followed by more granular decisions. This regulatory impact assessment (RIA) accompanies the first Cabinet paper, which proposes overarching settings for the regulation of personal use of cannabis. Supplementary RIA will be developed alongside additional policy proposals and will be appended to this RIA.*

## Summary: Problem and Proposed Approach

### Problem Definition

**What problem or opportunity does this proposal seek to address? Why is Government intervention required?**

Drug law is inherently complex and controversial due to the significant implications it has on society. The Government's primary objective for addressing alcohol and drug use, including cannabis use, is to improve wellbeing by reducing harm. One way to minimise cannabis-related harm is to take a health-focused approach by legalising and strictly regulating cannabis. This would involve regulating and controlling the cannabis market, with a focus on prevention and health services, rather than prohibiting and punishing cannabis use.

The Labour-Green Confidence and Supply Agreement commits to holding a referendum on legalising the personal use of cannabis. Cabinet has agreed to hold a binding referendum on cannabis legalisation at the 2020 General Election. This regulatory impact assessment (RIA) does not take a position on whether personal use of cannabis should be legalised but aims to help the public make this decision for themselves by assessing the proposed regulatory framework.

The referendum will only consider the personal use of cannabis by adults. Medicinal cannabis is a separate issue that deals with the needs and wellbeing of patients. Accordingly, policy around medicinal cannabis will not be dealt with in this RIA.

### **Status quo**

Cannabis is a psychoactive drug. Many people who use cannabis do so occasionally or in a moderate way, for reasons such as recreational enjoyment or pain relief. However, cannabis use comes with various adverse health risks. There is increasing evidence suggesting that cannabis use – especially use beginning at a young age or frequent use

into adulthood – is associated with acute cognitive impairment, motor vehicle accidents, brain development issues, dependency, psychosis, bronchial problems and poorer pregnancy outcomes.<sup>1</sup>

The current approach to cannabis in New Zealand is prohibition, which means that cannabis cannot be consumed lawfully anywhere in New Zealand and that cannabis-related offences attract criminal penalties. There are, however, tightly-controlled exceptions allowing very limited, medically-prescribed use of cannabis-based products for medicinal purposes. Since December 2018, there has been an exception and statutory defence for people in need of palliation to use and possess illicit cannabis (including raw cannabis).

The current approach also reflects New Zealand's international obligations under the Single Convention on Narcotic Drugs 1961, the Convention on Psychotropic Substances 1971, and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (the United Nations Drugs Conventions). As a party to those Conventions, New Zealand is currently bound to prohibit and punish cannabis possession and other cannabis-related conduct, except when carried out for medicinal or scientific purposes.

Prohibition of cannabis provides a clear message that personal use of cannabis is harmful, and cannabis should not be used (unless a person is permitted to use medicinal cannabis products). Prohibition also enables Police to use search and surveillance powers to seize cannabis from suppliers, reducing its availability.

The current prohibition approach, however, has limitations. Prohibition has not been effective at reducing cannabis use. Around 10-12 percent of New Zealanders use cannabis at least once a year. There is evidence to suggest around 80 percent of New Zealanders have tried cannabis by the time they are 21 years old. The potency and quality of the cannabis consumed by these New Zealanders is unknown and accessing cannabis often requires engaging with the illicit market.

Over the last decade Police have moved away from prosecuting people for cannabis use or possession of cannabis for personal use, instead focusing on the illicit market and suppliers. Nonetheless, some people are still convicted for use and possession, particularly Māori, which disproportionately punishes them for their cannabis use. Meanwhile stigma and fear of criminalisation remain and can prevent people seeking help for dependency or other cannabis-related issues. For those who do seek help, health services can be insufficient for people's needs and are not always adequately funded, issues that were highlighted by the report of the Government Inquiry into Mental Health and Addiction.

### ***Legalisation: an alternative solution***

An alternative option to address personal use of cannabis is legalisation. Legalisation would involve making aspects of use, possession and supply of cannabis lawful. Cannabis use, possession and supply would be regulated to mitigate the risks of harm from use.

<sup>1</sup> See discussion in Fischer, B, Russell, C, Sabioni, P, van den Brink, W, Le Foll, B, Hall, W, Rehm, J and Room, R. 2017. Lower-risk cannabis use guidelines: a comprehensive update of evidence and recommendations. *American Public Health Association* 107: 1-14.

Legalisation would be accompanied by greater investment in prevention, public education and health services.

A regulated market could help Government control access to cannabis for adults, restrict access for young people and reduce the size of the illicit market. Regulation could enable Government to establish rules to ensure the cannabis sold in New Zealand is quality-checked, potency is controlled and that cannabis use is discouraged, with clear messages around health impacts.

### ***The public will decide whether to legalise cannabis***

The decision on whether to legalise cannabis will be decided by the public at the 2020 General Election. The role of this RIA is to aid those debating and considering the legislation as to whether the proposed model to regulate personal use of cannabis best meets the objective of improving wellbeing by minimising the harm associated with cannabis. Alongside this objective, the regulatory model should also be consistent with the rule of law, tailored and workable for New Zealand, and fiscally sustainable.

## **Proposed Approach**

### **How will Government intervention work to bring about the desired change? How is this the best option?**

Objectives have been established to guide the development of a regulatory model for personal use of cannabis. The objectives are not used in this RIA to judge the question of whether legalisation is a better approach than current policy settings. That question is for the public to decide through the referendum.

The objectives have been based on the following Government priorities:

- An economy that is growing and working for all of us
- Improving the wellbeing of New Zealanders and their families
- Making New Zealand proud

The primary objective to guide the design of the regulatory model is to improve wellbeing by minimising the harm associated with cannabis, such as health-related harm, harm from responses to offending and harm to young people. The model should also capture the benefits from legalisation, such as opportunities for community development. It should promote equity and improve outcomes for Māori.

Secondary to this objective, the model should also seek to be:

- consistent with the rule of law – the regulatory model should uphold New Zealand's constitution, including the Treaty of Waitangi. It should also be clear and easy to follow
- tailored and workable for New Zealand – the model should recognise and reflect cultural practices and the values of New Zealand society
- fiscally sustainable – the model should seek to fund mechanisms that directly address cannabis-related harms.

### ***The proposed approach***

The Ministry of Justice has considered various models for regulating personal use of cannabis and, should the public vote to legalise personal use of cannabis, how well each

would achieve the objectives. This has included considering regulatory frameworks developed in Canada, Uruguay, and the jurisdictions in the United States that have legalised cannabis. Officials also considered how other harmful substances have been regulated in New Zealand (eg, alcohol and tobacco) and the lessons learned from experience regulating those substances.

The proposed approach is a health-focused regulatory system that would establish a government-controlled, tightly regulated market for the production, supply and use of cannabis. The size of the market would be set at a level that adequately meets existing demand with a view to reduce demand and thus market size over time. This would best meet the objectives, particularly the primary objective of improving wellbeing. It would keep the amount of cannabis sold and used as low as possible (recognising that there will always be some demand for cannabis) and seek to deter new users who would not use cannabis if it remained prohibited.

A small, tightly regulated market would help Government to steer the market toward minimising harm, while providing safe and legal access to cannabis. Licences would be required to commercially grow, process, distribute and sell cannabis. These could be limited to keep the market small. Government would regulate all aspects of the supply chain to reduce harm and ensure there would be incentives for businesses to cooperate and adhere to the Government's policy of prioritising wellbeing (ie, over profitability). There may also be opportunities for existing cultivators and suppliers in the illicit market to shift their activities into a legal market.

Other overarching policy settings proposed at this stage, which would achieve the objectives, include:

- Establishing a minimum age of 20 years
- Permitting use of cannabis at private premises and specially licensed premises only
- Regulating commercial cultivation of raw cannabis and the production of cannabis concentrates (eg, resin and oil), and the sale of these products in retail stores (not remotely, eg online or mail order)
- Limiting the import of cannabis
- Permitting private cultivation of cannabis by adults
- Allowing adults to make cannabis-infused products (eg, brownies) at home
- Allowing some social sharing of cannabis among adults.

The regulatory framework would sit alongside greater investment in prevention, education and health services. This would seek to ensure the public is well-informed and the risks from cannabis use are well understood, including occupational safety risks and drug-impaired driving risks.

### ***Assessing costs, benefits and impacts***

A cost benefit analysis (CBA), or similar market analysis, of the proposed regulatory model will be completed once the model has been more fully developed. This will enable the Ministry of Justice to test and better understand the costs, benefits and market outcomes of this particular model. The market analysis will be made available to the public to inform decision-making ahead of the referendum.

## Section B: Summary Impacts: Benefits and costs

**Who are the main expected beneficiaries and what is the nature of the expected benefit?**

### *Non-monetised benefits of the proposed regulatory model*

#### People who use cannabis

Illicit cannabis is used by a diverse range of New Zealanders for reasons such as relaxation, recreation and pain relief. While we do not know the exact number of people who use cannabis, studies indicate almost 200,000 people use cannabis each week in New Zealand. Many are between the age of 15 and 24 but cannabis is used across other age groups as well.

New Zealanders who use cannabis would benefit from a model of legalisation that permits retail sales. Legal retail of cannabis would provide a safe and legal way to access cannabis products. Regulation around product quality and safety would help consumers to learn the quality and potency of products, minimising risks of harm from use. As consumers, they would be protected under consumer law. The Government's ability to strictly regulate the supply chain would enable Government to introduce restrictions, and quality and safety checks that reduce harm for users.

The proposed regulatory approach would provide a range of products on the legal market that mirror those readily available on the illicit market in New Zealand. This would minimise the need for people to interact with the illicit market or to create products at home that require dangerous methods of extraction. It would also provide a range of products that do not require smoking and would avoid the sale of new products (ie, those not readily available in New Zealand) that are overly appealing to new users or young people.

Permitting private cultivation would offer an alternative means to access cannabis for those who do not live near a store, do not want to be seen in a store or prefer a lower-cost option.

#### New Zealand society

Limiting where cannabis can be used (to homes and licensed premises) would align with a public health message that cannabis is harmful. It would minimise exposure of third parties, including children, to cannabis (and its characteristic scent, which can be displeasing to some) while providing a place for all people to use cannabis, including those who do not have a home or do not want to use at home. Prohibiting use in public would help shape the norms around cannabis use that would develop following legalisation.

#### Young people

A minimum age of 20 to use cannabis would help restrict access to cannabis by young people (especially those in school), who are at greater risk of harm from cannabis use. The Government's ability to strictly regulate cannabis would provide a means to establish and implement policy to deter young people from using or trying cannabis. These mechanisms will be developed in subsequent policy proposals.

## Māori

Māori are the community that has suffered the most from cannabis-related criminalisation, incarceration and addiction. The proposed model would seek to ensure Māori benefit from the opportunities offered by a legal market while seeking to reduce harm for Māori. Strict government control of cannabis regulation and collaboration with Māori on policy approaches would provide a means to ensure this happens. The Ministry of Justice has begun engaging with Māori and iwi on the design of the regulatory model and aims to collaborate to develop solutions for issues relating to cannabis.

## Business

Under the proposed approach, there would be business opportunities across the country for licensed retail stores and commercial cultivation. Cultivation would provide opportunities in regional New Zealand, especially Northland and the Bay of Plenty, which have prime conditions for growing cannabis. The Ministry of Justice recognises that the objective to reduce harm by reducing demand for cannabis would not be beneficial for business. However, there will likely always be some level of demand.

### ***Monetised benefits of the proposed regulatory model***

The Ministry of Justice will develop a cost benefit analysis, or similar market analysis, for the regulatory model once the model is more fully developed, which should provide detail on monetised benefits.

## **Where do the costs fall?**

Should the public vote to legalise cannabis, implementing the proposed regulatory model would have non-monetised and monetised costs for Government and society. These costs will be better understood once the model is more fully developed, including compliance costs for businesses and costs of the system for Government.

There would be compliance costs for people who use, grow or sell cannabis as they would be required to comply with the tight regulation, such as rules around private cultivation or social sharing (which are yet to be determined). This would likely be costlier than under a less regulated model.

Implementation and administration of the regulatory system, including costs of greater investment in prevention, public education and health services, would be a monetised cost to Government. Licence fees and tax revenue could help offset some of that cost.

Businesses would face establishment and ongoing compliance costs, potentially more so than a more commercial, less regulated model. For people who currently grow small amounts of cannabis to sell in order to make ends meet (which anecdotal evidence suggests is significant in some communities), costs of operating in a legal market may be too high to enter the legal market.

**What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?**

There would almost certainly be unintended and unanticipated consequences of legalising cannabis for personal use, regardless of the model chosen. Cannabis legalisation is a relatively untested approach that breaks away from global norms. Legalisation has only been implemented in two countries (Uruguay and Canada) and some US states, and only since 2012. There is insufficient data to understand the medium and long-term impacts of the various approaches to legalise and regulate cannabis for personal use. Officials are learning from experiences abroad.

To mitigate the risks from legalisation, the proposed model would adopt a 'self-stewarding' approach, where the settings would drive the system to evolve organically in line with the overarching purpose of the system and its objectives. This approach would maximise the use of monitoring, evaluation and broader research on cannabis in New Zealand. It would also have clear accountabilities within legislative instruments to provide certainty for how the system should operate.

The policy approach outlined in this RIA would also help mitigate this risk as more restrictive policies are preferred and designed in a flexible way so that, through monitoring and evaluation, the model could evolve based on evidence. Ongoing data collection, particularly on key indicators that test whether the objectives are being met, would be established to ensure effective monitoring. This would include establishing baseline data to monitor the impacts of the regulatory framework.

Risks from the proposed model include:

***Significant increase in use of cannabis (an increase in use could result in additional health and social costs)***

- The Ministry anticipates that legalisation could result an initial spike in cannabis use as people experiment with legal cannabis.
- Experimentation with cannabis by individuals following legalisation does not mean those individuals would become regular users.<sup>2</sup> Evidence abroad suggests legalisation is not associated with increases in problematic consumption or more impulsive behaviour.<sup>3</sup>
- However, experience overseas does suggest that legalisation can increase harm with increased hospitalisations, visits to emergency departments and calls to poison centres.<sup>4</sup> The Ministry is trying to learn from experiences abroad and mitigate that risk through regulation (for example by strictly regulating and labelling products and restricting availability of the most dangerous products).
- Prevalence of cannabis use can also increase as a result of decline in cannabis retail price. Legalisation has resulted in substantial declines in prices of cannabis in

<sup>2</sup> Hasin, D S, Kerridge, B T, Saha, T D, Huang, B, Pickering, R, Smith, S M, Jung, J, Zhang, H and Grant, B F. 2016. Prevalence and correlates of DSM-5 cannabis use disorder, 2012–2013: Findings from the national epidemiologic survey on alcohol and related conditions – III. *The American Journal of Psychiatry*, 173(6), 588–599.

<sup>3</sup> Destree, L, Amiet, D, Carter, A, Lee, R, Lorenzetti, V, Segrave, R, Youssef, G, Solowij, N and Yucel, M. 2018. Exploring the association of legalisation status of cannabis with problematic cannabis use and impulsivity in the USA. *Drugs in Context* 7. [ncbi.nlm.nih.gov/pmc/articles/PMC6152614/](https://pubmed.ncbi.nlm.nih.gov/pmc/articles/PMC6152614/) (Accessed 19 February 2019.)

<sup>4</sup> Wang, G S, Hall, K, Vigil, D, Banerji, S, Monte, A and VanDyke, M. 2017. Marijuana and acute health care contacts in Colorado. *Preventive Medicine* 104: 24-30.



US states that have legalised personal use of cannabis. For example, despite taxation, prices have fallen 25% each year in Washington State.<sup>5</sup>

- The relationship between cannabis legalisation and medium-to-long term prevalence of cannabis use remains unclear. In the US states that have legalised cannabis, rates of cannabis use are much higher than in states where cannabis is not legal, but higher rates of use generally existed prior to legalisation.<sup>6</sup>
- These risks could be mitigated through enhanced public education to ensure people are well informed of the risks from cannabis use. Advertising of products could be prohibited and products that are particularly appealing for new users could be restricted.

#### **Normalisation of cannabis use**

- The risk that the proposed regulatory model would normalise cannabis use is low given cannabis use would be prohibited in public. As such, cannabis use would not be visible; using in public would be an offence, avoiding the kind of pro-consumption environment that could otherwise normalise use.
- This risk could be further minimised through restrictions on advertising, mechanisms to deter noncompliance around cannabis use, and extensive public education and prevention efforts seeking to prevent normalisation of use.

#### **Risk that prevalence of cannabis use among young people increases**

- Studies in the US on the impact of cannabis legalisation on use by young people are mixed. Some have found that cannabis legalisation has not led to a rise in use by young people.<sup>7</sup> One study found increased use in Washington State and no change in Colorado.<sup>8</sup> Data from various sources indicate that legalisation in Colorado has had no substantive impact on prevalence among youth.<sup>9</sup> While prevalence among youth in US states that have legalised cannabis is higher than states that have not, research indicates this is due to longer-term patterns established well before legalisation.<sup>10</sup>
- Nonetheless, this risk of increased use by youth could be minimised by restricting access to young people, making products less attractive and increasing public education, including education targeted at youth.

#### **The development of a strong commercial industry**

- There is a medium risk that industry would be driven by profit and sales over harm

<sup>5</sup> Caulkins, J P. 2017. Recognizing and regulating cannabis as a temptation good. *International Journal of Drug Policy* 42:50–6.

<sup>6</sup> Wilkinson, S T, Yarnell, S, Radhakrishnan, R, Ball, S A and D'Souza, D C. 2016. Marijuana Legalization: Impact on Physicians and Public Health. *Annual Review of Medicine* 67: 453-466.

