COMMONWEALTH OF AUSTRALIA

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SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Legalising Cannabis Bill 2023

(Public)

WEDNESDAY, 21 FEBRUARY 2024

BRISBANE

BY AUTHORITY OF THE SENATE

[PROOF COPY]

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Wednesday, 21 February 2024

Members in attendance: Senators Green, Polley, Roberts, Scarr and Shoebridge

Terms of Reference for the Inquiry:

To inquire and report into:

Legalising Cannabis Bill 2023

WITNESSES

BARNS, Mr Greg SC, National Criminal Justice Chair and Past President, Australian Lawyers Alliance [by audio link]

MARCUS, Mr Shaun, National President, Australian Lawyers Alliance [by audio link]

Committee met at 09:05

CHAIR (Senator Green): I declare open this public hearing of the Legal and Constitutional Affairs Legislation Committee for its inquiry into the Legalising Cannabis Bill 2023. I acknowledge the traditional custodians of the land on which we meet and pay my respects to their elders, past and present. I would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who are participating in today's public hearing. The committee's proceedings today will follow the program as circulated. These are public proceedings, being broadcast live via the web. I remind witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to the committee.

The committee prefers evidence to be given in public, but under the Senate's resolutions witnesses have the right to request to be heard in confidence, which is described as being in camera. If you are a witness today and intend to request to give evidence in camera, please bring this to the attention of the secretariat as soon as possible. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, the witness may request that the answer be given in camera. Such a request may, of course, be made at any other time.

I now welcome representatives from the Australian Lawyers Alliance, who are joining us via teleconference today. Thank you for taking the time to speak with the committee. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you and is available from the secretariat. Do you have any comments to make on the capacity in which you appear?

Mr Barns: I'm the criminal justice spokesperson for the Australia Lawyers Alliance and I'm a barrister who practises in criminal law.

CHAIR: Thank you very much for your attendance today. Would either of you like to make a brief opening statement before we go to questions?

Mr Marcus: Thank you, Chair. I thank the committee for inviting the Australian Lawyers Alliance to appear at today's hearing. I would like to acknowledge the traditional owners of the lands from which I am coming to you, the Wurundjeri people of the Kulin nation, and I pay my respects to their elders, past and present. The ALA is a national association of lawyers, academics and other professionals dedicated to protecting and promoting access to justice, human rights and equality before the law. The ALA is represented in every state and territory across Australia, and we estimate that our 1,400 members represent up to 200,000 people every year nationally.

For many years now, the ALA has maintained that the possession and use of cannabis should be legalised. It is evident that decriminalising drugs does not increase the use of drugs but instead allows harm minimisation policies to be put in place that result in better outcomes for users. We also believe that an emphasis on a punitive, criminalised approach to drug use in Australia has inhibited advances in research into therapeutic and health benefits of cannabis use. A change in the law could have huge health advantages and assist the many people who would benefit immediately from access to legal, less expensive and more readily available cannabis, subject to quality control.

The ALA considers that the criminalisation of some drugs that are harmful to one's health but not others is inconsistent and illogical. In my personal practice as a personal injury lawyer, I see many clients coping with traumatic injury who have broad access to drugs such as opioids. We know that the use of opioids brings a range of serious risks, and yet they are legal and users are able to drive and work while using these drugs.

Over the past few years, medicinal cannabis has finally been made accessible to patients in Australia, through a highly regulated scheme. While this is a step in the right direction, the number of people who have been able to access medicinal cannabis is low compared to many other countries. The current regulatory model makes it difficult for many people to access the system, and a new and fit-for-purpose framework is needed.

Due to the uncertain framework, we know that many medical professionals will refuse to prescribe cannabis for medicinal use. As a result of the challenges in gaining access, patients often must resort to self-medication by using illicitly obtained cannabis. Families are desperate to provide the best possible medical treatment and pain

relief for their loved ones, but the costs and regulatory burdens mean that these families are often forced to source illegal, black market cannabis, which puts them at risk of serious criminal charges.

Finally, injustices surrounding drug-driving laws for those prescribed with medicinal cannabis cause significant issues for many. The ALA has long advocated that such laws are causing serious harm to people, who can lose their licence and sometimes their job and their independence by having any amount of medicinally prescribed cannabis in their system, despite no evidence of impaired driving. We know that other people make the difficult decision to go without medicinal cannabis so that they can drive, despite experiencing significant benefits from using prescribed cannabis.

With all the above in mind, the ALA supports the proposal to implement legislation in the manner proposed by this bill—that is, through the registration and licensing of cannabis strains. Such a system allows for the growth, manufacture and distribution of cannabis to become legal and also regulated by law enforcement. There are enormous benefits in taking a coordinated, unified approach to cannabis regulation through federal legislation which accords with the principle of justice and equity. This is particularly the case when it comes to differing laws across the states and territories. The legalisation of cannabis, as proposed by this bill, would open up the opportunity for further research and investment into creating a fair scheme for regulating the availability of cannabis in Australia, especially for medicinal use. Greg Barns SC will now provide a short opening statement as well, on behalf of the ALA.

Mr Barns: Senators, I'm going to address very briefly the issue of the impact on the criminal justice system. Could I firstly say that I have not met a magistrate or judge—and I've met many over the years—who thinks that the current system, whereby we, for example, ensure that alcohol is legal but cannabis is not legal, despite the fact that cannabis has less of a deleterious impact on the community, makes any sense. The average cost person in police and court activities, according to the Penington Institute, which has taken its data from a number of sources, is around $2,000. That's around $62 million spent on courts around Australia dealing with possession offences. Ninety-one per cent of cannabis offences before the courts are personal use; they are not trafficking and they are not selling. The indication that the system doesn't work is that demand does not diminish. I'm reminded of what *The Economist* newspaper said about the war on drugs. 'In the war on drugs,' it said, 'there are no wins; there are only Pyrrhic victories,' and that's certainly the case in relation to cannabis. Around 37 per cent of Australians have used cannabis at least once and around 12 per cent have used cannabis in the last 12 months. That's an underreporting, as some people are afraid to report because of the fact that it's illegal. The number is estimated, again by the Penington Institute, to be just short of five million people. Daily cannabis use not only is amongst young people but also includes people who are 60 and older. I personally know of couples and individuals who are well into their 70s who use cannabis for chronic pain relief, who have to source it on the black market and who live in fear of the police turning up at their house. There is just zero evidence—and I mean zero evidence—that a law enforcement approach has any deterrent effect. There is also zero evidence that proceedings in the court and penalties imposed for cannabis use have any deterrent effect. As Shaun has just said, one of the major concerns is the discrimination that people endure if they've been convicted of a cannabis offence, or even been found guilty and given some form of diversion order or something less than a conviction, such as a bond. If you are seeking to be admitted to legal practice, you have to declare it. There is a range of jobs in our community where it has to be declared and questions can be asked.

Lastly, in relation to drug-driving offences, I would note that there's a decision of the New South Wales Court of Appeal this week, which has indicated that drug-driving offences in New South Wales are absolute liability offences. That means that there's effectively no defence available in the same way as there's no defence available in a speeding offence. If the drug driving testing has worked and if it is accurate, then you are guilty of an offence. This is extraordinarily unfair because the THC component might have some impact for a few hours but, of course, we know that it can remain in the system for a few days.

What we're getting is people being penalised for drug driving when there is no level of impairment. Road safety legislation is designed to stop people who are impaired or who are at risk of being impaired with, for example, a 0.05 or more blood alcohol concentration from being on our roads. To discriminate against people and to ensure that they lose their licence and, potentially, their livelihood simply on the basis that they've got a trace of cannabis in their system is patently unfair.

I've done two cases now where that's been the case. In one of these cases, the person in question was, in fact, going to his chemist to get his medical cannabis prescription when he was pulled over by police. We sought to get the prosecution to exercise its discretion not to prosecute because it wasn't in the public interest; we failed. The magistrate we appeared in front of was shocked because, effectively, she said, 'The law is not keeping up with reality; I have to penalise a person in circumstances that do not accord with justice.'

CHAIR: We are now going to questions. I just note that we do not have a lot of time with each witness today so we will keep questions short. We will start with you, Senator Shoebridge, as the mover of the bill.

Senator SHOEBRIDGE: Thanks, Mr Marcus and Mr Barns, for the ALA's submission. I don't know whether you've had a chance to look at some of the other submissions that have been lodged with the inquiry, particularly the AMA's submission; have either of you seen that?

Mr Barns: I have seen the AMA's submission, yes.

Senator SHOEBRIDGE: The AMA say that they 'do not condone the trafficking or recreational use of cannabis' and they seek to 'retain criminal penalties' for it, suggesting that would provide positive health outcomes. Are you aware of any study that shows that criminalising people for cannabis possession provides any kind of positive health outcome for the individual?

Mr Barns: None. It shocks me that the AMA would make that statement, and it shows an extraordinary naivete on the part of the AMA. It's a pity that they don't talk to judges, magistrates, police and those of us in the criminal justice system. I'm not aware of any studies that indicate that criminalisation ensures deterrence. What the AMA seems to be saying is that if a person comes to court with cannabis use that they won't do it again. That's simply not the case. It doesn't happen that way. That's not the world that we live in. It may be that, if a person has chronic cannabis use, they are diverted into the drug court, but the drug court is highly therapeutic and could certainly operate outside of the court system in the way in which it does in Portugal. The AMA statement flies in the face of all the evidence, and I mean all the evidence. In the United States, that's one of the reasons for legalisation; it's one of the major reasons for legalisation in Canada. The horse has bolted on this issue, and it's because of the failure of criminalisation, and that's why countries and states—even conservative states in the United States—are moving to at least decriminalise, and many, of course, are moving to legalise.

Senator SHOEBRIDGE: One of the other assumptions in the AMA submission seems to be that maintaining criminal penalties and maintaining an illegal market limits access to cannabis. Given the data about cannabis being so broadly available, and given the data particularly from the wastewater survey, do you have any views on the effectiveness of criminalising cannabis in terms of reducing access?

Mr Barns: Let me put it this way: if I wanted to get cannabis today, I'd have no trouble getting it. If any person wants to get cannabis, it is readily available. Again, it's extraordinary naivete on the part of the AMA—again, it's a pity that they didn't consult us or any legal groups, because legal groups have a very different view—as there's simply no evidence that supply is cut. If you look at all the data over many years, you will see that, when it comes to the war on drugs and prohibition generally—and cannabis is included in this—there is no diminution in supply. As a judge once said to me, 'Every time I sentence a person for selling or trafficking, all I am doing is creating a vacancy in the market.' That's the reality. There is, again, no evidence—no evidence—to show that cannabis supply is impacted by criminalisation.

Senator SHOEBRIDGE: One of the other statements that's used by opponents of the bill is, 'Oh, we don't need to worry about this because nobody goes to jail for possession of cannabis anymore; it's not a problem in the criminal justice system.' Could I ask you, first of all, what, if anything, you know about the numbers of people who are being brought into the criminal justice system with their head charge being possession of cannabis; and, secondly, what does it do to the dynamics of policing on the street, particularly for First Nations people and young people, when police can stop and question people on suspicion of possession of cannabis? I know that there are two parts to that question, but I'd like you to address them.

Mr Barns: Sure. Shaun, I might answer this again. Just in relation to the second part, criminalisation of cannabis means that young people in particular are overpoliced and particularly First Nations people. People say, 'Well, police, of course, will act in relation to any cannabis use.' Can I give you this anecdote? I live in Hobart. There is a preponderance of policing in the northern suburbs of Hobart—Senator Polley might know a bit about this—and many of the offences are simply possession and use of cannabis; there might even be very small selling amongst friends. You do not see the same policing, despite the fact that cannabis is probably more readily available there in suburbs like Sandy Bay, which are wealthy suburbs, and that's repeated right across Australia. I did have some numbers which I can't just put my hands on at the moment but, in relation to the numbers, if you go down to the magistrate's court in any state or territory of Australia—except for the ACT, which has taken a sensible and rational move to decriminalise—you will find that well over half the list will include cannabis charges. To say, 'Well, no-one goes to jail,' is not the point. As I've just said, it discriminates against people. People can lose their jobs, and literally do lose their jobs, because either they lose their licence or they've got the cannabis conviction on their record and they can't travel to certain places or they are unable to secure employment. There is a punitive effect. Just because you don't go to jail doesn't mean that there's not a punitive effect.

Mr Marcus: Perhaps I can add very quickly that, in 2021 in Victoria, Aboriginal and Torres Strait Islander persons were eight times more likely to be arrested for cannabis use than those not identifying, so the prejudice in the way in which the laws are applied across Australia is profound.

Mr Barns: Senator, I just found some data from Queensland. In Queensland each year, there are around 20,000 people in possession of small quantities of drugs for their own personal use, and it's mainly cannabis. That means that there are around 20,000 people going through the court system at a cost of $2,000 person. That number, in fact, is higher in Tasmania—I haven't got it on me—because it tends to be higher in regional areas.

Senator SHOEBRIDGE: If you can assume that about $2,000 person is the public cost for taking someone through the criminal justice system, that's about a $40-million cost just in Queensland in a given year for the policing of cannabis.

Mr Barns: Correct.

Senator SHOEBRIDGE: And that doesn't include the economic loss of people losing their jobs and the other private costs of lawyers on the other side.

Mr Barns: Yes. What's interesting about this issue is that it's not a left-right issue. The law and economics approach, which emerged from the University of Chicago and, of course, the renowned free-market economics school and the work of Gary Becker, who was a Nobel Prise winner, and others in the late 1990s, in fact, in a very famous article in the *Wall Street Journal*, said, 'You should legalise drugs.' One of the main reasons for legalising drugs is those economic costs, which come on top of the direct costs. The other reason, Becker said, is because you can control the market—you can tax and regulate it—which, of course, is what has happened in the United States. So this is not a left-right issue; it doesn't divide neatly. There are people across the political spectrum who support the legalisation of cannabis.

Senator SHOEBRIDGE: We've heard a lot over the last 12 months about what governments could do to address First Nations disadvantage. In terms of a practical measure for Closing the Gap, pulling thousands of First Nations people out of the criminal justice system, how would you measure legalising cannabis?

Mr Barns: It would be very high because, often, people's first entry into the criminal justice system is small charges, like the possession of drugs, including the possession of cannabis. It would have impact. It would be useful to get evidence, for example, from John Lawrence SC, who's in the Northern Territory and very passionate about the issue of Indigenous overrepresentation in the criminal justice system. But I certainly know from my experience—and I know other lawyers who have the same experience—that people of disadvantage, including Indigenous Australians, as I say, often enter the courts system with possession of cannabis. Then, of course, once they're in that system, they tend to cycle in and out.

CHAIR: Senator Scarr.

Senator SCARR: Thank you, Mr Marcus and Mr Barns, for appearing today, and thank you for all the work that you do in this space; I greatly respect it. I'd like to put to you some propositions. Really, this is to give you an opportunity, and feel free to take on notice some propositions that have been put in the AMA submission.

Mr Barns: Sure.

Senator SCARR: Quoting from page 1 of their submission, the first proposition is:

Since legalisation in Canada, cannabis use rates in youth have increased, along with increases ED presentations and cannabis use disorder diagnoses.

I should say, just to set it up further, that they then go on in the article to refer to potential mental health impacts, such as reduced brain function, anxiety or panic attacks, paranoia or memory loss arising from cannabis use. They say, and I quote: 'Cannabis users are more likely to develop psychoses or schizophrenia.'

Then, on page 2 of their submission, they have linked those two points to the fact that, as you would both know, we have chronic underfunding of mental health services in Australia, including in the state of Queensland. I meet young people who need to have mental health services and parents who are desperate to get them admitted into mental health services, but there are just no beds available. How do you respond to the issue that, if cannabis use increases amongst people, it's going to lead to an increase in mental health issues in a context where we already have a crisis in our mental health system?

Mr Barns: Could I just say in relation to the Canadian data that I think it's mixed. I have seen that data, but I've also seen other data which indicates that's not correct. What you're getting is more people coming forward who have used cannabis and they were too fearful of entering the medical system or society more generally and indicating that they use cannabis for fear of prosecution. So that has to be taken into account.

The second issue is that, even if you assume that the AMA is right in talking about increased poor mental health outcomes—which, again, I think is conjectural, and we might take that on notice and come back to you after getting some alternative information for you—the answer is not to criminalise, for all of the reasons that we've just set out. People don't present to mental health services or hospitals, and one of the reasons for their not doing so is that they are scared. I've had clients in this space who have been very scared of talking about the fact that they use drugs, including cannabis, so they're not presenting.

The AMA seems to be saying, 'If you criminalise it, that'll keep the numbers down; we don't have mental health services, so let's just shunt them into the criminal justice system, give them the stigma of a conviction and off they'll go.' To be blunt, it's cruel. It's a very narrow view, a conservative view and completely inconsistent with the evidence that you should not criminalise people for using a substance which causes a lot less harm in the community than alcohol. My clients don't commit offences when they've just used cannabis; they do commit offences when they've overconsumed alcohol. Shaun, do you want to add to that?

Mr Marcus: Just briefly. Talking about my own practice, there are the results that I see from medicinal cannabis use and the mental health improvements that my clients report, and that is something that our members see from day to day. We meet with clients after traumatic injury, with long periods in various compensation schemes across Australia, and we see and hear reports of the opposite: in those circumstances, medicinal cannabis has a real helping and improvement role in mental health. That's all that I want to say about that.

Mr Barns: The point about taxing and regulating the market, which is in its very early days in Canada, is that you get quality control. One of the problems with the cannabis market is that it's illicit, so the increase in psychosis et cetera comes about because people are buying on the illicit market. It's like moonshine in the 1930s with prohibition; that's the problem that you get. Poor health outcomes come from criminalising substances.

Senator SCARR: In relation to therapeutic use, I'll put on the record that my mother suffered from chronic pain for the last 10 years of her life. She tried therapeutic cannabis as a way to address it, but it didn't work. Like you, Mr Barns, I have close personal experience with people suffering in that context.

Mr Barns: Sure.

Senator SCARR: The AMA says, though, in that context that their concern is that people may self-medicate using cannabis products regulated under the proposed cannabis Australia national agency for therapeutic purposes, without consultation with their medical practitioner and without the quality controls that come with product registration under the Therapeutic Goods Administration's Australian Register of Therapeutic Goods. In effect, they're saying, 'Okay, to the extent that cannabis can be used to relieve pain et cetera, it needs to go through the process of the TGA and be regulated in that respect to make sure that, if it's indicated to use a cannabis-based product to alleviate pain, the product that's being used has come through the TGA processes.' We can talk about the cost of that, and I think submissions have raised valid points in relation to the cost. But couldn't that issue of pain management with therapeutic use of cannabis be better approached through the existing TGA processes to make sure that the right medicinal qualities of the cannabis that is used for therapeutic purposes has gone through the appropriate QAQC and through prescribing doctors and medical practitioners?

Mr Marcus: Our clients don't wish to take medications from the black market; they want to take a safe and reliable medication through the use of their doctor. I certainly have clients who have had to shop around to try to access, to test whether medicinal or therapeutic cannabis assists their long-term condition. We would support, obviously, this being done in a safe way. There's no advantage for people to be uncertain as to what they're taking or have to buy it on the black market; that just shouldn't be the case.

Mr Barns: It's inconsistent with what the AMA is also saying, as I understand it, which is that you have to keep criminalising people. On the one hand, it's saying, 'Cannabis is a terrible drug and it's so evil that you have to criminalise it,' that in some mythical world, it's going to deter people. Then, on the other hand, it's saying, 'Medical cannabis is okay because that comes through our members and we want people to use our members to prescribe cannabis.' What they could best do is make sure that their members do, in fact, prescribe medical cannabis because, in Tasmania, a serious problem is the number of GPs who won't prescribe it, either because they don't know the system—they're ignorant of the system—or, alternatively, because they can't be bothered filling out the paperwork. As I've said, I know people in their 70s and 80s who use—

CHAIR: I'm sorry; I'm going to stop you there. I know that you're not in the room, so you can't see me, as the chair, when I'm speaking. I'm going to ask you to finish your answer because I do need to hand the call to other senators.

Mr Barns: Sure. I've finished my answer.

CHAIR: Thank you; I appreciate that. We're just a bit short on time, so perhaps that can be kept in mind when answering. Senator Roberts.

Senator ROBERTS: Thank you, both of you, for being here, and involved in the inquiry. I found your submission excellent; it was very helpful and very eye-opening. As I see it, there are three issues: one is legalising medicinal cannabis; the second is legalising recreational use of cannabis; and the third is the quality of the bill itself. Perhaps a fourth one is the safety of product and the need for regulation. One Nation has strongly supported medicinal cannabis for decades, and we've worked to increase its availability and accessibility by reducing its price. The public is ready for medicinal cannabis; we've been convinced of that for quite some time. Will legalising recreational use scare people off legalising it for medicinal use?

Mr Barns: I'm not sure what the question was, Senator?

Senator ROBERTS: Will legalising the recreational use of cannabis scare the public off legalising medicinal cannabis? In other words, would it be better to—

Mr Barns: I'm not sure that's right. The polling that I've seen indicates that certainly over 50 per cent of Australians support at least decriminalising the use of cannabis. That's because, as I've said, around one in three Australians have used it, and it's probably higher because there's self-reporting, which means you get a lower number.

Senator ROBERTS: Some say that this bill seems sloppy and loose in its wording; what's your view?

Mr Barns: I think it's a good bill. Bills can always be improved, but I think that the framework of this bill is excellent. It provides for an effective regulator, and that's what you need and that's what you want. Very quickly, one of the issues in Canada—again, we can take this on notice—is that, as I understand it, the Trudeau government, because Canada has a much more federalised system, essentially handed over regulation to each of the provinces. That does explain some of the mixed data, but we can come back to you on that.

Senator ROBERTS: What problems do some of the details introduce for parliament?

Mr Barns: Having analysed the bill briefly, our major concern is to ensure that the policy behind the bill and the framework of the bill itself is there—and it is there. Of course,—I'm sure Senator Shoebridge would say the same—bills are subject to negotiation, and senators and parties will have different views on the bill. But in terms of an overall bill—I don't want to get into it clause by clause, and one reason for that is that I don't have it in front me, but I have read it—we certainly think the framework of the bill is sound, the bill's direction is sound and the major provisions in the bill are sound.

Senator ROBERTS: I got the impression from your answer to the first question that you're not necessarily convinced by all of the details.

Mr Barns: No, that's not what I'm saying.

Senator ROBERTS: Okay, because you've mentioned that you're very happy with the framework.

Mr Barns: We regard the bill as fundamentally sound. Of course, it can be tweaked; but, as a matter of law, we regard it to be fundamentally sound.

Senator ROBERTS: Are there any problems that it introduces for law enforcement officers?

Mr Barns: Again, anecdotally, I'll tell you what police tell me, 'What a waste of time; why am I doing this?' They would rather spend their resources on aspects of the drug system other than cannabis, particularly when we know that lawyers use it, judges use it, police use it and military people use it—particularly on the medicinal side. It's used so broadly in the community, particularly, as I say, for all medicinal purposes. The current system is not only farcical but also hypocritical.

Senator ROBERTS: Does it introduce any problems in detail for the judiciary?

Mr Barns: No, it doesn't. I probably shouldn't have said—and I withdraw my statement—that judges use it. I don't know any judges that use it, so I'll put that on the record. As I've said, I think the judiciary—

Senator ROBERTS: I didn't mean judges in their—

Mr Barns: As for members of the judiciary that I've spoken to, and the magistracy, I've not met one who thinks that the current framework works.

Senator ROBERTS: I didn't mean problems for judges who use it; I'm talking about problems for judges—

Mr Barns: No, I don't know any judges who use it; as I said, I withdraw that.

Senator ROBERTS: Yes, just in making rules; that's all.

Mr Barns: No. Again, I will repeat what I said. I think they'd be glad to get rid of this from their lists because it clogs up other cases and it means that you get courts having to deal with these petty matters day after day, maybe for an hour or so that could be freed up to deal, for example, with family violence or drink-driving matters.

Senator ROBERTS: What problems does it introduce for current users of medicinal cannabis and prospective users of medicinal cannabis, if any?

Mr Barns: I think anything that creates certainty for cannabis users—Shaun would say the same; in fact, he has said the same—would be welcomed by cannabis users. They'd no longer have to hide and feel a sense of unease, living in the community.

Senator ROBERTS: I'll just put a small question for my last question in this bracket. As for the stigmatisation of cannabis, the use of hemp and cannabis in making paper, textiles, food and medicine goes back to the 1920s and 1930s, with big pharma, big newspapers and big synthetic textile manufacturers. The doctors almanac in the 1920s or 1930s—I can't recall the year—actually had medicinal cannabis as the No. 1 treatment used in America. Has that stigmatisation been real, and is it still going on?

Mr Barns: You have to remember that the war on drugs started as an election ploy by Richard Nixon in 1968 to win over what he called the 'quiet Americans' or the 'forgotten Americans'—the silent majority. That's where it started. There was also his concern about soldiers coming back from Vietnam and using drugs. It had no medical efficacy attached to it. It was a political ruse and, of course, it was taken on and led to the destruction of communities and lives, particularly in Latin America. As I've said, the *Economist*, which, for many years, has supported legalisation, says that it's an impossible war and you can never win it.

CHAIR: Senator Polley.

Senator POLLEY: Thank you both for appearing and giving your evidence today. Does the ALA support decriminalisation or legalisation of all adult recreational use of drugs, and does this include cocaine, heroin and ice?

Mr Barns: We support decriminalisation of possession and use—not trafficking but possession and use. Again, it is for the same reasons—that the current policy settings have zero impact on deterrence. We would rather see a health-based approach, as you get in Portugal.

Senator POLLEY: We hear evidence in relation to Portugal, which has a very different legal system to the one that we have. Your submission states that, overall, the ALA continues to support the decriminalisation of possession and use of illicit substances. I ask again: does that include cocaine and heroin?

Mr Barns: Yes, it does, and I will tell you why. We are not saying that there shouldn't be some consequence, but legal consequences have zero impact. In Portugal it is not so different. You go into the health system—you don't go into the justice system; it is just the doorway you go through. That is why drug courts were established: to try to get away from that punitive approach.

Senator POLLEY: Your submission discusses the desirability of a national approach to drug possession. Would the bill cover the field under section 109 of the Constitution; that is, would it clear away existing state and territory laws? In particular, clauses 21 and 22 of the bill create a new specific offence for selling or providing cannabis to minors. Would these offences clear away existing state and territory offences which deal with similar conduct?

Mr Barns: I don't want to give you constitutional law advice on the run, but we have national drug laws in the Criminal Code alongside state and territory drug laws. That has been the case for many years.

Senator POLLEY: Earlier you talked about the offence of driving under the influence of cannabis or other drugs. Your view is that it does not impair one's ability to drive.

Mr Barns: No, that is not what I said. I said that it is not based on the impairment test; it is simply that there is the presence of drugs. It is not based on impairment, as we have with drink driving.

Senator POLLEY: But isn't it the case that law enforcement does not have the ability currently to test whether there is any impairment or not?

Mr Barns: Correct.

Senator POLLEY: Therefore, legalising it may not be in the interests of other drivers on the road.

Mr Barns: Why? I don't understand that, because if you are impaired when you are driving, you are a risk on the road. It doesn't matter what substance it is. Decriminalisation has nothing to do with that. There is an enormous amount of work going on in the United States dealing with an impairment level, as we have with drink driving, based on epidemiological studies. That is where 'drink driving' came from: it was based on science. At

the moment it is just based on the fact that this is illegal. As Shaun has said, you can take opioids or Valium and be a menace on the road, but it is not illegal.