<sup>7</sup> Wadsworth, E and Hammond, D. 2018. Differences in patterns of cannabis use among youth. *Drug and Alcohol Review* 37: 903-911; Dilley, J, Firth, C, Everson, E, and Maher, J. 2016. *Marijuana report: marijuana use, attitudes and health effects in Oregon*. [oregon.gov/oha/ph/PreventionWellness/marijuana/Documents/oha-8509-marijuana-report.pdf](http://oregon.gov/oha/ph/PreventionWellness/marijuana/Documents/oha-8509-marijuana-report.pdf) (Accessed 30 January 2019.); Harpin, S B, Brooks-Russell, A, Ma, M, James, K A, Levinson, A H. 2018. Adolescent marijuana use and perceived ease of access before and after recreational marijuana implementation in Colorado. *Substance Use and Misuse* 53: 451-456.

<sup>8</sup> Cerda, M, Wall, M, Feng, T, Keyes, K M, Sarvet, A, Schulenberg, J, O'Malley, P M, Pacula, R L, Galea, S and Hasin, D S. 2017. Association of state recreational marijuana laws with adolescent marijuana use. *JAMA Pediatrics* 171: 142-149.

<sup>9</sup> Colorado Department of Public Health and Environment. 2016. *Monitoring Health Concerns Related to Marijuana in Colorado*. [colorado.gov/cdphe/marijuana-health-report](http://colorado.gov/cdphe/marijuana-health-report) (Accessed 30 January 2019.)

<sup>10</sup> Wadsworth, E and Hammond, D. 2018. Differences in patterns of cannabis use among youth. *Drug and Alcohol Review* 37: 903-911; Dilley, J, Firth, C, Everson, E, and Maher, J. 2016. *Marijuana report: marijuana use, attitudes and health effects in Oregon*. [oregon.gov/oha/ph/PreventionWellness/marijuana/Documents/oha-8509-marijuana-report.pdf](http://oregon.gov/oha/ph/PreventionWellness/marijuana/Documents/oha-8509-marijuana-report.pdf) (Accessed 30 January 2019.)

reduction, which could undermine wellbeing objectives.

- The risk that this results in a strong commercial industry could be minimised through tight regulation, such as restricting promotion, inducements and advertising. Regulation could also limit the size of the market and the control of the market that individual companies could have.
- However, there is a tension that needs to be balanced to ensure the needs of business are adequately met so that businesses seek to participate in the legal market (ie, if businesses do not enter the market, there would be no legal supply of cannabis other than private cultivation, which would undermine legalisation and boost opportunities for the illicit market).

**Issues with implementation (detailed in section 6.2)**

- There is a high risk of issues arising with implementation. This is because legalisation of cannabis is a relatively untested approach and because the model proposed for New Zealand would be unique.
- Examples of potential issues include supply shortages and businesses not entering the market, both of which could fuel demand for the illicit market. Heavy regulation could increase the price of cannabis well above that for illicit cannabis.
- It is also possible that local communities use the Resource Management Act 1991 provisions to stop cannabis production for reasons other than environmental effects.
- Implementation risks could be minimised through early and ongoing planning; providing sufficient transition time; and consulting with experts and businesses.

Across all these risks, robust monitoring of cannabis use in New Zealand and impacts of the regulatory framework would enable Government to monitor the impact of the regulatory framework and respond effectively should issues arise.

ss 6(a) and 9(2)(h)

[REDACTED]

**Identify any significant incompatibility with the Government's 'Expectations for the design of regulatory systems'.**

The regulatory model is generally compliant with the Government's Expectations for the design of regulatory systems.

However, there are some potential incompatibilities with the Expectations:

- Legalisation and regulation of cannabis would be a novel approach with uncertainty around outcomes, regardless of the model. As the Ministry of Justice develops

policy, it will keep in mind the need for the regulatory model to be flexible, with robust monitoring of outcomes, to enable the Government to respond to any issues.

- ss 6(a) and 9(2)(h)  
[REDACTED]
- While there are design, consultation, timing and scope constraints, these have been identified and will be addressed as far as possible in the following tranches of policy proposals and accompanying RIAs.

## Section C: Evidence certainty and quality assurance

### Agency rating of evidence certainty?

Cannabis is currently prohibited and there is a shortage of reliable information on its use in New Zealand. The information that does exist is limited to surveys (the results of which are not always reliable as people are asked to self-report on their illegal activity), and data around offences and seizures. Few other official records exist. Anecdotal evidence on the nature of the problem is, however, well documented.

There is a weak evidence base on the impacts of different forms of cannabis legalisation and regulatory models in other jurisdictions, particularly in the medium-to-long term. Only Uruguay, Canada and some jurisdictions in the United States have legalised cannabis, and only within the last decade. Some assumptions have been made about how options would work based on the frameworks implemented in those jurisdictions and regulation of other harmful substances in New Zealand. To address this uncertainty, mechanisms for monitoring and review will be developed in subsequent policy development.

*To be completed by quality assurers:*

### Quality Assurance Reviewing Agency:

Treasury and Ministry of Health

### Quality Assurance Assessment:

*A Quality Assurance Panel with representatives from the Ministry of Health and the Treasury Regulatory Quality Team has reviewed the Regulatory Impact Assessment (RIA) "cannabis regulatory model" produced by the Ministry of Justice and dated March 2019. The panel considers that it **partially meets** the Quality Assurance criteria. Further analysis by the Ministry of Justice in subsequent RIA might see this assessment change.*

#### Reviewer Comments and Recommendations:

*The RIA clearly describes the types of options that can make up a regulatory model, contains a lot of information about current issues, and does a good job identifying the types of impacts that would be expected from different regulatory design.*

*Some features of the regulatory model are incomplete. For example, it is unclear how the licencing regime will operate and the quantity of supply will be regulated, and how effective this will be at achieving reductions in cannabis use while avoiding consequences, such as perpetuating the illicit market.*

*Impacts of different options are generally unquantified. This makes it hard to be confident that the RIA recommends the best options. For instance, prohibiting the commercial production of edibles would bring benefits of reduced risk of accidental consumption (including by children), but costs from greater consumption by smoking, increased risk of people mis-dosing homemade edibles and reduced choice for people with disabilities. Whether prohibiting sales is the best option depends on the relative size of these benefits and costs, and what weight the Government places on them.*

*Many of these impacts would be hard to quantify even with more analysis. Uncertainty around the impacts of the regulatory regime means that there will be benefit in ongoing review of regulatory settings once the regime is established. This may, however, conflict with public expectations that their vote on a particular regulatory model be respected. The subsequent RIA should detail how monitoring and review will be handled, and whether this should be signalled at the referendum.*

# Impact Statement: Cannabis regulatory model

## Section 1: General information

### Purpose

*The Ministry of Justice is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing:*

- key (or in-principle) policy decisions to be taken by the Cabinet Social Wellbeing Committee
- final decisions taken by Cabinet on the regulatory model to be proposed in the 2020 referendum on legalising the personal use of cannabis
- the general public ahead of the 2020 referendum on legalising the personal use of cannabis.

### Key Limitations or Constraints on Analysis

#### Limited scope for options

*The model proposed in the referendum must legalise personal use of cannabis*

- The Labour-Green Confidence and Supply Agreement commits to holding a referendum on legalising the personal use of cannabis at, or by, the 2020 General Election. The language used in the agreement is 'legalising', which rules out decriminalisation of cannabis or non-regulatory changes.

#### Limited time

*There is limited time available to scope and develop the analysis, including to consult with all affected parties*

- Cabinet has agreed to hold a binding referendum concurrently with the 2020 General Election. This may require the development of a regulatory model for the public to vote on that covers use, cultivation, sale and supply of cannabis in New Zealand.
- A binding referendum in 2020 may involve Parliament introducing and passing legislation before the referendum. The overarching policy settings need to be agreed now so that officials can begin to develop regulatory levers to give effect to the policy settings.
- These short time frames have introduced an additional constraint, limiting the time available to consult and test the preferred overarching policy settings. The Ministry of Justice has engaged with some drug policy experts on potential approaches, but the proposed overarching settings have only been consulted with government agencies. The Ministry of Justice has, however, begun to engage with Māori and iwi at a high level.

- As the model is further developed, the Ministry will seek to consult stakeholders on the proposals developed.
- Cabinet has agreed to consider the proposed regulatory model for legalising personal use of cannabis over a number of months. This will enable the Ministry of Justice to design the regulatory model within the limited timeframes available, beginning with key regulatory decisions followed by more granular decisions. This regulatory impact assessment (RIA) accompanies the first Cabinet paper, which proposes overarching settings for the regulation of personal use of cannabis. Supplementary RIA will be developed alongside additional policy proposals and will be appended to this RIA.

#### Limited evidence base

*There is a limited data about the nature and extent of cannabis use in New Zealand and impacts of legalisation abroad*

- Quantitative evidence about cannabis use in New Zealand is limited to Police data, Ministry of Health surveys and information from the National Drug Intelligence Bureau (NDIB).
- There is qualitative information on the harms from cannabis, including anecdotal information from government agencies, NDIB, advocacy groups and affected parties.
- There are some important gaps in the data, including information on where people currently consume cannabis, how many people grow cannabis for their own personal use, and how many people have sought help for their cannabis use.
- There has been insufficient time to gather further information ahead of this RIA.
- Legalisation of personal use of cannabis is a new policy approach. There is anecdotal evidence (and some studies) of impacts of the various models implemented in jurisdictions such as Colorado, California and Uruguay, but there is insufficient data to produce reliable quantitative evidence, especially evidence of medium-to-long term impacts.

In light of these constraints, the Ministry of Justice cautions against using the analysis in this impact summary, alone, to support or fully inform decisions. However, the Ministry of Justice will provide further analysis to be appended to this RIA, including a cost benefit analysis, or similar market analysis.

#### **Responsible Manager:**



Brendan Gage  
General Manager, Criminal Justice  
Ministry of Justice  
13 March 2019

## Section 2: Problem definition and objectives

### 2.1 What is the context within which action is proposed?

#### Cannabis

Cannabis is a psychoactive drug. It is commonly called pot, marijuana, weed and dope, among other terms. Cannabis comes from the *cannabis sativa* plant and is used for both recreational and medicinal purposes. Cannabis consumption can produce euphoria and can make users feel relaxed, giggly and hungry, but it can also cause blurred vision and feelings of sluggishness, paranoia and anxiety.

Cannabis can be used in a variety of forms, including as fresh or dried plant material, resin, oil or as an ingredient in other products (such as food, drink, lotions etc). Smoking cannabis can have an immediate effect, but it can take an hour or more to feel the effects of cannabis when it is ingested.

Cannabis consumed for recreational purposes is typically smoked in a 'joint' or in a water pipe, with tobacco sometimes added to assist with burning. A typical joint contains between 0.25g and 0.75g cannabis.<sup>11</sup> International research suggests that occasional users can achieve a 'high' when sharing a joint with other people, while regular users use around three to five joints of cannabis a day.<sup>12</sup> New Zealand data similarly suggests a dependant user consumes 3.4 joints per day (based on a joint consisting of 0.5g cannabis).<sup>13</sup>

The primary psychoactive agent in cannabis is delta-9 tetrahydrocannabinol (THC). High dosages of THC can have more harmful effects on health, including increasing the risk of developing some mental illnesses.<sup>14</sup> Research from King's College London shows that higher levels of cannabis potency may be linked to rising rates of treatment for cannabis-related problems.<sup>15</sup>

The potency of cannabis varies according to the proportion of THC relative to cannabidiol (CBD), a non-psychoactive substance in cannabis that moderates the effects of THC. CBD has potential therapeutic value and a limited range of CBD products are available in New Zealand as prescript on medicine. For the purpose of this RIA, CBD products are not considered to be cannabis. There are also over 100 other naturally occurring cannabinoids (substances found only in the cannabis plant) in cannabis, but THC and CBD are the most extensively studied.

The THC content of cannabis is highest in the flowering tops of the female cannabis plant.

<sup>11</sup> Room, R, Fischer, B, Hall, W, Lenton, S and Reuter, P. 2010. *Cannabis policy: Moving beyond stalemate*. Oxford: Oxford University Press.

<sup>12</sup> Hall, W D, Degenhardt, L and Lynskey, M T. 2001. *The health and psychological effects of cannabis use*. Canberra: Commonwealth Department of Health and Aged Care.

<sup>13</sup> Ministry of Health. 2016. *The New Zealand Drug Harm Index 2016*. [health.govt.nz/publication/research-report-new-zealand-drug-harm-index-2016](http://health.govt.nz/publication/research-report-new-zealand-drug-harm-index-2016) (Accessed 19 November 2018.)

<sup>14</sup> World Health Organization. 2018. *The health and social effects of nonmedical cannabis use*. [who.int/substance\\_abuse/publications/cannabis\\_report/en/](http://who.int/substance_abuse/publications/cannabis_report/en/) (Accessed 21 December 2018.)

<sup>15</sup> Freeman, T P, van der Pol, P, Kuijpers, W, Wisselink, J, Das, R K, Rigter, S, van Laar, M, Griffiths, P, Swift, W, Niesink, R and Lynskey, M T. 2018. Changes in cannabis potency and first-time admissions to drug treatment: a 16-year study in the Netherlands. *Psychological Medicine* 48: 2346-2352.

Dried cannabis consists of the dried flowering tops and leaves of the plant with a THC content generally ranging from 0.5% to 5%.<sup>16</sup> Some varieties of cannabis, and cannabis grown using highly sophisticated methods, can have higher THC levels – the highest ever recorded in New Zealand was 30%.<sup>17</sup> Hash, the dried cannabis resin and compressed flowers, generally has a THC range of 2-20%.<sup>18</sup> Hash oil, an oil-based extract of hash, generally contains between 15-50% THC.<sup>19</sup> Some cannabis concentrates and extracts sold overseas can have THC content greater than 80%.

The potency of cannabis in New Zealand has remained low for the last 10 years, however high potency cannabis is available due to experimentation with plant strains and cultivation methods. Research conducted by New Zealand Police and the Institute of Environmental Science and Research (ESR) suggests that average THC levels of cannabis in New Zealand have increased over time.<sup>20</sup> In 2010, Police and ESR tested cannabis produced indoors using the 'Screen of Green' method (the method of indoor growing used by illegal indoor operations). The THC potency across the plants ranged from 4.3% to 30%. In comparison, cannabis confiscated by Police between 1976 and 1996 contained THC within the range of 1.3% to 9.7%.<sup>21</sup> In addition, the levels of CBD in the 2010 sample were lower than the earlier sample. However, it must be noted that cannabis grown indoors using the Screen of Green method is known to yield cannabis with greater THC levels than cannabis grown outdoors.

## Cannabis in New Zealand

### *Cannabis use*

Cannabis is the most commonly used illegal drug in New Zealand. The rate of cannabis use per capita has been one of the highest in the world despite the illicit status of cannabis, and supply disruption and control strategies. The Ministry of Health's 2016/17 Health Survey indicates that around 445,000 New Zealanders aged 15 years and over (11.6% of the total population) use cannabis at least once a year, with a third of those people using at least weekly, although the New Zealand Drug Trends Survey 2018 suggests that number of daily or near daily users is much higher (47% of cannabis users).<sup>22</sup> Nearly a third of New Zealanders who use cannabis are Māori.<sup>23</sup>

Cannabis use and experimentation is particularly prevalent among young people in New Zealand. A 2011 report from the Office of the Prime Minister's Chief Science Advisor

<sup>16</sup> Room, R, Fischer, B, Hall, W, Lenton, S and Reuter, P. 2010. *Cannabis policy: Moving beyond stalemate*. Oxford: Oxford University Press.

<sup>17</sup> Knight, G, Hansen, S, Connor, M and Poulsen, H. 2010. The results of an experimental indoor hydroponic cannabis growing study using the 'Screen of Green' method-yield, tetrahydrocannabinol (THC) and DNA analysis. *Forensic Science International* 202: 36-44.

<sup>18</sup> Room, R, Fischer, B, Hall, W, Lenton, S and Reuter, P. 2010. *Cannabis policy: Moving beyond stalemate*. Oxford: Oxford University Press.

<sup>19</sup> Room, R, Fischer, B, Hall, W, Lenton, S and Reuter, P. 2010. *Cannabis policy: Moving beyond stalemate*. Oxford: Oxford University Press.

<sup>20</sup> Knight, G, Hansen, S, Connor, M and Poulsen, H. 2010. The results of an experimental indoor hydroponic cannabis growing study using the 'Screen of Green' method-yield, tetrahydrocannabinol (THC) and DNA analysis. *Forensic Science International* 202: 36-44.

<sup>21</sup> Poulsen, H A and Sutherland, G J. 2000. The potency of cannabis in New Zealand from 1976 to 1996. *Science and Justice* 40:171-176.

<sup>22</sup> Ministry of Health. 2015. *Cannabis use 2012/13: New Zealand Health Survey*. Wellington: Ministry of Health; Wilkins, C, Prasad, J, Rychert, M, Romen, J S, and Graydon-Guy, T. 2018. *Which regions reported higher levels of methamphetamine and cannabis dependency and need for help with substance abuse problems*. shoreandwhariki.ac.nz/news/2018/3/27/27-march-2018?rq=drug%20trends%20survey (Accessed 19 February 2019).

<sup>23</sup> Ministry of Health. 2015. *Cannabis use 2012/13: New Zealand Health Survey*. Wellington: Ministry of Health.



suggested that by age 21 around 80 percent of young New Zealanders have tried cannabis. Cannabis use is highest among youth aged 15-24 years and use generally decreases with age.<sup>24</sup> The median age of first use in 2007/08 was 17 years, with almost 80% of people reporting being 20 years or under when they first tried cannabis.<sup>25</sup> Māori are significantly more likely to have been aged 14 years or younger when they first tried cannabis compared with people of other ethnicities.<sup>26</sup> In 2012, a survey of over 12,500 high school students indicated that 23 percent of students had tried cannabis and 13 percent were using cannabis.<sup>27</sup>

### *Types of cannabis consumed*

Anecdotal evidence and Police data suggest that raw cannabis (fresh or dried plant material) is the most common form of cannabis used in New Zealand. The Drug Harm Index 2016 reports that the average amount of cannabinoids (including cannabis and synthetic cannabis<sup>28</sup>) consumed by a dependent user each year is 620 grams of dried cannabis with casual consumers consuming 40 grams a year.<sup>29</sup>

Cannabis oil, resin and cannabis seeds are also typically encountered by Police. Cannabis concentrates, extracts and cannabis-infused products (eg, edibles or lotions) are also available, although high quality, commercial products (such as the gummy bears and medical topicals available in legal markets abroad) do not appear to be readily produced in New Zealand. These generally require illicit import (there have been occasional intercepts and seizures at the International Mail Centre and through passenger interactions with tourists).