Senator POLLEY: I'm a little confused. My understanding is that medicinal cannabis can be prescribed; it is prescribed in Tasmania by doctors. So legalisation, or decriminalisation, of cannabis use has no bearing on medicinal use and what is prescribed by doctors; is that correct?

Mr Barns: I am not sure what the question is getting at.

Senator POLLEY: I want to make sure my understanding is right; that is, you can legally be prescribed medical cannabis from a GP, and that will not change, even though cannabis is still illegal now.

Mr Barns: Correct. One of the issues that Shaun and I have addressed is that it is difficult to access the medical cannabis market, which means that a lot of people are using cannabis more broadly for pain relief because they want to get off opioids, which are highly addictive.

Senator POLLEY: There is a different argument to have more GPs prescribing and for you to be able to fill those prescriptions in your home state. At the moment you cannot do so in Tasmania; you have to have it sent in.

Mr Barns: It is difficult, yes.

CHAIR: I want to go back to the constitutional question, particularly because you are one of the legal witnesses we are speaking to today, and it is important for the Senate. The Senate is uniquely placed to make decisions that affect the states—that is the constitution of the Senate. When we have debates about decriminalisation I am very wary of a law that would cover the field because developing law reform in that way has the potential to go the other way; federal governments or the Senate from time to time could cover the field where gains have been made in states. I am referring to the decriminalisation of abortion, which has happened on a state-by-state basis, and the work that's going on to decriminalise sex work, for example, in Queensland. Does this bill cover the field, in your view? Doesn't that raise issues about the Commonwealth making laws about criminal offences which would ordinarily be the remit of the states?

Mr Barns: Again, I would be very leery—and Shaun would too—about giving you constitutional advice on this; it needs to be examined. However, having said that, the difference between abortion and this issue is that you already have extensive Commonwealth laws that deal with drugs in the Commonwealth Criminal Code. A lot of people—not so much with possession—are charged with Commonwealth and state offences when it comes to drug laws. There should be a national approach. It would be absurd if you could use cannabis in Victoria but then crossed the border into South Australia and found that it is illegal. We live in 2024. As for a national approach to an issue like cannabis and cannabis use, it is used across the country—

CHAIR: So is abortion.

Mr Barns: But there are no existing Commonwealth laws in relation to abortion.

CHAIR: I understand, but that's not the point I'm making. Perhaps you could take something on notice? That might assist me.

Mr Barns: I urge you to get some constitutional advice on it—that is trying to help the committee.

CHAIR: Sure. If you could take this on notice, it might help the committee: do you know of any other examples of Commonwealth law criminalising something where that overrides the states' ability to make laws in respect of that area of criminalisation?

Mr Barns: Without going through the statute books at some length, I would be surprised if there were.

CHAIR: Yes, so would I. Thank you for your time and for your submission. You have been asked to take a couple of things on notice, so we will get you some information about how to get that to us and the dates by which we would like to see it, but you should have a bigger window than we give most witnesses.

Mr Barns: Thank you.

Mr Marcus: Thank you.

BUSH, Mr William, President, Families & Friends for Drug Law Reform [by audio link]

STEVENS, Dr Adele, Committee Member, Families & Friends for Drug Law Reform [by audio link]

[09:53]

CHAIR: I now welcome representatives from the Families & Friends for Drug Law Reform, who are also joining us via teleconference today. Thank you for taking the time to speak with the committee today. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you and is available from the secretariat. Do either of you have an opening statement?

Dr Stevens: We do have an opening statement. Families & Friends for Drug Law Reform strongly support this bill, as it is a move towards reducing prohibition, while not moving to extreme liberalisation, as occurs with alcohol, with gambling and, to a lesser extent today, with tobacco. The existing system of prohibition leads to increased illegal drug use, as we have shown in our submission. The use of drugs such as heroin and cannabis is increased by criminalisation of these drugs. There are problems under the present system with the medical use of cannabis, for example, for chronic pain. Some of the members of Families & Friends for Drug Law Reform had difficulty during COVID in accessing cannabis legally for their health needs and so turned to the unregulated illicit market.

Our big point is that an ignored law is a bad law. Any efforts to prevent the Australian community from consuming cannabis have been as ineffective as King Canute's efforts to hold back the tide. The 2019 National Drug Strategy Household Survey recorded that almost 12 per cent—11.8 per cent—of people had used cannabis in the previous 12 months. The same survey found that a third of the population had used cannabis at least once in their life. As Nicholas Cowdery, former Director of Public Prosecutions in New South Wales, noted: 'The use of cannabis in a phase of a young person's life is likely to have less serious consequences than processing that person as a criminal.' In the ACT, where Bill and I live, cannabis was partly decriminalised first in the 1990s and then again fully a few years ago, and the sky has not fallen in.

In summary, Families & Friends for Drug Law Reform support the bill because the bill will support us with a system that minimises the harm of unfettered commercialisation while reducing the harmful effects of prohibition, thus moving towards the sweet spot of public health policy that minimises an activity judged to be undesirable—that is drug use—and, in doing so, will not cause other harm in achieving that objective. Our submission urges you to find a sweet spot for cannabis. Most of the harm caused by cannabis comes from the prohibition of this drug. Moving to a regulated system reduces the need to participate in the illegal market and can reduce the harm of maximum prohibition and move to the sweet spot without going to maximum liberalisation, as has occurred with other potentially addictive substances, like gambling and the consumption of other drugs like alcohol and tobacco.

Senator SHOEBRIDGE: Thanks, Dr Stevens and Mr Bush, for the submission from Families & Friends for Drug Law Reform. One of the things your comprehensive submission deals with is how criminalisation of cannabis use actively creates social harm. Far from being a harm minimisation measure, it actively creates social harm. Can you give us some more detail about that?

Dr Stevens: Yes, I can definitely give some details about that. What it means is that you then get into the system of mixing with other people who sell other drugs. So many people use cannabis. We would like to see a system where they didn't have to mix with the sellers, who are much more harmful than the users. Also, there is a stigma about it and you've got to be wary of police. It induces bad relationships with the police, where you could have good community relationships with the police. Bill, is there anything else that you want to say?

Mr Bush: As you've mentioned, Senator Shoebridge, the submission does go into the harms that are caused by prohibition.

Senator SHOEBRIDGE: One of the trite attacks on legalising cannabis is that if you legalise cannabis it's somehow going to be a gateway drug and introduce people to other illegal drugs. As I understand your position, Dr Stevens, legalising cannabis means that potentially millions of Australians will have far less contact with other illegal drugs because they'll be getting their cannabis from a dispensary rather than a drug dealer.

Dr Stevens: Yes; that is exactly the point. In the ACT, with decriminalisation people were allowed to grow, in the 1990s, two plants and we did not find an increase in cannabis use. Also, it allowed people not to have to go to illegal sources to get their drug, which a third of the population has used at some time.

Senator SHOEBRIDGE: Changing the law so that a third of the population no longer has any reason to come into contact with people selling an array of illegal drugs has surely got to be a beneficial outcome, hasn't it?

Dr Stevens: Yes. That's what we have argued. We can only see benefit from it.

Senator SHOEBRIDGE: You're here to represent the families and friends of people who have been impacted by the existing drug laws. Can you also talk us through, from your experience, what the impact of a criminal conviction is, even if it's just for the possession of cannabis?

Dr Stevens: A criminal conviction is a real problem. It can affect people if they want to travel overseas, particularly to America, and it can affect people getting a job. Often now, you have to get a working with vulnerable people certificate and if you've got a criminal conviction that cuts you out. It cuts you out of jobs like working in a nursing home and working with kids. Yes, a criminal conviction has lots of consequences.

Senator SHOEBRIDGE: Thank you both. I am sorry that it's so hard over the teleconference. If you feel as though you want to give some more detail in response to any of those answers, I'm sure that we could accept that on notice. I really appreciate your detailed consideration of the bill. In fact, I particularly appreciated paragraph 58 of your submission, which said that it probably should go further. We'll take that on board.

Dr Stevens: Can you just repeat that?

Senator SHOEBRIDGE: I appreciate the detail of your submission, particularly your consideration in paragraph 58 of your submission that perhaps the bill should go further. If there's anything that you want to add to the answers that you've given up until now—because it's hard over the teleconference like this—feel free to provide that on notice.

Dr Stevens: Okay. We will think about whether we want to give you some more information there. So you're looking at us saying that it's true that police still retain the power to seize cannabis products in the ACT, even though we've changed the law.

Senator SHOEBRIDGE: I think the secretariat will be in contact with you after this to clarify the opportunity.

Dr Stevens: I'm sorry about this.

CHAIR: Dr Stevens, I am going to hand the call to Senator Roberts, who might have some questions for you, and we will go slowly so that you can hear us clearly.

Dr Stevens: Okay.

Senator ROBERTS: I thank both witnesses for participating. Your submission talks about a basic principle of 'Do no harm and cause no harm trying to do no harm'. I love that. It sums up One Nation's approach to many issues, including cannabis. Your submission says:

> Most of the harm caused by cannabis comes from the police, courts and jails. Moving to a regulated system reduces the need to participate in the illegal production and supply of cannabis and can reduce the harm of maximum prohibition and move us to the sweet spot without going to maximum liberalisation as had occurred with other potentially addictive activities like gambling and consumption of tobacco and alcohol, where commercial interests profit from promoting harmful patterns of consumption.

That's certainly true, but, Dr Stevens, it feels to me like you're underplaying the harm caused by the adulteration of cannabis by criminal elements, as well as the harm coming from amateurs growing, preparing and storing cannabis without the knowledge to do these things safely. Do you see a model where the commercial production of a regulated and safe product provides maximum safety for consumers?

Mr Bush: Maybe I could come in here, Senator. It is a characteristic of the system of legalisation that is being proposed to remove—

Dr Stevens: To remove some of the laws. I'm not quite clear on what you're getting at or what you're interested in.

Senator ROBERTS: Do you see a potential benefit in larger scale commercial production of medicinal cannabis being available to the market, or even recreational cannabis, so that it's regulated and of high quality?

Dr Stevens: Yes. When you buy something on the illegal market, you don't know what you're getting. Recently in the ACT we have had drug testing. We started off doing drug testing at Groovin the Moo events, and now the ACT government has drug testing where people can come in and get their illegal drugs tested. That's going to be very useful because it then shows that a small percentage of these drugs are quite contaminated and quite dangerous. But in a regulated system that wouldn't happen.

Senator ROBERTS: I also want to refer to your quote from Mick Palmer, a former Australian Federal Police commissioner, who began his policing career in the Northern Territory. He made a similar point to yours when he said:

As a young detective I found myself arresting decent young Australians who had never come to attention of police for any other crime. Weren't ever likely to. Who were planning careers in a whole range of areas, including teaching and police …. Little tiny quantities were likely to kill these people's careers. What sort of policy is that?

It is stupid policy. Could you elaborate on that, Dr Stevens.

Dr Stevens: Yes. I would definitely agree with Mick Palmer. We want to see a move away from policing of a drug that's used by a percentage of the population quite safely. As we have said, the criminal justice system, as Mick Palmer says, is causing a problem for some of those people who get caught up in it. What we do know, too, is that it's more likely to be people from lower socio-economic areas who get caught up. People who are in the high socio-economic areas seem not to get noticed by the police so often.

Senator ROBERTS: Your submission makes the point that a significant proportion of drug use is by people who are already feeling alienated or vulnerable, and that drives their habit. Then, when they get caught and they're criminalised, they're further isolated from society.

Dr Stevens: Yes.

Senator ROBERTS: That's your basic argument, isn't it, so you want to decriminalise?

Dr Stevens: Yes, it isolates people. It isolates them from their families as well, because kids keep this secret and then their parents find out when things go wrong, whereas if it weren't illegal they could talk to their parents about it.

Senator ROBERTS: Are there also problems with the use of SSRs? Do people become dependent on them, and do they cause serious problems in the community?

Mr Bush: There is a problem with SSRs in the police force and the military community. In fact, there is an inquiry being undertaken at the moment.

CHAIR: We'll have to get that on notice, I think, Senator Roberts.

Dr Stevens: We will take that on notice and Bill can give you some more details about that.

CHAIR: Yes. We are running short of time.

Dr Stevens: Okay.

Senator ROBERTS: Thank you both.

CHAIR: I don't think there are any further questions for you, Dr Stevens or Mr Bush. We've had a few connection issues. We spend a lot of time in Canberra, and I know you're located in the ACT, so I'm sure we could facilitate a very short meeting if we have missed anything.

Dr Stevens: That would be really helpful; thank you. We're all struggling with this.

CHAIR: We understand and we do thank you for your time.

Proceedings suspended from 10:14 to 10:29

WILLIAMS, Professor Jenny, Department of Economics, University of Melbourne

CHAIR: I now welcome Professor Jenny Williams. Thank you for taking the time to speak with the committee today. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you and is available from the secretariat. Do you have a brief opening statement that you would like to make?

Prof. Williams: Yes, I do. My research focuses on substance use in general and on cannabis use in particular. Over the past 25 years, my cannabis related research has investigated: the determinants of cannabis use and its consequences, including health, mental health and education; the impact of cannabis use on young men's school-to-work transition and labour market success; the impact of liberalising cannabis policies on starting and quitting cannabis use; and the consequences of using a waiting time to ration access to treatment for substance-use disorders in the context of a universal healthcare system.

I'm here at the invitation of your eagle-eyed principal research officer, Monika Sheppard, after she saw an article regarding comments that I made with respect to the PBO's modelling in terms of revenues from the Greens' bill; and I've provided a handout. But before getting to that, I think it's worthwhile speaking to the larger issue raised by the Greens' bill, which is the state of cannabis policy in Australia. It's my view, which is informed by my 25 years of research—I want to be really open—that criminalising the recreational use of cannabis for adults fails to meet the aim of the National Drug Strategy, which is to minimise health, social, cultural and economic harms of substance use. Also, I'm in no doubt that a well-designed model of legalisation that's informed by relevant expertise from a range of disciplines would do better.

Having said that, it's my view that the Greens' bill falls short of that mark. There are three comments I would like to make as to why I believe that to be the case. The key objectives of legalising cannabis are to move cannabis and the revenues it generates out of the hands of organised crime and into the legal market, including the government; to provide cannabis users with access to an untainted and quality-controlled supply of cannabis; and to protect the health of young persons by restricting their access to cannabis.

To be clear, a cannabis market exists and is well established in Australia and, according to the Australian Crime Intelligence Commission, it's a large market that's well supplied. So, for the legal market to make an inroad into replacing the illicit one run by organised crime, you need the legal market to be more attractive to players on both the demand and supply side of the market. You need to lure people who are already operating in the illicit market into the legal market—buyers and sellers. To be clear, 98 per cent of buyers are using weekly or more often and are not buying cannabis by the gram.

So my concern is three-fold. First, the bill proposes very high tax rates from the inception of the legal market for recreational cannabis. The experience provided by the US is that high taxes undermine the development of the legal market for cannabis, and that's because the buyers who are already in the market can continue buying from the illicit market. Even if the tax is set to the legal price in line with current illicit prices, suppliers in the illicit market in the US have been shown to respond quickly to the entry of legal players by cutting the price and forcing out the entry and establishment of legal players. This point was particularly well appreciated by the parliamentary budget office in Canada; it talked about the lack of fiscal space at the early stages of developing legal markets.

In addition, from the seller's point of view there is that concern that there are high prices and they're not going to be able to compete with the illicit players. However, in this particular bill, there's an absence of any seed-to-sale tracking. Seed-to-sale tracking tracks from the time that cannabis seed is planted and the plant grows. To make sure that there's no leakage from the system, it's tracked at every stage, from planting through to selling. It's quite clear to me, as an economist, that a legitimate seller is going to sell to the once-a-year kind of people at the front of their shop, and out the back they're going to be doing business with their more substantial clients, giving them cut prices with illicit product because there's no seed-to-sale tracking. They can compete with the illicit market because there is no tracking in place, and they're incentivised through the lack of tracking.

The last substantive point I would really like to make, and that I think is important—and it's embedded in a lot of the legislation in US states—is that legalising cannabis, even with a well-designed market, is not a silver bullet, and reducing the costs of accessing cannabis will lead to some increase in its use. As with alcohol and other substances, most of this use will be responsible and consistent with harm minimisation principles; inevitably, however, there will be some increase associated with cannabis-use disorder and other harms. This is foreseeable and, therefore, mitigation strategies, including the funding of prevention, early intervention, treatment and research, should be considered an integral component of cannabis legalisation.

CHAIR: Thank you very much. That will be very helpful in guiding our questions. I'm going to hand the call to Senator Shoebridge. Professor Williams, I should say from the beginning that, if we ask you questions and you want to add more information later on, you can provide that on notice; that might be helpful.

Senator SHOEBRIDGE: Professor Williams, because the bill is introduced in the Senate, it doesn't contain the tax measures, so the bill that's currently before the Senate doesn't have the tax measures. If the tax measures were going to be put in, they'd have to be done through amendment in the other place, in the lower house. So, the bill we have at the moment doesn't actually have the taxation measures, such as the proposed 15-per-cent cannabis sales tax.

Prof. Williams: The PBO's costings is what I was responding to.

Senator SHOEBRIDGE: Yes. The PBO has responded to your analysis, and I think you critiqued the costing analysis from the PBO; is that right?

Prof. Williams: I was interviewed and I just said that it was wrong.

Senator SHOEBRIDGE: Because we don't have a lot of time in this hearing and it's really focused on the bill that's currently before us, I might, on notice, provide you with the details given by the PBO.

Prof. Williams: I know, and they provided it to Emilia. It was just wrong, and it's easy to explain to you why; and, actually, I was asked to come here to do that. I'm very happy to do that; it will take 10 minutes.

Senator SHOEBRIDGE: It's just not part of the bill, and we're kind of limited to actually focusing on the bill.

Prof. Williams: Okay.

Senator SHOEBRIDGE: Could I ask you, though, about your analysis. Have you had a look at the national data in Canada? I think it is perhaps the most comprehensive national data on cannabis use anywhere in the world that I'm aware of. Have you looked at the Canadian data on cannabis use?

Prof. Williams: Do you mean the frequency of use or the distribution of frequencies of use by cannabis users?

Senator SHOEBRIDGE: I mean the annual cannabis surveys produced by the health department of the government of Canada.

Prof. Williams: Yes, I focused mainly on looking at the numbers, because the Parliamentary Budget Office just holus-bolus took the median PBO's numbers. At the time they were looking at introducing legalisation, about 12 per cent of the population aged 15 and older used cannabis, and that's very similar to how it is in Australia. The distribution, in terms of using daily or more than weekly, is very similar to Australia.

Senator SHOEBRIDGE: The most recent data shows that, in 2023, illegal purchases represent substantially less than 10 per cent of the market; and, in 2023, illegal purchases represented about four per cent of the market in Canada.

Prof. Williams: I'm sorry; would you say that again?

Senator SHOEBRIDGE: Figure 16 of their analysis of the Canadian health department's survey showed that illegal purchases in Canada, where there are significant sales taxes, represented less than five per cent of the market in Canada.

Prof. Williams: The Canadians started with a 15-per-cent sales tax, yes. What they wanted to do was to grow the market, so they started off without a high tax rate to encourage both suppliers and buyers into the legal market. So their way of raising revenue was by growing the base of people in the market by having a low tax to start off with and not a high tax.

Senator SHOEBRIDGE: What it shows is that a well-regulated legal market effectively wipes out the illegal market. Less than five per cent of the market in Canada is now the illegal market.

Prof. Williams: That's perhaps. I don't think that's what researchers are agreeing with, necessarily.

Senator SHOEBRIDGE: Sorry, Professor Williams—

Prof. Williams: But that being said, the point is that a well-legalised and structured—

Senator SHOEBRIDGE: Sorry, Professor Williams—

CHAIR: Professor Williams, Senator Shoebridge hadn't quite finished his question. He might be giving you some context, so perhaps we could just go back to him for a moment.

Prof. Williams: Right.

Senator SHOEBRIDGE: Given that is the most comprehensive, rigorous national data for Canada that I'm aware of, and you're here as a professor—

Prof. Williams: Yes.

Senator SHOEBRIDGE: do you have any studies or evidence that you can point us to that suggests that the Canadians' official data, on the basis of their national survey, showing that less than five per cent of the market is now illegal, is wrong?

Prof. Williams: I think the legal market has made substantial inroads. From talking to colleagues, my understanding is that it's not as high as 95 per cent. I can take that as a question on notice, and I would be happy to look for resources that substantiate that point.

Senator SHOEBRIDGE: Do you know of any better dataset about Canadian cannabis use than the comprehensive government-funded national dataset produced by the Canadian health department?

Prof. Williams: Once again, my research isn't on Canada. I've looked into the Canadian system to inform this hearing, but I'm happy to look into that question specifically and come back to you.

Senator SHOEBRIDGE: I'd urge you to look at figures 16 and 17 of the 2023 survey, which show that a tiny fraction of the Canadian market is now illegal and that the market is absolutely dominated by the legal market and legitimate social sourcing.

Prof. Williams: Yes, I'm happy to do that.

Senator SHOEBRIDGE: Given that we have that experience from Canada, what weight should we give to your concerns that, if we create a legal market in Australia, somehow it will be dominated by illegal backdoor sales?

Prof. Williams: I'm sorry if that's what you took from my opening statement. No; I actually think that we can create a legal market that's well functioning. I don't think the bill has provisions to ensure that; that's my concern.

Senator SHOEBRIDGE: There's no seed-to-purchase tracking in Canada—they don't have that provision that you said is essential for the Australian bill—yet the Canadian system has less than five per cent of sales in the illegal market. Why do you say that their experience isn't relevant to Australia?

Prof. Williams: I think the seed-to-sale is really important in order to stop leakage.

Senator SHOEBRIDGE: But they don't have it in Canada and there's almost no leakage.

Prof. Williams: Canada has many more regulations, such as an inspector's right to enter premises and to enforce really strict regulations. I have read the Canadian legislation and I have read the proposed bill, and there are many more provisions in the Canadian bill that restrict what can be sold. For example, in the first year, they had no edibles. They restrict packaging and you can't have any colours or flavours that would be attractive to children, and there are so many more. That's in the legislation; I actually read the legislation for Canada. There are lots of provisions in that legislation that provide protections to young people. They don't go at it with a high tax rate, so they don't scare people away in terms of price and profit margins. So there are all kinds of provisions in there. I was really impressed. Actually, the Canadian government was elected in 2015 and, in 2016, they announced that they were going to legalise cannabis. They then introduced legislation in 2018 that passed, after doing a huge amount of research and consultation on how to do it in the best way.

Senator SHOEBRIDGE: But, Professor Williams, in Canada, edibles make up almost a third of the market and beverages make up about 10 per cent of the market.

Prof. Williams: I guess what I'm saying is that they introduced it—

Senator SHOEBRIDGE: I'm sorry; just let me finish the question. If you look at the US studies, edibles and beverages make up a significantly growing proportion of the market. But just going back to Canada, you suggest that they outlawed edibles. Edibles make up—

Prof. Williams: I said 'in the first year'.

Senator SHOEBRIDGE: How is it that you say that not permitting edibles in the first year has some sort of meaningful impact on illegal sales?

Prof. Williams: They designed a system that was very thoughtful, very well researched and very well informed. They then went about rolling it out in a very careful way, which allowed them to observe the impact of changes before they moved to the next step. There are a lot of regulations around the packaging, I agree. So they didn't just holus-bolus let everything go straight away, and I think that's really important. With edibles, there are a lot of restrictions. You can't have any additives, such as sugar, cartoon figures or writing that might be attractive to children. All kinds of risk mitigation strategies were built into the way they did it because they gave themselves the time and the opportunity to research it, do it carefully, take on board good advice, be able to observe what happened and then judge what's the next step and how to proceed.

Senator SHOEBRIDGE: This bill provides a regulation-making power and a national authority that can assist in the issuing of regulations. Also, far from being laxer than the Canadian market, this bill prohibits social media use, online sales and displays on billboards, all of which are permitted under the Canadian model. Have you really studied the differences between the Canadian model—which has much more commercial promotion, much more social media advertising and much more online advertising—and the bill? Are you aware of the prohibitions on advertising in the bill?

Prof. Williams: I am aware of and have read both bills. With regard to the current Australian bill, as I read it, there's significant opportunity for leakage because you can—

Senator SHOEBRIDGE: Because of the 'vibe'? What is it about this bill that creates more leakage than the Canadian model, which doesn't track seed-to-sale, has vastly greater advertising—

Prof. Williams: So I have—

Senator SHOEBRIDGE: has an edible market and has a beverage market?

CHAIR: Senator Shoebridge, I have asked the witness not to interrupt you. You should not interrupt the witness, especially not to give a preamble to a speech which should be made in the Senate. Professor Williams, you can answer the question; then I will hand over the call.

Prof. Williams: One thing that impressed me about the Canadian bill is that they legislated the things that, in this bill, you would like to hand over to CANA. I am concerned about regulatory capture in this regard, because CANA is tasked with raising revenue to cover its own existence, as well as through issuing licences, and it's not clear to me how compliance is carried out. There's no authority for people to enter shops to ensure enforcement, as there is in the Canadian legislation. There's nothing in the bill that speaks to enforcement mechanisms. There's a lot that talks about CANA and the terms and conditions of the CANA executive, for example; but, in Canada, the parliamentarians in the Senate are responsible for and are saying, 'These are the rules and, if it goes wrong, we're responsible for fixing it.' It's very concerning that an organisation with a budget of $15 million a year is meant to be regulating a multimillion-dollar industry. That's deeply concerning. They have conflicting tasks that they're required to undertake, and I don't see any legislation which assists them in doing that.

Senator SCARR: Thank you for joining us, Professor Williams. I note your particular interest in relation to the PBO and their work, but given your extensive background in this area, I want to put to you a few propositions which have been raised in some of the other submissions. Have you had a chance to look at the other submissions?

Prof. Williams: No, I'm sorry.

Senator SCARR: That's okay. I will quote from page 2 of the AMA's submission:

The AMA is concerned that cannabis legalisation as a result of the above health harms—

where they talk about mental health impacts—

may increase health service demand. This will put further pressure on an already strained health system, including further strain on already limited and under-funded mental health and drug rehabilitation services. Research has found significant increases in cannabis-related hospitalisations and ED visits in some Canadian jurisdictions post-legalisation.

From an economic point of view, do you have any response regarding the concerns that the AMA raise?

Prof. Williams: You have to anticipate that there will be an increase in use when you improve access, lower the costs of accessing cannabis, so I don't anticipate that there would be an increase in use. The large proportion of that would be responsible use. However, there will be harms associated for a minority of individuals. That's why, for states like Washington state in the US, which have a comparable level of taxes, the vast majority of the money that they raise through their legal cannabis market is put back into the health system. That's why I mentioned that it's not a silver bullet. It addresses a lot of shortcomings—I'm not saying that criminalisation is a silver bullet at all—but, in the bill, you also have to think about how you mitigate the foreseeable adverse outcomes, because it's not a silver bullet.

Senator SCARR: You've mentioned our position as parliamentarians. I can look at the existing health system and, in particular, I have families contacting me who have young people who desperately need mental health services and they cannot access those health services today.

Prof. Williams: I know.

Senator SCARR: They can't access those mental health services. There are people here in Queensland who desperately need those mental health services and can't access those services today. Can you understand why—

Prof. Williams: Yes.

Senator SCARR: given that state, I would be wary of carefully assessing risks which might lead to an increase in demand for those mental health services, when we're not actually adequately dealing with the mental health issues in the community today, especially amongst young people?

Prof. Williams: The research shows that high concentrations of THC are associated with mental health harms, so that speaks to the role of regulating what can be produced. I don't think we want concentrates, because they're high concentration; they're also made with butane and there are all kinds of contaminants.

Member of the audience interjecting—

CHAIR: Excuse me. It is inappropriate, disorderly and not okay to interrupt a witness from the public gallery. If you do it again, you will be removed. I'm sorry, Professor Williams.

Prof. Williams: Thank you. To mitigate those risks, you want to look at what products can be offered, what the THC concentrations are and what the serving sizes are. It would be about labelling, so that people know what they're getting and that they have uncontaminated known product. Limiting or not allowing concentrates are ways of mitigating those risks. I agree: our mental health system isn't great; substance use treatment in Victoria is awful and in a terrible state. So I agree. That's why all of the money that other jurisdictions get is mostly spent in the health sector, including community health—not just substance use treatment, but setting up community health and, in the US context, providing insurance for people who don't have insurance, because the health sector generally is underfunded across the board in many jurisdictions. But there are ways of mitigating those risks for cannabis. The research has shown that the demand for cannabis use disorder treatment has increased over time and it seems to be tracking or correlated with the increasing levels of THC and the breeding out of CBD in the plants.

Senator SCARR: If I look at the context of the tobacco industry in Australia—Senator Polley serves as chair of the law enforcement committee of the Senate, so she has deeper knowledge of these areas than I—we have a legal and regulated tobacco industry; but, at the same time, we have an industry worth billions and billions of dollars in terms of illicit tobacco. You have the regulated system but, at the same time, you have a parallel black market system, in which organised crime is heavily involved. Why wouldn't the same sort of dynamic emerge?

Prof. Williams: The taxes are very high on cigarettes. We pay a huge amount of tax, and that was my whole point about having to really balance this. You want to bring people into the legal market, so that's where there is the trade-off with taxes.

Senator SCARR: Do you have confidence that the government will keep taxes very low on a product?

Prof. Williams: What you need to understand is that, if you can bring people in, you grow your tax base. The GST has a great tax base because almost everything is taxed. So you want to bring people in. You offer them a discount, low taxes, and bring them in; then your tax base grows because of the number of people in the market.

Senator SCARR: I get theory. Thank you, Chair.

CHAIR: Senator Roberts?

Senator ROBERTS: Thank you, Professor Williams, for attending. As I see it, there are three issues—I put this question to the first witnesses—and one is legalising medicinal cannabis; two is legalising recreational cannabis, possibly; and three is the quality of the bill. I think you can also add another topic—safety of the product and the need for regulation. One Nation has been supporting medicinal cannabis for decades. I'm intrigued by your comment that Canada—you're very supportive of it—introduced it bit by bit so that they could assess the impacts of whatever they had introduced before moving to the next stage. Do you think legalising recreational use will scare people off it and maybe we should legalise medicinal cannabis first, wait for that to be bedded down and then consider—

Prof. Williams: We have legalised medical cannabis.

Senator ROBERTS: making it more accessible or more readily accessible to people? At the moment it's effectively driven it onto the black market because it's so expensive and difficult to get.

Prof. Williams: I can talk about the US experience. How medical cannabis—or marijuana, as they call it there—was rolled out was different in every state. It's really interesting, as a researcher; I was in California at about the time that it was legalised, so I was very excited. I was working with colleagues at RAND, Rosa and Beau, who led all of the drug research there. Because I was in that area, I went to what was, I think, the first medical cannabis shop, but now it was legalised. They were still set up in that way; I think you needed a script to get in the door when it was a medical one. At another one that I went to in San Diego, even though cannabis was legal, you had to register. Because there were all of these constraints about getting in and getting access, you couldn't see products from the street and that kind of stuff.

What research has shown is that it didn't leak out to youth, and, for me as a researcher, I want responsible use of substances, because cannabis is, as you would all know, less dangerous, less harmful, than cigarettes or alcohol. Professor Nutt from the UK has well established that, but you still worry and you would want to restrict access to kids. The research all shows that it didn't leak out into kids; there's a lot of research, and its use by kids is really not increasing. The research out of the US suggests that there is some leakage into youth use in the US, but it's not as large as 25- to 34-year-olds; in the US it's 21. There is some leakage with legal cannabis, but not a whole lot, into youth, but there was none for medical cannabis. That was really good, from a statistical point of view, not from an individual experience point of view.

Senator ROBERTS: Would you be willing to take this on notice: give us a list of amendments that you would like to see regarding aspects of the bill that you're not happy with?

Prof. Williams: You know that I'm not a lawyer, right?

Senator ROBERTS: That's fine. We want a practical approach.

Prof. Williams: Okay. I'm not suggesting that I could be the architect of the world's greatest bill. The other thing is that, with the Canadian bill, they've made amendments along the way. That's the other thing that I noticed when I went to the US: I was at a conference and there were mayors and government officials there from, I think, Colorado and Washington state. Because they had no federal assistance, they were on the phone every week, having to make amendments. For example, butane was used to make concentrates, but they used grass clippings on the public lawns as mulch. That turned out to be toxic, and Agriculture couldn't help because it's a federal government body. They were having to trouble-shoot every week. Everyone has to be aware that it's a new market, and we can take advantage of the research and the experience that have occurred in other countries and other jurisdictions, but it might not all translate precisely into the Australian jurisdiction. We have to be prepared to make amendments along the way. I don't know whether that's easy from a political point of view, but they've had to do it in Canada.

Senator ROBERTS: Let me check my understanding. You've said that, if a high tax is levied, it will drive out legal players and we won't have much of an improvement.

Prof. Williams: Yes. Even in Canada, they're saying that. I have seen a news article. The government is saying, 'We made this much money,' but all of the businesses there are saying, 'We're going broke,' because of the high taxes and having to compete with the illicit market, which they observe in their day-to-day life.

Senator ROBERTS: One of the key themes that I took from your opening statement was that the cannabis market in this country, recreational and medicinal, is very large—

Prof. Williams: Yes.

Senator ROBERTS: and it's largely illicit.

Prof. Williams: Yes.

Senator ROBERTS: If we introduce it sensibly, in well-managed stages, and levy a sensible tax, we will drive people away from the illicit market and into the regulated market; is that basically it?

Prof. Williams: I would say attract them into it. You're not driving them, because there's no stick. You're attracting them into the legal market, yes.

Senator ROBERTS: Thank you. I appreciate your correction to my language.

CHAIR: I have a couple of questions. What Senator Roberts was getting to, going back to your opening statement, was that you went through things that aren't in this bill that you think would be necessary, if we were to move to a market and have decriminalisation. Putting aside that this is a Senate bill, can I go through with you those things that you say are missing from this bill and this reform to actually make it effective and non-harmful? There's no taxation at all, and there's no seed-to-sale regulation?

Prof. Williams: Yes. That is something that really deserves attention and should be looked at.

CHAIR: You said there was no authority to inspect. So there are no rules about who can go into sale?

Prof. Williams: Yes, and what they can require the producers, sellers and retailers to provide.

CHAIR: You said that there are no laws about the way products can be marketed. We understand that in the case of tobacco there are certain regulations about—

Prof. Williams: There are no plain labelling provisions.

Senator SHOEBRIDGE: In clause 36.

CHAIR: Senator Shoebridge, that's just unnecessary.

Senator SHOEBRIDGE: It's not true.

CHAIR: What are some of the things that would be necessary to protect children but aren't in the bill?

Prof. Williams: Exclusions on food and drink that contain sugar, in particular, are important. In the US and Canada there have been emergency room episodes where children have accessed certain goods. You don't ever want that to occur. So you need to exclude foods and drinks that might appeal to children, which includes having no-sugar drinks, plain packaging, and child-proof packaging. You want product labelling standards about what is a dose. Different US jurisdictions give you information about what is considered to be a dose and how many doses are in a package. You want provisions excluding dangerous chemicals such as butane, used to create concentrates. You want to provide limits on the level of THC. Research shows that high levels of THC precipitate, with a higher probability and quicker speed, cannabis-use disorder and other mental ill-health consequences. There need to be quality controls around there being no contaminants and what products can be sold; we need to know that.

CHAIR: Proponents of this bill would argue that the law gives regulation-making power for those types of things. But what I am getting from your evidence today is that, rather than putting those things in regulation, they would be better off in the bill so we could understand what the reform would look like.

Prof. Williams: Yes. You don't want that to be happening offline.

CHAIR: The Department of Home Affairs submission raises a number of concerns:

The department raises the need for extensive engagement on the implementation of this bill, should it be passed, because it would have significant operational and funding impacts for the department. Decisions would be required across government as to how existing laws and processes for controlling cannabis at the border would be altered and expectations of the functions to be undertaken by the ABF clearly articulated.

You referred to a lack of funding, and how much money it would take to regulate a market like this. I had thought about the funding implications for the agency proposed in this bill, but not about the funding implications for police forces, the ABF, or the Department of Home Affairs. How are they funded in other parts of the world to regulate or control the market?

Prof. Williams: Washington State allocated a bunch of funds to law enforcement. They had $30 million for licensing enforcement. Half the money went to basic care, then you had the healthcare authority, and education and prevention. I don't have it at the tips of my fingers—

CHAIR: You can take that on notice.

Prof. Williams: Yes. When you have a legal market, it is very hard for police to distinguish illegal cannabis from legal cannabis, which is why it is easy for cannabis to leak into the illegal market: it looks the same, so what are you going to do? Police don't know, and that makes it hard. That is why enforcement can be difficult, which is why it is better to prevent leakage than to try to police leakage.

CHAIR: You mentioned in your opening statement that you had done some research into the effects of cannabis on young men transitioning from school to work. What was that research about, and what were the findings? As policymakers, one of the big things we are dealing with, particularly in Queensland, is helping young people, particularly young men, in that transition. If it is not a successful transition, it can be detrimental to them personally, but also to their families and to the community. What did that research find?

Prof. Williams: The US National Longitudinal Survey of Youth—it is quite old data, the 1997 cohort, not in the post-legalisation era—showed that, if there was experimentation with cannabis, if it was used for a year or less, there was no impact. But it also showed what might occur with more sustained use, particularly amongst heavier users. You could leave school, and then you could either go back to school or find a job. It showed that youth who had used cannabis for an extended period were less likely to go back to school and more likely to find a job. They would find a job a few months quicker than someone who hadn't used cannabis for an extended period, but they did so at a lower wage. Instead of hunting around for the best job, they took whatever came along. Because that research was only looking at that initial transition, it didn't go on to ask, 'Do they stick with the job?' or 'Is there churning and are they more prone to churning?' or 'How long do they stay employed in their whole life course?' It just looked at that one transition. It found that they got slightly lower wages but suffered no real adverse effects.

Senator POLLEY: Thank you for your contribution to this hearing. I want to go to organised crime. In this country we have a lucrative illegal tobacco market; we cannot control vaping and pop-up shops. Even with decriminalisation or legalisation of cannabis, I do not see—I don't trust the figures from Canada—how only five per cent of cannabis would be consumed illegally. That is because organised crime, if they are not going to market this product, will market other products. Anything you can provide to us on that would be helpful.

Prof. Williams: I don't work in the chop-chop market, the illegal tobacco market. But it is the case that higher taxes make it worthwhile for sellers to sell chop-chop. So you need to bring them back into the market, and taxes are an issue there. As for vaping, my Norwegian colleague was visiting the UK and she said, 'I have a vape shop down the street, and people come in there and they check.' She was in the shop, and the vendor refused to sell to someone who could not produce an ID, saying, 'It is not worth my licence, because there is so much compliance checking.' The regulatory body hires people—I don't know if the customers are under age—to do compliance checking to make sure that vendors comply with their licence conditions, which means that they cannot sell to minors. I don't know that we have much of that going on in Australia. You have to invest in that.

Senator POLLEY: Yes. It is the police who have the responsibility for that.

Prof. Williams: No, it is not a police responsibility; it is the regulatory body's responsibility.

Senator POLLEY: That's right—over there. But here in Australia tobacco is policed by the police, who just don't have time to do that. The other issue is the dose or the quality of the product you are selling. If a product has a lower dose, whether it is something you eat, drink, smoke or whatever, surely the illegal market will produce a stronger product. So won't people still be inclined to go for the illegal product because it will be of a higher dose?

Prof. Williams: I don't know the evidence on that; it might well be the case. But there is a spectrum of strengths of alcohol, and different markets for all of them. In the US, you can get overproof rum and all kinds of stuff, but not everyone drinks that all the time. So it is a good question, but I don't know the answer to it. There is the question of whether you should tax on the strength, such as the THC content. That might lead to people titrating. I am not sure that any jurisdiction regulates the THC content. But they do have packaging which, if it is an edible or a jelly or something like that, tells you: 'This is a serving size' and tells you how much THC is in the jelly of the individually served pack. So then at least you are aware of how much you are taking.

Senator POLLEY: I appreciate your experience and your research. Do you have any research or evidence on the impairment of people who use cannabis when driving? Or can you take that on notice?

Prof. Williams: Yes. There have been a couple of papers. The first paper suggested that they drove slower and were less likely to have accidents and, if they did, it was at low speeds, but new research raises questions around that. It is tricky with cannabis. With alcohol, there is a very mathematical relationship between blood alcohol content and impairment. That is not the case with cannabis. You cannot tell how impaired someone is, as there is no metric. Also, it takes a long time for cannabis to get out of the system, so the test that is available now might indicate that you have cannabis in your system, but you are not impaired. So there is a lot of tricky stuff. I did note that wasn't covered in the legislation, but it is tricky.

Senator SHOEBRIDGE: Chair, I have a couple of questions of clarification to put to Professor Williams. You might want to take them on notice, Professor. One of your concerns is the lack of oversight by the agency. I ask you to look at clause 35 of the bill, which provides a series of functions for the agency, including 'overseeing activities authorised by licences', and clause 36, which provides the agency with the 'power to do all things necessary or convenient in connection with the performance of that function.' Clause 35(e), amongst others, provides the national agency with, amongst many other functions, the function: 'to oversee activities authorised by licences.' Clause 36 gives the agency 'power to do all things necessary or convenient to be done for or in connection with the performance of its functions.' That would include having people attend licensed premises to check that they were complying with their licences, and the like.

Prof. Williams: The Canadian legislation is very clear. 'To oversee activities authorised by licences' could mean anything.

Senator SHOEBRIDGE: The agency would have the power to do 'all things necessary or convenient.'

Prof. Williams: I am looking at clause 35(e): 'to oversee activities authorised by licences.' If you want to take samples to make sure there are no contaminants and things like that, I am not clear whether that is covered by that. Who provides the sample? Does the regulatory body choose the sample, or is it offered by the licensee? When you say, 'the power to do all things necessary', there is an argument about what is necessary. The Canadian legislation is very clear; it is unambiguous.

Senator SHOEBRIDGE: I think you spoke about regulatory capture, suggesting that the agency would be funded by licences. You may have been referring to a draft bill that we consulted on. Are you aware that this bill, the bill we present to the parliament after consultation, has the agency funded out of general revenue?

Prof. Williams: I was a bit confused by that, because the Parliamentary Budget Office shows—

Senator SHOEBRIDGE: Correct.

Prof. Williams: So I wasn't sure. There were two bits of information and I wasn't sure.

Senator SHOEBRIDGE: That was a draft bill that we consulted on. Having received the feedback that the agency will now be funded out of general revenue, does that remove your regulatory capture concerns?

Prof. Williams: I look at an agency with a budget of $15 million a year and I think, 'What kind of expertise would you need to design and oversee this system? Who would be doing the testing? Would they be doing the testing?' I wasn't really clear on what their role and functions would be.

Senator SHOEBRIDGE: I was asking about regulatory capture, not budget.

Prof. Williams: When you look at a budget of $15 million and the number of tasks that they potentially would have to do under that to oversee the conditions of the licences, that is a very small budget for a very big industry. I know that in the US experience they've had a lot of trouble trying to push back from regulatory capture. That's why I really like the Canadian bill, where they said, 'We are standing up and saying that these are the important things. We're going to put it into law so that it is not subject to interpretation and slippage.'

Senator SHOEBRIDGE: Professor, I was asking you about your position on regulatory capture. You said your concern was that if the agency was funded by the industry there would be regulatory capture. I've pointed out the fact that the bill doesn't provide for that. I might also note that the bill doesn't set a cap or even a figure for the agency's budget. Given that the bill does not provide for the agency to be funded by the industry, I am inviting you to clarify your position on regulatory capture.

Prof. Williams: I am really not sure what you want me to say. Is there an answer that you would like?

CHAIR: He wants you to agree with him. You don't have to.

Senator SHOEBRIDGE: Your evidence was that if it's funded by the industry there will be regulatory capture. I'm telling you the bill is not funded by the industry. I am wondering if you want to revisit your evidence.

Prof. Williams: I don't think that's the right way to do things.

CHAIR: Thank you, Professor Williams. If you have taken anything on notice, we'll give you a date to provide that back to the committee.

Prof. Williams: Is someone taking a list, to make sure that I don't miss anything?

CHAIR: We will make sure that happens. Thank you for your time. I know this was your first appearance at a Senate committee hearing. I hope it wasn't too difficult.

Prof. Williams: I'm an academic. I like being able to talk about things. I like to hear what people think. I like to know that there are different opinions in the room. I think that's really important.

BONNING, Dr Michael, Chair, Public Health Committee, Australian Medical Association [by audio link]

[11:18]

CHAIR: I now welcome Dr Michael Bonning, representing the Australian Medical Association, via teleconference. Thank you for taking the time to speak with the committee today. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you and is available from the secretariat. Would you like to make a brief opening statement before we go to questions?

Dr Bonning: I would. Thank you very much. I would like to begin by acknowledging the traditional custodians of the land on which I am speaking to you from today, the Gadigal people of the Eora nation, and pay my respects to their elders, past, present and emerging. I extend that respect to all Aboriginal and Torres Strait Islander peoples in attendance today. I am, as I said, appearing in my capacity as Chair of the Australian Medical Association's Public Health Committee. I thank the committee for inviting the AMA to be here today. We welcome the chance to contribute a medical perspective to your deliberations.

Speaking as a GP and a member of the AMA, legalising and commercialising cannabis in Australia is not what we see as being in the best interests of the health of the Australian people. The AMA does not support the Legalising Cannabis Bill 2023. There are several key reasons. We would ask, from a health perspective, that the committee continue to consider that people's reactions to cannabis can vary widely. I note that the previous witness was documenting the idea of impairment and that was very difficult to assess, and it does not have the same dose-dependent relationship as for, say, alcohol.

We know that the age and size of the person, the quantity of cannabis and the regularity of use all affect people's responses. Additionally, mental health issues such as anxiety, depression and undiagnosed schizophrenia can exacerbate the symptoms of psychosis. These responses cannot be predicted with any certainty, and inter-user variability in response is significant.

We also recognise and look to overseas evidence that legalising cannabis leads to an increase in patients presenting to already overstretched emergency departments. Our purview is the breadth of the health sector. We are very sensitive to the demands on Australia's public health system at the moment, and specifically our emergency departments.

We note that changes and pushes towards legalisation also normalise the use of recreational cannabis and mean that many people, including young people, see this as a safe and normal thing to do, as opposed to still being a significant psychoactive compound. The AMA is concerned that people may use recreational cannabis products to self-medicate when Australia already has existing high-quality processes for assessing the safety, quality and efficacy of therapeutic products through the TGA. We know that the TGA does license, and the PBS supports, certain cannabis products. The consistency of regulated products is in direct contrast to the variability of recreational cannabis products, where users are often unsure of the impact on them individually.

The bill also doesn't place any restrictions on locations for retail sale, which we have seen more recently with vaping has driven commercial retailers to place points of sale close to vulnerable populations such as young people and schools. We recognise that in this bill we cannot make the same mistakes with cannabis products about access, and especially access that would drive towards younger people.

I note again the previous witness's statement, which was that a series of very strong regulatory efforts in overseas countries had to be in place to allow for any form of legalisation. That is not something that we have seen Australia partake in for things like the management or regulation of vaping products, before the ban on single-use disposables started this year.

We also note that the bill allowing people to grow up to six plants in their homes normalises frequent cannabis use, especially in the fact that it doesn't then differentiate for the use of people under the age of 18 who may also live in said houses, making cannabis even more accessible to young people.

My final comment is that our federal office is domiciled in Canberra. The ACT is the only state to decriminalise cannabis in Australia. That decriminalisation model is very different to what is proposed in this bill. What we have seen so far, and what has been reported on in the ACT, is that, of the people who encountered police with small amounts of cannabis, the majority opted to be referred to a drug diversion program in preference to any form of fine.

We want laws that allow people to get the medical help they need and/or support, rather than any engagement with the criminal justice system. While we do not support the legalisation bill, we certainly are in support of people receiving the medical help they need, if they are people who use cannabis and have become dependent on it. I thank you for your time and look forward to taking your questions.

CHAIR: Thank you so much for that. I'll hand the call to Senator Shoebridge, who has some questions for you.

Senator SHOEBRIDGE: Thanks for your attendance today. What do you say are the health impacts of a totally unregulated cannabis market, which is the system we currently have, where the only people who are regulating—if we can call it that—quantity, quality and sales are organised crime, bikie gangs and illegal dealers? What do you say about the current market and the health impacts of having zero regulation in a market that's accessed by a third of Australians, from a health perspective?

Dr Bonning: We recognise that there is a large illicit trade in cannabis. Under all of these circumstances, access to cannabis, whether it be legalised or illicit, is not good for people's health outcomes. We recognise both the mental health outcomes and the associated drug and alcohol and tobacco use that occurs when people use cannabis, and then also other issues: digestive diseases, evidence supporting the issues of cancers of the upper respiratory tract and mouth, and likely impacts on infant birth weights.

Senator SHOEBRIDGE: First of all, every one of those health impacts that you just cited exists in an illegal market, and every one of them is aggravated by having no licensing conditions, no labelling conditions, no controls over product. You recognise that, don't you?

Dr Bonning: I would refer to the legislation that was proposed in Canada. I am using an overseas example because they have gone down part of this pathway. In laying the groundwork for that change, researchers and federal policymakers emphasised the kinds of public health considerations you are describing now, including the need to prevent the harmful effects of cannabis amongst youth but also amongst all people. That is really clearly laid out in their bill. Regarding the adverse effects of cannabis use, however, there hasn't actually been any significant change in the upwards trajectory of use after the legalisation process. One would say that they are continuing to see increases in use. We would say to you that in most of these processes the simple fact is that people are using cannabis and that is not good for their health overall. The approach here is not to look at a legalised market versus an illegal market and say that one is necessarily better than the other; it is more to say that when more people use more cannabis that is a bad thing for their health. That's the contended evidence.

Senator SHOEBRIDGE: I assume you've looked at the very detailed Canadian data, which shows a significant reduction in people smoking cannabis once they legalised it—a very significant reduction in the number of people smoking cannabis. Given that one of the principal concerns you just raised was lung and throat and mouth cancers, policy changes that saw a quite radical reduction in the number of people smoking cannabis would surely be good from a health perspective. Why do you oppose that?

Dr Bonning: I don't know what research you're referring to. If you would send some of that through, I am sure I can comment.

Senator SHOEBRIDGE: Figure 9 in the 2023 survey released by the Canadian department of health, which tracks the reductions in people smoking cannabis—

Dr Bonning: Sorry, I beg your pardon, and through the Chair: has that been sent to us?

CHAIR: I don't think so. I think what you might need to do, Dr Bonning, is to take that question on notice, if you don't mind, and that way you can have a look at it.

Dr Bonning: Of course, thank you.

Senator SHOEBRIDGE: Multiple people have raised concerns with me about the citations you have put in your submission. I think it's in footnotes 2 and 3 in the second paragraph, where your submission states:

Since legalisation in Canada, cannabis use rates in youth have increased, …

Do you see that?

Dr Bonning: If you're looking at our submission, can you please identify for me which footnotes they are?

Senator SHOEBRIDGE: I just told you: footnotes 2 and 3.

Dr Bonning: Thank you very much. I have now found them; let me go to them.

Senator SHOEBRIDGE: Just let me finish. You cite them as evidence of cannabis use rates in youth increasing. You'd be aware that the first study actually doesn't measure youth cannabis consumption; it's a survey on the perception of mental health service providers in one province, namely, Ontario. You would be aware, wouldn't you, that the second study that you cite there actually states, 'Since 2019, recent cannabis use in Canada has modestly increased among adults but not among adolescents.' Far from supporting your proposition, one of them is neutral on it and the other one directly disagrees with your proposition. Why did you do that? Why did you cite a study that is directly contrary to your submission?

CHAIR: Senator Shoebridge, just let Dr Bonning answer the question. It's pretty obvious to me. Dr Bonning?

Dr Bonning: I beg your pardon?

Senator SHOEBRIDGE: Why did you cite a study purportedly to support your proposition, which in actual fact is directly contrary to your proposition?

Dr Bonning: Thank you very much for the question, Senator Shoebridge. I am looking at these studies. I want to draw your attention to the fact that much of this study work, I think, revolves around the COMPASS study, which is the underlying data source. I am just going to pull some out. Maybe I have the right thing—or not. I quote: 'Youth cannabis use remains common with ever use increasing from 30.5 per cent in 2016-17 to 32.4 per cent in 2018-19', which shows that they were 1.05 times those of the preceding year, with a p value of less than 0.01. It therefore appears—and I am reading from some of these studies—that 'cross-sectional odds of ever use were significantly higher post legalisation.' I quote again:

High prevalence of youth cannabis use in this sample remains a concern. These data suggest that the Cannabis Act has not yet led to the reduction in youth cannabis use envisioned in its public health approach.

I am just reading these; that's from the author's conclusions.

Senator SHOEBRIDGE: You cite Professor Hall's research on four separate occasions. In a publication entitled, 'Australian Medical Association's position on cannabis reform is disconnected from reality', Professor Hall was asked about your submission and the repeated citing of his work, and he said this:

The AMA has long opposed cannabis legalisation, so it is not surprising that they focus on my work on possible health-related harms of legalisation. If I tried to correct the selective citation of my publications on cannabis I would get nothing else done.

Your selective citing of Professor Hall's publication here, which actually has conclusions directly contrary to your assertion, is not helpful, is it? It doesn't convey trust in your submission.

Dr Bonning: I understand this is coming from an article that appeared in *cannabiz*?

Senator SHOEBRIDGE: Correct.

Dr Bonning: Thank you. I'll go back to that. I was about to say that I have not spoken to Professor Hall about this. I will essentially just quote from the studies that we have used. I am not expert as a cannabis researcher, and so I'll draw from the information here. I can send you through the papers with the sections of the author's conclusions. I note that, while he is the author, I will have to defer to Professor Hall's views on that, but I have never spoken to him.

Senator SHOEBRIDGE: When you made your assertion about increasing cannabis use rates in youth, you obviously hadn't looked at the most recent data, again published by the Canadian health department, which provides that the average age of starting cannabis use was 20.8 in 2023, which is an increase from 18.9 years in 2018, the first year of legalisation. The Canadian data actually shows that the average starting age for using cannabis has increased by almost two years since Canada legalised cannabis. Were you aware of that when you made your submission?

Dr Bonning: You are providing that information to me now. Again, if I could please be furnished with the document you're talking about. We can take that question on notice. We draw people's attention to all the study data that is done. Obviously, the COMPASS study is longitudinal and uses a sampling process of thousands of Canadian young people, and results in that way are not generalisable. We have relied on study data that is done in that context. We recognise that there are always limitations to studies or to any individual piece of data. We know that the self-reporting nature of any scenario means that there is a potential for response bias. However, under any study situations, when you have large-scale, active information but passive consent protocols it limits the bias associated with use substance research.

I do note that average age you describe. Averages, obviously, require one to understand also where the standard deviation is in that data, and again I don't have that. But it is important to recognise that there are still social scenarios associated with people about whether they will admit to or when they will describe their first use of a substance. I'll just have to take that information on notice, thank you, Senator.