### *Where and how New Zealanders use cannabis*

The New Zealand Alcohol and Drug Survey 2007/08 found that people who had used cannabis in the past year were most likely to have used it in either their home or someone else's home.<sup>30</sup> Outdoor public places and special events were also common locations to consume cannabis. Police anecdotally report that discovering a stationary motor vehicle with people consuming cannabis inside is a relatively common occurrence.

Previous surveys in New Zealand indicate alcohol is the most commonly used substance alongside cannabis.<sup>31</sup> A survey in 2007/08 by the Ministry of Health indicated that three in four people who had used cannabis in the previous year had used alcohol at the same time.

<sup>24</sup> Ministry of Health. 2015. *Cannabis use 2012/13: New Zealand Health Survey*. Wellington: Ministry of Health.

<sup>25</sup> Ministry of Health. 2010. *Drug use in New Zealand: key results of the 2007/08 New Zealand alcohol and drug use survey*. NZ alcohol and drug use survey 2007/08. [health.govt.nz/publication/drug-use-new-zealand-key-results-2007-08-new-zealand-alcohol-and-drug-use-survey](http://health.govt.nz/publication/drug-use-new-zealand-key-results-2007-08-new-zealand-alcohol-and-drug-use-survey) (Accessed 5 December 2018.)

<sup>26</sup> Ministry of Health. 2010. *Drug use in New Zealand: key results of the 2007/08 New Zealand alcohol and drug use survey*. NZ alcohol and drug use survey 2007/08. [health.govt.nz/publication/drug-use-new-zealand-key-results-2007-08-new-zealand-alcohol-and-drug-use-survey](http://health.govt.nz/publication/drug-use-new-zealand-key-results-2007-08-new-zealand-alcohol-and-drug-use-survey) (Accessed 5 December 2018.)

<sup>27</sup> Clark, T C, Fleming, T, Bullen, P, Denny, S, Crengle, S, Dyson, B, Fortune, S, Lucassen, M, Peiris-John, R, Robinson, E, Rossen, F, Sheridan, J, Teevale, T and Utter, J. 2013. *Youth '12 Overview: The health and wellbeing of New Zealand secondary school students in 2012*. Auckland: The University of Auckland.

<sup>28</sup> Synthetic cannabis is not cannabis but a plant material that has had a synthetic cannabinoid sprayed onto it.

<sup>29</sup> Ministry of Health. 2016. *The New Zealand Drug Harm Index 2016*. [health.govt.nz/publication/research-report-new-zealand-drug-harm-index-2016](http://health.govt.nz/publication/research-report-new-zealand-drug-harm-index-2016) (Accessed 19 November 2018.)

<sup>30</sup> Ministry of Health. 2010. *Drug use in New Zealand: key results of the 2007/08 New Zealand alcohol and drug use survey*. NZ alcohol and drug use survey 2007/08. [health.govt.nz/publication/drug-use-new-zealand-key-results-2007-08-new-zealand-alcohol-and-drug-use-survey](http://health.govt.nz/publication/drug-use-new-zealand-key-results-2007-08-new-zealand-alcohol-and-drug-use-survey) (Accessed 5 December 2018.)

<sup>31</sup> Ministry of Health. 2010. *Drug use in New Zealand: key results of the 2007/08 New Zealand alcohol and drug use survey*. NZ alcohol and drug use survey 2007/08. [health.govt.nz/publication/drug-use-new-zealand-key-results-2007-08-new-zealand-alcohol-and-drug-use-survey](http://health.govt.nz/publication/drug-use-new-zealand-key-results-2007-08-new-zealand-alcohol-and-drug-use-survey) (Accessed 5 December 2018.)

Tobacco was the second most common substance used alongside cannabis (60% of people who had used cannabis had also used tobacco).

## Cannabis-related harms

### Health harms

There is a body of evidence about the health effects of cannabis use but studies can be inconclusive. The effects range from acute to chronic, can vary in intensity and are confounded by a number of variables. While less is known about the health effects of using cannabis than the use of tobacco or alcohol, cannabis can cause significant harm, particularly for people who frequently use cannabis for long periods of time.

Adverse mental health outcomes, for example, are correlated with long-term and frequent cannabis use.<sup>32</sup> Studies in New Zealand show a relationship between cannabis use during youth and an increased risk of psychotic symptoms.<sup>33</sup> According to the World Health Organisation, regular use of cannabis with a higher THC and lower CBD concentration may increase the risk of adverse psychological effects, such as developing psychosis and schizophrenia. It must be noted, however, that the evidence is mixed and association could be explained by a common cause (ie, factors that increase the risk that a person will use cannabis also increase the risk that they will develop schizophrenia). There is also evidence that people with cannabis-use disorders have higher rates of depressive disorders. However, a causal link has not been established.

The association between cannabis use and mental health outcomes is reflected in hospital admissions data and surveys in New Zealand. Between 2001 and 2005 between 213 and 256 people were admitted to hospital for cannabis use each year (not including short-stay visits to emergency departments) and half of those admissions were for a cannabis-related psychotic disorder. A Ministry of Health survey in 2012/13 found that eight percent of cannabis users reported harmful effects of cannabis use on their mental health in the previous 12 months.<sup>34</sup>

Consuming cannabis by smoking is associated with an increased risk of developing breathing issues, lung damage, and some cancers; and the risk is likely higher when cannabis is consumed with tobacco.<sup>35</sup> In New Zealand, however, mixing cannabis with tobacco is much less common than the global average (23% and 67% of users use tobacco with their cannabis, respectively).<sup>36</sup> Cannabis smoke has many of the same carcinogens as

<sup>32</sup> World Health Organization. 2018. *The health and social effects of nonmedical cannabis use*. [who.int/substance\\_abuse/publications/cannabis\\_report/en/](http://who.int/substance_abuse/publications/cannabis_report/en/) (Accessed 21 December 2018.)

<sup>33</sup> Arseneault, L, Cannon, M, Poulton, R, Murray, R, Caspi A and Moffitt T E. 2002. Cannabis use in adolescence and risk for adult psychosis: longitudinal prospective study. *British Medical Journal* 325: 1212-13; Fergusson, D M, Horwood, L J and Swain-Campbell, N R. 2003. Cannabis dependence and psychotic symptoms in young people. *Psychological Medicine* 33: 15-21.

<sup>34</sup> Ministry of Health. 2015. *Cannabis use 2012/13: New Zealand Health Survey*. Wellington: Ministry of Health.

<sup>35</sup> Moir, D, Rickert, W S, Levasseur, G, Larose, Y, Maertens, R, White, P. and Desjardins, S. 2008. A comparison of mainstream and sidestream marijuana and tobacco cigarette smoke produced under two smoking conditions. *Chemical Research in Toxicology* 21:494-502; World Health Organization. 2018. *The health and social effects of nonmedical cannabis use*. [who.int/substance\\_abuse/publications/cannabis\\_report/en/](http://who.int/substance_abuse/publications/cannabis_report/en/) (Accessed 21 December 2018.)

<sup>36</sup> Global Drug Survey. 2018. *The Global Drug Survey 2018 findings*. [globaldrugsurvey.com/](http://globaldrugsurvey.com/) (Accessed 19 February 2019.)

tobacco smoke and cannabis smokers typically inhale more deeply than tobacco smokers, retaining more tar.<sup>37</sup> In addition, second-hand cannabis smoke can have detrimental (including psychoactive) impacts on third parties.

There is some evidence that cannabis use can trigger coronary events.<sup>38</sup> There are also additional health risks from consuming contaminated cannabis products (eg, from pesticides and mould) or products with unknown THC levels (eg, there is a risk of overdose with edibles due to the delay in effects, which can lead people to overconsume). While these risks are a factor of the plant itself, the lack of regulatory settings also contributes to the risk of harm.

There is a high risk of dependence among those who regularly use cannabis. Over time, people who use cannabis develop a tolerance to THC and often report withdrawal symptoms that are severe enough to impair daily functioning.<sup>39</sup> The risk of developing dependence is estimated to be around 1 in 10 among people who ever use cannabis and 1 in 3 among daily users.<sup>40</sup> Withdrawal from regular cannabis use can last well over a week and symptoms include anxiety, insomnia, irritability, craving, aggression, and depression.<sup>41</sup>

There is some research on the impacts of cannabis use on women. At least one study indicates that women develop addiction to cannabis much faster than men, although that conclusion is based on animal testing.<sup>42</sup> Another study suggests anxiety and depression associated with cannabis use appears more evident in women than men.<sup>43</sup> Studies also suggest that cannabis use during pregnancy may cause harm. Infants exposed to cannabis in utero show developmental delays while older children have some deficits in higher cognitive processes.<sup>44</sup>

In New Zealand, surveys indicate women are much less likely to use cannabis and less likely to report harm from cannabis use. Of those people surveyed by the New Zealand Cannabis Use Survey only 8% of women reported using cannabis in the past year, compared with 15% of men.<sup>45</sup> Women who use cannabis were less likely than men to report driving under the influence of cannabis, to report harmful effects of cannabis on studies, work or employment opportunities, and to report legal problems as a result of their cannabis use.

### *Social issues and harms*

Cannabis use also contributes to social issues. Family members and friends of people who use cannabis may be harmed by the user's poor decisions and behaviour, as well as

<sup>37</sup> Hashibe M, Straif, K, Tashkin, D P, Morgenstern, H, Greenland, S and Zhang, Z F. 2005. Epidemiologic review of marijuana use and cancer risk. *Alcohol* 35: 265-75; Marselos, M and Karamanakis, P. 1999. Mutagenicity, developmental toxicity and carcinogenicity of cannabis. *Addiction Biology* 4: 5-12.

<sup>38</sup> World Health Organization. 2018. *The health and social effects of nonmedical cannabis use*. [who.int/substance\\_abuse/publications/cannabis\\_report/en/](http://who.int/substance_abuse/publications/cannabis_report/en/) (Accessed 21 December 2018.)

<sup>39</sup> World Health Organization. 2018. *The health and social effects of nonmedical cannabis use*. [who.int/substance\\_abuse/publications/cannabis\\_report/en/](http://who.int/substance_abuse/publications/cannabis_report/en/) (Accessed 21 December 2018.)

<sup>40</sup> World Health Organization. 2018. *The health and social effects of nonmedical cannabis use*. [who.int/substance\\_abuse/publications/cannabis\\_report/en/](http://who.int/substance_abuse/publications/cannabis_report/en/) (Accessed 21 December 2018.)

<sup>41</sup> New Zealand Drug Foundation. 2018. *Cannabis*. [drugfoundation.org.nz/info/drug-index/cannabis/](http://drugfoundation.org.nz/info/drug-index/cannabis/) (Accessed 5 December 2018.); Room, R, Fischer, B, Hall, W, Lenton, S and Reuter, P. 2010. *Cannabis policy: moving beyond stalemate*. Oxford: Oxford University.

<sup>42</sup> Struik, D, Sanna, F and Fattore, L. 2018. The Modulating Role of Sex and Anabolic-Androgenic Steroid Hormones in Cannabinoid Sensitivity. *Frontiers in Behavioural Neuroscience*. [frontiersin.org/articles/10.3389/fnbeh.2018.00249/full](http://frontiersin.org/articles/10.3389/fnbeh.2018.00249/full)

<sup>43</sup> Fattore, L and Fratta, W. 2010. How important are sex differences in cannabinoid action?: Sex differences in cannabinoid action. *British Journal of Pharmacology* 160(3): 544-548.

<sup>44</sup> Hall, W and Degenhard, L. 2009. Adverse health effects of non-medical cannabis use. *Lancet* 374: 1383-1391.

<sup>45</sup> Ministry of Health. 2015. *Cannabis use 2012/13: New Zealand Health Survey*. Wellington: Ministry of Health.

suffering emotional distress. The Global Drug Survey 2018 explored people's experiences trying to quit using cannabis, including New Zealanders, and found effects on personal relationships and finances were a strong motivator for quitting, alongside impacts on physical health, mood and motivation.<sup>46</sup>

Public health impacts include motor vehicle accidents from cannabis-impaired driving, harms associated with being impaired at work, and potential harms from consuming cannabis while pregnant. Analysis by the ESR found that 27% of drivers killed in crashes between January 2014 and May 2018 had consumed cannabis (similar to the number who had consumed alcohol – 29% of drivers killed). However, there is not always conclusive evidence that impairment was a factor in the crash. A 2012/13 survey by the Ministry of Health found that 36 percent of cannabis users who drove in the past year reported driving under the influence of cannabis in the preceding 12 months.<sup>47</sup>

The 2007/08 New Zealand Alcohol and Drug Use Survey reported that around 16.7% of people who had used cannabis in the past year reported working while feeling under the influence of cannabis.<sup>48</sup> Meanwhile six percent of cannabis users reported harmful effects on work, studies or employment opportunities, 4.9% reported difficulty learning, and 1.7% reported absence from work or school in the preceding 12 months due to cannabis use.<sup>49</sup>

#### *Harms for Māori, young people and other groups*

Māori generally suffer more harm from cannabis use and addiction than people of other ethnicities who use cannabis.<sup>50</sup> Other groups most adversely affected by cannabis use include males aged between 15 and 25 years of age (the group most likely to use cannabis), people who are predisposed to mental illness and people living in the most deprived areas of New Zealand.

Consumption of cannabis is particularly harmful for brain development and function in people under 25 years, as the brain continues to develop until the mid-20s. Cannabis use by young people can result in potentially irreversible decline in cognitive performance as well as issues such as anxiety and depression.<sup>51</sup> Cannabis is also associated with educational underachievement and school dropout rates, which can have significant enduring life consequences.<sup>52</sup> A survey in 2012/13 found that younger users are also more likely to experience harm from cannabis use on work, studies or employment opportunities.<sup>53</sup>

<sup>46</sup> Global Drug Survey. 2018. *The Global Drug Survey 2018 findings*. [globaldrugsurvey.com/](http://globaldrugsurvey.com/) (Accessed 19 February 2019.)

<sup>47</sup> Ministry of Health. 2015. *Cannabis use 2012/13: New Zealand Health Survey*. Wellington: Ministry of Health.

<sup>48</sup> Ministry of Health. 2015. *Cannabis use 2012/13: New Zealand Health Survey*. Wellington: Ministry of Health.

<sup>49</sup> Ministry of Health. 2015. *Cannabis use 2012/13: New Zealand Health Survey*. Wellington: Ministry of Health.

<sup>50</sup> Māori who use cannabis are more likely to report harmful effects of cannabis use on work, studies or employment opportunities than users of other ethnicities (Ministry of Health. 2015. *Cannabis use 2012/13: New Zealand Health Survey*. Wellington: Ministry of Health.)

<sup>51</sup> World Health Organization. 2018. *The health and social effects of nonmedical cannabis use*. [who.int/substance\\_abuse/publications/cannabis\\_report/en/](http://who.int/substance_abuse/publications/cannabis_report/en/) (Accessed 21 December 2018.)

<sup>52</sup> Fergusson, D and Boden, J. 2011. Cannabis use in adolescence. In *Improving the Transition: Reducing Social and Psychological Morbidity during Adolescence: A report from the Prime Minister's Chief Science Advisor*. Office of the Prime Minister's Chief Science Advisory Committee. Auckland: Office of the Prime Minister's Science Advisory Committee: 235-256.

<sup>53</sup> Ministry of Health. 2015. *Cannabis use 2012/13: New Zealand Health Survey*. Wellington: Ministry of Health.

### *Cannabis can be less harmful than other drugs but contributes to deaths*

While cannabis is harmful, it can be less harmful than many other drugs. For example, a cannabis overdose, while possible, is not known to be fatal.<sup>54</sup> However, cannabis use is a contributing factor or antecedent cause of some deaths in New Zealand. Coronial data from 2007 to 2018 shows that a total of 102 deaths were concluded to be attributable to cannabis, outlined in the table below. The row on toxicity references two alcohol poisonings and one multidrug overdose where cannabis was also involved. There are many additional cases where cannabis may be present in toxicology, but the pathologist did not consider it to be a contributing factor to the death (current toxicological testing cannot determine whether the person was under the effects of cannabis at the time of death).

| Cause of death     | 2007     | 2008     | 2009     | 2010      | 2011      | 2012     | 2013      | 2014      | 2015     | 2016     | 2017      | 2018     | Grand Total |
|--------------------|----------|----------|----------|-----------|-----------|----------|-----------|-----------|----------|----------|-----------|----------|-------------|
| Drowning           | 1        | 1        | 1        |           | 1         | 2        | 1         | 1         | 1        | 1        | 2         | 1        | 13          |
| Fire               |          |          |          | 1         |           |          |           | 3         |          |          |           |          | 4           |
| Homicide           |          |          |          |           |           |          |           |           |          | 1        |           |          | 1           |
| Medical            |          |          | 1        | 1         | 1         |          | 2         | 1         | 1        | 2        | 3         |          | 12          |
| Motor vehicle      | 5        | 2        | 1        | 9         | 7         | 4        | 6         | 2         | 1        | 3        | 3         |          | 43          |
| Suicide            | 1        | 1        | 4        | 2         | 4         | 1        | 1         | 5         |          | 2        | 5         |          | 26          |
| Toxicity           |          |          |          |           |           |          | 1         |           | 1        |          |           | 1        | 3           |
| <b>Grand Total</b> | <b>7</b> | <b>4</b> | <b>7</b> | <b>13</b> | <b>13</b> | <b>7</b> | <b>11</b> | <b>12</b> | <b>4</b> | <b>9</b> | <b>13</b> | <b>2</b> | <b>102</b>  |

### *New Zealanders are concerned about cannabis use*

The New Zealand Alcohol and Drug Use Survey 2007/08 found that 1.5% of the total population (aged 16-64 years) had received help to reduce levels of cannabis use at some point in their lives.<sup>55</sup> Cannabis is also the third most common primary drug of concern by people contacting the Alcohol Drug Helpline (0800 787 797). The helpline can be called by people who are using the drug themselves, or by people who are concerned about others' drug use.