Senator SHOEBRIDGE: Dr Bonning, did you reference the COMPASS data, which started two years before the Canadian legalisation happened and which went through to 2018-2019; like, almost five years ago—five-year-old data? Is that what you are referencing?

Dr Bonning: Yes, we did reference studies that use that, yes.

Senator SHOEBRIDGE: Five-year-old data.

CHAIR: Senator Scarr, you have the call.

Senator SCARR: Thank you, Dr Bonning, for being with us. At the outset, I wanted to give the AMA an opportunity to put on the record its position with respect to its view regarding how society should treat the issue of possession of small quantities of cannabis for personal use. We did have some witnesses earlier today who characterised the AMA's position in certain ways, but I wanted to give you, on behalf of the AMA, the opportunity to put on the record what the AMA's position is with respect to decriminalisation in particular of personal cannabis use and the reasons that the AMA has that position.

Dr Bonning: What we recognise is that there are significant benefits for the decriminalisation of cannabis. We do not believe that the best way in which people's health, especially in many vulnerable groups, is assisted by engagement with a criminal justice approach. We think within the organisation and within our policy approach about the use of cannabis as something which continues to happen and which is used by many members of our society. However, there are also many people, when given options of support and given appropriate levels of support, who recognise that there are potential health harms associated with their cannabis use and who will seek medical and healthcare support for reducing or ceasing their use of cannabis. The ways that allow people to enter the health system and be supported are entirely consistent with a decriminalisation approach. The more recent experience of that in the ACT has been that most people opt for engagement with health services as opposed to a fine. That is obviously preliminary data from a change that occurred only last year, but it is one that we see as being particularly positive.

We also note more broadly that there are disproportionate rates of harms occurring in certain communities. We note that Aboriginal and Torres Strait Islander people end up engaged with the criminal justice system more considerably, and the decriminalising of cannabis use—and for that matter things like changing the age of criminal responsibility and bringing that up to 14—has significant impacts, especially with respect to groups that are more disproportionately affected by this use and by the current criminal approach in terms of accessing and engaging health services.

If I understand your question correctly, those are the things that form the basis for our understanding, and the understanding by the AMA as an organisation, of why decriminalisation not only would be a significant step forward but also why, at this point, we do not support any form of legalisation.

Senator SCARR: In your paper, the AMA states:

A recent systematic review found an increase in acute cannabis poisoning post-legalisation in the US, Canada, and Thailand.

What does 'acute cannabis poisoning' mean in practice? Are we talking about children taking cannabis accidentally? What's behind that observation?

Dr Bonning: In that, there was a set of studies that met inclusion criteria across those jurisdictions. When we talk about poisonings, we are essentially talking about people who end up presenting to health services. Typically, the information also comes from poison centres, but we know that they're often paediatric exposures—things like children accessing edible cannabis products or people experiencing signs and symptoms of toxicity, whether it is dosing errors with their marijuana or deliberate self-harm overdoses. As we said earlier, we note that, in those circumstances, people present very differently in those environments. As we still describe it, and we have said this in our submission, there are generally low risks of single use or limited use for most people. There is what we describe as a wide safety margin. But overdose looks like central nervous system issues, hallucinations, psychosis, changes in heart rate and problems with the heart's conductivity. As with smaller and smaller people—essentially, younger and younger people—when we see central nervous system and respiratory problems, coma and seizures and people who stop breathing, it's more likely to be the smaller and younger you are, mainly because of changes and differences in the brains of young people and simply because of the amount versus the weight of the individual.

We see certain dose-dependent relationships associated with side effects or with effects of different drugs quite regularly, whether it be for nicotine or alcohol. As I said earlier, it doesn't necessarily always mean that the same dose-dependent relationship occurs with cannabis, but there is still obviously some form of dose-dependent relationship; it's just that there are high levels of what we call inter-user variability when it comes to what those outcomes look like.

Senator SCARR: I want to go to the provision of mental health services. From my perspective, I talk to families who are trying to get access to mental health services, in particular for young people, sons and daughters, potentially between the ages of 14 and 21, and they have extraordinary difficulty accessing mental health services. The AMA touches upon this in your submission, and you actually refer to 'a concern about further strain on already limited and underfunded mental health and drug rehabilitation services'. What is the particular concern of

the AMA in relation to this policy proposal in the context of provision of mental health services in particular for young people?

Dr Bonning: Since research from overseas found those significant increases in ED visits and hospitalisations associated with cannabis—that is only limited data; we recognise that—the issue will always be that our health system, especially our acute sector, our hospitals, are under huge and continuing levels of unprecedented demand. We can cite any number of ambulance ramping issues in Victoria, South Australia, Queensland and New South Wales; also, wait times in emergency departments, lack of access to beds, and especially limitations on—we are seeing this in New South Wales—the amount of public service psychiatrists, mental health nurses, full-time positions for those individuals, and increasing health system costs. In all of those things, the people who get left out, more often than not, unfortunately, are those who enter our system through a drug pathway. That is often because of the complexity of their care; also, the needs for that care often have multidisciplinary team approaches—initial engagement with psychiatry and long-term engagement with people in the ATOD space—alcohol, tobacco and other drug space—alongside social work and youth-appropriate mental health services in ways that can deliver education alongside peer support. All of those systems are highly strained and are quite limited.

I would think about services like headspace. Only fairly recently in the provision of health services did we recognise the importance of youth-specific mental health services. The differences of experiences for young people when entering our hospital or acute care sector are huge. We wanted, through headspace, to be able to create something that was more appropriate for those young people. There is the same limitation that we see, and a still developing approach that we see, for young people and drug use or cannabis use. I think all of those factors—

CHAIR: Thank you, Dr Bonning. I know these are complex answers, but I have to hand the call over before we run out of time. Apologies, Senator Scarr; I will have to cut you off there. Senator Roberts?

Senator ROBERTS: Thank you, Chair. Thank you, Dr Bonning, for participating. In your submission you say:

In Australia, cannabis was present in 4.5 per cent of drug-induced deaths in 2021.

How many of those deaths were found by autopsy to have had cannabis as the primary cause of death?

Dr Bonning: I do not have that data at hand. We will take that on notice and get it for you.

Senator ROBERTS: Thank you, Again, your submission states:

A recent systematic review found an increase in acute cannabis poisoning post-legalisation in the US, Canada, and Thailand.

Those countries allowed unregulated supply into the market, didn't they? These people could have been smoking cannabis laced with anything; isn't that correct?

Dr Bonning: That's correct, Senator.

Senator ROBERTS: In your data, can you tell me how many people have suffered hospitalisation or death from an approved cannabis product provided by a regulated and licensed supplier and being in the form of a vape, patch, topical, tincture, drops on the tongue or suppository?

Dr Bonning: We will take that question on notice and get the information for you via the TGA.

Senator ROBERTS: Thanks. Would you agree that the problem is, firstly, criminal gangs lacing unregulated supply with addictive drugs; and, secondly, amateurs growing, preparing, storing and using cannabis in unsafe ways?

Dr Bonning: Both of those issues are contributory to both the overdose and the mental health impacts of cannabis. They are not exclusively the problem, but they are certainly contributory, yes.

Senator ROBERTS: Do you see a role for medical practitioners and chemists in supervising supply at least in the foreseeable future to ensure safe use, as opposed to criminal supply and prohibition?

Dr Bonning: We would expect that the use of regulated cannabis products in limited medical situations, where there is evidence for use for medical reasons, could be, and potentially would need to be, in early circumstances, under the supervision of registered health practitioners.

Senator ROBERTS: Can you explain doctors' current interest in cannabis use—medicinal cannabis, that is? What's your involvement?

Dr Bonning: Personally, my involvement is very limited.

Senator ROBERTS: I am sorry; I meant doctors' involvement in this. Where do doctors sit regarding the current use of medicinal cannabis?

Dr Bonning: There is growing evidence for specific conditions and the use of medicinal cannabis. This has been shown by the number of special access scheme authorisations for the use of medicinal cannabis. In addition, many general practitioners and subspecialist practitioners are now authorised to apply for cannabis-based products for their patients. That has been increasing steadily over the last five years. There is genuine interest in continuing research, and in the use of cannabis where there is clear medical and clinical evidence for the use of it. As with all things, if there is good evidence to support it, from a clinical perspective, doctors are happy to assess that evidence and use it for the benefit of their patients.

Senator ROBERTS: At the moment, doctors' guilds, colleges and associations have it pretty well sewn up, don't they? They have exclusive use.

Dr Bonning: Given that these are regulated products and that they require a prescription, yes, because, generally, with prescription-only medicines, the legal requirements are that a doctor provide that prescription.

Senator ROBERTS: Following Senator Scarr's questions, I have a similar question but with a different angle to it. In your submission's conclusion you say:

The AMA does not support the Legalising Cannabis Bill 2023. The AMA is concerned that if cannabis were legalised for recreational purposes, it may increase health and social-related harms. This in turn may increase demand on an already overstretched healthcare system.

Isn't it true that the healthcare system, certainly in Queensland, and I suspect in other states, is over-stretched because of two things? First of all, the COVID mandates have led to a lot of doctors and nurses leaving the system. Secondly, I refer to the high number of excess deaths due to the COVID injections—not only deaths but increased diseases of all kinds due to the lack of good manufacturing processes in the COVID vaccines. They are things that the AMA supported.

Dr Bonning: Senator, I do not have the data that you would need regarding those questions. I can say that we have continually supported WHO, Australian government and other evidence-generating organisations around the safety and efficacy of COVID vaccines, and that those COVID vaccines were responsible for protecting many millions of lives here in Australia and around the world. In addition, while there have been some people who left the healthcare system due to COVID mandates, those numbers have been relatively small. I would say that the more likely cause of our stretched hospital system is a need for increased investment, developing our healthcare workforce over the long term, and recognising that there are ongoing increases in chronic disease as Australians not only live longer but also live with longer periods of ill-health.

CHAIR: Senator Roberts, I have to hand the call over to Senator Polley.

Senator POLLEY: We had evidence this morning from the Australian Lawyers Alliance. They were fairly critical of the AMA and the fact that people are accessing cannabis illegally because there aren't enough doctors prescribing medical cannabis. What's your response to that allegation?

Dr Bonning: I recognise that, because we are talking about that in the context of medicinal purposes, while many patients may see cannabis as a potential option for the treatment of a condition, that needs to be supported by the clinical evidence. That is not always the case. The engagement with a health practitioner, and specifically a doctor, is about assessing what sits within the realms of appropriate evidence for treatment. While patients may disagree with that, it is still an important responsibility of a doctor to do what is both medically available but also ethically and clinically appropriate based on the evidence and the understanding that they have. I agree that there may well be people seeking cannabis from other sources, but a growing number of doctors are willing to prescribe cannabis and cannabis-associated products. There may always be a gap between those people who think they should have medicinal cannabis and the evidence supporting that use.

Senator POLLEY: The other issue relates to a person's impairment when they have consumed cannabis. My understanding is that no testing is available by law enforcement to measure whether or not there is any impairment. Are your concerns not just from a psychiatric point of view but also about the harm from people who may be impaired driving? Is that an issue for the AMA?

Dr Bonning: The driving issue is complex. Impairment is not just the presence of a substance. The previous witness commented that the dose-dependent relationship with cannabis is more difficult to understand. There is no specific single test that determines whether someone, in using an amount of cannabis, is or is not significantly impaired. It is very different to being able to identify a blood alcohol level and recognise different levels of impairment based on that. Apart from saying that there isn't a test, I am not able to say much more about the harms and risks associated with driving, noting only that any substance which changes your perception or inhibits your reflexes is likely to pose some risk to some people on the roads.

Senator POLLEY: In your submission you talk about this bill with all its flaws, and how the establishment of cannabis cafes proposed by the bill may further normalise cannabis use and could introduce smoking into the public setting. This country has led internationally in trying to reduce the number of people who smoke. We now have the scourge of vaping, appealing to children because of the way it has been marketed, both legally and illegally. Have you anything to add regarding the messaging to young people that smoking cannabis is normal?

Dr Bonning: I could not agree with you more. We have seen almost a test run of how illicit products may be marketed to young people. Vaping has shown us that marketing, social pressure, and social media pathways have introduced many thousands of Australian people under the age of 18 to vapes. We know that early on and throughout it was normalised. The same concerns exist there. This was safer than smoking, it was cool to do, and that because it was allowed in highly trafficked, highly conspicuous areas, it was a normal thing to do. Therefore, it attracted people who had otherwise heeded the warnings for years—and within their families had done so as well—that smoking cigarettes was dangerous. Overwhelmingly, when people use cannabis products they use smoking and inhalation products. We know that creates an environment where young people see smoking associated with people whom they might look up to. That creates strong pressures on young people about what the norms are and what they should or shouldn't do. Normalisation through something like a cannabis cafe is very concerning.

CHAIR: Thank you, Dr Bonning. We appreciate the time you have taken to give evidence today. You have agreed to take some questions on notice, so we will look forward to those answers.

Dr Bonning: Thank you. I appreciate the experience.

LAI, Ms Sasha, Director, Plant Playground Pty Ltd

SIETARAM, Ms Malini, Founder and Chief Executive Officer, Ganjika Pty Ltd

[12:06]

CHAIR: I welcome representatives from Plant Playground and Ganjika Pty Ltd. Thank you for taking the time to meet with the committee today. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you and is available from the secretariat. Would either of you like to make an opening statement?

Ms Lai: Thank you for allowing me to speak today. I acknowledge the traditional custodians of the land upon which we meet today. I am a biophilic designer from Perth. I create environmental and spatial interventions that connect people to nature. I also own a sustainability concept space that specialises in hydroponic technology and tools that enable folks to grow their own fresh fruit and vegetables at home. I believe this liberty ought to extend to cannabis plants. I am here today to humanise cannabis use. I am here today to provide a voice for home growers, small business owners, legacy community members and the millions of Aussies who choose to consume cannabis and wish to do so safely without being treated as criminals. I would like to share with you my unique perspective today. As a young queer person of colour and as a woman, my diversity is championed in the global cannabis community. However in stark contrast, my local government, state government and federal government instil fear into my work and chokehold my business, preventing me and others from advancing in a rapidly changing marketplace. We are getting left behind. Additionally, many essential services which we know ensure a healthy, sustainable, and successful cannabis industry fear entering into the sector; and rightfully so. My businesses face severe financial repercussions and social stigma due to the demonising of hydroponic cultivation goods and services. It is unfair.

Allow licence holders to educate and promote healthy adult cannabis use. Allow Australians the right to choose what they put into their bodies. We know people will consume cannabis regardless of what the law says, so let's change our cannabis laws to reflect current views, values, and science. If the Australian government chooses not to legalise cannabis, we send a clear message to an estimated one out of three Australians: we don't care that your cannabis is unknown and untested; we don't care that you are unsafe when purchasing cannabis; we don't care that you are directly bolstering the black market; we don't care if you are unfairly caught up in the criminal justice system; we don't care that the cost, quality and safety of your cannabis are completely unregulated; we don't care about your education; we don't care about your health; we don't care about you. It is not right.

I urge the Australian government to change their views on cannabis and welcome back into society those who have been discriminated against and/or marginalised through the criminalisation of cannabis. I urge the committee to consider the bill as an opportunity to create a more equitable, tolerant, and inclusive Australia as a way to strengthen our collective value and ensure that all Australians are equal in the eyes of the law, irrespective of their choice to consume a plant. Thank you.

Ms Sietaram: Thank you for my invitation to be here today. I am the founder of Ganjika Pty Ltd. We operate as 420s, a cannabis platform for women's health. The 420s platform was created out of my need to access easy-to-understand information; information I didn't have access to when my husband went through stage 4 cancer. I looked into medicinal cannabis. I got lost in scientific journals and conflicting content. For too long the prohibition stance on cannabis has led to numerous adverse consequences. Today I would like to highlight three of them: safety, education, and choice. We are currently putting the risk and safety of 2½ million Australians at risk; 2½ million Australians who are currently obtaining cannabis purchased on the black market and risk purchasing contaminated, adulterated or very high THC products. As you might have noticed from my funny accent, I am Dutch. I was born and raised in Amsterdam, where 95 per cent of all cannabis sales take place at licensed coffee shops. The purchase and consumption of cannabis in a safe, regulated environment has significantly reduced the exposure and access to other drugs, such as heroin and cocaine. In fact, Australia has twice as many opiate-related deaths per million inhabitants than the Netherlands. We cannot put the public safety and health of Australians in the hands of criminal organisations.

My second point is education. Our vision at 420s is a world where women have agency in their health choices. Currently, it is not compliant to put evidence-based education and the personal stories of women on a telehealth site where I refer patients to doctors. I am not even allowed to mention the word 'cannabis'. How is an ordinary Australian meant to educate themself? Education does not equate to advertising, yet it is treated that way.

The stigma and lack of education impede progress towards evidence-based alternative health options. Scientific research has shown that cannabis can improve the overall quality of life if people are suffering from chronic pain, endometriosis, anxiety, epilepsy, and other conditions. Yet most of my patients have told me how anxious they

are when they speak to their doctors, feeling like they are doing something illegal. One of my patients, a top executive, is going through menopause and has tremendously benefited from a legal cannabis script, yet she is too afraid to mention this to her peers due to the stigma associated with it, and fear of judgement.

At my local farmers market, a stallholder told me with tears in his eyes how his doctor treated him like a drug addict because he wanted to replace his Endone prescription with alternative plant medication. Surely we have to see the irony in this. I am not talking about teenagers in the back of a Kombi van. I am talking about law-abiding Australians who are in desperate need of alternative medication and in need of a seal of approval through legislation.

Finally, there is the issue of choice. Providing online access will lead to equal health outcomes for Australians in rural areas, for people with mobility issues and for people who need privacy. The traditional coffee shop concept may pose barriers to those seeking help. We have systems and technology in place that can help prevent underage usage, similar to the systems used by Dan Murphy and BWS. Australians deserve an active role in their own wellness choices.

It is time for us to acknowledge that our current approach is not only ineffective but unjust. Australia prides itself in being a forward-thinking, innovative society. This bill is not just about changing lives; it is about fostering a more compassionate and equitable society. I urge us to embrace a future where cannabis is regulated, researched, and respected. Thank you.

Senator SHOEBRIDGE: Thank you both for your excellent submissions. Just for clarity, I visited your Plant Playground premises when I was last in WA. I have got to tell you: it was an absolutely wonderful space. I was very grateful for my oat flat white that you gave me. To an extent, that is my conflict of interest declaration.

Ms Lai: Thank you for that feedback. I'll let the barista know.

Senator SHOEBRIDGE: It was delicious. Could you talk us through the benefits that would come, from a small business perspective, of being able to operate in a well-regulated market with responsible service of cannabis obligations—the benefits that would give you, as a small business owner.

Ms Lai: It would create jobs for small businesses, opportunities for us to enter into a thriving global industry that is really advancing technologies and aiding in medicine and science and botany. It would be incredible to be a part of that. We know that cannabis is supported inherently by grassroots movements; in other words, that is small business. It is incredibly important that we highlight that cannabis is something that can be used for health and wellness, but it can also be used really successfully and safely for relaxation and socialising. That's not a bad thing. I don't think enough has been said on that.

Senator SHOEBRIDGE: We seem to be addicted to fun police, don't we, to make it illegal to relax and have fun in this space, which is something that maybe we should reflect upon as a society.

Ms Lai: Yes; definitely. Let's have more fun.

Senator SHOEBRIDGE: One of the things you say in your submission is:

We strongly support the bill's proposal for labelling strength, strain, purity, and other relevant information …

Particularly when you talk to young people—but not limited to young people—people wanting to have information about what they're putting in their body, how important is that?

Ms Lai: It is incredibly important. You don't go to a bar and not understand what the alcohol percentage is in the cocktail or glass of wine you're having. The same goes for if you were to travel to anywhere in the world where cannabis is legal; you would be able to safely understand, through regulated products, what it is that you are consuming. This is incredibly important, as cannabis acts differently with everybody. The way that it interacts with our own individual endocannabinoid system is unique. It's integral to safe consumption. Knowing exactly how much dosage is in a product, when to take that product and how to take that product is part of the education that needs to happen through licence holders.

Senator SHOEBRIDGE: None of that information is currently available in an illegal market where the bulk of the supply is driven through criminal actors. None of that information is currently available.

Ms Lai: Correct. The black market is completely unregulated. In a product such as a tincture or an oil or a gummy, anything where it is not obvious that it's cannabis sativa in its flower form, how do we even know that it contains what it says it does?

Senator SHOEBRIDGE: Malini, thank you for detailing your own personal engagement, through your family and your partner, with medicinal cannabis. One of the issues I take away from your submission is that legalising cannabis in a well-regulated market would take away a lot of the stigma. How important is that?

Ms Sietaram: It's incredibly important. When I started the telehealth site for women, I called every single patient because I wanted to know what we could improve. Every single person said, 'I felt like I was doing something naughty.' These are women who are going through menopause or have severe endometriosis. These are women who are going through serious things. They shouldn't feel that advocating for their health is illegal, especially in a situation where it isn't. The most important thing about stigma is that we cannot educate people. My husband, by the way—spoiler alert—is alive and well, over there. We got the results last September of a five years clean PET scan, so we are very happy about that.

Senator SHOEBRIDGE: We're all happy about that.

Ms Sietaram: He still doesn't do the laundry.

Senator SHOEBRIDGE: We'll put some questions on notice about his behaviour.

Ms Sietaram: But the stigma is about education. I spent a year, and I've read over 200 scientific research papers. I have spoken to multiple researchers and about 150 doctors to get this education. My job is to translate that really complex information that's out there and make it accessible to people, which is what I have done. This is how we are going to remove the stigma. I talk to women who are suffering from endometriosis, and the only solution we have now is invasive surgery. It is invasive surgery that you have to do. There is science out there, there's research out there that shows that there is a suppository, built by an Australian company, that takes away the lesions. There's amazing research coming out of the University of Newcastle which is funded by private people—not the government—that is helping these women. That's the story I want to tell. That's not a stigmatised story. There's so much more. We talk about fun. I would like to consider wellness. Relaxation doesn't mean you're having fun. You have the right to relax. You have the right to make your racing brain stop. And cannabis can do that, in a controlled, safe environment.

Senator SHOEBRIDGE: Could I ask you about access to medicinal cannabis. A whole series of submissions point out that it can be quite hard to access in parts of the country and it's incredibly expensive. I might go first to you, Malini, about what impacts the current system has on access and then to you, Ms Lai.

Ms Sietaram: I can give a fact. I heard Senator Malcolm Roberts ask a question about this. In 2022, research came out that showed that there are 47,000 GPs in Australia; 19,000 of those GPs are interested in prescribing medicinal cannabis, and 843 of them are actually prescribing. This was in 2022. The reason for that is the red tape and the lack of education these doctors have. They don't feel comfortable prescribing it, but they're happy for their patients to go somewhere else. It is incredibly difficult. There were a number of licences and compliance loopholes I had to jump through just to get doctors on board to do it in a compliant way. I believe in doing things the right way. I believe in showing a path forward, where it is a healthy, safe environment. It is incredibly hard. The pricing is very expensive. There is price gouging going on. It comes back to education. I am legally not allowed to tell a customer how much 30 millilitres of CBD oil will cost. Australians aren't allowed to shop around. Australians aren't even allowed to choose the brand they want. What we do in the background is that, if we know someone who is not in the best financial position, we give them products that are cheaper. But we're not allowed to advise them. Who are we benefitting there: the Australians or the companies making profits?

Senator SHOEBRIDGE: The most recent data has shown that, yes, there has been an uplift in authorised prescribers. The dashboard that I have in front of me says that it's now 2½ thousand, which is a bit over five per cent of GPs, so it's still a tiny fraction.

Ms Lai: Not everybody wants to go to a doctor to have them tell them what they are allowed to consume inside their own home. Coming at it from the perspective of a home grower who has been cultivating their own plants for their own use, which may be recreational adult use or medicinal use, they would like to consume that safely and without the intervention of a doctor, if they've been doing so previously with success. I know that a lot of people do require guidance around the medicine, and for very specific conditions it's necessary to have health practitioners involved with your journey when looking to cannabis. That's still going to exist if we legalise cannabis.

Senator SHOEBRIDGE: Could I ask you about the cost of medicinal cannabis. I've had people approach my office, particularly people in regional New South Wales, who say the cost of medicinal cannabis, if they're on a government pension, for example, is impossible. Others have said that the current illegal system means that they just won't access medicinal cannabis, particularly if they have to drive. Could I ask you about the current access issues but especially cost. What are you hearing about the cost of medicinal cannabis?

Ms Sietaram: It's too high.

Ms Lai: Very expensive.

Ms Sietaram: Just to give an example, in Australia, for a 30-millilitre bottle of CBD oil, the cheapest that is available right now is $125. The most expensive is $270. We're expecting pensioners to pay $270 for 30 millilitres. We are almost driving these people to the parking lot to get it illegally. It's not acceptable. We are putting people at risk there.

Ms Lai: Exactly. I echo that: people are going to look for their cannabis elsewhere, given the price that we have right now and the lack of competition. A legal cannabis marketplace would really bring down prices and obviously increase quality at the same time. There's no reason that people should not be able to access cannabis because of pricing.

Senator SHOEBRIDGE: That's the fact at the moment, isn't it? The cost of medicinal cannabis means that it's really only for people who have some form of private wealth who can get regular access to medicinal cannabis, which is a fundamental economic unfairness, isn't it?

Ms Lai: And that's if your doctor is prescribing it in the first place.

Senator SHOEBRIDGE: If you've got one of the five per cent of GPs who prescribe.

Ms Lai: Correct.

Senator SHOEBRIDGE: Malini, given your experience of people's use of cannabis, their use for medical treatments, their use for relaxation, can I ask you to talk about those two different things?

Ms Sietaram: Our target audience is very much focused on women, who have a different consumption pattern than men, in general. What we see is that the majority of women prefer not to smoke. They prefer edibles, they prefer things that don't smell, just because of the stigma related to it. Most women that we see come in for endometriosis pain, period pains, menopause, which is a very big segment of our audience, and anxiety. I recently spoke to a young lady, 25 years old. After COVID, she had to go back to the office and she couldn't get out of her bed. She couldn't function on the antidepressants they were prescribing her. She got onto CBD oil. She now takes six drops a day and she's doing brilliantly. She works for a very large company that you all know, and she's doing brilliantly. It has really unlocked her life. There are real solutions out there for people. It's so much more than getting high.

I'm from Amsterdam. We have no problem with that. But you can do that in a safe environment. If you look at Amsterdam—even though I printed it all out, I won't bother you with all the data from Amsterdam—at how it is used there, how responsible it is, how low addiction rates are there, it's amazing. This has been proven for over 40 years.

I used to live right next to the coffee shop in a very nice suburban area. This coffee shop is still there, just like our local butcher. It has been there for 35 years. No-one is allowed to smoke outside. You have to get your stuff inside. You can smoke there. Out of respect for the neighbourhood, people drive home. Actually, we jump on our bikes and go home; we don't really like cars. And it's fine. It's an integral part of society. It's normalised. Because of that, a lot of kids don't use it. It's not a big thing. It's just part of society.

Senator SHOEBRIDGE: In fact, some of the studies suggest that by legalising cannabis, far from attracting young people to it, by making it kind of boring and legal, it takes away a lot of that attraction for young people to access it.

Ms Sietaram: It does. It all comes down to education, to understand what it is. There are over 85 different varieties of cannabis. Every single one has a different impact on people. I would love the home growing, because I've killed at least a thousand plants, so I need to get your number. I have grown legal plants. But there's still education there. Just planting a marijuana plant in your house doesn't mean that's the right one for you. It really depends on the strain. That's where the education comes from. That's where the database needs to be built so that people can understand: 'This is what I need to feel and this is the solution for it.'