Anecdotal evidence suggests people are concerned about the quality of cannabis available in New Zealand. This includes poor quality cannabis sold to dependent users outside the main harvest periods, cannabis contaminated with other drugs or pesticides, and people selling fake cannabis products for medicinal use. The lack of regulatory settings contributes to this concern.

### **Current approach to cannabis**

New Zealand's current approach to personal use of cannabis is prohibition (detailed in section 2.2), which means that cannabis cannot be consumed lawfully anywhere in New Zealand and that cannabis-related offences attract criminal penalties. Since December 2018, there has been an exception and statutory defence for people in need of palliation to

<sup>54</sup> This is different to deaths due to intoxication from use, for example crashing a car while impaired from cannabis.

<sup>55</sup> Ministry of Health. 2010. *Drug use in New Zealand: key results of the 2007/08 New Zealand alcohol and drug use survey*. NZ alcohol and drug use survey 2007/08. [health.govt.nz/publication/drug-use-new-zealand-key-results-2007-08-new-zealand-alcohol-and-drug-use-survey](http://health.govt.nz/publication/drug-use-new-zealand-key-results-2007-08-new-zealand-alcohol-and-drug-use-survey) (Accessed 5 December 2018.)

use and possess illicit cannabis.

### **International shift in approach to cannabis**

Prohibition is not the only approach to deter cannabis use and minimise cannabis-related harm. Other countries have experimented with alternative policy approaches to cannabis that take a health focus rather than a criminal justice one. These approaches are broadly categorised as decriminalisation and legalisation.

Decriminalisation means activity involving cannabis remains illegal but, instead of prosecution, alternative penalties such as a fine are given for some offences (although in some jurisdictions there is no penalty at all). There is usually no possibility of receiving a conviction for use or possession of cannabis. In comparison, legalisation makes aspects of cannabis use, possession and supply lawful.

Examples of alternative approaches include:

- The Netherlands, which has tolerated cannabis use and sale for nearly 50 years through its *de facto* decriminalisation policy.
- In 2012, the US states of Colorado and Washington became the first jurisdictions to legalise cannabis for personal use.
- Uruguay became the first country to legalise personal use of cannabis in 2013, followed by Canada in 2018.

### **Referendum on legalising the personal use of cannabis**

The Labour-Green Confidence and Supply Agreement commits to holding a referendum on legalising the personal use of cannabis at, or by, the 2020 General Election. Legalisation of cannabis would be a fundamental change in approach for New Zealand. To ensure the Government has a public mandate for such a change, the question of whether to legalise cannabis will be put to the public and will be binding on Government (Cabinet has agreed to hold a binding referendum concurrently with the 2020 General Election).

This regulatory impact assessment does not take a position on whether personal use of cannabis should be legalised. Instead it aims to help the public make this decision for themselves by assessing the proposed legalisation model to be put to the public in the referendum.

## **2.2 What regulatory system, or systems, are already in place?**

### **Prohibition with a harm reduction objective**

New Zealand's current approach to cannabis is prohibition. The Misuse of Drugs Act 1975 (MoDA) prohibits use, possession, cultivation and supply of (including distributing, giving or selling) cannabis. MoDA categorises cannabis as a Class C controlled drug (cannabis fruit, plant and seed) and Class B controlled drug (cannabis preparations, such as resin and oil). Penalties range from a fine not exceeding \$500 for use of cannabis fruit, plant and seed, to a maximum sentence of 14 years' imprisonment for supply of cannabis preparations.

Despite this, 42 percent of the population report using cannabis at some time in their life.<sup>56</sup> The flouting of cannabis laws by such a large group of people brings laws and wider law enforcement system into disrepute.<sup>57</sup> Buyers and sellers risk victimisation when transacting in a criminal market.<sup>58</sup> There are also no consumer protections around quality or safety of cannabis.

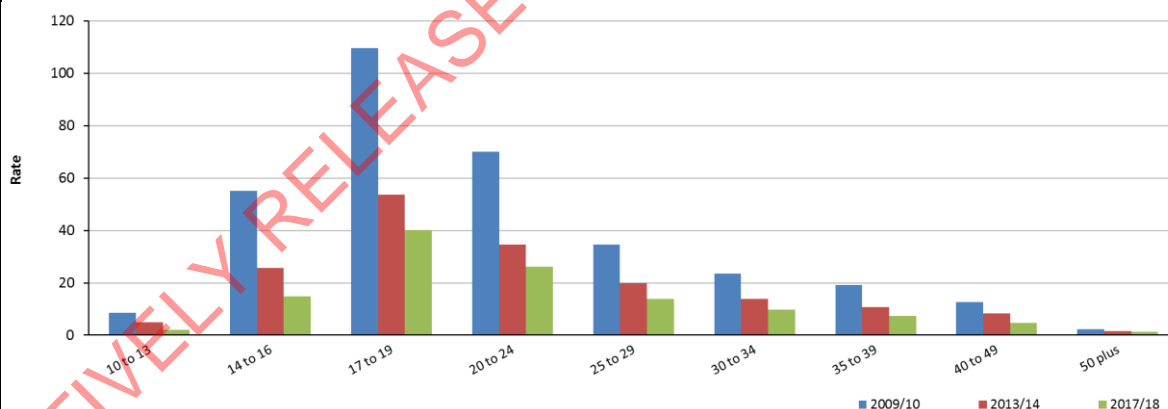
Government agencies take a harm reduction approach to alcohol and drugs, with an overarching goal of minimising alcohol and other drug harm, and promoting and protecting health and wellbeing. This is achieved through:

- problem limitation – reducing existing harm from drug use by providing support for people who use drugs and for those affected by other people’s drug use,
- demand reduction, and
- supply control.

### *Use and possession offences*

A low-level and diversionary response is taken by Police and the Courts to use and possession of cannabis, although punitive responses are used for sale and supply. Operational practice has developed whereby Police confiscate cannabis and use pre-charge warnings; only small numbers of people are prosecuted for use and possession offences. When people are prosecuted, the Police Adult Diversion Scheme is often available, meaning the individual does not receive a conviction.

The graph below indicates the general downward trend in proceedings for cannabis use and possession offences over the last 10 years. It illustrates the number of proceedings per 10,000 population for cannabis use and possession offences across age groups from 2009/10 to 2017/18, where the most serious offence was a cannabis offence.



This shift away from prosecuting people for use and possession of cannabis has reduced the number of people who receive a conviction for their cannabis use. However, concern has been raised about the role of discretion in this approach, including by the Law Commission. While data shows the proceeding rates for both Māori and non-Māori have decreased over the past four years (by 14% and 17% respectively), the current approach does not appear to be working equally for Māori, who were still 3.8 times more likely to be proceeded against for

<sup>56</sup> Ministry of Health. 2015. *Cannabis use 2012/13: New Zealand Health Survey*. Wellington: Ministry of Health.

<sup>57</sup> New Zealand Institute of Economic Research. 2016. *The high cost of (not) stopping people getting high*. [nzier.org.nz/static/media/filer\\_public/96/47/9647693f-7878-4fa3-b0fe-a4092dfd329e/nzier\\_insight\\_61-high\\_cost\\_of\\_not\\_letting\\_people\\_get\\_high\\_-\\_final.pdf](http://nzier.org.nz/static/media/filer_public/96/47/9647693f-7878-4fa3-b0fe-a4092dfd329e/nzier_insight_61-high_cost_of_not_letting_people_get_high_-_final.pdf) (Accessed 18 February 2019.)

<sup>58</sup> Wilkins, C and Casswell, S. 2002. The cannabis black market and the case for the legalisation of cannabis in New Zealand. *Social Policy Journal of New Zealand* 18: 31-43.

cannabis use and possession in 2017/18 than people of other ethnicities. Although, it should be noted that proceedings include pre-charge warnings and other non-court options as well as prosecution.

While Police may prosecute adults for cannabis use and possession, the prison population directly attributable to cannabis use and possession offences is zero. People in prison whose sentence is linked to cannabis use or possession are there because of other offending. Having been imprisoned for their other offending, they attract a concurrent term due to the cannabis offence.

Proceedings against young people for use or possession of cannabis have also significantly decreased over the last 10 years. If a child or young person under 17 years commits a cannabis-related offence in New Zealand, their offending is responded to within the youth justice system. Responses to cannabis use or possession by young people are usually low-level, often involving a warning or alternative action response by Police. Only six percent of 14-16-year olds who committed a cannabis use or possession offence appeared in Youth Court for that offending in 2017/2018. Young people who are dealt with by the Youth Court do not receive a conviction or a criminal record.

#### *Presumption of supply*

Under section 6(6) of MoDA, a person in possession of 28 grams or more of cannabis<sup>59</sup> is deemed to possess that cannabis for the purpose of sale or supply “until the contrary is proved.” This requires the person charged to prove that the cannabis was not for sale or supply, on the balance of probabilities. The maximum penalty for possession of cannabis is three months imprisonment. The maximum penalty for possession of cannabis for the purpose of supply or sale is eight years imprisonment; a significant difference.

In 2007, the Supreme Court held that the presumption of supply is inconsistent with the presumption of innocence in section 25(c) of the Bill of Rights Act 1990 and that this inconsistency could not be justified.<sup>60</sup> In 2011, the Law Commission recommended that, in light of the Supreme Court ruling, the presumption of supply be removed and replaced with an offence of aggravated possession.<sup>61</sup>

The presumption of supply level for cannabis is particularly problematic for dependent cannabis users. Data from the Drug Harm Index 2016 indicates that an average dependent user of cannabis consumes around 24 grams of cannabis a fortnight.<sup>62</sup> This is very close to the presumption of supply level (28 grams). There is a risk that a dependent user caught with around two weeks' worth of cannabis for their own personal use would be captured by the presumption of supply.

#### *Cultivation and supply – prison sentences*

The percentage of people who receive a prison sentence when charged with cannabis cultivation, manufacture, sale or supply (where the cannabis offence was the most serious

<sup>59</sup> For cannabis preparations (eg, oil and resin) the amount is five grams or more.

<sup>60</sup> *Hansen v R* [2007] NZSC 7.

<sup>61</sup> Law Commission. 2011. *Controlling and regulating drugs: a review of the Misuse of Drugs Act 1975*. Wellington: Law Commission.

<sup>62</sup> Ministry of Health. 2016. *The New Zealand Drug Harm Index 2016*. [health.govt.nz/publication/research-report-new-zealand-drug-harm-index-2016](http://health.govt.nz/publication/research-report-new-zealand-drug-harm-index-2016) (Accessed 19 November 2018.)



offence) has decreased over the last few years. In 2017/18, 41 people charged with selling or supplying cannabis received a prison sentence (11%), down from 101 (21%) in 2013/14. In 2017/18, 25 people (5%) charged with manufacture or cultivation of cannabis received a prison sentence, down from 62 (8%) in 2013/14. The average sentence length for sale/supply and manufacture/cultivation in 2017/18 was 1.81 and 2.08 years, respectively.

Māori are more likely to be proceeded against for these more serious cannabis offences than people of other ethnicities. In 2017/18, Māori were 3.7 times more likely to be proceeded against for cannabis manufacture and cultivation, and 4.5 times more likely to be proceeded against for sale and supply offences than people of other ethnicities. In that same period, 42 percent of individuals who received a prison sentence for cannabis offending were Māori.

Prison time can significantly impact on a person's life not only while in prison but following release. Research has shown that former prisoners face a range of problems on leaving prison, including finding accommodation, obtaining and maintaining employment, accessing health services and treatment and reconnecting with loved ones.<sup>63</sup>

### **Harms from prohibition of cannabis**

Even when a person does not receive a prison sentence, a conviction for cannabis can have serious life enduring consequences. Adverse impacts include difficulties obtaining employment or accommodation, travelling overseas and a conviction can affect child custody arrangements. The criminalisation of cannabis also poses a barrier to seeking help for cannabis use.

Meanwhile, the illicit market also contributes to harm, with proceeds from the illicit market benefiting criminal groups, which are typically involved in every level of the supply chain, from cultivation to distribution to sale.<sup>64</sup>

### **An established illicit market: from cultivation to sale**

The illicit cannabis supply chain is split into three general levels: cultivation, wholesale purchase/distribution and retail sale. Cannabis has been a big volume, big money drug, which creates significant revenue when sold in larger quantities. Organised crime groups likely deal in large amounts of cannabis, such as ounces<sup>65</sup> and kilos, whereas low level gang members and non-gang affiliated dealers will often deal with smaller amounts, such as 'tinnies' (0.5 to 1g of dried cannabis).

People who use cannabis need to source it either from the illicit market or by growing cannabis illegally themselves. Cannabis is grown, distributed and sold by a wide range of individuals and organised crime groups, including gangs. However, anecdotal evidence suggests that in some communities, individuals grow and sell cannabis in order to make ends meet or to provide the community with a source of cannabis that does not require engaging with gangs.

<sup>63</sup> Morrison, B, Bevan, M and Bowman, J. 2018. Employment needs post-prison: a gendered analysis of expectations, outcomes and service effectiveness. *Practice: the New Zealand Corrections Journal* 6. [corrections.govt.nz/resources/research\\_and\\_statistics/journal/volume\\_6\\_issue\\_1\\_july\\_2018/employment\\_needs\\_post-prison\\_a\\_gendered\\_analysis\\_of\\_expectations\\_outcomes\\_and\\_service\\_effectiveness.html](https://corrections.govt.nz/resources/research_and_statistics/journal/volume_6_issue_1_july_2018/employment_needs_post-prison_a_gendered_analysis_of_expectations_outcomes_and_service_effectiveness.html) (Accessed 19 February 2019.)

<sup>64</sup> Organised and Financial Crime Agency New Zealand. 2010. *Organised Crime in New Zealand*. [ofcanz.govt.nz/sites/default/files/Organised-Crime-in-NZ-2010-Public-Version.pdf](https://ofcanz.govt.nz/sites/default/files/Organised-Crime-in-NZ-2010-Public-Version.pdf) (Accessed 18 February 2019.)

<sup>65</sup> While New Zealand uses the metric system, illegal drugs are commonly sold according to the imperial system (by ounce).

The information below applies to large scale cultivation, distribution and sale (ie, not to individual level cultivation and supply, such as one person growing a few plants in their back yard to share with, or sell to, friends).

### *Cultivation*

While the cannabis used in New Zealand is almost exclusively cultivated in New Zealand, seeds are often imported from overseas jurisdictions (including from the United Kingdom and the Netherlands). Growing cannabis from cuttings (cloning) is also common. To provide a supply of cannabis for the illicit market, large quantities have been cultivated in two particular areas in New Zealand: Northland and the Bay of Plenty.

Each cannabis plant typically produces an average of 227 grams of usable cannabis, but yield can vary from 28- 454 grams per plant. Cannabis can be grown both inside or outdoors. Outdoor growing depends on sunlight and weather conditions; accordingly, warmer locations in New Zealand see more outdoor growing. While most cannabis available in New Zealand is grown outdoors, it is vulnerable to theft, damage and Police enforcement activity.

Indoor cultivation, which takes place all over New Zealand, allows for improved security, is less conspicuous, can result in higher THC levels (from methods required to grow cannabis indoors) and greater yield per plant, but requires more effort. Indoor plants can be cultivated in soil or using hydroponic methods. In 2018, indoor cannabis plants seized by Police accounted for 44% of total plants seized. Hydroponically-grown cannabis is the least common form of cannabis seized by Police. This may be because people are less likely to use hydroponics, likely because the plants are more complex and the equipment is more expensive than that used in other methods of cultivation.

### *Distribution*

Like most commodities, cannabis is distributed in bulk at a higher level, then cut down and supplied in smaller quantities by lower-level dealers. In most cases, it is likely smaller gangs or associates and prospects who are involved in moving and distributing cannabis once it has been harvested and dried. In some cases, gangs in the North Island cultivate cannabis (where conditions are better) then transport it to the South Island, where it is distributed through their southern chapters.

### *Sale*

For those who buy cannabis (rather than grow their own), multiple methods are available to engage with the illicit market. These include drug dealing houses (often linked to gangs); using a variety of communication methods to pre-arrange meeting points or provide door-to-door service; internet sales; as well as sharing among friends.

Drug dealing houses are a central part of drug supply and distribution in New Zealand. In 2018, 684 drug dealing houses were identified; 250 more than 2017. Drug dealing houses, which may have dealt almost exclusively with cannabis in the past, have diversified into the sale of other drugs such as methamphetamine and synthetic drugs.

The internet and social media provide another means to sell and promote cannabis. Technology has facilitated connections between customers and a wider range of dealers, without the need for customers to go to a drug dealing house.

There has been little change to the price of cannabis over the last few decades in New Zealand, although there is regional price variation. The typical price for a tinny has remained consistent at \$20. A \$50 bag (3g) has remained at \$50. Heavy users or dealers can purchase an ounce bag (28g) for \$350 or a pound bag (450g) for \$3,800.

The availability of cannabis in New Zealand has reportedly been declining in the last three years, while other drugs such as methamphetamine and synthetic drugs have become more prevalent. Dealers have reportedly been selling less cannabis and more methamphetamine, MDMA and synthetic drugs.

#### *Police enforcement*

In recent years, Police have prioritised and targeted Class A and Class B drugs like methamphetamine or MDMA. Cannabis has, in some instances, been prioritised where large scale supply networks or tinny houses are known to operate. Cannabis is also often encountered during investigations of other drugs, indicating that the supply of cannabis is linked to the supply of other drugs.