Senator SHOEBRIDGE: I have many more questions, but I note the time.

Senator SCARR: Thank you both for attending today—especially my friends; we have many common attributes. Even though I haven't met you, I know of at least one. Ms Lai, one issue that has arisen in the Californian context—I have been reading various references, footnotes in submissions et cetera—is that a lot of work has been done by a reporter in California called Paige St. John in relation to the illegal production of cannabis and the illegal cultivation of cannabis in California. Are you across some of the issues that have occurred in the Californian context?

Ms Lai: Yes, some of them.

Senator SCARR: I am referring to an article; I am giving you the context. I am interested in your response, especially as a person in small business. I quote from an article of 8 September 2022:

…the law triggered a surge in illegal cannabis on a scale California has never before witnessed.

… … …

For those sidestepping taxes and regulation—

which is something you would not do—

the reduced criminal penalties in Proposition 64—

the reform of the law—

lowering the cost and risk of doing business.

The phenomenon that appears to have occurred in California is that in rural areas and hard-to-access areas there's been an explosion of cannabis cultivation and production, which means that lawful businesses, including those people who have small businesses and who are paying their taxes and complying with the regulatory costs, can't effectively compete in the market. How do you address the risk of that phenomenon occurring in Australia?

Ms Lai: It has to be regulated. We have to learn from, I guess, the mistakes that have unfolded in other countries that have already legalised cannabis. A black market is still going to exist, but with proper regulations in place people are going to find it more attractive to enter into the legal cannabis market. I think that something that often gets missed is that, prior to California first legalising recreational adult use, licence holders were allowed to grow their own cannabis there legally. There was a huge loophole where licences were issued out to particular landholders but the mother companies of these landholders were just one great mass company. Obviously, profiteering in that way causes severe negative impacts on small business and creates a marketplace that is very unstable. Yes, the black market poses a risk, but it's a greater risk currently. There are greater health implications and social implications, and there are greater implications on businesses trying to operate legally under our current legislation.

Senator SCARR: Malini, thank you for sharing your story with us. It brings a human element to these issues when we're considering them; that's very generous of you both. In that vein, my mother struggled with chronic depression and pain issues towards the end of her life. In fact, for 10 years she tried medicinal cannabis through the right way. Unfortunately, it didn't provide her much assistance, which was very tragic on many levels. I am interested in your statistics in relation to the number of doctors who are subscribing. On notice, could you provide just where you got those statistics? We had the AMA here earlier today. It is something I would like to put to the AMA in terms of their response to these issues to get a better feel for why it is that, I think you said, only 843 doctors—

Ms Sietaram: In 2022, yes.

Senator SCARR: in 2022 are subscribing. Do you have any geographical understanding of how they are distributed? Is it predominantly in certain jurisdictions? How many in Queensland, for example?

Ms Sietaram: I cannot answer that. It is in my report; it is not in my brain.

Senator SHOEBRIDGE: It is currently 2½ thousand, which comes from the TGA website. They publish data. It is the most up-to-date data. I will share it with the committee.

Senator SCARR: I am particularly interested in the cost you referred to: $125. For how many millilitres was that?

Ms Sietaram: For 30 millilitres.

Senator SCARR: How long would 30 millilitres last in a medicinal context?

Ms Sietaram: Depending on your dose, about two weeks.

Senator SCARR: And there isn't any way to get pharmaceutical benefit support in relation to the cost of that if you are using it for medicinal use?

Ms Sietaram: Nothing; even the doctor's consult. If you talk to your doctor, you cannot claim that consult on Medicare. You make it very expensive for Australians to access this. There are some really good Australian companies now that are providing concession rates. However, what they do is that, instead of using the premium quality of the flower, they are using the left-over buds. So it's still effective but they are lower-quality products that are then sold at concession prices.

Senator SCARR: It would be helpful if you could provide us more detail with respect to those costs with respect to medicinal use and barriers for Australian patients to access the products they need to counter medical conditions, including pain management and issues like that.

Senator ROBERTS: Thank you both for appearing. I loved your commitment and your enthusiasm. They are very powerful statements; I'm looking forward to getting copies of them. I am going to ask several questions.

They need only brief answers, but if you want longer, that's fine. From your submission, the way for a safe and regulated product is through a system of government regulation, correct?

Ms Lai: Yes.

Ms Sietaram: Yes.

Senator ROBERTS: A regulation would allow for better education and harm reduction, which is the problem with the free-growing system—nobody has the role of educating, do they?

Ms Lai: Yes, that's currently correct.

Ms Sietaram: Correct.

Senator ROBERTS: I am not sure how strain registration will reduce harm, unless the intention is not to register some of these new extreme strains with THC over 25 per cent, even 30 per cent. You've heard of that. What are your thoughts, please, on some of these new strains going into general use?

Ms Sietaram: It boils down to education. Without body shaming, there are people who have a higher BMI. They have a higher metabolism and they need a higher type of strain. People in palliative care might need a higher type of strain. It's very much about matching the individual needs to the vast variety of strains that are out there. I do think it should be in the legal market, but there should be regulation in place about who can access it, when they can access it and why.

Ms Lai: The number of cultivators that exist and will exist in the future is unknown. That's because we keep making genetic advances in this field, and that is really exciting. The law should not prohibit cultivators from providing end consumers with access to particular strains based on levels of THC—one of 120 active compounds that are within cannabis. It doesn't make any sense, and it kind of reflects upon Australia's current lack of understanding around this very powerful plant. There are many strains in particular that have incredibly low levels of THC and high levels of CBD, for instance, which we know is non-intoxicating. Should that be regulated in the same way as a really high THC concentrated plant that is sedative in nature? In my opinion, it all needs regulating but it needs expertise from the legacy community and medicinal practitioners to make sure that we understand the plant fully.

Senator ROBERTS: We need to be practical. A down regulation would allow easier and cheaper access to medicinal cannabis. Do we need to change how medicinal cannabis is done in Australia?

Ms Sietaram: Yes, please.

Ms Lai: Yes.

Senator ROBERTS: Do you think this bill will increase jobs or will it simply move them out of the shadows?

Ms Lai: Of course it will increase jobs, and it will encourage a lot of valuable labour that is currently being kept in the dark due to stigma. People are unable to share their wealth of knowledge with the general public, and it's a grave shame. It would possibly affect jobs in virtually all sectors, such as tourism, hospitality.

Senator ROBERTS: How so?

Ms Lai: Well, I am from Western Australia. If we look to the wine region that we have there, which is highly sought after as a place to visit not only for leisure but also for wine connoisseurs, we know that is one of the most successful tourism regions we have in Australia. The wine is excellent there because of the growing conditions of that area. There's no reason why that can't extend to cannabis plants. That craft industry that would boom up around cultivation of beautiful, Australian, sun-grown, high-quality cultivators would put us on the map globally.

Senator ROBERTS: I was at Margaret River recently with my wife. We tasted some olive oil. So you're saying we could even get a tasting of CBD?

Ms Lai: Correct. Cannabis can be infused into olive oil. It can be used topically, and our regions could be really well-known for extremely high-quality and unique products.

Senator ROBERTS: Ms Sietaram, Amsterdam has been done well, you say?

Ms Sietaram: Yes.

Senator ROBERTS: You're very proud of it. If you put them side by side, how does this bill stand up relative to Amsterdam? What more is needed?

Ms Sietaram: I think that, because of all the data that is out there, Australia can be at the forefront of proper regulation. What does happen—we have seen this in Thailand and in some ways in the Netherlands—is that there is a regulatory vacuum. That vacuum needs to be filled. We have the opportunity to really think: how are we going to legalise that? Put the rules in place, have the data in place and have it science backed. This hurts my little

Dutch heart, but I think that we can do it better than the Netherlands, because we can use their 30 years of data, we can use the 10 years of data from the US and we can use the six months of data from Thailand and really figure out how to do this properly.

Senator ROBERTS: Would it be asking too much for you to answer a question on notice in writing with respect to what amendments you would like to see to the bill?

Ms Sietaram: Yes, I can do that.

Senator ROBERTS: And why?

Ms Sietaram: Yes.

Senator ROBERTS: Ms Sietaram, on page 4 of your submission, which is page 48 of the briefing pack, you have a list of two significant economic benefits being increased: tax revenue and job creation. Wouldn't a third one be lower health cost to the nation?

Ms Sietaram: Yes, I agree with that.

Senator ROBERTS: Would that be significant?

Ms Sietaram: My personal opinion is that it would be significant, but I don't have an Excel spreadsheet to prove that.

Senator ROBERTS: You have done a lot of research and you have read a lot of papers.

Ms Sietaram: Yes, I have. We do see it. I heard earlier the AMA talking about the strain it would have on mental health services. I disagree with that 100 per cent. I go back to my farmer's market stallholder. This is a man who is in his late 60s who has worked at farmers' markets his whole life. His back is broken. He has to go on Endone. He couldn't play with his grandkids because he didn't feel good. Now we've put him on alternative medication and he is a new human being. Not only does it reduce the strain on the medical environment but also it helps Australians. We cannot stand there and say, 'We prefer people to be on opioids.' We cannot say that.

Senator ROBERTS: Just to follow up on that one, I have no doubts about medicinal cannabis being highly beneficial. We need to bring it in quickly. So many Australians—I am looking across everyday Australians—can see that, but they are not yet ready to accept recreational use. Is it a mistake to try to bring in both at once? Why not get medicinal cannabis in first and then tackle the issue of recreational cannabis?

Ms Sietaram: I personally don't like the term 'recreational cannabis'. I believe it is about wellness—sleeping better, relaxing after a hard day and dealing with pain. Instead of drinking a glass of wine, having an edible is a healthier solution. I would consider it to be wellness. I think that, in the end, they will merge together. The way they will merge together is by education. A book which I highly recommend is Steve DeAngelo's *The Cannabis Manifesto*, which he wrote many years ago. He has been one of the biggest cannabis advocates since the seventies. He says that it's the intent that matters. There is misuse and there is wellness, and it's only in the state of the mind. What happens is that if someone comes in and says, 'I want to use this because I want to feel better,' et cetera, they use it in the right way.

We see this in the Netherlands. The problems in the Netherlands with cannabis don't come from the people who live there; they come from the tourists, because they come with an intent of misuse. 'I'm from France. I want to party in Amsterdam and'—respectfully—'I'm going to get wasted.' The societal change will make such a difference. Instead of looking at it as recreational, it becomes a wellness thing. The only way we can solve that is by providing proper education to people.

Senator ROBERTS: What is the author's name?

Ms Sietaram: Steve DeAngelo. I can send you a copy, if you want.

CHAIR: We are running a little bit behind time. I will keep my questions really brief. You've both spoken about the need for regulation and to have rules in place. The bill itself is pretty light on what those rules would be and what the regulation is. It creates some offences and talks about the types of activity that would be regulated, but it doesn't actually say what that regulation would be. What are some of the types of regulation that could be introduced to manage the market, keep it safe, particularly protect young people and ensure that we don't bring the illegal market into a legal one?

Ms Lai: An obvious one is to learn from the way that we regulate alcohol, especially in public spaces, and especially with the aim of protecting youth. I don't see why we can't lend that to cannabis and create a responsible service of cannabis. Licence holders would need to ensure that their staff and anyone that interacts with the general public in providing cannabis to them is trained in a way that is providing education.

CHAIR: Liquor licences.

Ms Lai: Yes; and really specific guidance on how to consume cannabis. That's a really obvious one.

Ms Sietaram: I agree with that. It is about education; putting in regulation about age verification; putting in regulation that the products aren't marketed to appeal to children. There is the vape example. Let's not use bubble gum flavours; let's not use cutesy products; and let's make sure that it's not attractive to children. I think that's really important. I think the education is important. In America, they call them 'budtenders'. They're almost like a sommelier, where you go in and say, 'This is what I need,' and they will give you the product that will work for you. It is about making sure that the patrons of these cannabis cafes and online shops have that education and that we have some formalisation of that. 'You cannot work here unless you've done this course.'

CHAIR: You were talking about the fact that people need to be—prescribed is really what you were talking about, essentially; that there needs to be the right type or dose for the right person. How would you do that, if not by medical prescription?

Ms Lai: It's really easy. You ask the customer what it is that they are trying to achieve. That might simply be coming to a place of homeostasis, which you can do with cannabis in a non-intoxicating way or through psychoactive measures. You ask the customer what they need and, with your training, you offer the appropriate cannabis product.

Ms Sietaram: I think that's absolutely correct. I am a little bit of a geek, so I've been playing with this algorithm. Basically, I've taken all of the information that's out there on strains and scientific research, and started to match that. It is about having an algorithm that builds on that, so that people can say, 'This is what I want to achieve.' Having the experience of a budtender or a patron of a coffee shop can definitely help with that. But having data behind it will make it into a playbook and it will secure more regulation for consistency.

CHAIR: That's all we have time for. If you have taken some questions on notice, we will let you know a date by which we need to get them back. The committee will now suspend for lunch.

Proceedings suspended from 12:52 to 13:34

BARRETT, Ms Liz, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre [by audio link]

DIZARD, Dr Jake, Senior Research Officer, Penington Institute [by audio link]

KELAITA, Dr Paul, Postdoctoral Fellow, Drug Policy Modelling Program, Social Policy Research Centre [by audio link]

KEYZER, Professor Patrick, Private capacity [by audio link]

KOWALSKI, Ms Michala, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre [by audio link]

RYAN, Mr John, Chief Executive Officer, Penington Institute [by audio link]

TOUMBOUROU, Mr John, Private capacity [by audio link]

VARCOE, Mr Shane, Executive Director, Dalgarno Institute [by audio link]

CHAIR: I now welcome, by teleconference, representatives from the Dalgarno Institute, the Social Policy Research Centre and the Penington Institute. Thank you for taking the time to speak to the committee today. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you and is available from the secretariat. Would any of your organisations like to make an opening statement? We will start with the Dalgarno Institute.

Mr Varcoe: Thank you for the opportunity to present here today. In 1993 Richard Cowan, former director of NORML, the National Organisation for the Reform of Marijuana Laws, speaking at a conference, said:

The key to getting marijuana legalised is medical access because, once you have hundreds of thousands of people using marijuana under medical supervision, the whole scam is going to be blown. Once we have medical access and we continue to do what we have to do, and we will, then we'll get full legalisation.

Not unsurprisingly, the recent emergence of the unsigned CHIFEC and regressive vote for medicine regimens in various jurisdictions is a fulfilment of that Trojan Horse agenda. It has enabled the sidestepping of thorough, evidence-based, double-blind placebo accounted for clinical trials of this over-promised and underperforming psychotropic toxin. Now this highly engineered, psychologically and physiologically addictive substance can generate its own demand-increasing culture. On 20 December, 2023, the *New England Journal of Medicine* published 'Cannabis-Related Disorders and Toxic Effects.' A brief excerpt is as follows:

Cannabis use poses a global disease burden. The Global Burden of Disease project calculated that cannabis use alone in 2016, seven years ago, was responsible for an estimated 646,000 years of healthy life lost to disability. Cannabis use is most strongly associated with an increased risk of motor vehicle crashes, suicidality, and cardiovascular and pulmonary disease. Cannabis use in 2021 was associated with an estimated 10 per cent of drug-related emergency department visits in the United States alone. Sixteen million plus Americans now have a cannabis use disorder, and that is growing.

This paper also stated that only the legal drugs of alcohol and tobacco do more harm. We contend that they do so because they have received the highest endorsement for legalisation. We already have two public and community health and safety wrecking balls in play. Why would we want to add another to that mix?

Finally, there are thousands of families whose lives are in chaos and great grief because of cannabis use, my family being one of them. Living with the psychosocial harms that this substance generates is not only heartbreaking but ruins families. Sound community health and safety minded governments are mandated to protect their citizens from these harms and not to promote or, worse, endorse and profit from them. Thank you for your time.

CHAIR: Thank you. Mr Ryan, do you have an opening statement?

Mr Ryan: I do; thank you, Chair. I thank the committee for paying attention to this issue. I have been in this field for three decades. I have seen a globalisation of drug problems and drug supply. It has spread to places in the last decades that it has never been before. Even contemplating that more than 1,500 new drugs have been identified this century, we have a big problem internationally. Australia is part of the global challenge of how to manage drug problems. In Australia we have methamphetamine, GHB, and heroin, and we have Fentanyl knocking at the door.

The Penington Institute does Australia's Annual Overdose Report. The overdose toll is bigger than the road toll in Australia, but cannabis is not part of the single drug overdose statistics. There is no plant-based cannabis fatal overdose in Australia yet recorded. So it has a different harm profile to other drugs, but it is certainly not harmless. Even though it has a different harm profile, especially compared to methamphetamines or heroin, of the

150,000-odd arrests per year in Australia, half are for cannabis and about 90 per cent of those are for personal use and possession.

The harm profile of cannabis is much lower than the drugs already mentioned. We need to think about how to effectively and efficiently manage cannabis in the community. The evidence from the last five decades shows that criminalising cannabis does not work. It fails to control supply. It leaves the market and profits in the hands of criminals and costs billions of dollars in enforcement, all the while crippling a public health led approach to managing the health harms that are associated with problematic cannabis use. In place of the current regime, Penington Institute supports a balanced model that facilitates a steady nation-wide shift to a regulated adult cannabis use market while also taking decisive steps to minimise the health harms that cannabis can cause.

We believe that the bill under discussion today is a positive step away from the current failed approach, which imposes a criminal sanction on people for use or possession of a substance with a harm profile arguably lower than alcohol or even nicotine, as well as funnelling hundreds of millions of dollars annually to organised crime operations rather than stimulating economic development and providing products free of unpredictable, unknowable contaminants. There are many important details to iron out in cannabis policy, but the most important hurdle is simply accepting that it is past time to abolish the outdated, misguided, criminalised cannabis regime.

The former chief commissioner of the Australian Federal Police spoke at a Penington Institute event last year. He noted some of the examples of criminal laws from his own career that we now look back on as counterproductive and ridiculous, including laws against sodomy and attempted suicide. Poor Mick actually had to charge someone with attempting suicide as they lay in bed recovering. The law punished the very people it was trying to protect.

I firmly believe we will look back on the cannabis prohibition era similarly. I urge the committee to help craft a coherent, flexible cannabis regime that both acknowledges the reality of cannabis use in the Australian population as of today and prioritises public health and safety for individuals and the broader community. Thank you.

CHAIR: Thank you Mr Ryan. Dr Kelaita, do you have an opening statement?

Dr Kelaita: Thank you, Chair. Thank you for the opportunity for being here today. My colleagues and I are here on behalf of the Drug Policy Modelling Program. I am pleased to make a few summary comments. Our submission speaks to the benefits of pursuing regulated access to cannabis and draws attention to three key points regarding cannabis legalisation. The current approach to recreational cannabis across Australia sees significant harms. The Australian Criminal Intelligence Commission notes that the cannabis black market is large, well-supplied and potentially expanding. In 2020-21, 90 per cent of national cannabis arrests were consumer arrests. The substantial unregulated black market and criminal justice impacts are felt by individual consumers. Evidence from Australia has shown that a conviction for personal use and possession of cannabis can have long-term negative impacts on employment, housing, travel, and relationships. Currently, the widespread use of fines and cautions for personal use and possession across Australia recognises and attempts to avoid the substantial harms that come with criminal conviction and incarceration. However, evidence has shown that fines disproportionately impact the most marginalised members of society and can lead to further encounters with police. Reports on the Australian Cannabis Cautioning scheme, reliant on police discretion, have also demonstrated that there are significant racial and geographic disparities, with First Nations people in particular receiving fewer cautions than non-First Nations people. This evidence shows that the benefits of diversionary approaches are not equally felt by all Australians. A further area of harm comes in the unregulated supply of cannabis, which opens the door for dangerous contaminants and variations in strength. Regulated access to cannabis can address these areas of harm.

I move now to three key points regarding the illegal regulated cannabis market drawn from our research into cannabis regulation and alcohol policy and evidence from other jurisdictions. First, strong industry regulation is required. The clash of commercial interests with public health principles is a key area of concern. Industry influence should be restricted at all points in a legalised cannabis market, from a seat at the table of the regulatory agency itself to supply and retail arrangements.

The second point is that the regulatory agency should be located within the health portfolio. In addition to measures in the public health interest, such as pricing restrictions, maximum THC levels, mandated THC for CBD ratios and outlet density limits, locating the agency within the health portfolio would formalise the agency functions, to maximise safety and minimise the harm associated with regulated cannabis activities, while still receiving identified benefits and tax revenue.

We welcome the provisions in the bill allowing individuals without a licence to grow cannabis at home, manufacture products for personal use only and share cannabis products valued under $50. Our third key point is

that the legislation should avoid recriminalising activities that reflect how these kinds of policies work in practice, particularly around the sourcing of seeds online for home-growing personal use.

Overall, cannabis regulation is an area of policy reform that can draw from Australian experience and evidence, and evidence from many international jurisdictions, to address the realities of cannabis use and the harms of current recreational cannabis policies across Australia and to safeguard against the potential harms of regulated cannabis policies. Thank you.

CHAIR: Thank you very much. We are going to go to questions now. Because we have a number of people on the panel and we do have organisations with different views, Senators, if you could assist the witnesses by directing your questions, that might help. I'll start with you, Senator Shoebridge.

Senator SHOEBRIDGE: Thanks to all for your submissions. Could I first go to UNSW. Your submission references the harms that currently come from unregulated supply in a very large illegal market in Australia. Do you want to identify some of those harms? After UNSW we might go to Penington.

Dr Kelaita: Some of the harms around unregulated supply specifically come from various contaminants that might be in the illicit supply, as well as variation in THC quantity in cannabis. You can't know how much THC is in cannabis bought on the illicit market. There is the same kind of problem around the ratio between THC and CBD in cannabis. There's also some emerging evidence that synthetic cannabinoids are found in unregulated supply, so various contaminants across the board are the main issues with unregulated supply specifically.

Senator SHOEBRIDGE: Penington?

Dr Dizard: I might note that these harms are often discussed. I have not seen specific evidence or specific studies about contaminants in Australian illicit market cannabis, but there are such studies in other countries. In general, we think of Canada as a better analogy for thinking about a general framework for an Australian regulated market in cannabis, rather than the overly commercialised US states. I happened to come across a study carried out just last year, a 2023 study, on contaminants in Canadian cannabis, sourced from both the legal market and the illicit market from seizures by law enforcement. It was quite revealing on that note. This phenomenon of contaminants is often discussed in the abstract. I found those numbers yesterday showing that in Canada 92 per cent of the samples from law enforcement seizures from the illicit market had extremely high levels of pesticides and only six per cent of the samples from the legally sold cannabis had unregistered levels of pesticide at very low levels. I thought it was important to put some sort of substance on the bones of this very important point raised by our colleagues about contaminants.

Senator SHOEBRIDGE: Mr Dizard, was there any detail about the nature of the contaminants? It was pesticides and other material that was found in about 98 per cent of illegal product in Canada?

Dr Dizard: This is pesticides specifically. We know that mould and heavy metals are other contaminants that have often been found in studies in North America, but this one was focused on pesticides. I'd be happy to provide that study.

Senator SHOEBRIDGE: If you could, on notice, that would be very helpful.

Dr Dizard: Sure.

Senator SHOEBRIDGE: One of the provisions in the bill is to propose that the legal market for cannabis operate largely through cafes and dispensaries, where it would be illegal to sell tobacco or alcohol. I might go first to Penington on this. Do you see a benefit in that degree of regulation in the bill?

Mr Ryan: Yes. One of the opportunities is to distinguish cannabis from the way that we have managed alcohol and tobacco. Keeping them separate, as you've outlined, is appropriate. The other separation that we need to really think through is how do we get the very significant cannabis market and its profits out of the hands of organised crime. When you talk about other harms with the current model, I look at profit incentive. We have had police come out and say that cannabis profits are used to import more dangerous drugs like methamphetamine et cetera. We really need to think about the smart way of reducing the criminal, profit-making cash-cow that is the cannabis market in Australia.

Senator SHOEBRIDGE: Does UNSW have a view on that?

Dr Kelaita: Keeping them separate from alcohol and tobacco is a foundational part of the public health approach. The co-use of tobacco has been shown to be an area of concern. Cooperatives internationally have been shown to be successful methods, particularly in the fact that the profit motive is not there in the same way as it is for commercial interests, as well as allowing for information around lower risk use to be communicated amongst members.

Senator SHOEBRIDGE: You're dropping in and out.

Dr Kelaita: The last point was on the benefits of cooperatives and the use they have in avoiding the profit motive but also communicating lower risk use guidelines.

Senator SHOEBRIDGE: Again, that's one of the features of the bill: to promote non-profit based production in the cooperative sector. Do you see there being good public interest reasons to do that?

Dr Kelaita: Definitely. Evidence from alcohol and tobacco and emerging cannabis markets does suggest that separating it from commercial interests driven by profit has public health benefits.

Senator SHOEBRIDGE: The first function of the proposed new agency under the bill, CANA, is to regulate cannabis activities in the broader public interest, including to maximise safety and to minimise harm associated with those activities. First of all, do you agree that should broadly be the goal of the agency? Do you have any additional elements you might want to put in for the agency's primary goal? I might go to you first, Penington.

Dr Dizard: Could you repeat the question about CANA?

Senator SHOEBRIDGE: The first function of the agency is to regulate cannabis activities in the broader public interest, including to maximise safety and to minimise harm associated with those activities. Do you think that's an appropriate key function for the new regulator?

Dr Dizard: I do think that's an appropriate function. A lot of it is about balancing the trade-offs. It's trade-offs all the way down, in particular with respect to minimising the harms that we've already discussed from criminalised prohibition of cannabis and the health harms from cannabis that certainly do exist. I would note that one potential reference point is the priorities—I believe they are called—of the Cannabis Act in Canada. It has seven or eight bullet points. They include protecting the health of young people; minimising inducements to use cannabis, which refers to advertising and promotions; allowing the legal production of cannabis to replace the illicit cannabis market; and a few others that are a bit more detailed and very explicit about how to achieve an effective balance.

Senator SHOEBRIDGE: I might go to UNSW on this agency purpose point, and then I'll come back to Penington on the advertising restrictions in the bill.

Ms Kowalski: Just on the question about CANA and public benefit, what we've seen within alcohol policy is that can sometimes be construed in interesting ways. It is very useful to define in concrete terms what that public interest means. We noted that there are restrictions on our whole industry and the tobacco industry from having a seat at the table in CANA. It would be really good to get restrictions on the cannabis industry, restricting the cannabis industry from participating and having a seat at the table in CANA as well. That is something that would be quite helpful and would be really good to do. It would be in that broader public interest. That is the extent of our comments about that.

Senator SHOEBRIDGE: That's to ensure that there is distance between the regulator and the industry, which is important if they're going to do public interest regulation; is that your point?

Ms Kowalski: Yes. The point is that in Australia we have the benefit of having over 20 jurisdictions around the world go before us. Different jurisdictions have dealt with this differently. Places like Montreal have gone to great lengths to really limit the involvement of industry in defining what the broader public interest is. Then you have places like Washington State that haven't. It can be really hard to get these things in place after the horse has bolted. It's about that.

Senator SHOEBRIDGE: If you had any best practice examples you could point to to articulate the public interest and if you could provide them on notice it would be really helpful.

Ms Kowalski: We're happy to take on notice examples of best interest and public interest.

Senator SHOEBRIDGE: This probably is also an element of the need to have a functioning market in order to allow people to access it, as well as having appropriate restrictions, for example, on advertising. It was a matter we consulted on in the course of drafting the bill. We came up with fairly tight advertising restrictions in the bill, which are primarily about point of sale but also very limited, regulated online advertising. I know Penington has some views about whether we got the balance right or not. Did you want to speak to that?

Dr Dizard: In general, starting with a very strict approach to advertising I think is something that we are fully on board with: plain packaging, no celebrity promotions, no broadcast advertising—all the things that the bill mentions already. The issue is that we note that online sales can be a weak point. They don't have to be; it is not inevitable. They are a weak point especially if done through cannabis cafes or any sort of private model, rather than a government wholesaler, as is the case in Ontario. The regulator would have to be very proactive in policing all of the content that appears online, to determine whether it's promotional in nature, and be very strict about looking for violations of those content restrictions. As online sites proliferate, that becomes increasingly difficult.

So there are several really thorny points to think about where a laudable ban on advertising promotion can be weakened. One is the point of sale, of course—that certainly fits in with the responsible stewardship model or service certification model—and making sure that people who work in any sort of cannabis retail point aren't verbally promoting products. But it also is important online. In Canada that seems to be one of the weak points in terms of advertising. Because commercial entities can sell online in some states, there is now a large grey market, and it is extremely easy to get onto Google and find websites selling products in Canada that appear to be illegal websites. So it's something to be very careful about and perhaps specify in the bill rather than leaving it just to the regulator.

Senator SHOEBRIDGE: Can we hear from UNSW on advertising?

Ms Barrett: I think we just agree with everything that Penington has suggested. The evidence is really strong for a ban on advertising, the packaging, restrictions on online sales and so on. I think I'll just point out there are multiple levers that can be pulled in the regulation of substances. We undertook a systematic review of the evidence on different types of regulation of alcohol and tobacco and its application to cannabis for the Swiss government. That was to assist them in coming up with, I guess, the best regulatory environment for cannabis in Switzerland. We'd be happy to provide a copy of that report to you as well if there is interest.

Senator SHOEBRIDGE: Thank you. Some of the submissions we got—we got about almost 9,000 people responding to our online survey with our draft bill. A large number of those submissions said—because the market will be dynamic, and we've seen that in other jurisdictions, we didn't want to be excessively prescriptive in things like labelling requirements, packaging requirements and the like but, rather, to empower a nimble regulator to be able to respond to issues as they arise. That was the thinking behind clause 32 of the bill, which allows the agency, by legislative instrument, to determine labelling requirements, packaging requirements and storage requirements, with a specific reference in the examples to child safe packaging and not making packaging attractive to children. What do you think about that challenge between trying to not be too prescriptive in a bill and being principles based and then also trying to do everything all at once in a dynamic market? I might go to UNSW first.

Ms Barrett: I think there's really strong evidence from the regulation of tobacco about what does and doesn't work in packaging. I think my colleague Ms Kowalski said that it's quite hard to put the horse back once it's bolted. There's no reason to not review these things once they come in. Legislation itself isn't static. It can be dynamic and it can be ever-evolving. But I definitely think there's benefit in applying a precautionary principle and then reviewing the legislation to see if it works rather than doing it the other way around.

Senator SHOEBRIDGE: And Penington?

Dr Dizard: Yes, I agree with my colleagues at UNSW. In general, though, that level of dynamism is certainly important and that level of responsiveness is important. But it is also important to consider that things being embedded directly in legislation sends a pretty strong signal about what are core priority components of the bill. That's No. 1. No. 2: I think evidence across many policy domains suggests that the regulation level is more vulnerable to corporate capture or capture by interest than—it is particularly vulnerable in those respects, whereas the transparency of the bill itself—it has some benefits in terms of writing core tenets and core priorities right into the legislation. That's not to say that we have direct, prescriptive answers about which components need to be written into legislation. But I think it's worthwhile considering some of the really sensitive issues, whether it be potency levels or marketing and advertising issues or the range of products that's available or even things like social equity issues, a little bit of which is already in the bill—to really consider the gamut and think about which ones should be directly embedded in the legislation, at least in the form of more concrete directives to the regulator.

Senator SHOEBRIDGE: A small minority of submissions have opposed the bill, saying that creating a legal market will give people access to cannabis, which can lead to health impacts and addiction problems. One of those submissions came from the Australian Medical Association. What do you say to the argument that we shouldn't legalise cannabis because that would create negative health outcomes, given how many people currently access—that millions of Australians currently access cannabis in a totally unregulated environment at the moment? What do you say to that argument? I might go to UNSW then Penington.

Dr Kelaita: The vast majority of people who use cannabis do not experience problems from their use. Most serious problems are concentrated and adverse effects are generated around particular forms of use, particularly around frequency and things like high THC content, as well as their THC to CBD ratio. Just to comment on this question, and also the previous question, having in legislation requirements around labelling is really beneficial to help ameliorate some of those health impacts while also opening the field for more discussion around what cannabis use is in practice and what the realities of cannabis use are for people, as well as education around how

to ameliorate some of the negative health effects—for instance, by avoiding smoking or avoiding daily use or other components such as that. I'll just pass to Ms Kowalski for some extra comments.

Ms Kowalski: I'd just agree with my colleague and strengthen what he has to say. I'd also just add that we know that public health officials from other states that have legislated or regulated cannabis have got concerns about putting in upper limits and ceilings on THC levels and that some jurisdictions have introduced things like that as a way to manage what you could call pitfalls that can come with legalisation. The good news is that we have a good idea of what they are and we can probably regulate around them, which would be the goal.

Mr Ryan: I'm just reflecting on the AMA's position and remembering a few years ago when Penington Institute was pushing for the availability of naloxone—the opioid overdose reversal drug for potential overdose cases. Actually, at the first part of that work that we were doing, the AMA was opposed to providing naloxone. Several years later, they've actually come onboard. I expect that the AMA will shift its position. We've got a lot of fear and concern in the community after 50 years of what has been a very draconian approach to managing this issue. So I'm optimistic that the AMA will shift to a much more forward-looking approach, including considerations, as you must do as senators, of not just the health impacts but also the other impacts of our current model, such as the 70-odd thousand people who are arrested every year for cannabis-related personal use and possession. I think it's just pretty much a hangover from 20th century approaches that we're seeing with the AMA at the moment.

Senator SHOEBRIDGE: Thank you.

Senator SCARR: I'm acutely aware that our friends from the Dalgarno Institute haven't had an opportunity to answer any questions. So, in seeking some level of fairness and balance, and with due respect to our other witnesses, I'm going to direct all my questions to the Dalgarno Institute and provide our witnesses there with an opportunity to contribute. The first question I want to ask—the AMA submission has been referred to. One of the points the AMA submission referred to was that one of the issues or one of the concerns they have is with respect to the impact of cannabis use on mental health. In that context, Australia has a great—it almost really is a crisis in terms of mental health services. I speak to families who can't get their sons and daughters into mental health facilities. The AMA says, 'The AMA is concerned that cannabis legalisation as a result of the above health harms may increase health service demand. This will put further pressure on an already strained health system, including further strain on already limited and under-funded mental health and drug rehabilitation services'. I'm interested to know the Dalgarno Institute's view with respect to that issue.

Mr Varcoe: Certainly. There's a lot of data—and we've heard previously about regulations and potential principles. It's all very good on paper. As many of our peers in the US and North America have come out and told us, on paper it looks and sounds good, but in reality it doesn't work because you're dealing with an illicit substance market that's strong and virile, and trying to overlay a legal market on it creates the three markets, as we've already discussed—legal, grey and illicit markets. There are concerns around that ongoing impact of those markets and the policing of those markets. Time won't permit us, in this particular setting, to actually unpack all of that. Canada is now unravelling in that space. The US has got all sorts of chaos in play. Sure, there are other jurisdictions that try to manage it better, and we would be looking for those if that's what we're going to step forward into.

But, when it comes to the mental health issue, that's a real concern because you're dealing with a psychotropic toxin that's incredibly addictive, despite some of the evidence coming out of certain sectors, particularly for the young and the developing brain. I think the AMA have got this completely correct. Professor John Toumbourou is a chair of psychology at Deakin and understands that principle pretty well. He'll speak to that in a moment. But the concerns we have of the uptake of young people—the Canadian model is failing. There's recent data coming out of Canada that shows that now between 20 per cent and 25 per cent of young people are engaging in this because they see it as safe. And, of course, an addictive substance generates its own demand. We don't have this approach to cigarettes.

We have one motto, one focus and one voice, and that is to quit—and, of course, we manage the process of quitting. But now we're going to introduce a product that not only can be inhaled by a smoke, and that's been advised against, but is also a psychotropic toxin, and that creates all sorts of addictive problems in the developing brain. Again, not everyone who smokes weed as a teenager ends up with a problem. But now we're seeing more and more evidence—published and peer reviewed evidence—of the ongoing harms that lead into adulthood, and that's transitioning from psychotic episodes to psychosis disorders. Now, that's really concerning. Our submission—both the submission direct and also attending documents—has outlined that.

So we're really dealing with—if my personal experience counts for anything in this context, I've worked with young people for nearly 40 years. The unravelling of the mental health and wellbeing of young people who use

cannabis is overwhelming, in my experience. Again, the data is—but the issues that I'm dealing with—I've got family members who are now fully funded by the NDIS who live literally supervised 24 hours a day because of their cannabis use. This is a concern at the public health level but also, more importantly, for the future of a generation, because now we're talking about productivity issues moving forward. You can't regulate that out. You cannot advertise that out. That's going to continue to be a problem because the illicit market will continue to flourish, as it has done in the US and is doing in Canada. So, again, we've got this problem—

Senator SCARR: Sorry to interrupt, Mr Varcoe. I'm keen to hear from Professor Toumbourou—I note here you're chair in health psychology at Deakin University—in relation to this mental health issue. Professor, what are your views?

Mr Toumbourou: The reason that I have concerns here is that we've been doing literature reviews looking at what has been the impact of cannabis legalisation, and we've been reviewing all of the literature reviews over the last five years. The weight of them are telling us that these models of cannabis liberalisation and legalisation are increasing adult use of cannabis. I'd just say that is a great concern, as we're hearing—I don't think there's any evidence that there's a safe level of use. There are a lot of people who are going to be affected by increased use. So why is it increasing? I have a PhD student studying this at the moment. Her review shows us that there are two things going on. One of them is an increase in perceived availability.

Unfortunately, the model that's on the table at the moment is actually going to again increase that mechanism. The second is a more favourable social norm that tends to set the scene that people think that this is acceptable behaviour. Again, the legislation we see on the table at the moment will in fact exactly go along that same problem—it creates these two factors that increase adult use. What is proposed here is going to increase adult use. I see nothing in the legislation to try and ensure that doesn't happen and I'm hearing everybody playing down the harms of cannabis. To go back to the mental health impacts, as we've heard from the experience of Mr Varcoe, where he talks about that just as one example, there is no evidence that cannabis can be used without there being—firstly, the increase in what we're seeing in the evidence from the current models of legalisation is increased cannabis disorder. So there's a first example of a direct impact on health.

Senator SCARR: Sorry to interrupt you, Professor. What is cannabis disorder?

Mr Toumbourou: When we have cannabis use disorder, what we've got is a whole range or a whole list of—it's a formally diagnosed problem where the use is actually associated with some aspects of the dependence syndrome but also other problems in your life and your ability to function. It has a formal diagnosis that's in the Diagnostic and Statistical Manual of Mental Disorders. This is one of the things that's going up in the jurisdictions that are legalising, which is, again, a great concern. It's very much related to the increased use that we're seeing and also that includes increased doses.

Senator SCARR: Okay. On notice, if you could provide—there has been some evidence which has been challenged during the course of the hearing today in relation to whether or not, in some of the models that have adopted or some of the countries that have adopted legalisation and regulation, there has been an increase in use, especially amongst young people. So I'd be interested if you could take on notice and provide particular statistics from the institute's perspective in that regard. The next question I wanted to ask was in relation to the concept that, if you legalise and regulate, you will take organised crime out of the picture. What is the institute's view with respect to that hypothesis?

Mr Varcoe: The tracking we've done over the last five years to 10 years, particularly, around the jurisdictional shifts, has shown that—as I said before, we went from one illicit market and now we have, in the jurisdictions that have legalised, three markets. Each market requires a level of policing. The idea that policing is going to be less—it may be less on one metric, but on others it's not. So policing and regulation continue to grow and the bureaucratic ball and chain going around that is huge if we're going to do it anywhere near well enough. As we know, to harness that and rein it in is going to be virtually impossible, particularly with this particular substance already being so widely used illicitly. Now, what we've seen too recently—

Prof. Keyzer: Do you have any statistical basis for that?

CHAIR: Sorry, hold on. I know we're on teleconference, but it is actually for senators to ask questions and not witnesses.

Prof. Keyzer: I'm sorry, I was told to join you at 3:15. I was just wondering what was happening.

CHAIR: Okay, well, you'll just have to hold on because we have got a panel with us.

Prof. Keyzer: Sorry about that.

Senator SCARR: Professor Keyzer, we're also on Brisbane time, without daylight saving, so I think that might have caused some confusion.

CHAIR: Thank you very much. Can I just restore order. Senator Scarr, do you—

Mr Varcoe: I apologise. I'm not sure where we were up to.

Senator SCARR: I think we're talking about—there has been discussion around whether or not, if you adopt a legalisation and regulation model, that will deal with the organised crime aspect and illegal activity. My question is what your research indicates in that space.

Mr Varcoe: Again, the difficulty in this scenario is that we deal with police reports, obviously. The research around that, peer reviewed and published, on cartel activity is very thin on the ground. One of our DART team members is a doctor—a cannabis specialist who lives in Colorado. The cartel activity there is through the roof. In fact, the cartels now own a lot of the distribution outlets for the legal, as well as selling illegal behind the scenes. We know from the police reports and from the various data coming through that cartel activity around this and illegal grows are prolific in California and in Colorado. So the evidence is obviously emerging. It's yet to be quantified in that format that you're looking at. We're happy to supply the data we have from that if that's required by the committee. That's also part of the submission that was given—in the attending document on legalising harm. That's in there as well.

Senator SCARR: Okay. To the extent you can assist just in drawing out—I know all of the submissions that have been made contain multiple references. So, to the extent you can draw anything out from those and put it in a simplified form for us mere senators, that would be useful. I note that, in your submission, you refer to the United States and you refer to Canada. Portugal adopted a model probably earlier, I think, than a number of other jurisdictions. Do you have any data with respect to the success or otherwise of the legalisation model in Portugal?

Mr Varcoe: We can give you a series of very clear datasets around the actual failure of that policy. It's been touted as the poster boy for drug decriminalisation, of course. The Portugal authorities will tell you they never legalised drugs; they decriminalised them. But now they are backpedalling quite heavily. Professor Toumbourou has had some engagement in Portugal with the prevention group. He's also a member of the international Society for Prevention Research. We have a couple of significant evidence-based papers on the Portugal model and why it's certainly not suitable for any other jurisdiction other than Portugal—and that it is failing. They are reviewing there at the moment. Professor Toumbourou, would you like to speak to that?

Mr Toumbourou: Yes. I think that one of the things to say is that I don't think we're going to get consensus on what exactly is happening in Europe, because the measurement—again, this issue of whether or not the models have led to increases in adult use is probably one of them. That's the one that we want to look at most closely. What I would say there is that we can provide you with some of the evidence that we're concerned about. Certainly we do note that we don't see any harm reduction effect necessarily. So the question was made whether or not these changes that are proposed with this new bill will actually take some of the problem of the weight of criminal behaviour out of the equation. I'll just say that there is very little evidence that, once you increase cannabis use, there will be no implications from that. As I said earlier, if you have people who are experiencing some of these psychological changes—we have to also say that most of the evidence for cannabis use shows that, in addition to adverse mental health impacts, it will predict, as well, that people don't do as well economically. We know that if you're not doing well economically—we see in the longitudinal research I've been associated with that, if you are a cannabis user, it's more likely over time that you'll wind up on welfare. If you're a younger person and your plan of life was to complete an education, it reduces the possibility that you will do that. These things are, in the longer term, criminogenic. They're part of the drivers of the reason why people get involved with crime. I guess what I'm saying there is that I wouldn't really think in the end this is going to be an antidote to reducing causes of crime. That'd be the reason why I would be concerned that it shouldn't be sold as a model that's going to do that. I can't see that happening. Not only that: there are some very fine-grained distinctions law and policing are going to have to make here in this legislation around whether a cannabis plant was intended for sale or is it for private use. I'm not sure how anyone can work that out.

Mr Varcoe: And who's breeding it.

Mr Toumbourou: Yes. I'll just leave it there. But thank you for the chance to comment.

Senator SCARR: Thank you.

Mr Toumbourou: Chair, I have just one last thing. We can send data on the Portugal issues as well, if that's required.

Senator SCARR: Yes, please.

Senator ROBERTS: Thank you all for participating today. My questions will initially be to Dalgarno. In your submission, you say, 'this submission will show how proponents of increased promotion and permission models for illicit drugs must persistently deny evidence-based science'. By illicit drugs, do you mean medicinal cannabis?

Mr Varcoe: Are you talking about the pharmaceutically and clinically trialled, double placebo, accounted for medicines that are on the pharmaceutical register? I'm not referring to those—

Senator ROBERTS: My question is: by illicit drugs, do you mean medicinal cannabis?

Mr Varcoe: Illicit substances are, again, drugs that are still registered on the market as being and scheduled as being illegals, whatever the scheduling is in a particular jurisdiction. When it comes to pharmaceutical grade cannabis, double blind, placebo accounted for and clinically trialled medicines are not illicit; they are prescribable drugs. Simply by putting the title 'medicinal' in front of cannabis doesn't make it medicine. It doesn't make it medicine. In no jurisdiction—pharmaceutical grade has been clinically trialled—

CHAIR: I think we might still be able to hear you—

Mr Varcoe: I'm sorry—

CHAIR: You can keep answering—or if you have another question, Senator Roberts—

Mr Varcoe: I'm sorry, I thought we were cut off. I apologise. I can name—I can't name all of them, but the ones that are pharmaceutically available—certainly Sativex has been on the market in Australia for a long time. It's a therapy related to cancer treatment and, obviously, nausea issues. Of course, Epidiolex is the newest one. It was created by GW Pharmaceuticals, who did a great due diligence to create a fourth line, by the way—fourth line treatment for Dravet syndrome epilepsy with a 25 per cent efficacy rate. But they did the due process on that to have it marketed. But, outside of those three or four pharmaceutically trialled medicines, just creating a cannabis plant and then putting the word 'medicinal' in front of it doesn't make it medicine.

Senator ROBERTS: So the thousands of scientifically peer reviewed papers, Mr Varcoe, that show benefit from using cannabis in a medical setting don't exist—not one benefit from cannabis?

Mr Varcoe: No, I'm not arguing that there are some benefits, but there are also side effects. That's one of the reasons why you have double blind, placebo accounted for clinical trials—to ensure that the product does do what it says going to do with a minimum amount of side effects. We are seeing that a lot of those perceived benefits also have massive side effects—genotoxicity, neurotoxicity and other factors—that are not being considered. But the ones that have been properly done, like GW Pharmaceuticals did, now owned by Jazz Pharmaceuticals—13 years to create that.

Senator ROBERTS: Your submission lists 19 known harms from medical cannabis, supported by a document called 'Cannabis and hemp scientific review', which is a paper by Drug Free Australia. The document you cite is not referenced. I see you have lots of opinion pieces on your website that follow your 19 talking points here. Can you provide a direct link for the scientific proof for each of the 19 assertions, please? On notice is fine.

Mr Varcoe: Yes, we can do that.

Mr Toumbourou: Just on my own position, I'd just say clearly that I totally support therapeutic trials of drugs. I'm in support of cannabis being trialled if it's for a medical purpose where there's going to be therapeutic doses tested. That is I think what we're saying here. That is supported. The problem is that a lot of the way that the legalisation model has worked in the US is to claim medicinal benefits forms of cannabis that have never been through those trials. There is concern that those doses are actually doing harm. They're not of therapeutic benefit. Cannabis, of course, is a very powerful drug. Used for therapy I'm sure there would be titrations of it for which would be for a medicinal purpose. But they've got to be carefully tested. So this is the point. But if what you're looking for is evidence about some of the models that have been used and promoted to legalise medicinal cannabis use, which have been the forerunners of the non-medical or recreational legalisation, then we can provide some of those papers, including papers that show that there have been increased birth defects and cancers in association with the bringing in of legalisation, which in the early phases was for these so-called medicinal variants. But, in fact, what we're arguing here is they never went through therapeutic testing. Thank you.

Senator ROBERTS: I'd like to see those papers—I look forward to them. Are you aware that the TGA recently approved for use—in recent years, it approved for use, with no testing in this country, mRNA vaccines. They relied on the FDA in America. The FDA in America had already said previously that they did not test the mRNA vaccines. They relied upon Pfizer's testing. Pfizer admitted later that they had not completed their testing. Is that the kind of regime that we should take a lot of respect in?

Mr Toumbourou: Again, we're in favour of therapeutic testing. We believe that's the way forward. We're not in favour of a vote for whether or not a drug is going to be harmless. It seems to us that the model we're proposing is one that would continue to have rigorous therapeutic testing for any claims that a drug has benefits.

Senator ROBERTS: Okay. In your submission you say, 'the regulating and this new industry will require a level of bureaucratic monitoring that will, as we are seeing in other jurisdictions, take more and more financial and human resources to oversee'. How does the totality of that cost compare to the totality of the cost of prohibition, policing, courts, prisons and the opportunity cost of low-level convictions for possession that may cost that person a career and the tax revenue that goes with that loss of career?

Mr Varcoe: Again, in the addendum document that was submitted with the submission also covers that quite thoroughly. A number of papers and reviews in there make it clear the assumptions made about people being incarcerated for simply blazing a spliff are fallacious. The costing—we're mostly a diversion mechanism in this country. Incarceration models and the enforcement around that are a problem. As I've stated in the submission too, one metric is policing the possession. Once you remove that metric—as previously said by my colleague here, it doesn't remove the other potential criminal metrics that can come into play. Bureaucracy in California—it's in one of our papers in our submission there as well; in that single large document. It also talks about the grey market, how under-resourced it is and trying to bureaucratically manage the new market and all that's going on, and the failings of that—and, of course, the failings and the corruption in the testing regimes. Groups that have been used to test legal products have also come into the fore in recent data coming out. So, again, we've got a real problem here with—again, we talk about talking points and just throw out the incarceration change. That's just a talking point that has got to have evidence to it and we've seen the evidence—

Senator ROBERTS: Mr Varcoe, I asked you about the cost.

Mr Varcoe: We're looking at what's going on at the moment and the cost savings, in the law enforcement alone, will soon be swallowed up, as we've seen in other jurisdictions, like Colorado, with other forms of policing and with other forms of bureaucracy. So your net fiscal outcome is going to be, if not zero then negative.

Senator ROBERTS: Prescription opioids, Remdesivir, known now as 'Run—death is near' and statins are examples of pharmaceutical products over many years with a history of fatal outcomes that exceed cannabis notifications using DANE data. I note that Dalgarno does not campaign against those, yet you're opposing the TGA decision to legalise the use, under limited circumstances, of psychedelic drugs. Can I ask where is the line? What TGA approved drugs are okay and what are not? What is your logic? Could cannabis ever be okay with you for any purpose?

Mr Varcoe: That looks like a straw man question to me. Our concern is that we have an unpredictable, highly promised substance that has not delivered. In 50 years of promise, it has not delivered what it could deliver, although we have, as I said, a number of therapeutic capacity based cannabis products on the market. We're certainly opposed to any pharmaceutical drug that causes harms and any illicit drug that causes harms—of course we are, and we do that. But we're wanting to mobilise and commercialise this particular market and pretend that's not going to be a problem. That's the concern that we have about cannabis. It's also the substance that was most easily stepped into that place, as was indicated in our opening statement, back in 1993 by the head of—that's the agenda. So we're concerned that we want to foist another psychotropic toxin onto the marketplace for families and communities to contend with and pretend that we can manage the harms of that. That's a concern that we have. We certainly want to see good, evidence-based, clinically trialled use of cannabis for certain issues, as we have with Epidiolex. That's a wonderful product. But again, this is the issue. We're not pretending that other drugs are not a problem. We're saying we don't want to add another problem to the problem.

Senator ROBERTS: I just need to clarify that we'd like a single large document, not documents in a pack, when Mr Varcoe provides that evidence.

CHAIR: Senator Roberts, if the witness is taking a question notice, they will provide that information.

Mr Varcoe: The evidence is there.

CHAIR: Thank you very much. If you have taken any questions on notice, we'll give you a date by which we would like to get those back from you.

LEE, Professor Nicole, Founder and Chief Executive Officer, 360Edge [by audio link]

[14:37]

CHAIR: I now welcome, via teleconference, Professor Nicole Lee from the 360Edge organisation. Thank you very much for joining us. Information on parliamentary privilege and protection of witnesses and evidence has been provided to you and is available from the secretariat. Do you have an opening statement that you'd like to make before we go to questions?

Prof. Lee: Yes, I just want to say a couple of things quickly that emphasise some of the key points in our submission. The first is that Australia's National Drug Strategy is based on the principle of harm minimisation. What that means is that the policy's No. 1 aim should be to minimise health, social and legal harms associated with both legal and illegal drugs. But there's no evidence that banning drugs minimises harms. There is actually evidence that it increases harms. Laws that are based on prohibition and a prohibition approach are harmful and also contrary to the intent of our official drug policy.

Prohibiting cannabis doesn't stop people from using it. Clearly, around 38 per cent of adults have tried cannabis, despite the enormous effort and cost that's gone into policing it. Individuals experience significant legal harms when they're in contact with the criminal justice system. Prohibition means also that the only possible way to access cannabis, aside from the medicinal route, is through the black market. When we create a black market, there are no controls whatsoever over what's sold as cannabis, the quality of what's sold and the potency, and those things increase the risk of health harms. There's no labelling or health warnings available. A thriving black market means that young people have easier access, because there are no controls over who it's sold to. Prohibition also increases stigma, which we know prevents people from accessing help when they need it. All of these harms disproportionately affect the most marginalised people in the community. Banning drugs has not reduced use; it has increased legal, social and health risks for people who use and it reduces our ability to assist people who need help. I think the important thing to remember is that cannabis use is a health issue first and foremost, and public health needs to be the No. 1 priority of any kind of cannabis legislation or policy. Our current laws don't pass that test.

Then, on the flipside of that, the second thing that I wanted to say is that, thinking about cannabis laws, we need to learn from history on the problems that we have, have had and continue to have with our most harmful drugs—alcohol and tobacco. There are very strong commercial drivers of use and problems that need to be considered. We don't want to end up in a situation like with alcohol, where the commercial drivers are taking a higher priority, sometimes with health impacts. As an example, the alcohol industry regulates its own advertising. We know that advertising is a very strong driver of use, and it spends millions of dollars and an enormous amount of time and effort every year to lobby governments to ensure that laws and policies don't impact sales. This is what happens when, in a highly commercialised environment, policy can be influenced by commercial considerations rather than health considerations. With alcohol and tobacco, we started with a very wide berth and we've had to rein it in over many decades and apply more and more restrictions, which is a much harder way to go than starting tight and loosening up regulations over time if that seems warranted. Finally, I just wanted to say that, in making laws and policies around cannabis and illicit drugs generally, we need to balance the harms of prohibition at one extreme with the harms of over-commercialisation at the other extreme and really focus on the health impacts and outcomes as a priority. Thank you.

Senator SHOEBRIDGE: Professor Lee, I think you're a little modest in not detailing your CV. You're not only the CEO of 360Edge; you're an adjunct professor at the National Drug Research Institute at Curtin University. You're the CEO and board member of a bunch of things that I won't read out. You're a member of the Australian National Advisory Council on Alcohol and Other Drugs, and you provide advice to a variety of government panels. I think I missed a few things out there, but that's part of your CV—is that right, Professor Lee?