In 2017, Police seizures (targeting commercial-level cultivation and distribution of illicit cannabis) included 83,294 cannabis plants and 637 kg dried cannabis. Other products seized included cannabis seeds, cannabis oil and cannabis resin. This was likely only a small amount of the total cannabis available that year, given around 27,440 kilograms of dried cannabinoids are consumed each year in New Zealand. While this number includes synthetic cannabis as well as cannabis, it gives an indication that much more dried cannabis is used than that seized.<sup>66</sup>

#### **Medicinal cannabis and industrial hemp**

New Zealand has approved the use of prescribed cannabis-based products for medicinal use (ie, those prescribed by a medical professional). The Misuse of Drugs (Medicinal Cannabis) Amendment Act 2018 improved access to these products. It also provided people in need of palliation, a defence to the offences of possession and use of illicit cannabis (including raw cannabis) and possession of a cannabis utensil.

Evidence suggests that many New Zealanders who use cannabis often use it for medicinal purposes; a study by Ministry of Health in 2012/13 indicated that 42 percent of cannabis users reported medicinal use in the preceding 12 months.<sup>67</sup> However, many of these people cannot access cannabis under the medicinal cannabis scheme.

Industrial hemp is a variety of cannabis that generally has a THC content below 0.35 percent. In contrast, cannabis has a much higher THC concentration. Hemp is a controlled drug under MoDA. However, people can apply for a licence to cultivate hemp, which enables them to process hemp into specified products that can be sold legally in New Zealand.

#### **Counterfactual**

The supply of, and demand for, cannabis is well established in New Zealand and is unlikely to change significantly, unless there is a change in the Government's approach to cannabis

<sup>66</sup> Synthetic cannabis is not cannabis but a plant material that has had a synthetic cannabinoid sprayed onto it.

<sup>67</sup> Ministry of Health. 2015. *Cannabis use 2012/13: New Zealand Health Survey*. Wellington: Ministry of Health.

(although cannabis supply can be affected by factors such as weather).

Should the public vote against legalising personal use of cannabis, it is possible there may still be some change in the Government's approach to cannabis in the future. The Government has proposed an amendment to MoDA. The amendment specifies that when Police consider whether a prosecution is required in the public interest for personal drug possession and use, consideration should be given to whether a therapeutic approach would be more beneficial. This applies to all drugs. This amendment reflects current Police practice and the requirements of the Solicitor-General's Prosecution Guidelines but clearly outlines the requirement in primary legislation. This change sits alongside a proposal for increased funding for health-based responses.

There have been significant calls for drug reform in New Zealand. Several reviews have questioned whether the current approach to cannabis (and other drugs) is fit-for-purpose. For example:

- In its 2011 review of MoDA, the Law Commission recommended greater focus on harm reduction approaches to drugs, including cannabis<sup>68</sup>
- In its 2017 model drug law, *Whakawātea te Huarahi*, the New Zealand Drug Foundation proposed decriminalising all drugs (as well as legalising cannabis)<sup>69</sup>
- In its 2018 report, the Government Inquiry into Mental Health and Addiction recommended decriminalising all drugs. The Government will be responding to those recommendations in 2019.<sup>70</sup>

The Labour-Green Confidence and Supply Agreement also committed to increase funding for alcohol and drug addiction services.

### 2.3 What is the policy problem or opportunity?

Drug law is inherently complex and controversial due to the significant implications it has on society. The Government's primary objective for addressing alcohol and drug use, including cannabis use, is to improve wellbeing by reducing harm. As outlined above, the main harms from cannabis use include:

- health-related harm for people who use cannabis and those around them when they use it
- social harms, including from the illicit market
- harms from responses to people's cannabis use.

One way to address cannabis-related harm is to take a health-focused approach by legalising and strictly regulating cannabis. Legalisation would involve making aspects of use, possession and supply of cannabis lawful, with regulation to mitigate the risks that cannabis poses. Legalisation would be accompanied by greater investment in prevention, public education and health services.

<sup>68</sup> Law Commission. 2011. *Controlling and regulating drugs: a review of the Misuse of Drugs Act 1975*. Wellington: Law Commission.

<sup>69</sup> New Zealand Drug Foundation. 2018. *Whakawātea te Huarahi: a model drug law to 2020 and beyond*. Wellington: Drug Foundation.

<sup>70</sup> Government Inquiry into Mental Health and Addiction. 2018. *He Ara Oranga: report of the Government inquiry into mental health and addiction*. Wellington: Government Inquiry into Mental Health and Addiction.

The Labour-Green Confidence and Supply Agreement commits to holding a referendum on legalising the personal use of cannabis. Cabinet agreed to hold a binding referendum on cannabis legalisation at the 2020 General Election. To ensure clarity for the public and the best possible outcomes, should cannabis be legalised, a regulatory model is being developed for the public to vote on.

Objectives have been developed to guide the development of the regulatory model. The objectives are not used in this RIA to judge the question of whether legalisation is a better approach than current policy settings or not. This is for the public to decide through the referendum. The Ministry of Justice acknowledges that there are a range of objectives that different groups want to be achieved in relation to cannabis.

Objectives based on government priorities have been used to design the regulatory model. Those Government priorities include:

- Improving the wellbeing of New Zealanders and their families
- Reducing the number of people in prison
- Lifting Māori and Pasifika incomes, skills and opportunities
- Creating opportunities for productive businesses, regions, iwi and others to transition to a sustainable and low-emissions economy

The primary objective to guide the design of the regulatory model is to improve wellbeing by minimising the harm associated with cannabis. The model should also capture the benefits from legalisation, such as opportunities for community development. It should promote equity and improve outcomes for Māori.

Secondary to this objective, the model should also seek to be:

- consistent with the rule of law – the regulatory model should uphold New Zealand's constitution, including the Treaty of Waitangi. It should also be clear and easy to follow
- tailored and workable for New Zealand – the model should recognise and reflect cultural practices and the values of New Zealand society.
- fiscally sustainable – the model should seek to fund mechanisms that directly address cannabis-related harms.

## 2.4 Are there any constraints on the scope for decision making?

*The model proposed in the referendum must legalise personal use of cannabis*

- The Labour-Green Confidence and Supply Agreement commits to holding a referendum on legalising the personal use of cannabis at, or by, the 2020 General Election. The language used in the agreement is 'legalising', which rules out a decriminalisation model or non-regulatory changes.

*Limited time available to scope and develop the analysis, including to consult with all affected parties*

- Cabinet has agreed to hold a binding referendum concurrently with the 2020 General Election. A binding referendum will ensure there is a clear mandate from the public to

make any change.

- A binding referendum may require the development of a regulatory model for the public to vote. This would need to cover use, cultivation and sale and supply of cannabis in New Zealand.
- Given the short timeframes to develop a regulatory model, it will be important to closely monitor the performance of the regulatory model – should cannabis be legalised and the model implemented – and enable refinements to be made as and when required.

*Connections with existing issues and ongoing work*

- The Government has proposed an amendment to the Misuse of Drugs Act 1975, which affirms that when considering whether a section 7 prosecution is required in the public interest, in addition to any other relevant matters, consideration should be given to whether a health-centred or therapeutic approach would be more beneficial. This change sits alongside a proposal for increased funding for health-based responses.
- The Misuse of Drugs (Medicinal Cannabis) Amendment Bill received Royal Assent on 17 December 2018. It introduced an exception and statutory defence for terminally ill people to possess and use illicit cannabis, and to possess a cannabis utensil, among other amendments.
- The report of the Government Inquiry into Mental Health and Addiction made recommendations including decriminalising all drugs in New Zealand, as well as improving mental health and addiction services. The Government will respond to the report in 2019.

## 2.5 What do stakeholders think?

Ministry of Justice officials have gathered information on the status quo from government agencies and advocacy groups. Officials have had initial discussions with drug policy experts, seeking their views on a preferred model for New Zealand. Due to time constraints, limited external consultation has been undertaken on the specific overarching regulatory settings but Government departments were consulted on the proposals.

Officials have also begun to engage with individuals, hapū, whanau and Māori organisations on the model. The aim is to consult with Māori on the design of the regulatory model and, where possible, collaborate with Māori to develop solutions for issues relating to cannabis and ensure better outcomes for Māori.

Should legislation on the model be introduced ahead of the referendum, the Select Committee process would provide an opportunity for stakeholders and interested parties to express views on the model (and for any appropriate modifications to be made). Ultimately, the public will have their say on the model when they vote in the 2020 referendum.

The subsequent tranches of policy proposals, which will detail how the regulatory system would work, will be consulted on. The primary stakeholders are:

- People who use cannabis, including advocacy groups representing them (eg, NORML and the Cannabis Coalition)
- People who are against the legalisation of cannabis
- Māori, who are more likely to use cannabis, more likely to suffer harm from their use and more likely to be proceeded against for use
- Government agencies
- The New Zealand Drug Foundation
- Health providers

Other stakeholders include:

- Schools
- Social workers
- Medical professionals and hospitals
- Businesses
- Farmers
- People who do not use cannabis but may be exposed to cannabis use

## Section 3: Options identification

### 3.1 What options are available to address the problem?

Should cannabis be legalised, there are a range of diverse regulatory models that could be implemented to regulate cannabis for personal use. The Ministry of Justice has considered several different options for an overarching approach to cannabis, as well as different options for some of the key regulatory settings.

This RIA accompanies the first Cabinet paper, which sets out the initial proposals for a regulatory model. Details will be developed in subsequent policy proposals.

#### The overarching approach

The three overarching approaches to regulating cannabis that were considered by the Ministry of Justice are:

- A limited and tightly controlled, regulated market for personal use of cannabis (the preferred approach)
- A more commercialised model where a greater number of licensed businesses could operate in the supply chain with less regulation
- A model that would only permit private cultivation of cannabis, not commercial sale of cannabis or cannabis products (other than starting materials, such as seeds).

The Ministry did not consider the options of an unregulated legal market or decriminalisation, which were considered out of scope and would fail to meet the Government's objectives for a regulatory model.

#### The preferred overarching approach

The preferred option is to develop a regulatory system that – should the public vote in favour of legalisation – would establish a government-controlled, tightly regulated market for the production, supply and use of cannabis and cannabis products. The size of the market would be limited to a level that is adequate for meeting current demand levels, with a view to reducing demand over time. Government would regulate all aspects of the supply chain. The small size of the market would enable greater government control through regulation. The proposed regulatory model would also seek to reduce opportunities for, and disperse, the illicit market.

Possible options to control the size of the market include limiting the number of licences issued (licences would be required to operate in the market) or setting a limit on the overall cannabis produced by each cultivator. Setting a limit on the production amount provides a more direct control on the level of supply in the market but could deter businesses from entering the market as it limits growth opportunities. Limiting the number of licences may not provide as much direct control on the supply levels but could encourage businesses to adhere to government policy in order to obtain and maintain a licence. Having a small number of licensed businesses may also make it easier for Government to monitor and regulate their operations.

The Ministry of Justice recognises that the aim of reducing demand for cannabis would not



align with economic objectives of businesses, but equally recognises that cannabis use will never completely dissipate. There will always be some demand; the goal would be to reduce use as much as possible, with a particular focus on regular, long-term and problematic use.

Other policy proposals, to be fully developed in subsequent policy development, include

- greater investment in prevention, education and cannabis-related health services – this would seek to counter misinformation about cannabis-related health impacts, enabling individuals to make more informed decisions about using cannabis and providing information on how to seek help, while ensuring adequate help is available.
- maintaining a distinct regulatory system for medicinal cannabis products – this would ensure clear and consistent messaging about the harms of cannabis for personal use, which is quite different to medicinal cannabis for the needs and wellbeing of patients.
- maintaining a distinct regulatory system for industrial hemp – separate regimes would recognise that hemp and cannabis have markedly different characteristics and different health impacts.

#### Alternative overarching models

The Ministry determined that neither of the alternative models would adequately achieve the objectives for a regulatory model.

*A more commercialised model where a greater number of licensed businesses could operate in the supply chain with less government regulation*

- This approach would maximise opportunities for economic development and generate greater tax revenue
- It would be much more difficult for Government to control the market and ensure wellbeing is prioritised.

*A model that would only permit private cultivation of raw cannabis, not commercial sale of cannabis and cannabis products*

- Under this model there would unlikely be any commercial market behaviour to impede objectives to reduce cannabis demand and cannabis-related harm.
- This approach, however, would leave significant room for the illicit market to continue.

#### **Additional key features of the model**

The following overarching policy settings have been proposed after considering a range of options:

- Establishing a minimum age of 20 years for the regulatory system
- Permitting use of cannabis at private premises and licensed premises only
- Regulating commercial cultivation of raw cannabis and the production of cannabis concentrates (eg, resin and oil), and the sale of these products in retail stores (not remotely, eg online or mail order)
- Limiting the import of cannabis
- Permitting private cultivation of cannabis by adults
- Allowing adults to make cannabis-infused products (eg, brownies) at home
- Allowing some social sharing of cannabis among adults.

## **Cannabis use**

### *Minimum age of 20*

A minimum age would restrict young people's access to cannabis. This is important as consumption of cannabis is particularly harmful for brain development and function in people under 25 years. Establishing an age limit is only part of the approach to address cannabis use by youth. Other tools to deter young people from using cannabis will be determined in subsequent policy proposals.

Experience with regulating the minimum age for alcohol in New Zealand suggests that a minimum age of 18 would likely provide an opportunity for supply of cannabis by 18 year-olds, who are often still at secondary school, to underage peers. The Law Commission, in its review of alcohol laws in 2011, collated information from various sources that indicated this was a significant problem and, as a result, the 'de facto' drinking age had lowered to 14 and 15 in many cases.<sup>71</sup>

A minimum age of 20 would strike the appropriate balance between the model being workable in the New Zealand context and minimising harm to young people from cannabis use, especially restricting access to young people in secondary school. Alternative minimum ages of 18 years or 25 years were considered.

### *Where cannabis could be used*

If cannabis is regulated, there would need to be places for people to legally consume cannabis. This must be balanced with the objective of protecting the health and wellbeing of New Zealanders. Limiting where cannabis could be used would send a message against cannabis use and second-hand smoking, which has some of the same dangers as second-hand tobacco smoke, as well as having psychoactive effects. Restricting where cannabis could be consumed would provide a means to limit exposure to third parties, including children and young people. It would also help shape the norms around cannabis use that develop after legalisation.

The preferred option is to limit use to homes and licensed premises only. Cannabis use would be restricted to individuals' homes, including outdoor areas, and homes of other people, with their permission. Some people may not be able to or want to use cannabis at home, and licensed premises would provide an alternative, safe space for using cannabis. The alternative options considered were: homes only; licensed premises only; or to align with the rules around smoking tobacco.

## **Commercial cultivation and production**

### *Which products could be produced commercially*

Products available on the legal market should meet existing demand in the current illicit market to minimise opportunities for illicit suppliers. This includes not only raw cannabis but also other products made from raw cannabis that are currently readily available in New Zealand. There is, however, a tension with the objective of improving wellbeing, which could

<sup>71</sup> Law Commission. 2010. *Alcohol in our lives: curbing the harm*. Wellington: Law Commission.

be achieved by encouraging the use of products that do not require smoking and limiting products that are more dangerous (eg, high potency) or would appeal to young people and new users.

There are benefits and risks to the three main types of cannabis products and the way these are consumed. The health risks (ie, from smoking cannabis or ingesting high THC levels) are discussed in more detail in section 2.1

- **Raw cannabis:** smoking raw cannabis is the most common form of cannabis consumption. It is associated with negative health impacts from smoking,<sup>72</sup> including from second-hand smoke, but there are low risks of accidental consumption or overconsumption. Raw cannabis can also be vaporised. Vaping is believed to be a 'safer' way to consume cannabis because it heats, rather than burns, the cannabis and therefore does not produce many of the harmful components of burning material, such as tar.
- **Cannabis concentrates and extracts:** concentrates are generally more potent than raw cannabis and there are longer-term health risks from regular use of high THC products. Concentrates can be smoked, vaporised or consumed orally. There are risks around making these products at home with hydrocarbons, particularly of fires or explosions.<sup>73</sup>
- **Cannabis edibles:** consuming cannabis edibles does not have the same effects on respiratory function as inhalation. However, the delayed onset (30-90 minutes) and sustained (2-4 hours peak effect) psychoactive effect following ingestion can result in other adverse effects. Most notably, this limits people's ability to dose control and often results in people consuming more than intended.<sup>74</sup> Edibles also carry a greater risk of accidental consumption, especially by young children, as they can look like normal pieces of food (eg, a brownie or biscuit). Colorado and Washington have seen an increase in hospitalisations and calls to poison control lines following the legalisation of commercial production of edibles.<sup>75</sup>
- **Other cannabis-infused products:** many cannabis-infused products, such as lotions and balms, are used for medicinal purposes. Over time, the medicinal cannabis system may allow cannabis-infused products (eg, topicals) to be available for medicinal purposes, but availability of medicinal cannabis is not part of the regulatory model for personal use. Other cannabis-infused products, such as cannabis-infused drinks, raise similar issues as cannabis edibles.

The preferred approach to best achieve the Government's set of objectives is to:

- permit commercial cultivation and sale of raw cannabis
- permit the commercial manufacture and sale of concentrates and extracts, but
- prohibit the commercial manufacture and sale of cannabis-infused products.

<sup>72</sup> US National Academies of Sciences, Engineering and Medicine. 2017. *The health effects of cannabis and cannabinoids*. Washington, D.C., National Academies Press.

<sup>73</sup> Monte, A A, Zane, R D and Heard, K J. 2015. The implications of marijuana legalization in Colorado. *JAMA* 313: 241-2.

<sup>74</sup> This has been a problem identified in Colorado: Barrus, D, Capogrossi, K, Cates, S, Gourdet, C, Peiper, N, Novak, S and Wiley, J. 2016. *Tasty THC: Promises and challenges of cannabis edibles*. Research Triangle Park: RTI Press.

<sup>75</sup> Monte, A A, Zane, R D and Heard, K J. 2015. The implications of marijuana legalization in Colorado. *JAMA* 313: 241-2.