Prof. Lee: Yes, that's correct.

Senator SHOEBRIDGE: You make it clear in your submission that cannabis use is not without harms. However, the adverse health outcomes of cannabis use are limited, especially relative to some legal drugs. Do you want to just give us some context about potential harms from cannabis compared to other drugs?

Prof. Lee: Yes. Like with everything in society, nothing is risk or harm free. Walking across the road comes with some potential risks and harms. It is the case, like with alcohol, that cannabis has some health risks. But the two things I'll say about that is that what we should be trying to do is balance and reduce risks and harms as much as possible, because there is not a measure that will eliminate harms at all. So we're not aiming for elimination of harms; we're just aiming, with laws, policies and regulation, to reduce the risks and harms that people might be

experiencing. The second thing is that, as I said in my opening, despite a lot of effort, people still use cannabis. A lot of people have tried it and a sizable proportion of the population use it on a regular basis. So, when we're talking about health harms, people are already using cannabis, and we need to take that into consideration as well.

Senator SHOEBRIDGE: Some of the submissions oppose legalisation of cannabis because they say it will create a market which causes harm. But our current market for cannabis—it would be hard to conceive of a market more designed to cause harm when it's regulated by bikie gangs, organised crime and illegal drug dealers. That's almost the workings of the worst possible market, isn't it?

Prof. Lee: I agree. Currently, when you look at the balance of harms across health, social and legal harms, the enormous legal harms and burdens that are placed on people who use cannabis far outweighs the health risks and harms. Given that most people who use cannabis use very irregularly—just a handful of times a year—and only a very small proportion use regularly enough to have some of those significant health issues, that's another thing that needs to be taken into account.

Senator SHOEBRIDGE: So of the millions of Australians who try cannabis, overwhelmingly, it's occasional use?

Prof. Lee: Overwhelmingly.

Senator SHOEBRIDGE: Of the small subset who use cannabis very regularly, it's another subset of those who may have some notable health concerns. We're talking about a fraction of a fraction, aren't we?

Prof. Lee: That's correct. Of the number of people who have tried or have recently used cannabis, 70 per cent or 75 per cent of those use less than a handful of times a year. Of the remaining, not all of those who use regularly have problems. In fact, most of those who use regularly don't have problems. A small proportion of those who use regularly, and we think it's about 10 per cent of people, may have significant problems—things like an exacerbation of psychosis symptoms, lung issues from regular use and those kinds of health issues.

Senator SHOEBRIDGE: That's a small proportion of a small proportion of regular users. Currently they're accessing cannabis in a market with no quality controls, no labelling, no health warnings and a whole lot of stigma that prevents them going to get assistance. That doesn't seem sensible to me.

Prof. Lee: Yes, I agree with that. That's absolutely correct—a correct assessment of the situation currently.

Senator SHOEBRIDGE: Of those barriers that I just put out, to treatment, all of them are significantly reduced by a well-regulated legal market, aren't they?

Prof. Lee: Yes. I think one of the really important things is that people know what they're getting in a regulated market, so they can make good decisions about dose and how much they're using, and it reduces stigma around drug use. We know that people are reluctant to go to treatment when they have problems because of the stigma around cannabis use and because it's illegal. So it opens up more opportunities for us to have contact with people and for them to be able to seek help without feeling ashamed to do that.

Senator SHOEBRIDGE: You put in your submission that a prominent argument against the legalisation of cannabis is that it would increase use. But evidence from legal jurisdictions now proves that this is largely not true. Can you expand on that?

Prof. Lee: Yes, there have been several studies now in some of the jurisdictions that have had either decriminalisation or legalisation for some time now—particularly, Colorado is often raised. There have been some studies there that have shown in Colorado and Minnesota as well that there is no link between cannabis legalisation and increased problems to do with cannabis. There is sometimes a little uplift in the number of people who use, but they tend to be people, again, at the very low end of use, just using a couple of times a year. So we shouldn't panic about more people using. What we should be focusing on is the risks and harms and therefore the number of people who have significant problems. There is no association that anybody has been able to find so far between cannabis legalisation and increased risks of problems.

Senator SHOEBRIDGE: You cite a study about Australian perceptions. You say that the vast majority of Australians over 14 reported they wouldn't use cannabis even if it were legal. Less than three per cent reported they would use it more frequently. Can you talk about that study? Are there any other studies that show perceptions in Australia?

Prof. Lee: This is a common question that gets asked when we talk about legalisation and decriminalisation. It doesn't matter what drug it is. People in the general community—it's easy enough to access cannabis now, if you want it, through the black market. Most of the people who would want to use it are already using it and they're probably using it as frequently as they would want to. That's why, when jurisdictions have decriminalised or legalised cannabis, there hasn't really been much of a shift in the number of people using because people are

already using. In Australia, in the National Drug Strategy Household Survey, we asked this, and in a number of other studies. When you ask people, if it were legal, would you use cannabis, the vast majority of people, which also reflects the number of people who currently don't use, say that they would not start to use it. So this idea that, as soon as we legalise it, everybody's going to be trying it is just not borne out by any evidence whatsoever.

Senator SHOEBRIDGE: One of the reasons that might be is that, pretty much, if you want cannabis, you can already get it. Anybody who has a wish to get cannabis can already get it in the black market at the moment. Given that, it's likely that at best we would see a very modest uptick in use if we go to legal markets. Would that be a fair summary?

Prof. Lee: Yes, that's correct. That's my view. That is exactly how—currently, most people wouldn't have trouble working out how to get cannabis, even if they don't know how to get it right now. That won't change when we legalise it.

Senator SHOEBRIDGE: Thank you.

Senator ROBERTS: In your submission, you said:

… only 3% or less of the burden of schizophrenia, anxiety disorders, road traffic injuries and depressive disorders in Australia are attributable to cannabis use.

The data on these health outcomes is not normally based on longitudinal studies with patients being provided with cannabis known to be grown and processed to good manufacturing process standards. In other words, these results are more reflective of the effects of illegal cannabis, whatever that substance they took actually was, rather than regulated, safe cannabis. Could we have your thoughts on that, please, Professor Lee?

Prof. Lee: Yes, I would say that's an accurate assessment. One of the benefits of legalising and regulating cannabis is that currently these studies are based on people accessing whatever cannabis they access, without any understanding of the dose. It could be very potent or moderately potent or not potent at all. One of the benefits of regulating is that people can access a known dose of the drug of cannabis when they choose to use it. It is actually likely or at least possible that, with a regulated dose, that figure would actually come down because the doses may be smaller than people are currently accessing. We actually don't know.

Senator ROBERTS: Thank you. Your submission says there are no barriers preventing the sale of cannabis to minors, because, without regulation, illegal supply abounds and can be directed to children. Do you think growing six plants at home will reduce the incidence of kids getting hold of cannabis?

Prof. Lee: That's a good question, and it's hard to know the answer to that. If I make an analogy with alcohol, many people, including me, have a bunch of bottles of alcohol on my shelf. My now 18-year-old, when he was younger, was not allowed to access those and he didn't. That's part of parenting, I think. There is potentially an increased risk, but it is certainly up to parents, as it would be for alcohol, tobacco, sweets and lollies, to ensure that those products are out of reach of children. That needs to be part of the regulations as well.

Senator ROBERTS: Thank you. You draw a connection between the increase in harm in Canada following legalisation and a commercial model. Can you quickly explain your thoughts on that and why this legislation will avoid that happening if at all?

Prof. Lee: Some of the criticisms of legalisation have come from looking at the US model. Predictably, the US have gone for a completely free market model of cannabis sales. So, in the same way that we have that model for alcohol, for example, for me, that comes with some unnecessary risks, because we know that there are very strong commercial drivers, particularly of alcohol, and there's no reason to think that there wouldn't be strong commercial drivers of cannabis sales as well. There's an enormous number of models of regulation, but my personal view is to start conservative and then move up. I don't think that the fully commercialised model is a model that is suitable for Australia.

Senator ROBERTS: Let me just ask one question just out of speculation. I haven't prepared this one. There's been an enormous decrease in trust in health institutions, health agencies and the medical profession as a result of the COVID and the government's lies to us over the last four years. People are seeking independence. That's very clear. They want to make their own decisions on medication. I'm not an expert on medicinal cannabis, but, as I understand it, medicinal cannabis and around 150 or 180 natural compounds in Aboriginal medicine have minimal side effects and are very safe to use. Do these give people that independence?

Prof. Lee: All of those medicines still need to be prescribed and managed by a medical practitioner. If someone has a medical condition that cannabinoids would be helpful in treating then I am 100 per cent in support of people being able to access that with the support of their doctor. But I guess what we're talking about here is more recreational use, not medicating. I think it's risky for people to self-medicate if they have a health problem

without the supervision of a doctor. But certainly regulating and having a known dose and known potency does allow people who are recreational users as well to have some autonomy over their use.

Senator ROBERTS: Your submission credits the bill with regulating product quality, strength and safety, but those areas to be made in regulation. At the moment, all this bill does is provide the framework, albeit a very useful framework, for unknown regulations to come later. Would you like to see more information on those regulations now? I know that, as a senator, I want to see more information on what I'm voting for.

Prof. Lee: In general, I think the more information that we have about things, the better decisions we can make. But also I think the actual model of legalisation and the ins and outs of it are quite complex. They may take some time to get agreement on, to get in place and to get right. So I'm super keen to see at least a framework set up that will move us towards regulation rather than prohibition.

Senator ROBERTS: Thank you.

CHAIR: Thank you, Professor Lee. If you've taken anything on notice, we'll get some dates for you to return that information to us. The committee will suspend for a short break.

Proceedings suspended from 15:02 to 15:21

KEYZER, Professor Patrick, Private capacity [by audio link]

CHAIR: We will resume. I now welcome Professor Patrick Keyzer. Thank you for taking the time to speak with the committee today. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you and is available from the secretariat. Do you have an opening statement you'd like to make before we go to questions?

Prof. Keyzer: I do, thank you. What I'm about to say concerns adult use of cannabis, which is what I understand to be the topic today. At present, cannabis is readily available in Australia. Prohibition and the notion that criminal law can operate as an effective deterrent have plainly been ineffective in preventing adult use of marijuana in Australia. Even though prohibition has not stopped people from trying or using marijuana, as Professor Lee noted earlier, marijuana possession arrests and convictions are very commonly the first step that many people take into the criminal justice system. There are more than 180 prisons in Australia. Statistics clearly indicate that a significant percentage of the people in prison are there for illicit drug use offences. Before they arrive in prison, they, of course, have been arrested, charged, processed by the courts and sentenced. These are time-consuming and costly activities. There were 77,000 arrests for cannabis possession in Australia in 2020. There is no way that this volume of police activity would not be very costly indeed. Assuming that every arrest takes an hour, that's 77,000 police hours that could be expended doing other things, such as protecting women from family violence.

The small number of people who have drug use disorders should be managed in health system, not prisons. At present, the burden of abuse and overuse of illegal cannabis is being borne by the health system in circumstances where no revenue is hypothecated to address it. At present, cannabis is illegal and it is not taxed. Revenue from cannabis taxation could be used to support a better funded health system. Legal cannabis purchases could be taxed and the revenues generated could be hypothecated to health promotion and the sorts of harm minimisation measures that Professor Lee mentioned earlier. One of the most significant, if not the most significant, functions of government is to protect the health and wellbeing of people. At present, the quality of the cannabis that is sold on the streets of Australia is completely unregulated. People don't know what they're smoking. Some of that marijuana is toxic. Some of it has been sprayed with pesticides that are toxic. Some of it has ridiculously highly elevated levels of THC.

A legal and regulated market for cannabis would place a big dent in the black market for cannabis in Australia. Respectfully, comments of preceding witnesses suggesting that the black market would not be displaced have no evidentiary foundation. The New South Wales Crime Commission has recently reported that organised crime in that state alone is costing billions of dollars per year. The commission has also indicated that a significant part of the income of organised crime in that state comes from illegal cannabis. A legal and regulated market can work. We've seen this take place in the medicinal cannabis industry, where cannabis has provided relief from anxiety, nausea, pain and post-traumatic stress disorder for many hundreds of thousands of Australians. Legalisation of cannabis provides an opportunity to take an unregulated, dangerous black market and make it a regulated and safe product market. Cannabis strains could be registered under plant variety rights legislation—what Americans call plant patents. This would enable government to ensure product quality. Carefully regulated dispensaries could be licensed to sell cannabis products. Licences could be provided to people who undergo proper probity screening. The Single Convention on Narcotic Drugs does not present a barrier to the down-scheduling of cannabis. If it does, it is a principle of Australian constitutional law that an international treaty or convention can be implemented in Australian law in whole or in part. Many other countries, including comparable countries like Canada, have legalised cannabis while remaining members of the single convention.

I will complete my initial evidence by setting out the different ways that the Commonwealth government could regulate a legal market in cannabis. First, it could regulate importation and exportation under the trade and commerce power. It could regulate interstate trade in cannabis also using section 51(i). It could tax cannabis using section 51(ii) and section 90 of the Constitution. It could register and regulate cannabis plant variety rights under section 50(xviii) of the Constitution. It could regulate cannabis dispensaries under section 51(xx) of the Constitution. It could regulate the trading activities of cannabis dispensaries under section 51(xx), and it could authorise the territories to regulate cannabis under section 122. In my opinion, effective federal regulatory reform is necessary to remove barriers to state and territory decriminalisation of cannabis—in particular, to remove the risk of a section 109 constitutional challenge to any state reforms. The High Court decided in 1920 that the Commonwealth can regulate topics that have historically or traditionally been regulated by the states. That was over 100 years ago. The critical thing now is to ensure that, whatever legislatures are doing, they've got the constitutional power to do so and that the regulation is an advancement or an improvement. Ideally, the

Commonwealth and states and territories would work together to ensure a proper, regulated legal market for adult use of cannabis. Thank you.

Senator SHOEBRIDGE: Thanks, Professor Keyzer, for your assistance. I'm on the record as being grateful for your assistance in indicating a potential constitutional pathway for the bill previous to this. This bill doesn't contain a cannabis sales tax because it's introduced in the Senate. That could only be added in the House of Reps. One of the reasons for a federal system would be to allow, effectively, a sales tax to be put on, because there are real limits to how states can implement sales taxes. I think there's a very recent decision regarding Victoria and its EV regulation that highlights that. Can you speak to the limits on states' ability?

Prof. Keyzer: Absolutely. In 1997, shortly before the introduction of the GST, the High Court of Australia decided a case called Ha v New South Wales. It's reported at volume 189 of the *Commonwealth Law Reports* at page 465. In that case, a majority of the High Court of Australia struck down state tobacco taxes. In the old days, when there was a state budget, you could always tell, because on the front page of a tabloid newspaper it would say 'Beer, cigs up', which was the way that states raised revenue before the 1997 decision. In that decision, the High Court struck down state liquor and tobacco taxes, and they confirmed what many constitutional lawyers had thought for almost 100 years—that only the Commonwealth can tax goods. They confirmed that unequivocally in that 1997 decision. So there is a significant role for the Commonwealth parliament in any legalisation of cannabis that involves sales. Only the Commonwealth can tax sales of goods, and that is now very well established. Of course, shortly after that decision, the Howard government stepped in to introduce the GST legislation and coordinated arrangements with the states to ensure that the states would have replacement revenue. That's been the system that we've been living under ever since. Senator Shoebridge, I understand why you haven't introduced a tax in the bill—because it's emanating from the Senate. But certainly it is the case and it is an integer of Australian constitutional law that, really, only the Commonwealth can tax goods.

Senator SHOEBRIDGE: So, even if a state moved to legalise cannabis—and, for the record, I'll be clear that I welcome any movement from the states to legalise cannabis—they wouldn't be able to put in place a state based sales tax in order to get the revenue benefits? The only revenue that would happen would be GST? I'm not suggesting that's not inconsiderable, but there would be very real limits on state sales tax?

Prof. Keyzer: Certainly states can impose charges on such matters as licensing for dispensaries. Perhaps cannabis dispensaries could be licensed under state law, but the revenue would have to be hypothecated to regulatory topics that are sufficiently connected and directly related to the regulatory charge. For that reason, they would have to be relatively minimal. The High Court does allow some types of regulatory charges, but certainly the states cannot tax goods per se. If you want to raise significant revenue, you really have to have a sales tax.

Senator SHOEBRIDGE: Yes. For the record, I recall looking at this in some detail when I was a state representative and looking at how much you could gouge out of licence fees and not become a tax. It was extremely limited. Could I ask you about the benefits of a national market and maybe reflect upon some of the issues that have arisen in the United States, where there's been state legalisation but still, at a federal level, a variety of laws that criminalise cannabis production?

Prof. Keyzer: Sure. Really, the principal objective of having a regulated legal market for cannabis is to ensure product quality so that consumers know what they're smoking or know what they're consuming. At present, we don't have that. People don't know what they're smoking; they don't know what they're consuming. Because Australia is an island, we have the advantage of being able to control importation of cannabis. Of course, the Commonwealth government is responsible for the regulation of import and export trade, which is another reason the Commonwealth government has to have a role in any effectively regulated legal market for cannabis. So having a national market does give you the advantage of having a regulatory environment that's efficient. I'm sure all the senators would be aware of the medicinal cannabis industry and how it is regulated by the Therapeutic Goods Administration. People are prescribed medicinal cannabis products as and when needed. That's an example of a federal regulatory regime which, quite frankly, demonstrates the benefit of having a national model, because you have a single regulator with clear rules that can be adjusted from time to time, as and when needed, and it protects consumers.

Senator SHOEBRIDGE: The bill expressly references the patents power as one of the Commonwealth heads of power to ground the bill. Could you perhaps discuss some of the case law around the patents power, and particularly on registering of strains, that relates to that?

Prof. Keyzer: Yes. There was a High Court decision called Grain Pool of Western Australia back in 2000, where the High Court of Australia examined section 51(xviii) of the Constitution in a factual context that considered plant breeders' rights legislation. Today we have plant variety rights legislation. Novel and original plant breeds can be developed from cuttings—the traditional horticultural way that has been done for thousands of

years—or they can be developed synthetically in laboratories. Of course, as you might imagine, once you're developing strains of any plant, or cannabis strains, and you're using advanced technology to do that, you're going to have some expense involved. Naturally, people who invest in the production of original cannabis strains seek intellectual property protection of those things. They could readily do that under section 51(xviii). The High Court has taken an approach to that provision that is like the approach that it takes to many of its legislative powers—it has taken a wide approach to the power. They have specifically acknowledged the need to construe those powers to allow for unforeseen developments. Obviously, in the last five, 10 or 15 years, in the various different parts of the United States, there have been inventors who've been inventing plant patent strains. In the United States they refer to them as plant patents rather than plant variety rights. People are investing in the companies that are developing those strains, and the strains are designed for particular effects. Section 51(xviii) provides the Commonwealth parliament with ample power to enable the registration of new cannabis strains and, importantly, cannabis strains that have been demonstrated not to be harmful.

Senator SHOEBRIDGE: If the bill was passed into law, the effect of it on contrary state laws would be that those state laws would be read down to the extent that they were inconsistent under section 109 of the Constitution. Can you explain how that would work in practice on, for example, cannabis state laws that criminalise cannabis possession?

Prof. Keyzer: Everything depends on the detail. Constitutional lawyers need to see the exact detail of the legislation after it's been enacted. In a sense, I can only indulge in hypotheticals at this stage. But you're certainly absolutely right that the way our Constitution operates is that Commonwealth laws override state laws to the extent of their inconsistency. The Commonwealth has a variety of legislative powers that it can use to create a national market for cannabis and cannabis products. As I indicated in my evidence, it can regulate imports and exports, it can regulate interstate trade and it can regulate trading corporations that are involved in dispensing of cannabis products. It has a very wide range of powers that it could use to regulate those trading corporations. The plant variety rights power is something that we've just discussed. There's also the territories power. So it has a wide range of powers at its disposal. I am of the view that there's ample federal legislative power to create a national market for legalised cannabis. It is a principle of constitutional law that, if a Commonwealth law says you can and a state law says you can't, the Commonwealth law would override the state law to the extent of its inconsistency. However, obviously it would be better and an ideal situation if there could be Commonwealth, state and territory cooperation. I would imagine that there would probably need to be, to sort out the revenue arrangements, because, as we all know, while the Commonwealth has the power to tax goods and does so with the GST, that revenue is shared with the states and territories, and I imagine that all state and territory treasurers would take an active interest in how the Commonwealth would go about taxing cannabis in a legalised market.

Senator SHOEBRIDGE: I think it was Paul Keating who said, 'Never get between a premier and a bucket of money'. So it would no doubt be an interesting discussion. Thank you.

Senator SCARR: Thank you for joining us, Professor. I seem to recollect a constitutional principle from my time at university that was, essentially, just because you can doesn't mean you should. Is that a constitutional principle: just because you can doesn't mean you should?

Prof. Keyzer: Well, I would think that's more of a political principle, respectfully. I don't remember that one from constitutional law. Obviously, it's up to—there is a view amongst some people that it's important that the Commonwealth not over-reach. However, that sort of commitment to states rights, as it were, isn't a feature of our constitutional makeup and hasn't really been since about 1920.

Senator SCARR: I understand. If you were in the room, you would have seen I was smiling gently as I asked that question. I think there is a principle, though, that, while the constitutional power is there—and I think you put the arguments very well, with respect—for the Commonwealth to regulate in this space, potentially against the wishes of a particular state, does raise an issue, albeit it's a political issue. Would you agree with that?

Prof. Keyzer: Absolutely. I would just offer the qualification, though, that perhaps an opt-in arrangement could also be developed. I would think you have ample powers to do that.

Senator SCARR: Okay. I think there are precedents of opt-in arrangements, but do any come immediately to mind, just for the Hansard record?

Prof. Keyzer: The only one I can think of at the moment was when the—well, there's a variety of things. Certainly, the states could refer any of their powers to the Commonwealth parliament under section 51(xxxvii), but I can't—

Senator SHOEBRIDGE: WA family law being a model—

Senator SCARR: Sorry, Professor—Senator Shoebridge has raised family law as an example. WA has dispensed with the Family Law Act.

Prof. Keyzer: Yes, that is an example.

CHAIR: Thank you, both of you, for taking credit for that.

Senator SCARR: Based on the chair's answer. The chair did helpfully raise—and I think it is a good example—that WA retains its family law jurisdiction.

Senator SHOEBRIDGE: They've got their own court.

Prof. Keyzer: Thank you. I'm not an expert in family law, so I was unaware of that. But I could certainly do more research on any question that you'd like me to answer.

Senator SCARR: We're very lucky—this committee is replete with experts in many areas. Can I ask you a question in relation to the—this is really the only question I wanted to pursue with you. You made a comment about the black market and observations about what happens if you adopt a legalisation and regulation model and the impact of that on the black market. I just wanted to first give you an opportunity to clearly state what your position is in that regard.

Prof. Keyzer: Sure. The New South Wales Crime Commission has recently reported that there is a significant black market for illicit drugs in that state. While that state is only part of Australia, it has a significant population within Australia. I can't think of any reason why their conclusions on that front wouldn't be similar to conclusions that would be reached by other crime commissions.

Senator SCARR: So you're not positing that the mere fact that you introduced legalisation and regulation—you're not saying that will automatically mean there is no black market as well riding parallel?

Prof. Keyzer: No. What I would say is this: none of us can know whether the black market for cannabis would be completely removed or displaced by having a legal, regulated market. However, it has to be said that, while criminal deterrence hasn't worked historically to stop people from trying or using marijuana, it does criminalise people. It may be that some people would report using marijuana if they could use it lawfully and legally. When people look at—they say, 'When you legalised cannabis, there's an uplift in use'. Well, there's an uplift in reporting because it's no longer illegal for you to do what was formerly illegal. I would certainly think it's reasonable to hypothesise that, for those people who are using cannabis that they're currently buying illegally and using illegally, if they had the opportunity to purchase a legal, well-regulated product that is going to do what the package says, as it were, they would desist from using illegal sources to get that marijuana. I mean, that's just a hypothesis, but I think it's a fair one. I should add that, when the New South Wales Crime Commission made those observations about the size of the black market for illicit drugs in New South Wales, they also indicated that a significant part of that black market was for cannabis.

Senator SCARR: I understand the logic of what you're saying. Are you aware of any of the reports coming out of the United States in particular? It might be something you take on notice and have a look at. The *Los Angeles Times* in California has done a series of articles in relation to the explosion in the black market in marijuana cultivation in California. I'll quote from one of their articles. They say, 'Growers at illegal sites can avoid the expensive licensing fees and regulatory costs associated with legal farms'. Are you aware of the issues that have emerged in California in that respect?

Prof. Keyzer: I am, although naturally I'd prefer to take the issue on notice and do some further study before responding in full. But I'll just make a number of observations. One of the advantages of being in Australia is that we're an island that's relatively out in the middle of nowhere. Of course, California used to—I used to live in California. California used to be part of Mexico. It has a large land border with Mexico, Nevada and Oregon. It has a land border with Arizona. There are a lot of ways that illicit cannabis or unregulated cannabis can make its way into the southern California and the Californian market. We don't have those problems. Of course, we've also got the advantage in 2024 of having geographical identification systems and drones so we can keep an eye on legal cannabis plantations and illegal cannabis plantations, as the case may be. If the Commonwealth parliament decides, for example, that the model in the Australian Capital Territory, where people grow a couple of plants at home and have home use, is a way to go, you're not looking at big plantations and that sort of thing. But certainly there is substantial scope for a domestic Australian legal regulated cannabis market where the product is regulated so that you know what it is you're getting, just in the same way as you go to a liquor store and you can decide how much percentage of alcohol there is in your beer, wine or spirits or whatever. We could have the same situation for cannabis. I would think that's significantly preferable. Just to use an analogy, we know that there are illegal cigarettes in Australia that aren't in plain packaging. From time to time there will be raids and so on. One can only guess whether that would happen in the future in a legal, regulated cannabis market. However, you'd have to think

that it's a fair hypothesis to make that in Australia, on an island with a well-regulated national legal market, we could keep an eye on unregulated, illegal growing of marijuana.

Senator SCARR: Can I ask you to take this on notice. I had a look quickly in terms of Canada, and there's an article that appeared in the—and, again, if you could take this on notice, I'm not seeking a response from you today.

Prof. Keyzer: Absolutely.

Senator SCARR: We spoke about the US. In Canada there was an article in the *Toronto Star* on 18 February 2023 which reports that Canada's black market for cannabis is 43 per cent of the total market. They reported that two legitimate companies that engage in the regulated market—one, Canopy, has lost Can$4.2 billion since 2018; and another, Tilray Brands, has lost $1.2 billion during the same time. In that respect, the Canopy CEO, David Klein, said there's one market that's legal, highly taxed and regulated and one that is not. He says the one that is not is thriving and illicit. I am interested in you taking that on notice and giving your thoughts with respect to that issue, because it seems to be an issue in the US. As I understand it from the articles I read in the *Los Angeles Times*, the Mexicans aren't importing it from Mexico because they lose too much product. They're actually growing it in California, or it's being grown in California. So I'm interested in your take in relation to that issue and how a legalisation regulation model might adapt to that issue.

Prof. Keyzer: I will apply myself to that topic with great interest.

Senator SCARR: Thank you very much.

Senator ROBERTS: Thank you for participating, Professor Keyzer. I want to commend you for your clear, concise and very powerful opening statement. Pauline Hanson, who's the leader of our party, has been pursuing this for decades and we're hearing some marvellous evidence today. First of all, I just want to do a quick recap to make sure I understand your position before asking you a question—again, following Senator Scarr—about international matters. Really, by criminalising it, we've now got a justice system that is perpetrating injustices through no fault of their own. We've also got, in 2020, 70,000 arrests for cannabis use, huge opportunity costs, police and other professionals could be engaged on other duties within our community and be far more productive. You said we should be managing people with drug disorders in the health system, which would give us better health and them better health. Is that a fair summary so far?