Cannabis concentrates and extracts (particularly cannabis oil and resin) are already available on the illicit market in New Zealand. They can be dangerous to make at home. In 2011, there were at least 10 fires or explosions reported from people attempting to turn cannabis into cannabis oil. It is possible that other incidents have occurred but gone undetected or unreported. As such, the Ministry of Justice recommends permitting commercial production and sale of concentrates and extracts to meet existing demand and avoid people resorting to the illicit market or dangerous activities to produce these products. Regulation would be developed to mitigate the risk of harm these products can pose (ie, due to high potency).

Ready-made edibles and other cannabis-infused products would appeal to new users and young people. These products increase the risk of accidental consumption and overconsumption.<sup>76</sup> Existing demand for these products could largely be met by home production (eg, baked goods and tea). The gummy bears and other commercialised products seen abroad are not readily available in the current illicit market in New Zealand (although there have been some instances where illegal import has been detected). Even with these products prohibited, there would be alternative products that do not require smoking available in retail stores (eg, products consumed through vaping).

## **Commercial sale and supply**

### *Retail stores*

Physical stores would provide a legal means to purchase cannabis. Government would establish consumer safeguards and vendors could intervene in problematic use. The number of these stores could be limited to meet demand across the country without increasing availability of cannabis; how to ensure demand would be met will be determined in subsequent policy development. While some people, particularly in rural areas, may not live near a store, there would be the alternative method of accessing legal cannabis through private cultivation.

The preferred approach is to permit cannabis and cannabis products to be sold in physical retail stores only. This would prohibit remote sales (eg, through the internet or remotely over the phone, fax or by mail order). Prohibiting remote sales would avoid cannabis deliveries, which pose risks around age restrictions and leakage to the illicit market regardless of safeguards.

An alternative approach would be to permit online sales with stringent safeguards. For example, requiring a credit card belonging to an adult 20 years or older be used both at point of sale and at delivery (alongside identification). However, this convenience of purchasing and removal of vendors (who may be a point of education and intervene in problematic use) may lead to increased problematic use and does not align with the Government's objective to reduce harm.

### *Import*

The Ministry of Justice recommends prohibiting private import of cannabis and limiting the commercial import of cannabis under the regulatory framework for personal use of cannabis.

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<sup>76</sup> Overconsumption involves consuming too much cannabis. This may result in rapid heart rate, hallucinations, acute anxiety, or overdose. Accidental overconsumption is difficult to control with edibles, as the effects can be delayed, encouraging people to consume more to achieve the desired 'high'.

It may be possible to import medicinal cannabis or seeds (cannabis seeds are not always considered an illegal drug in countries that have prohibited cannabis, eg the United Kingdom). Licensed import of cannabis could be permitted for licensed businesses in instances of shortages in supply but would need to be subject to strict conditions, which will be determined in the next stage of policy development.

## **Private cultivation, production and supply**

### *Private cultivation*

Private cultivation provides an alternative means to access cannabis. If permitted, it needs to be conducted in ways that encourage safe consumption of cannabis, prevent illicit sales of privately cultivated cannabis and prevent access by children and young people.

The Ministry proposes permitting and regulating private cultivation by adults. Legalising private cultivation would ensure that a current practice in New Zealand becomes regulated, with safeguards introduced through regulation. Private cultivation would provide an alternative way to access cannabis for those who do not live near a retail store or prefer a low-cost product. Rules and guidance will be developed to reduce the risks of diversion into the illicit market or access by young people, and ensure safe storage and other practices.

### *Making cannabis products at home*

Raw cannabis can be used as an ingredient to create products at home, including edibles (such as brownies), tea, or even homemade soap. The preferred option is to permit the creation of cannabis-infused products by adults, but not to permit people to make concentrates and extracts at home.

Allowing people to make cannabis-infused products at home enables access to products that would not be sold in retail stores. However, extracting cannabis resin and other concentrates at home should not be allowed as the process can be dangerous both due to the extraction process (and these products would be commercially available) and unknown potency.

### *Social sharing*

Cannabis is commonly shared in social settings and the current prohibition on social sharing does not always act as a deterrent. There is a tension between allowing conduct inherent in the social nature of using cannabis and preventing a loophole for people to circumvent rules (particularly the requirement to have a licence to sell cannabis).

The Ministry of Justice recommends permitting people 20 years or older to share small amounts of cannabis socially. This would be limited to sharing of a small quantity with friends, family or acquaintances 20 years or older and must not include activities such as selling or gifting for promotional or remuneration purposes.

### 3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

The primary objective, which officials have used to assess the options, is to improve the wellbeing of New Zealanders by reducing the harm associated with cannabis. This includes reducing harms directly from use of cannabis (such as harm to health or from accidents or offending) and from the illicit market. The options have been assessed against the current features of, and impacts from, cannabis in New Zealand.

Should legalisation be preferred by the public, a model for regulation of cannabis should also ideally:

- capture benefits, such as opportunities for community development and for Māori
- be consistent with the rule of law, upholding New Zealand's constitution, including the Treaty of Waitangi, and be clear and easy to follow
- be tailored and workable for New Zealand, recognising and reflecting our cultural practices and values
- be fiscally sustainable – the model should seek to fund mechanisms that directly address cannabis-related harms.

The primary criteria in the regulatory impact analysis is:

**Efficacy** – *would the system achieve the objective of minimising cannabis-related harm*

- Would the system deliver the right changes? For example, would the model achieve wellbeing by reducing demand for cannabis, reducing cannabis-related harm and reducing the illicit market

The secondary criteria are:

**Compliance and business opportunities** – *is the policy better than the alternatives?*

- What are the relative efficiencies of this model and alternatives, particularly around compliance?
- How much control would the Government have over the market?
- What are the comparative benefits of different forms of a legal market, including economic benefits?

**Coherence** – *is the policy consistent with constitutional norms and would it improve equity*

- Is the policy consistent with the rule of law and Treaty of Waitangi obligations?
- Would the policy provide equal opportunities, including economic equality?

**Clarity and practicality** – *would the policy be clear and workable in New Zealand?*

- Structurally, does the policy make sense and is it simple?
- Does it work in harmony with existing regulatory and common law frameworks?

### 3.3 What other options have been ruled out of scope, or not considered, and why?

There is a spectrum of viable non-regulatory and regulatory options for addressing cannabis use and harm. Government decisions have limited the scope of the referendum option to a model legalising cannabis. Non-regulatory options and a decriminalisation model have been ruled out of scope.

It could be possible to legalise cannabis without any regulatory framework. This was not considered because it would fail to meet all of the objectives.

PROACTIVELY RELEASED BY THE MINISTRY OF JUSTICE

## Section 4: Impact Analysis

**Marginal impact: How do the options compare against each other in addressing the impacts from cannabis use and how would each meet the criteria set out in section 3.2?**

Should the public vote in favour of legalising personal use of cannabis, a completely new legal market for cannabis would need to be established. Given the objectives of reducing harm from cannabis use and dispersing the illicit market for cannabis, the new market would likely be the most heavily regulated market in New Zealand. This RIA indicates which regulatory approach would, on the balance of probabilities, meet the objectives for a regulatory model. The impact analysis set out below provides an assessment of this approach based on the evidence available. The impact analysis has involved judgements where there is limited information and evidence available to draw on. Consequently, the approach taken generally favours more restrictive options. Monitoring and evaluation would be established so that following implementation, should the public vote in favour of legalisation, Government could closely follow the impacts of the regulation and improve the system, where and if necessary.

**Key:**

- ✓✓ Would meet criteria very well
- ✓ Would adequately meet criteria
- ✗ Would not adequately meet criteria

|  | Primary criteria  | Secondary criteria  |   |   | Overall assessment  |
|--|---|---|---|---|---|
|  | Efficacy – would the system achieve wellbeing and minimise harm?  | Compliance and business opportunities – is the policy better than the alternatives?   | Coherence – is the policy consistent with constitutional norms and would it improve equity?   | Clarity and practicality – would the policy be clear and workable for New Zealand?  |   |
| <b>1. Overarching approach</b>   |   |   |   |   |   |
| <b>Government controlled, regulated and limited market for production, supply and use of cannabis (preferred option)</b> | <p>✓✓ The ability to create a limited market could meet current demand with a view to reduce demand and use over time. It could reduce opportunities for, and disperse, the illicit market. Strong government control would likely enable government to address and minimise harm from cannabis use. Likely to provide government with better oversight of market activities, including what types of products are available for sale. Would provide users with a legal way to access safe cannabis products that have been quality tested and so they do not have to engage with the illicit market.</p> | <p>✓✓ Would set the most appropriate balance between achieving wellbeing, while enabling a feasible operating environment for business. Would likely reduce the non-compliance seen under the status quo. Would create new jobs and tax revenue, contributing to economic development. It could also provide opportunities for people currently operating in the illicit market to bring their businesses into the legal market. Government control over small market would provide opportunities for government to direct benefits to the regions. A small regulated market with government control over how many businesses could operate and how much they could produce would also likely mean businesses have strong incentives to cooperate and adhere to government policy of minimising harm.</p> | <p>✓✓ Government control would enable government to ensure the system is, and remains, consistent with constitutional norms. Government control could improve equity across the market through, for example, the issuing of particular types of licences.</p> | <p>✓ Policy would be generally workable and simple, however there would be a difficult tension to manage between the government aim to reduce cannabis use and a legal market. Would be easier for government to regulate and monitor compliance of businesses in a small, licensed market. However, limits on the number of licensed retailers could make it difficult to have adequate supply across New Zealand.</p> | <p><b>Preferred option:</b></p> <p>Government would regulate all parts of the supply chain to mitigate against any incentives for competitive commercial measures to increase demand</p> <p>The approach could ensure that demand for cannabis is met by the legal market, while regulating to help achieve the objective of improving wellbeing.</p> |
| <b>A greater number of licensed businesses operating in supply</b>   | <p>✓ Businesses would likely be focused on maximising sales and profits, without incentives from</p>  | <p>✓ Would be more difficult for government to control the market and</p>   | <p>✓ Would be less room for government to support small</p>   | <p>✓✓ Policy would be likely workable and regulation would be simple.</p>   | <p><b>Not recommended:</b></p> <p>This option would maximise opportunities for economic development and generate greater tax</p>  |



|   | Primary criteria  | Secondary criteria   |  |   | Overall assessment   |
|---|---|--|--|---|--|
|   | Efficacy – would the system achieve wellbeing and minimise harm?  | Compliance and business opportunities – is the policy better than the alternatives?  | Coherence – is the policy consistent with constitutional norms and would it improve equity?  | Clarity and practicality – would the policy be clear and workable for New Zealand?  |  |
| chain with limited government regulation                                    | <p>government regulation to promote wellbeing. This would likely increase availability of cannabis. Would more likely minimise need for users to engage with illicit market.</p> <p>There would be some government control to address and minimise harm from cannabis use.</p> <p>Could increase the opportunity for profit, which could provide an incentive for illicit suppliers to enter legal market for profits.</p>  | <p>ensure wellbeing is prioritised. Would maximise opportunities for economic development, jobs and tax revenue.</p> <p>Usual business practice in a full commercial market does not align well with health-focused approach.</p>  | <p>community businesses.</p>   | <p>It would likely operate similar to other commercial markets.</p> <p>A more open commercial market would be more difficult to regulate and monitor for compliance.</p>  | <p>revenues for the Government. However, usual business practices in a fully commercial market tend to focus on maximising profits and would not align well with a harm reduction approach that aims to minimise cannabis-related harm. Nonetheless, this option would be greater than the illicit market.</p>   |
| Private cultivation of raw cannabis only; no commercial cultivation or sale | <p>✓ There would be limited commercial market behaviour to potentially impede objectives to reduce cannabis-related harm. However, this approach would leave significant room for the illicit market to continue as it relies on individuals to grow their own cannabis without the convenience of purchasing ready-to-use cannabis on the legal market.</p> <p>There are also risks associated with quality and potency of privately cultivated and processed cannabis as it does not undergo any quality or potency testing. This could undermine wellbeing and, instead, continue to cause harm.</p> <p>Should Government seek to test privately cultivated cannabis, this would be difficult.</p> | <p>✗ There would be limited commercial opportunities or revenue generation. There would be limited government control over quality of cannabis being consumed.</p> <p>Private cultivation requires time and resources (eg, land, seeds or seedlings, tools etc), which may be a cost that people are unwilling to pay for. Relying solely on private cultivation is also a cost to the consumer as it removes the convenience of purchasing ready-to-use cannabis and may push people to the illicit market.</p> | <p>✗ Would discriminate against people who do not wish to or may not be able to privately cultivate cannabis, such as people who do not own their property or whose tenancy conditions prohibit private cultivation of cannabis.</p> | <p>✗ Would be impractical as it would continue to provide demand for the illicit market (as not everyone would want to grow their own cannabis). It is also more difficult to regulate and enforce regulations in the private sphere.</p> | <p><b>Not recommended:</b></p> <p>Under a private cultivation-only model there would be limited commercial market behaviours that would impede the Government's objectives to reduce cannabis use and harm. However, it would leave ample room for the illicit market to continue: while a legal source of cannabis would be available, not every cannabis user would be able to, or want to, grow their own cannabis.</p> |
| <b>USING CANNABIS</b>   |   |  |  |   |  |
| <b>2. Minimum age</b>   |   |  |  |   |  |
| 25 years  | <p>✓ Would restrict access to cannabis for young people whose brain is still developing. However, there would be a particularly large young adult group who may provide demand for the illicit</p>  | <p>✗ Consistent with messaging that cannabis use is particularly harmful for those under 25 years. 18-25-year-olds are the largest cannabis user group and significant revenue would be lost, likely to the</p>  | <p>✗ There would likely be Bill of Rights issues with limiting all people under 25 from conducting an otherwise legal activity.</p> <p>It may be difficult to ensure that young people aged 18-25 years who</p>                      | <p>✗ It would be complex and may not work in practice.</p> <p>Approach would be unprecedented (no conduct is limited in New Zealand for people under 25 years).</p> <p>An age limit of 25 does not align with</p>                         | <p><b>Not recommended:</b></p> <p>This approach would recognise the greater risk of harm that cannabis use has on people under 25 years. However, it would be practically difficult and would likely push a sizeable number of people to the illicit market (the age group that most commonly uses</p>   |

|  | Primary criteria  | Secondary criteria   |  |  | Overall assessment  |
|--|---|--|--|--|---|
|  | Efficacy – would the system achieve wellbeing and minimise harm?  | Compliance and business opportunities – is the policy better than the alternatives?  | Coherence – is the policy consistent with constitutional norms and would it improve equity?  | Clarity and practicality – would the policy be clear and workable for New Zealand?   |   |
|  | market, which would undermine efforts to reduce the illicit market.   | illicit market.<br>Would push a sizable proportion of the known cannabis user group into non-compliance as they would likely continue to seek out cannabis by illegal means.   | commit a cannabis-related offence are treated consistently with young people 17 years and under, as the latter would be dealt with in the youth justice system whereas 18-25 year olds would have their offending responded to in the adult criminal justice system.   | existing regulatory approaches.  | cannabis is 18-25-year olds), which would be inconsistent with the objectives for cannabis regulation, particularly reducing harm and reducing the size of the illicit market.  |
| <b>20 years (preferred approach)</b>                       | <p>✓✓ Would be consistent with the overall objective to improve wellbeing and reduce harm. As the illicit market reduces in size, it would become more difficult for young people to access cannabis. An age limit of 20 was more effective at helping to restrict supply of alcohol to young people in schools. This is expected to have a similar effect for cannabis supply.</p> <p>Would more likely establish social and cultural norms around young people and cannabis to help avoid a reduced de facto age, as seen with alcohol.</p> | <p>✓✓ There would be alternative tools to address 20-25-year-olds.</p> <p>Would achieve most appropriate balance between ensuring greatest possible level of compliance with regulation and protecting young people.</p> | <p>✓ Some Bill of Right issues arise from limiting all people under 20 from conducting an otherwise legal activity. However, this age limit is used for zero tolerance drink driving and entrance to casinos.</p> <p>It may be difficult to ensure that young people aged 18 and 19 years who commit a cannabis-related offence are treated consistently with young people 17 years and under, as the latter would be dealt with in the youth justice system whereas 18 and 19 year olds would have their offending responded to in the adult criminal justice system.</p> | <p>✓✓ Has been workable in other contexts (e.g. casinos).</p> <p>Would be practical to apply the same rules to peers in secondary school with likely success.</p>  | <p><b>Preferred option:</b></p> <p>Would strike the appropriate balance between the model being workable in the New Zealand context and minimising harm. This minimum age would meet the objective of improving the wellbeing of young people who are at greater risk of harm from cannabis use. It would contribute to establishing social and cultural norms against use by young people, especially those in secondary school. It would align with the age limit on entry to casinos and the zero tolerance/drink driving age.</p> |
| <b>18 years</b>  | <p>✓ As the illicit market reduces in size, it would become more difficult for young people to access cannabis but there would be an opportunity for access through 18-year-old school peers.</p> <p>Would be consistent with the objective to improve wellbeing and reduce harm by restricting access, but only to those under 18 years.</p>   | <p>✓ Would likely result in the best possible level of compliance among New Zealanders but would make it easier for young people under 18 years to access cannabis and break the rules.</p>                              | <p>✓✓ All young people under 18 years who break rules would be dealt with in the youth justice system, which would mean a consistent approach to offending by all young people.</p>  | <p>✓✓ Rules would be clear.</p> <p>Would be workable and align with current age-based policies for alcohol and tobacco. Would align with the general approach to 18-year-olds, which recognises them as adults capable of making informed decisions.</p> | <p><b>Alternative option:</b></p> <p>Would align with the current age limit for alcohol and tobacco. The main issue with setting a minimum age of 18 is that it would provide an opportunity for 18-year-olds to supply cannabis to younger school-aged peers.</p>  |
| <b>3. Where cannabis could be consumed</b>                 |   |  |  |  |   |
| <b>Homes and licensed premises only (preferred option)</b> | <p>✓✓ Would reduce the number of people exposed to cannabis and second-hand smoke, including children.</p> <p>Controls could be put in place for</p>  | <p>✓✓ Would provide two options to address diverse needs and ensure people are not forced to use illegally.</p>  | <p>✓✓ Would avoid disadvantaging people who do not have a home (eg, people who are renting or homeless) or do not want to use at home as they could use in a licensed premise</p>  | <p>✓✓ Would establish clear rules around where use is permitted.</p> <p>Workable in other contexts (e.g. licensed premises for alcohol consumption, restrictions on smoking</p>  | <p><b>Preferred option:</b></p> <p>This would align with the objective of minimising harm by placing limits on where cannabis could be used. It would send a public health message against cannabis use and about second-hand smoke. Use would be restricted to individuals' homes, including</p>   |

|   | Primary criteria   | Secondary criteria   |  |   | Overall assessment   |
|---|--|--|--|---|--|
|   | Efficacy – would the system achieve wellbeing and minimise harm?   | Compliance and business opportunities – is the policy better than the alternatives?  | Coherence – is the policy consistent with constitutional norms and would it improve equity?  | Clarity and practicality – would the policy be clear and workable for New Zealand?  |  |
|   | <p>people consuming at licensed premises.</p> <p>Would prevent the development of norms around use in public.</p> <p>Would be consistent with a public health message against cannabis use and second-hand smoking.</p>  |  |  | <p>tobacco).</p> <p>Would make regulation workable for those who cannot/do not want to use at home.</p>   | <p>outdoor areas, and in the homes of other people, with their permission. Some people may not be able to or want to use cannabis at home, and licensed premises would provide an alternative controlled space for using cannabis.</p>   |
| <b>Homes only</b>                             | <p>✓ Would reduce the number of people (including young people) exposed to cannabis and second-hand smoke in public. However this would not be the case when cannabis is used around others in the home.</p> <p>Would prevent the development of norms around use in public.</p> <p>Would not always provide a safe and controlled place to use cannabis away from young family members.</p> | <p>✗ Not all people would have a place to use cannabis legally.</p> <p>Would be consistent with a public health message warning against cannabis use and second-hand smoking.</p>  | <p>✗ Would disadvantage those who do not have a home or cannot use at home.</p>  | <p>✗ Would establish clear rules around where use is permitted.</p> <p>Would not be workable for all people.</p>  | <p><b>Not recommended:</b></p> <p>This could discriminate against the homeless, as well as tenants and people in retirement homes who may not be able to use cannabis as a term of their agreement. It would put more people (including children) at risk of second-hand smoke, which could be avoided with an alternation option (licensed premises).</p> |
| <b>Specially licensed premises only</b>       | <p>✓✓ Would reduce the number of people (including young people) exposed to cannabis and second-hand smoke.</p> <p>Would prevent the development of norms around use in public.</p>  | <p>✓ Would be problematic for people who do not live near a licensed premise or do not want to be seen in one.</p> <p>Would be consistent with a public health message warning against cannabis use and second-hand smoking.</p> | <p>✗ Would disadvantage people who do not live near a licensed premise (eg, people living rurally) or who wish to use cannabis for some purposes where visiting a licensed premise would be inconvenient eg, to help with sleep.</p> | <p>✗ There would be clear rules.</p> <p>Not workable in practice if people are permitted to grow cannabis at home since they would not be able to legally use cannabis at home.</p> | <p><b>Not recommended:</b></p> <p>Not workable in practice, especially if people are permitted to grow cannabis at home since they would not be permitted to use cannabis at home. There may not be a licensed premise in proximity of all people who want to use cannabis, particularly in rural areas.</p>   |
| <b>Where tobacco can be used</b>              | <p>✗ Could result in more use of cannabis in public than currently, which may normalise cannabis rather than deter use. There may be negative impacts for third parties from second-hand smoke in some public places.</p>  | <p>✗ Would be inconsistent with a public health message against cannabis use.</p>  | <p>✓✓ All people would have a place to use cannabis.</p>   | <p>✓✓ Would be clear rules around where use is permitted.</p> <p>Workable in the tobacco context.</p>   | <p><b>Not recommended:</b></p> <p>Use in public would likely normalise cannabis. This is particularly problematic for young people who tend to adopt behaviour they see as normal. It would expose more people to the risk of second-hand smoke, which can have psychoactive implications.</p>   |
| <b>COMMERCIAL CULTIVATION AND MANUFACTURE</b> |  |  |  |   |  |
| <b>4. Commercial cultivation</b>              |  |  |  |   |  |
| <b>Permit commercial cultivation</b>          | <p>✓✓ Would enable the creation of a domestic legal cannabis market. Government could control, through strict regulation, the quality and potency of the cannabis that would be</p>  | <p>✓✓ Would create new jobs and tax revenue.</p>   | <p>✓✓ Government control would enable Government to provide opportunities to regional communities and Māori. For example, through the use of a licensing system, a number of licences could be allocated to</p>                      | <p>✓✓ Would be generally workable and clear.</p>  | <p><b>Preferred option:</b></p> <p>Permitting commercial cultivation would enable the establishment of a legal domestic cannabis market and a legal supply of cannabis for retail stores. This could reduce the size of the illicit market, as well as</p>   |

|   | Primary criteria   | Secondary criteria   |  |  | Overall assessment   |
|---|--|--|--|--|--|
|   | Efficacy – would the system achieve wellbeing and minimise harm?   | Compliance and business opportunities – is the policy better than the alternatives?  | Coherence – is the policy consistent with constitutional norms and would it improve equity?      | Clarity and practicality – would the policy be clear and workable for New Zealand?     |  |
|   | commercially cultivated.<br>Would contribute to reducing the size of the illicit market and could provide an opportunity for those who illegally cultivate cannabis to enter the legal market.   |  | particular regional communities or Māori.  |  | regulate quality and potency of cannabis. It would also create new jobs, tax revenue, and provide an opportunity for regional development.   |
| <b>Prohibit commercial cultivation</b>                | ✓ Stores would have no legal source of cannabis so would not be able to operate legally unless they could legally import cannabis. Private cultivation would provide a legal source of cannabis for people to use. However there would be a risk that people would continue to engage with the illicit market or illegally import cannabis as it could be more convenient than growing their own.      | ✗ Would undermine the overarching approach of establishing a legal market for cannabis as there would be no legal supply of cannabis to retail stores.   | ✗ Would not be coherent as it would be unusual to prohibit commercial supply of a legal product. | ✗ Would be impractical as there would be no legal supply of cannabis for retail stores | <b>Not recommended:</b><br>Demand would need to be met by allowing people to grow their own cannabis at home or by importing cannabis into New Zealand. Prohibiting commercial cultivation would effectively prevent a legal supply of cannabis for retail stores.   |
| <b>5. Commercial manufacture of cannabis products</b> |  |  |  |  |  |
| <b>Raw cannabis only</b>                              | ✓ Likely that some people would turn to illicit market for other products that are not available in the legal market. However, evidence suggests raw cannabis is most popular form of cannabis in New Zealand.<br>Prevents availability of more appealing products that could attract new users and young people.  | ✓ Would avoid unpredictable consequences of introducing new products into the New Zealand market.<br>Government could regulate quality and potency of raw cannabis but would not be able to regulate other cannabis products.  | ✓ Would be coherent  | ✓✓ Would be clear and practical.   | <b>Not recommended:</b><br>This option would fail to meet demand in New Zealand for concentrates and extracts, pushing people to the illicit market or to produce using dangerous methods at home.   |
| <b>Include concentrates and extracts</b>              | ✓ There would be risks posed from typically high THC concentrates and extracts. However, this could be minimised through regulation.<br>This approach would ensure demand for these products, which are already available in New Zealand, is met. This would avoid people turning to the illicit market or making these products at home (which is particularly dangerous when hydrocarbons are used). | ✓✓ Would ensure most demand is met through legal market. Regulations could avoid the particularly dangerous commercialised concentrates and extracts available in the US.<br>Would avoid unpredictable consequences of introducing new products into the New Zealand market. | ✓ Would be coherent  | ✓✓ Would be clear and practical.   | <b>Preferred option:</b><br>Cannabis concentrates are already available on the illicit market in New Zealand. They are dangerous to make at home. Permitting commercial production and sale of raw cannabis alongside concentrates would address existing demand and avoid people resorting to the illicit market or dangerous activities to produce at home. To address risks from consumption of these products, restrictions could be developed eg, around THC potency. |

|   | Primary criteria   | Secondary criteria   |   |   | Overall assessment  |
|---|--|--|---|---|---|
|   | Efficacy – would the system achieve wellbeing and minimise harm?   | Compliance and business opportunities – is the policy better than the alternatives?  | Coherence – is the policy consistent with constitutional norms and would it improve equity?   | Clarity and practicality – would the policy be clear and workable for New Zealand?  |   |
| <b>Include cannabis-infused products</b>                              | <p>✓ There would be risks posed from the consumption of cannabis-infused products but these could be minimised through regulation.</p> <p>Potential harms include increased cannabis use, overconsumption, and accidental consumption.</p> <p>Government could regulate to ensure quality and standards are met, which is harder to control homemade infused-products.</p>   | <p>✓ It would have the disadvantage of possibly allowing products into the New Zealand market that are not currently available. This could have negative and unpredictable consequences seen overseas.</p> <p>Government would have control over all products.</p>   | <p>✗ Problematic for disabled people and others who cannot make at home</p>   | <p>✗ Would undermine New Zealand's approach to food regulation, which prevents a psychoactive substance being mixed with and sold as food. Would similarly undermine the Australia-New Zealand Food Standards Code.</p>               | <p><b>Alternative option:</b></p> <p>Although cannabis-infused products could encourage non-smoking methods of consumption, we do not recommend that they are manufactured commercially. These products, particularly edibles, are much more appealing to new users and young people. If these products were easily accessible, it is likely that there would be an increase in overall cannabis use, which is contrary to our aim of reducing use over time. Allowing these products to be made at home (but not commercially) would achieve a balance between limiting the convenience of buying a ready-made product, while still making them available to users that choose to make them at home.</p>                                       |
| <b>SALE AND SUPPLY</b>  |  |  |   |   |   |
| <b>6. Retail sales</b>  |  |  |   |   |   |
| <b>Regulated retail stores but no remote sales (preferred option)</b> | <p>✓✓ Retail stores would provide cannabis for people who seek to use it, with consumer safeguards and requirement that vendors ensure age restrictions are upheld.</p> <p>Prohibiting online sale would avoid cannabis deliveries, which pose risks of access by people underage and leakage to the illicit market.</p> <p>However, the lack of an online alternative may be an inconvenience to consumers, especially those not living near a store.</p> | <p>✓ Some people would not have easy access to retail cannabis (eg, rural areas) but would be able to grow cannabis.</p>   | <p>✓ Would be coherent. While some people, particularly in rural areas, may not be close to a store, there is the alternative of private cultivation.</p> | <p>✓✓ Would be clear and practical.</p>   | <p><b>Preferred option:</b></p> <p>Remote sale would be prohibited, which would make it easier to enforce consumer safeguards, such as age restrictions. Government could more easily require vendors to provide health-related information and advice (although this could be sent with deliveries if remote sales were permitted), and potentially intervene in problematic use. Stores could be established across the country, promoting regional development. While some people, particularly in rural areas, may not be close to a store, there is the alternative of private cultivation. Prohibiting remote sales would avoid cannabis deliveries, which pose risks of access by people underage and leakage to the illicit market.</p> |
| <b>Retail stores and remote sales (with safeguards)</b>               | <p>✗ The option of purchasing cannabis online may be more convenient for consumers. However, this convenience of purchasing and removal of vendors (who may be a point of education and intervene in problematic use) may lead to increased use, including problematic use, and does not align with government objectives</p>  | <p>✗ Safeguards could include requiring a credit card belonging to an adult 20 years or over be used both at point of sale and at delivery (alongside identification). However, there may be an increased risk of diversion of cannabis into the illicit market or purchase by people underage as control of remote sales and deliveries are more difficult.</p> | <p>✓✓ Would be coherent. Would ensure people across the country could access retail cannabis, regardless of location.</p>                                 | <p>✓ Rules would be clear for consumers, however, stringent safeguards for online sales may be difficult to effectively implement (eg, may have logistical difficulties such as requiring the certification of delivery drivers).</p> | <p><b>Not recommended:</b></p> <p>Remote sales, particularly online sales, may provide access to cannabis for people who do not live near a store (eg, rural communities) but there are other options for legal access. Remotes sales could increase the risk of diversion to the illicit market or access by children and young people.</p>  |

|  | Primary criteria   | Secondary criteria  |  |  | Overall assessment   |
|--|--|---|--|--|--|
|  | Efficacy – would the system achieve wellbeing and minimise harm?   | Compliance and business opportunities – is the policy better than the alternatives?   | Coherence – is the policy consistent with constitutional norms and would it improve equity?  | Clarity and practicality – would the policy be clear and workable for New Zealand?   |  |
|  | to reduce harm.  |   |  |  |  |
| <b>7. Import</b>   |  |   |  |  |  |
| <b>Prohibit all import</b>                                     | ✓ This approach would more likely ensure that cannabis could be quality and safety tested at New Zealand standards.  | ✓ There is currently no opportunity for legal trade in cannabis for purposes other than medicinal or scientific use and seeds.  | ✓✓ Largely coherent  | ✓✓ Would be clear and practical.   | <b>Alternative option:</b><br>This approach would ensure quality and safety checking of all cannabis available in New Zealand, including seeds.  |
| <b>Prohibit with exceptions (preferred option)</b>             | ✓ Having some exceptions for licensed businesses to import cannabis could ensure demand is met (ie, by importing seeds) if there was a shortage within New Zealand, particularly initially. While it would be difficult to test the quality and safety of cannabis to New Zealand standards before it arrives, this is possible.   | ✓ May be particularly useful when cannabis first legalised. There is currently no opportunity for legal trade in cannabis for purposes other than medicinal or scientific use and seeds.  | ✓✓ Largely coherent  | ✓✓ Would be clear and practical.   | <b>Preferred option:</b><br>It may be possible for licensed businesses to import medicinal cannabis, or seeds (cannabis seeds are not always considered an illegal drug in countries that have prohibited cannabis, eg, the United Kingdom). Importing cannabis could be permitted in instances of temporary shortages in supply but would need to be subject to conditions, which would need to be determined.  |
| <b>Permit</b>  | ✗ Could establish an effective standards regime, as we do with other imports. This would likely limit imports to countries with good regulatory regimes. However, could provide a supply for the illicit market and increase supply in New Zealand if private individuals could import cannabis.   | ✗ Could easily flood the market and makes it difficult for government to control supply. There is currently no opportunity for legal trade in cannabis for purposes other than medicinal or scientific use and seeds.   | ✓✓ Largely coherent  | ✓ Would be clear and practical, however establishing an effective standards regime, particularly for plant material, would take time.  | <b>Not recommended:</b><br>This approach would undermine goals of ensuring economic opportunities for New Zealand companies and ensuring cannabis products are quality and safety checked. It could also provide a supply for the illicit market.  |
| <b>PRIVATE CULTIVATION AND PRODUCTION OF CANNABIS PRODUCTS</b> |  |   |  |  |  |
| <b>8. Private cultivation</b>                                  |  |   |  |  |  |
| <b>Permit (preferred option)</b>                               | ✓ Would provide an additional means of accessing legal cannabis without engaging with the illicit market. Government could control private cultivation through rules or guidelines to minimise harms eg, from quality and potency of cannabis or children accessing it. Risk of accidental consumption by children but similar risk from storing store-bought cannabis at home. More difficult to control safety and quality, and physical security (ie, from theft) of privately cultivated | ✓✓ It is expected that fewer people would privately cultivate cannabis due to the convenience of purchasing cannabis from legal retail. It could however be popular if it provides a low-cost alternative. Not everyone would be near a store (particularly in rural New Zealand) or want to be seen in a store so it provides an alternative legal source of cannabis. | ✓✓ Would ensure no one is disadvantaged by where they live or their ability to afford to buy retail cannabis (especially if retail cannabis costs more than illicit cannabis). However, some people would not be able to grow cannabis (eg, due to tenancy agreements or body corporate rules). Stores would provide an alternative means to access legal cannabis for these people. | ✓ Clarity would depend on regulation around private cultivation, but a clear approach is possible. Would be difficult to enforce rules around private cultivation but most likely to follow rules, if not overly burdensome. | <b>Preferred option:</b><br>Would provide an alternative means to access legal cannabis for those not near a licensed retailer, as well as a potentially lower-cost product. However, there are disadvantages as any parameters around private cultivation developed would be difficult to enforce. Permitting private cultivation would mean some tax revenue would be lost; however, based on experience abroad, it is anticipated that retail sales would be a more commonly used means to access cannabis. |

|   | Primary criteria   | Secondary criteria  |   |  | Overall assessment   |
|---|--|---|---|--|--|
|   | Efficacy – would the system achieve wellbeing and minimise harm?   | Compliance and business opportunities – is the policy better than the alternatives?   | Coherence – is the policy consistent with constitutional norms and would it improve equity? | Clarity and practicality – would the policy be clear and workable for New Zealand?   |  |
|   | cannabis than commercially cultivated cannabis.  |   |   |  |  |
| <b>Prohibit</b>   | <p>✓ Would only provide one source of legal cannabis (retail cannabis).</p> <p>Those who currently illegally grow cannabis to avoid the illicit market would likely buy from a store (retail sales provide a legal alternative source of cannabis).</p>  | <p>✗ May push people to the illicit market (or to conduct illicit cultivation) if they do not live near a store or if illicit market cannabis is cheaper.</p> <p>Biggest concern is diversion of privately cultivated cannabis to the illicit market; however, other regulatory levers are available to prevent and address this.</p> | <p>✗ Would be equity issues for people who live rurally.</p>                                | <p>✗ Unlikely to stop non-compliance as people currently privately cultivate cannabis for personal use illegally would likely continue to do so.</p> | <p><b>Alternative option:</b></p> <p>Would only be one source of legal cannabis (licensed retail stores). Would make it more difficult for people who do not live near a retail store to obtain cannabis.</p>  |
| <b>9. Making cannabis products at home</b>                                  |  |   |   |  |  |
| <b>Permit all products but concentrates and extracts (preferred option)</b> | <p>✓ Would enable access to cannabis-infused products, such as edibles, to meet demand without risks that people turn to the illicit market.</p> <p>Enabling access to cannabis-infused products, such as edibles, could encourage users to consume cannabis in ways other than smoking, which would be positive for health.</p> <p>Prevents and deters dangerous production of concentrates and extracts at home.</p> | <p>✓✓ Would meet existing demand for such products and could control supply of concentrates/extracts</p> <p>Would deter people from dangerously making concentrates at home.</p>  | <p>✓ Would be coherent.</p>   | <p>✓✓ Would be clear and practical.</p>  | <p><b>Preferred option:</b></p> <p>Enabling access to cannabis-infused products, such as edibles, could encourage users to consume cannabis in ways other than smoking, which would be positive for health. However, these products are often much more appealing to new and young users. To address this tension this approach would permit cannabis-infused products to be made at home (but not available ready-made) for those who do not wish to smoke; such home-made products are what is available currently in New Zealand (ie, there is no commercial production of edibles or topicals, although these products are occasionally detected through illegal import).</p> <p>Creating concentrates and extracts at home should not be allowed as the process can be dangerous (and these products would be commercially available) both due to the extraction process and because of high levels of THC.</p> |
| <b>Permit all</b>   | <p>✓ There would be a risk of harm when people attempt to make concentrates or extracts at home. However, this could be mitigated by prohibiting use of dangerous methods, rather than prohibiting the creation of all concentrates and extracts</p>   | <p>✓✓ Meets existing demand for such products.</p> <p>Deters people from dangerously making concentrates at home through prohibition of such activity (and commercial sale of concentrates)</p>   | <p>✓ Would be coherent.</p>   | <p>✓✓ Would be clear and practical.</p>  | <p><b>Alternative option:</b></p> <p>Enabling access to cannabis-infused products, such as edibles, could encourage users to consume cannabis in ways other than smoking, which would be positive for health. However, these products are often much more appealing to new and young users. To address this tension this approach would permit cannabis-infused products to be made at home (but not available ready-made) for those who do not wish to smoke; such home made products are what is available currently in New Zealand (ie, there is no commercial production of edibles or topicals, although these products are occasionally detected through illegal import).</p>  |

|                                  | Primary criteria  | Secondary criteria  |  |  | Overall assessment  |
|----------------------------------|---|---|--|--|---|
|                                  | Efficacy – would the system achieve wellbeing and minimise harm?  | Compliance and business opportunities – is the policy better than the alternatives?   | Coherence – is the policy consistent with constitutional norms and would it improve equity?  | Clarity and practicality – would the policy be clear and workable for New Zealand?   |   |
|                                  |   |   |  |  | Creating extracts and concentrates at home should not be allowed as the process can be dangerous (and these products would be commercially available) both due to the extraction process and because of high levels of THC. However, Government could permit these products to be produced in ways that don't involve dangerous chemicals (eg, the approach taken in Canada).   |
| <b>Prohibit all</b>              | <p>✗ There would be no legal means of accessing cannabis-infused products, pushing people to the illicit market.</p> <p>However, prohibiting creation of all cannabis products at home reduces risk of products being made that are not safe etc</p>  | <p>✗ Would fail to meet existing demand for cannabis-infused products. Concentrates and extracts, however, would be available at retail stores.</p> <p>May push people into non-compliance.</p>                       | <p>✓ Would be coherent</p>   | <p>✓ Would be clear but difficult to enforce</p>   | <p><b>Not recommended:</b></p> <p>Would effectively prohibit all cannabis-infused products in New Zealand. Some of these are already widespread and would push people to the illicit market. It would also be difficult to detect and enforce.</p>  |
| <b>10. Social sharing</b>        |   |   |  |  |   |
| <b>Permit (preferred option)</b> | <p>✓✓ Could result in encouraging new users to try cannabis, however social pressure could equally be applied to encourage people to buy their own cannabis to try.</p> <p>Would no longer penalise people for sharing with friends, which commonly occurs when people use cannabis in social settings.</p> | <p>✓✓ Would be better than penalising people for conduct inherent to the social nature of cannabis.</p> <p>Other regulatory tools would be available to encourage new users not to try or regularly use cannabis.</p> | <p>✓ Would be coherent</p>   | <p>✓ It could be difficult to detect when social sharing is being used as a loophole to act illegally. However, the worst behaviour (selling cannabis) would be obvious (ie, when money is exchanged).</p> <p>Clear message that buying off friends would be prohibited.</p> | <p><b>Preferred option:</b></p> <p>Limited to sharing of a small quantity between friends or acquaintances and must not include activities such as selling or gifting for promotional or remuneration purposes. This would recognise that cannabis is shared socially. Allowing social sharing could be seen to enable and possibly encourage experimentation with cannabis. However, the current approach of prohibiting sharing has not been a deterrent.</p> |
| <b>Prohibit</b>                  | <p>✓ Would avoid a means of encouraging people to try cannabis. There would be harms for people penalised for sharing small amounts of cannabis with their friends.</p>   | <p>✗ Unlikely to stamp out behaviour (which already occurs under existing prohibition).</p>   | <p>✓ Generally coherent but approach could hinder equity if Māori continue to be more likely to be penalised for cannabis-related offending.</p> | <p>✓ Could be difficult to enforce when occurs in private settings.</p> <p>Would be easy to detect as any passing on of cannabis (outside of a regulated store) would be illegal.</p>  | <p><b>Not recommended:</b></p> <p>Social sharing already occurs as a result of the social nature cannabis use can have. Prohibiting social sharing would effectively criminalise common behaviour associated with cannabis use despite cannabis' legality. It would likely push a greater number of people into non-compliance. Preventing circumvention of regulated sales could instead be achieved through limits on social sharing.</p>                     |



## Section 5: Conclusions

### 5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

Legalisation and prohibition are both potential solutions to address cannabis use and associated harms. Both will be options in the 2020 referendum on legalising personal use of cannabis. The regulatory analysis in this RIA aims to determine the best regulatory model for legalisation by considering which model would best achieve the Government's objectives.

The preferred model of cannabis regulation – to provide as an option in the 2020 referendum – is a regulatory system that would establish a government-controlled, tightly regulated market for the production, supply and use of cannabis. The size of the market would be limited to a level that is adequate to meet current demand, with a view to reducing demand over time. Cultivation, production, manufacture and sale would all require a licence. Government would regulate all aspects of the supply chain.

The impact analysis indicates that the proposed approach to regulating cannabis would provide the best model should the public vote in favour of legalisation. The approach would enable Government to strictly control the market to prioritise the objective of improving wellbeing by reducing harm; the objective which the analysis is weighted toward. The model would use regulatory levers to mitigate the risks posed by legalisation.

The impact analysis in this RIA has involved making judgements when there is limited information and evidence available to draw on. Consequently, the proposed approach generally favours more restrictive policy options. For example, online and remote sales would make cannabis more accessible to those with limited access (eg, living in a remote area or people with some types of disabilities) but carries a risk of increased problematic use. The proposals have, therefore, proposed to prohibit online and remote sales.

Another example is prohibiting the commercial manufacture and sale of cannabis-infused products, particularly edibles. Allowing the commercial manufacture of edibles would bring benefits by providing a method of consumption that avoids smoking and reduces the risk of mis-dosing from home-made edibles, but the sale of ready-made edibles risks increasing cannabis use, encouraging new users to try cannabis and accidental consumption (including by children). The proposals, therefore, prohibit commercial production of edibles.

A robust monitoring system would be implemented alongside the regulation to assess if the system is meeting the Government's objectives, with mechanisms for evaluation. It would aim to enable Government to closely follow the impacts of the regulation and improve the system, where and if necessary. Detail around how monitoring and evaluation would work will be developed in subsequent policy analysis.

The Ministry of Justice has analysed additional settings within the overarching proposed framework. This involved considering a range of moving parts and required balancing competing objectives to select options that would improve wellbeing and be workable in New Zealand.

This includes the proposals to:

- Establish a minimum age of 20 years
- Permit use of cannabis at private premises and licensed premises only
- Regulate commercial cultivation of raw cannabis and the production of cannabis concentrates (eg, resin and oil), and the sale of these products in retail stores (not remote sales, eg through the internet or by phone, fax or mail order)
- Limit the import of cannabis
- Permit private cultivation of cannabis by adults
- Allow adults to make cannabis-infused products (eg, brownies) at home
- Allow some social sharing of cannabis among adults.

These proposals would have some expected impacts, including better outcomes for people who use cannabis (including Māori), restricting access to young people, reducing opportunities for the illicit market, and establishing a strong foundation for enhancing wellbeing and reducing harm.

Costs for Government would include costs of implementing the regulatory model, as well as for monitoring and review. There would also be establishment and compliance costs for the new cannabis industry.

The range of potential impacts will be better understood once the model is more fully developed and a cost benefit analysis, or similar market analysis, has been conducted.

## 5.2 Summary table of costs and benefits of the preferred approach

| Affected parties | Comment: | Impact | Evidence certainty |
|------------------|----------|--------|--------------------|
|------------------|----------|--------|--------------------|

| Additional costs of proposed approach, compared to taking no action |   |                       |        |
|---|---|-----------------------|--------|
| Legal businesses (licensees)  | One-off establishment costs*  | Medium                | Low    |
|   | Ongoing compliance costs*   | Medium                | Low    |
| Government  | Implementation and administration of the regulatory system  | High                  | Medium |
|   | Health sector costs (MOH – thoughts?) <sup>77</sup>   | High <sup>78</sup>    | Medium |
|   | Costs of public education <sup>79</sup>   | High <sup>80</sup>    | Medium |
|   | ss 6(a) and 9(2)(h)   |                       |        |
| New Zealand society   | Expect at least an initial increase in use but this is not necessarily expected to increase problematic use | Low                   | Medium |
| <b>Total monetised cost</b>   |   | Unknown at this stage |        |
| <b>Non-monetised costs</b>  |   | Medium                | Medium |

| Expected benefits of proposed approach, compared to taking no action |   |        |        |
|--|---|--------|--------|
| People who use cannabis, including Māori                             | Access to quality checked cannabis with known potency         | Medium | High   |
|  | Consumer law protection                                       | High   | Medium |
|  | No interaction with the illicit market needed to buy cannabis | High   | Low    |

<sup>77</sup> Health sector costs would include greater investment in resources for prevention, early intervention and wrap-around health and treatment services for substance use disorders. This needs to ensure services are more widely available and adequately address people's needs, including culturally appropriate services and services targeted to young people.

<sup>78</sup> A report commissioned by the New Zealand Drug Foundation estimates funding for harm reduction and addiction treatment services needs to increase by \$150 million per year: Sense Partners. 2018. *Estimating the impact of drug policy options*. drugfoundation.org.nz/assets/uploads/Cost-benefit-analysis-drug-law-reform.pdf (Accessed 19 February 2019.)

<sup>79</sup> Public education costs with long term public education and awareness raising, including in schools, to counter the persistent and somewhat socially-accepted view that cannabis does not cause harm to health. This would need to target different communities and age groups, rather than taking a generic approach.

<sup>80</sup> The Drug Foundation-commissioned report estimates that funding for drug education would need to increase by \$9 million per year: Sense Partners. 2018. *Estimating the impact of drug policy options*. drugfoundation.org.nz/assets/uploads/Cost-benefit-analysis-drug-law-reform.pdf (Accessed 19 February 2019.)

|                                |  |                       |        |
|--------------------------------|--|-----------------------|--------|
|                                | Private cultivation provides an alternative means to access cannabis | Low                   | Medium |
| Legal businesses (licensees)   | Legal business opportunities   | Medium                | Medium |
| Children and young people      | Restricted access to cannabis  | High                  | Low    |
| Communities                    | Opportunities to benefit from legal market                           | Medium                | Medium |
| Māori and iwi <sup>81</sup>    | Opportunities to benefit from legal market                           | Medium                | Medium |
| Government                     | Tax revenue <sup>82</sup>  | Medium                | High   |
|                                | Reduced expenditure on criminal justice system <sup>83</sup>         | Medium                | Medium |
| New Zealand society            | Enhanced wellbeing and reduced harm                                  | High                  | Low    |
|                                | Smaller illicit market for cannabis                                  | High                  | Medium |
|                                | Increased investment in health and public awareness                  | Medium                | High   |
| <b>Total monetised benefit</b> |  | Unknown at this stage |        |
| <b>Non-monetised benefits</b>  |  | Medium                | Medium |

\*These costs and benefits are monetisable, but more policy development and data is required to determine the monetised cost.

<sup>81</sup> The Ministry of Justice has begun to consult with Māori, iwi, hapu and Māori organisations. The aim is to consult with Māori and collaborate to develop solutions for issues relating to cannabis.

<sup>82</sup> In 2013, Treasury estimated that a change in the legal status of cannabis could bring an additional \$150 million in revenue from taxing cannabis, see [assets.documentcloud.org/documents/2995244/Bill-English-Cannabis-OIA.pdf](https://assets.documentcloud.org/documents/2995244/Bill-English-Cannabis-OIA.pdf). Research commissioned by the New Zealand Drug Foundation and released in 2018 concluded that legalisation could generate tax revenue of between \$185 and \$240 million a year: Sense Partners. 2018. *Estimating the impact of drug policy options*. [drugfoundation.org.nz/assets/uploads/Cost-benefit-analysis-drug-law-reform.pdf](https://drugfoundation.org.nz/assets/uploads/Cost-benefit-analysis-drug-law-reform.pdf) (Accessed 19 February 2019.).

<sup>83</sup> The report commissioned by the Drug Foundation estimated in 2018 was savings of \$6-13 million per year for the Justice sector as fewer people go to court and prison for cannabis possession and supply offences. However, it should be noted that there have been published concerns with the methods of that report. See Wilkins, C, Rychert, M, Romeo, J S and Randerson, S. 2019. Smoke in our eyes: the Sense Partners' evaluation of the legalisation of cannabis in New Zealand. *New Zealand Medical Journal* 132: 6-9.

### 5.3 What other impacts is this approach likely to have?

The financial impacts of the model are yet to be determined but the Ministry of Justice will provide a full cost benefit analysis, or similar market analysis, once the model is developed further. This will enable the Ministry of Justice to test and better understand the costs, benefits and market outcomes of creating and transitioning to the proposed regulatory system to govern personal use of cannabis. This analysis will be made available to the public to inform decision-making ahead of the referendum.

Some uncertainties around impacts are known to exist, for example it is unclear what other activities illicit suppliers might turn to if cannabis is legalised. The illicit market for cannabis may shrink but organised crime groups are likely to shift focus to other drugs and may look to exploit any gaps in new legislation and supply lines. Other uncertainties will become clearer as further policy proposals are developed.

### 5.4 Is the preferred option compatible with the Government's Expectations for the design of regulatory systems'?

The regulatory model is generally compliant with the Government's Expectations for the design of regulatory systems.

However, there are some potential incompatibilities with the Expectations:

- The proposed regulatory model is completely new; it differs from legalisation models in other countries, which means there is uncertainty around outcomes. In the next phase of policy development, officials will develop policy keeping in mind the need to be flexible, to ensure processes produce predictable and consistent outcomes, and to ensure there is scope for regulation to evolve to avoid incompatibility.
- ss 6(a) and 9(2)(h) [REDACTED]
- While there are design, consultation, timing and scope constraints, these have been identified and will be addressed as far as possible in the following tranches of policy proposals and accompanying RIAs.

## Section 6: Implementation and operation

### 6.1 How will the new arrangements work in practice?

Should the public vote in favour of legalising cannabis, legislation would establish the model for cannabis regulation and would give effect to the overarching policy proposals.

Other details around implementation will be determined in subsequent policy proposals. It is likely that additional regulations would need to be created through delegated legislation with further details eg, around licencing. In addition, successful implementation – if the public vote in favour of legalisation – would require close collaboration with the new cannabis industry.

The Ministry of Justice recognises that there would need to be sufficient time to transition from prohibition to the proposed regulatory model, should the public vote in favour of legalisation. There would need to be adequate time for the legal market to be established and cannabis to be cultivated to supply the market. Seeds would need to be available to enable private cultivation. Officials are learning more about transition experiences from other jurisdictions.

### 6.2 What are the implementation risks?

Assumptions around cannabis legalisation have been based on experiences abroad. As such, there are notable implementation risks of the proposed regulatory model (which differs from models abroad). These could be minimised through early and ongoing planning, and consultation.

There are risks of:

- Supply shortages, particularly initially, which could fuel the illicit market.
- Businesses not entering the market. For example, due to unrealistic compliance costs, unclear regulatory rules or burdensome establishment costs.
- Increased prices (eg, as a result of heavy regulation and compliance costs), making legal cannabis more expensive than cannabis available in the illicit market. However, it is anticipated that most people would prefer having access to a stable quality legal product over a cheaper illegal product of potentially lower quality.

## Section 7: Monitoring, evaluation and review

### 7.1 How will the impact of the new arrangements be monitored?

Government already collects some cannabis-related data. This includes proceedings data and seizure data from Police, and surveys conducted by the Ministry of Health. Some data is only collected on drug use as a whole (ie, it is not cannabis-specific). Should cannabis be legalised, it would be necessary to collect and record cannabis-specific data (eg, drug-impaired driving). The details around data collection will be determined in subsequent policy proposals. The Ministry of Justice is working with other agencies to establish baseline indicators, which would enable comparisons of outcomes under the status quo and legalisation.

Other mechanisms to support monitoring and evaluation will be determined as the model is developed further. Certain policies may require greater monitoring. Given constraints, and the various moving parts of a regulatory model for cannabis, the Ministry proposes to identify particular areas to prioritise to analyse workability and check for unintended impacts.

### 7.2 When and how will the new arrangements be reviewed?

The next stages of policy development will involve consideration of review mechanisms. Given the novel and uncertain nature of legalisation of cannabis, particularly the proposed model, the Ministry of Justice will consider how to review the proposed legislation on an ongoing basis. This will involve considering opportunities for stakeholders to raise concerns.