Prof. Keyzer: Yes, absolutely. I guess I'd add to that, if I may, that a legal, regulated tax market would provide additional revenue that could be hypothecated to harm minimisation measures in the health system.

Senator ROBERTS: Thank you. One of the questions I have is from the Department of Home Affairs submission. On page 3—I don't know if you have it near you, but I'll just read it for you; it's fairly straightforward—it says:

The policy agency for the control of drugs is the Department of Health and Aged Care. This includes ensuring compliance with the following conventions that Australia is a signatory to the:

Single Convention on Narcotic Drugs 1961, as amended by the 1972 Protocol;

Convention on Psychotropic Substances of 1971; and the

United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychoactive Substances 1988.'

As far as I'm concerned, we should get out of the UN. Even if we stay in the UN, we should just take no notice of these or at least revoke our signatures.

CHAIR: Let's stick to this inquiry. We can have another one on that if you like.

Senator ROBERTS: Given that, what's your advice there? Apparently, according to Department of Home Affairs, there are several other laws within this country that Commonwealth has enacted that are associated with these. What's your advice regarding UN conventions and obligations and also Commonwealth biosecurity laws and other laws? We've got about half a dozen listed here by the Department of Home Affairs.

Prof. Keyzer: Thank you for your question. My response would be in two parts. Firstly, as a principle of constitutional law, the Commonwealth parliament can decide how far and to what extent it implements international treaty obligations into domestic law. There's a decision of the High Court in 1996, reported at volume 187 of the Commonwealth Law Reports, page 416, in which a five-judge majority of the High Court of Australia, led by Sir Gerard Brennan, held that it is a matter for the Commonwealth parliament to decide what parts of a treaty it will implement into domestic law. The debate about the operation of the single convention, whether in Australia or any other country, and declining to give effect to that convention by creating a legal market for regulated cannabis has been had in Canada about 10 years ago. I commend any person who's interested in the topic to read the debates that were had in parliament and the research that was done around that issue at that

time. In other words, Canada is sufficiently similar to us that their considerations around the issues that you raised are very instructive. The second observation I'd make is a little bit of a discursive—just like I think you did just a moment ago, Senator Roberts. I find it interesting that the Australian Department of Home Affairs would insist on the implementation of those treaties into domestic law when there's so much evidence of the Australian government's unwillingness to comply with the International Covenant on Civil and Political Rights in its treatment of immigration detainees. That's not just me saying that. That's the United Nations Human Rights Committee.

Senator ROBERTS: Thank you very much. What about the other laws that this proposed bill, if passed, would violate—import regulations; biosecurity—

Prof. Keyzer: I think what you'd need to have happen there is—obviously, there needs to be an advice from the Commonwealth Solicitor-General, drawing the attention of the people in his office to the implications of the legislation for the various instruments that have been identified by the Department of Home Affairs so that one can feel confident that the legislation would survive a High Court challenge. I've read the bill. I can't see any significant or major problems. I also am, unfortunately, unable to predict what the High Court would decide, although I've certainly tried and had some success on some occasions. No Australian constitutional lawyer in Australia, including the Solicitor-General, would give an unequivocal advice about a matter such as this. But certainly the bill seems to be consistent with the Constitution, according to my reading of it.

Senator ROBERTS: Thank you. The next question is to do with comparison with alcohol. This is going to be very subjective for you, but that's what I'm interested in. You know a hell of a lot about this topic, so I value your advice. People say there are two camps. They say, 'Well, a recreational use of cannabis is not as dangerous, harmful, damaging or addictive as alcohol'. Then the other camp says, 'We've already got alcohol making a mess of our society. Why add another one?' What are your thoughts on those two arguments, please? How dangerous is cannabis recreational use compared to alcohol? Is it lesser? Then take it from there.

Prof. Keyzer: Thank you for your question and for also acknowledging that, to answer it, I'm straying a little bit into the edges of my expertise. Certainly you can buy and consume a lot of alcohol and you can get very drunk, but a lot of people don't. A lot of people will buy alcohol, they'll consume it in moderation and they're able to lead happy and successful lives even though they don't mind having a glass of wine at the end of the day. Australia is a country where it is known that per capita we drink large amounts of alcohol compared to other countries around the world. Professor Lee and the other medical experts are better placed to talk about alcohol-related harm and that sort of thing. I think it's fair to make an observation that there is a double standard here and that there are many adult users of marijuana who would say that they can consume in moderation and it hasn't affected their health adversely or, if it has affected their health adversely, they have it under control. Ultimately, it's a matter for government to decide whether to allow people to exercise their own good judgement. Again, everything I've been saying today—I'll just reiterate what I said at the start—is about the adult use of marijuana. I note Professor Toumbourou's expertise in adolescent use of alcohol and adolescent use of marijuana, but his research is not concerned with the adult use of marijuana. We're talking about adult use here. The question whether an adult should have the opportunity to decide whether they want to have a smoke or a drink has historically been something for an adult to decide. There are plenty of other jurisdictions that are doing this, as we know. This is a matter of politics, and it's a matter for people like you.

Senator ROBERTS: Thank you very much.

CHAIR: I just have a couple more questions for you. Thank you for your evidence. We didn't receive a submission from you, so I'm just going off what you've told us today and what I've seen recorded. I'm the mover of the bill. Our fellow senator, who's with us here today, Senator Shoebridge—I'm sure he won't mind me referring to his media release. I'm sure he would want everyone to have seen it. It says that, rather than unequivocal constitutional law advice—he refers to your advice as being compelling. Did you provide written advice to the Greens party when they were preparing this bill?

Prof. Keyzer: Yes.

CHAIR: Is that something that you can provide to this committee?

Prof. Keyzer: I don't have a problem with that. I mean, it might be better for me, given that my evidence today has—

CHAIR: You can take it on notice.

Prof. Keyzer: Yes, given my evidence has traversed a number of additional topics, it might be good for me to take what I've said, add some more meat to the constitutional bones, as it were, and then share that with you at a future time. You can let me know what my deadline is.

CHAIR: That's a different thing than what I'm asking for. I would welcome that. I think the committee would benefit from any advice that you could provide us. But what I'm asking for, if you're able to provide it, is a copy of the advice that you provided to the Greens.

Prof. Keyzer: To be perfectly honest, I'm not sure I still have a copy, but I will look for it. If I can find it—

CHAIR: Maybe Senator Shoebridge can table it for us.

Prof. Keyzer: That's a matter for him. You're welcome to ask him. I certainly don't have any difficulty with that course being taken. I stand by what I've said.

CHAIR: That's good to know. I'm sure Senator Shoebridge can assist us. The reason I ask is that part of that written advice seems to have been quoted in the media release. It refers to the heads of power. Again, it's compelling constitutional advice on the heads of power that would enable the Commonwealth to regulate and legalise cannabis. The three that you've spoken about today, I believe, that are referred to are trade and commerce, the intellectual property power and the taxation power.

Prof. Keyzer: Sorry to interrupt. I think I also mentioned today the power of a trading corporation and the territories power.

CHAIR: Corporations power—right.

Prof. Keyzer: Yes, and the territories power.

CHAIR: Okay. That wasn't quoted in the release. That's why I was asking. I'm not a constitutional lawyer. What I gather from the advice that's been quoted and the evidence you've given today is that you argue that the Commonwealth could stitch together the powers through the different powers under section 51 to regulate parts of this reform. Is that what you're suggesting? There's not one single power that would cover the entire—

Prof. Keyzer: Let me see if I can explain it as crisply as I can. The Commonwealth can decide whether it would allow companies, for example, or people to import cannabis strains into Australia for sale. The Commonwealth could set up an agency or use one of its existing agencies and clothe it with the powers that it needs to register plant variety strains—particular cannabis strains that have been demonstrated in trials in the United States in particular to produce particular effects.

CHAIR: Are you referring to the intellectual property clause?

Prof. Keyzer: Yes, that's right. The power over copyright and patents of invention has been interpreted by the High Court to include plant variety rights as part of the genus of intellectual property. So it's basically people doing original things that they deserve to have a property right for. The High Court confirmed that in 2000. So the first step is controlling inputs. The second is controlling plant variety rights or strains. Thirdly, the Commonwealth could use the corporations power to regulate cannabis dispensaries. I could say if you want to set up a trading corporation that specialises in dispensing cannabis, you can do that under federal regulation. The Commonwealth could also use the power over trading corporations to regulate the trading activities of trading corporations. So it could require probity and all that sort of stuff.

CHAIR: I understand what you're saying. I don't have the benefit of your written advice. It would be helpful to receive it, but I'm assuming that written legal advice, as I understand it, would normally refer to case law and quote papers.

Prof. Keyzer: Sure.

CHAIR: Are you aware of any other academic or constitutional lawyer that's taken the same view, particularly on the intellectual property law or power?

Prof. Keyzer: No, I'm not, but that's not really my job. My job is to tell you what I think. What I think is the Commonwealth can control imports, it can control plant variety rights, it can authorise trading corporations to conduct dispensaries, it can regulate those dispensaries, it can tax cannabis and it can hypothecate—

CHAIR: You've already given me that answer, Professor. It's my job to test those views that you're putting forward. That's why I'm asking you if they're shared by any other academics or lawyers.

Prof. Keyzer: They're shared by the majority of the High Court. If you'd like, I can give you the decisions of the High Court that would support the propositions that I've put to you.

CHAIR: That would be great. The last question—

Prof. Keyzer: I will give them in writing later.

CHAIR: I just wanted to ask you about—you said, and it's well understood, obviously, that, if the Commonwealth covers the field on a particular law, state and territory laws are essentially—there's an override power there—sorry, they need to be consistent is the better way to put it. You said that, if a state law criminalises

cannabis and the use of it, the possession and the supply, a Commonwealth law that legalises it would override a state law. Have I got that right?

Prof. Keyzer: Yes, that's essentially the proposition. To put it crisply, if one law says you can and the other law says you can't, you have an inconsistency for the purposes of section 109.

CHAIR: Understood. What if it happens the other way around? What if the Commonwealth was to say—the current makeup of the parliament may change. What if states were to reform on this issue and we have the regulation of this? We establish the constitutional powers to allow the Commonwealth to regulate the use of cannabis and the offences that relate to it. It goes without saying that, if there's an inconsistency, it goes both ways. If the Commonwealth were to, say, enact laws to ensure the criminalisation, that would override state laws?

Prof. Keyzer: No, it doesn't really operate in both directions because of section 109. Where there's a clash, Commonwealth law will always override. But in any given year you might have 100, 150 or 200 acts of parliament in the Commonwealth and you might have the same number in all of the states and territories. So it's a kind of a movable feast. Section 109 issues can be anticipated by people like me and solicitors general, but sometimes they come up and they happen by surprise. So you can never anticipate that you're going to be able to give advice that will be worth its weight in platinum for time immemorial. One thing we can rely on is that, if a Commonwealth law says a cannabis dispensary can sell cannabis to a person, that would override a state law that says a person can't buy cannabis in a state.

CHAIR: I guess I was sort of thinking about the way that the previous parliaments, not this one, have stepped in to prevent the territories, for example, legalising voluntary assisted dying.

Prof. Keyzer: Yes. What's happened, I think, since then is—I think last year the Commonwealth parliament passed legislation that removed the power that the Governor-General had to disallow ACT ordinances, for example. So the Commonwealth can give the territories power and it can take it away. The territories are entirely a creature of the Commonwealth. When it comes to the states, the principle of states' rights that's been accepted by the Constitution only concerns core functions of a state government and it wouldn't cover cannabis regulation.

CHAIR: Understood. Thank you very much. If you have taken anything on notice, that would be helpful. We'll give you a date when you can provide that to us by. Thank you.

BISMIRE, Ms Petra, Assistant Secretary, International Regulatory Branch, Department of Health and Aged Care [by audio link]

CAIRNEY, Ms Stephanie, Assistant Director, Illicit Drugs Policy, Attorney-General's Department [by audio link]

CHIFLEY, Ms Danielle, Acting First Assistant Secretary, Office of Drug Control, Department of Health and Aged Care [by audio link]

ENGEL, Mr Alex, Assistant Secretary, Transnational Crime Branch, Attorney-General's Department [by audio link]

HENDERSON, Mr Nick, First Assistant Secretary, Medicines Regulation Division, Department of Health and Aged Care [by audio link]

LANGHAM, Prof. Robyn, Chief Medical Adviser, Health Products Regulatory Group, Department of Health and Aged Care [by audio link]

LINGARATNAM, Ms Sukanya, Policy and Reforms Adviser, Department of Health and Aged Care [by audio link]

SMITH, Mr Tony, Assistant Commissioner, Customs, Australian Border Force [by audio link]

TOMAS, Ms Kristy, Director, International Regulatory Branch, Medicines Regulation Division, Department of Health and Aged Care [by audio link]

[16:13]

CHAIR: I welcome, as our last panel today, representatives from the Department of Health and Aged Care, the Attorney-General's Department and the Department of Home Affairs. Thank you for taking the time to speak with the committee today. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you and is available from the secretariat. I remind senators and witnesses that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about how and when policies were adopted. Thank you so much for joining us. Does anyone have any brief opening statements? We have submissions, I think, from some departments. Could you keep the opening statements really brief, because senators have a variety of questions for you? Anyone?

Mr Smith: No, thank you.

Mr Engel: No.

Mr Henderson: No, Chair.

CHAIR: Lovely. We'll shoot straight through to questions.

Senator SHOEBRIDGE: My first question is to the Department of Home Affairs. Did you provide advice to your minister on this bill? If so, can you provide that to the committee?

Mr Smith: No, we didn't provide advice to the minister's office.

Senator SHOEBRIDGE: I'll ask the Attorney-General's Department the same question.

Mr Engel: We didn't provide advice—a factual summary to the office. But I can take that on notice.

Senator SHOEBRIDGE: You did provide a factual summary or you didn't?

Mr Engel: We did provide a factual summary, but I'll take that on notice and check the records.

Senator SHOEBRIDGE: Did you say you'll provide that to the committee and that you'll take it on notice? Is that right?

Mr Engel: Yes, Senator. I'll just check the records about what went up, but I'm fairly certain it was just a factual advice on the bill rather than a ministerial submission and analysis.

Senator SHOEBRIDGE: Can I ask the Department of Health and Aged Care the same question. I don't know which of the eight witnesses to direct that to.

Mr Henderson: Not that I'm aware of, Senator, but—

Senator SHOEBRIDGE: Sorry, I didn't get the last bit—something about not being aware of it. I think the Hansard would say 'indecipherable'.

Mr Henderson: Senator, I'm from the Therapeutic Goods Administration. Not that I'm aware of, but I will check with other officials in the Department of Health and Aged Care.

Senator SHOEBRIDGE: So is the department as a whole going to take that on notice as to whether or not it's been provided to the minister and whether or not it'll be provided to the committee? Do I take that as the Department of Health and Aged Care taking that on notice? Is anyone in a position to do that for the department or do I have to go through all eight of you?

Mr Henderson: Yes, I will take that on notice on behalf of the whole Department of Health and Aged Care.

Senator SHOEBRIDGE: All right, thank you. Does the Department of Home Affairs have any internal insight into what it currently spends on regulating cannabis at the border?

Mr Smith: Sorry, Senator, can I ask you to clarify the question? Did you say in terms of what we currently see in terms of cannabis movement through the border?

Senator SHOEBRIDGE: What the current resources from the department are for regulating cannabis at the border.

Mr Smith: I would suggest that all Australian Border Force officers at the border, from a frontline operations perspective, are there to be able to identify, detect, deter and seize all forms of prohibited imports that come through the border, cannabis being one of those prohibited imports. So it would be difficult to define a specific number of resources that are attributed to cannabis.

Senator SHOEBRIDGE: You say that you have difficulty understanding what the impact of the bill will be on offence provisions for the import and export of a cannabis product. Do I read your submission correctly?

Mr Smith: That's correct, in the sense of further work that we would need to undertake to understand the full impact of the bill if it were to be passed and its effect on the border. Some of those relate to specific interactions with other laws. That would be something that we would work in partnership with our colleagues at the Attorney-General's office on. Additionally, from the impact of the border in terms of the regulation of cannabis activities and the import and export of cannabis, we would work on how ABF officers would be able to determine if the proposed import or export cannabis is either licensed or registered, as referred to in the bill. Then, in relation to the offence provisions in relation to import-export of cannabis products, it's obviously existing in provisions in other Commonwealth laws, such as the Criminal Code, we would work on how that interacts with those laws. Those are the areas that we would identify as impacts that we would have to work through.

Senator SHOEBRIDGE: Section 6 of the bill makes it quite clear—and I think you reference that—that to the extent of any inconsistency with any other Commonwealth law this act would prevail, so those criminal provisions would be read down to the extent that they're inconsistent with the bill. You identify that in your own submission, don't you?

Mr Smith: We do identify that as an impact. As you've just outlined, that is an impact. We would have to understand how that is worked through, through the Attorney-General's office, in terms of how those laws interact with each other. It's not having a position on the bill to suggest that it would work or would not work, as the bill referred—it would have its own power. We would have to understand how the bill overrides those powers and how it interacts in terms of the customs laws and other related Commonwealth laws. The submission we've put forward is simply calling out that as an area of focus.

Senator SHOEBRIDGE: If somebody was importing cannabis consistent with a licence granted to them by the national regulator, section 16 in the bill makes it pretty clear that wouldn't be an offence and would be permitted, doesn't it?

Mr Smith: That's how I read it, yes.

Senator SHOEBRIDGE: That doesn't seem an overly complicated provision, does it?

Mr Smith: In terms of a provision put forward in terms of the statement itself within the bill, it makes sense. Again, though, I come back to the point in relation to how it interacts with existing provisions in other Commonwealth laws, such as the Criminal Code. The Australian Border Force in the Department of Home Affairs isn't an agency that would be able to decipher the interactions and the impact of those interactions. We'd have to work with the Attorney-General's office. But the outcome of those discussions would obviously be something that we would have to implement at the border once it's decided.

Senator SHOEBRIDGE: There are countless products that can only be imported pursuant to a licence, aren't there?

Mr Smith: There are a number of products in terms of managing goods that are prohibited at the border—yes, that's correct. There are certain goods that are prohibited absolute and certain goods that are prohibited unless a licence or permit is provided.

Senator SHOEBRIDGE: For example, the Commonwealth at the moment is moving through proposed regulations to significantly limit the importation of vapes without clear licence and authority, isn't it? It's going through that process. I assume you're part of that.

Mr Smith: That's correct, Senator.

Senator SHOEBRIDGE: So none of this is novel for Border Force, is it?

Mr Smith: It is not unfamiliar in terms of the way that we operate. Certainly, in terms of administering a permit scheme and understanding how a permit scheme interacts, that is a case-by-case basis in terms of how we have to understand the impacts at the border. But, as you say, I agree that it's not novel to the Australian Border Force on how we interact. It is just a hurdle that we have to work through to understand the impacts of managing such a system.

Senator SHOEBRIDGE: It's just standard regulatory practice from a competent agency, isn't it?

Mr Smith: It is. It is standard practice. The difficulty comes in terms of the detail that sits behind the permit scheme. As you mentioned, there are a number of different processes that utilise a permit scheme. Each one of them will have their own rules and focus points that we would have to understand and see what the impact would be for us in managing. Some of those, as we've identified in the submission, come down to how a permit scheme is operated and what type of evidence is provided. That could be simple or it could be complex. But, as mentioned, that would be something that would have to be worked through if this bill was passed.

Senator SHOEBRIDGE: Thank you.

Senator SCARR: First, to the Department of Home Affairs, thank you very much for providing your submission. Can I ask the Department of Health and Aged Care why you chose not to make a submission?

Senator SHOEBRIDGE: You have to pick one of the eight.

Mr Henderson: I can talk on behalf of the Therapeutic Goods Administration. We regulate or facilitate access to medicinal cannabis. But I'll need to take it on notice in relation to why the broader Department of Health and Aged Care did not put in a submission to this hearing.

Senator SCARR: Okay. I'll ask the Attorney-General's Department. Given the Department of Home Affairs made a submission, why did the Attorney-General's Department choose not to make a submission?

Mr Engel: That would go to what's contained in the bill and I guess who has most interest in it across government, although noting that there are elements here for AGD. Then, just generally, as more of a general practice, we wouldn't always put in a submission on a private member's bill.

Senator SCARR: Is that practice registered anywhere—not generally putting in a submission on a private senator's bill—or is that just an unwritten practice?

Mr Engel: Not that I'm aware, Senator. We can take it on notice.

Senator SCARR: Okay. Could you just take it on notice and see if there is any documented practice or protocol. I'm just interested in that because, to be frank, I asked the question genuinely. I would have been interested in the views of both of these departments. Professor Langham, have you had an opportunity to read the AMA submission?

Prof. Langham: No, I haven't. I apologise.

Senator SCARR: Could you perhaps take this on notice. They make a number of observations with respect to the medical implications and health implications of using cannabis. Clearly, that's something we're interested in as a committee. Could you read the AMA submission and give us some comment on it and whether or not you agree with their observations from a medical perspective and also provide any other information you might have from a medical perspective?

Prof. Langham: I'm happy to read the AMA submission and provide you my feedback, absolutely. In terms of my own understanding of the adverse effects of cannabis on the human body, there are known issues with cardiovascular problems of the heart and pulmonary effects of the lungs; and also issues regarding acute use, chronic use and neuropsychiatric or mental disorders as well. There have been increasing reports of overdose and toxicity by minors with increasing use. Also, I suppose, there's the other perhaps less easy to measure aspect of use, which is the risks on driving and impaired driving.

Senator SCARR: Okay. I'd be very interested in your views as Chief Medical Adviser. If you could spell those out and provide sources as well, that would be very useful.

Prof. Langham: I'm happy to, yes.

Senator SCARR: Okay. I now want to ask our friends in the Department of Health and Aged Care—I've got your titles here and there's a number of you whose titles refer to International Regulatory Branch. Ms Bismire and Ms Phillips, do your responsibilities include looking at what is happening overseas from a regulatory perspective and assessing whether or not it's working or not working?

Ms Bismire: Ms Phillips is an apology today. I've got Kristy Tomas here, also from the International Regulatory Branch. Our branch is made up of two very different parts. One relates to international work, which is international engagement and regulatory strengthening work—so development work; working with countries in the Indo-Pacific region. The other half of the branch is special access—access to unapproved medicines and other medical products. I'm here today on behalf of the other part of the branch not related to international work, and Ms Tomas is the director of the Special Access Scheme. I hope that clarifies.

Senator SCARR: When you say Special Access Scheme, does that include access to cannabis type products?

Ms Bismire: Yes, that's correct. The TGA operates a number of schemes to access unapproved therapeutic goods. That includes the Special Access Scheme, the Authorised Prescriber Scheme and clinical trials.

Senator SCARR: Maybe you can take this on notice. There have been a number of concerns raised by a number of witnesses in relation to issues accessing cannabis-related items for therapeutic purposes or medicinal purposes. Issues raised include cost and also the number of prescribing physicians. Does your work encompass looking at those sorts of issues in terms of the practicality of access?

Ms Bismire: We're responsible for the mechanisms to enable access, but ultimately the decision for a prescriber to prescribe access to an unapproved medicinal cannabis product is a decision made at the discretion of a medical practitioner—

Senator SCARR: Sorry to interrupt; we got limited time. I understand that, but the particular focus of the question is not in relation to the individual choice or professional judgement that an individual medical practitioner makes. I understand that part of the process. The concerns I'm particularly interested in are related to the cost and also the practicality of locating a practitioner who is prepared to prescribe goods of this nature at all. The evidence we've received is that, I think, the figure was just over 800 prescribing practitioners.

Senator SHOEBRIDGE: It's now 2½ thousand.

Senator SCARR: Senator Shoebridge corrected me. It's 2½ thousand medical practitioners who prescribe in this space, but still the vast majority don't. I'm interested in your thoughts in relation to those issues.

Ms Bismire: I'll hand over to my colleague Professor Langham to comment on that one.

Prof. Langham: The TGA administers this scheme to access what are unregistered products. All bar two of the medicinal cannabis products that are available in Australia are not registered. By that I mean they've not been presented to the TGA for evaluation of safety, quality and efficacy. So the TGA administers this scheme to allow practitioners to access these medications for their patients. We hold a register of practitioners and pharmacists who are able to dispense it. But, once a practitioner makes a decision to prescribe an unapproved drug, it's very much they're under the care of the prescriber. It's the prescriber that is making the decision to use an unregistered product, ensuring that the patients are fully aware and consented to the nature of these products and also that they've considered every other similar product for the condition that they have that's already registered by the ARTG. By that I mean there have been products that have been evaluated for safety, quality and efficacy. That's why the practitioners themselves are taking on the burden of making decisions around safety and quality—because they've not been presented to the TGA to make this decision. Furthermore, with the cost question, I'm assuming you might be referring to the Pharmaceutical Benefits Scheme in terms of supported funding. That funding is only available to therapies that have been registered on the ARTG.

Senator SCARR: Right. Do you understand, Professor, the concern that someone—and I think it does go to medical advice. Someone goes to a medical practitioner and a medical practitioner believes that some of these medicinal purposes are indicated by their health condition. But, in reality, the cost is so prohibitive that someone is left to ponder whether or not they need to go to the black market in order to access a medical therapy that a medical practitioner has prescribed as indicated. Do you understand the concern and issue there?

Prof. Langham: I understand the concern. But I just reiterate that the ability to support and co-fund the cost of medicines through the Pharmaceutical Benefits Scheme is only available to those drugs that have been evaluated for safety, efficacy and quality and are registered on the ARTG. For those drugs that aren't and that are

only available as unapproved drugs through these special access schemes that are made available for medicinal cannabis, there's no opportunity in our current legislation for the PBS to be able to support it.

Senator SCARR: So that would need legislative reform?

Prof. Langham: Or for a sponsor of a drug to bring the medicinal cannabis product to the TGA for evaluation for safety, quality and efficacy. We would welcome that and we would encourage that in order that, indeed, we would then be able to have a more rigorous oversight of drug effects and drug provision and also adverse events.

Senator SCARR: Okay. Can I ask a question to our policy and reforms adviser, Ms Lingaratnam. In terms of your role, policy and reforms, has the department done any work in this space looking at legalisation and regulation of the nature which is proposed in this bill?

Ms Lingaratnam: No, we have not. We have looked at the safety aspect of medicinal cannabis in the paediatric space. In March 2022 we made some changes to the paediatric prescribing, where we required restrictions and paediatric support for patients who are prescribed THC products. At this stage, we haven't made any changes to the reforms in terms of medicinal cannabis. As Professor Langham mentioned, our goal is to have more products registered on the ARTG, and we encourage sponsors to submit a dossier of evidence to support that.

Senator SCARR: Is it part of your role or someone's role in the department to look at what's happening overseas and assess its success or otherwise in order to inform policy and decision-making here in Australia?

Ms Lingaratnam: We continually work with our international regulators and our national regulators to ensure we have a consistent approach. However, recreational use is not within our remit. We regulate therapeutic goods.

Senator SCARR: All right. Can I then move to the Attorney-General's Department. Ms Cairney, your title that I have here is Assistant Director, Illicit Drugs Policy. To what extent is the Attorney-General's Department looking at different policy approaches overseas, whether it be Portugal, Canada, different states in the United States or recent approaches in Thailand, and assessing their success or failure?

Ms Cairney: We are generally always looking at what other countries are doing or other jurisdictions are doing in the space, just for our knowledge and understanding. My understanding from the international space is that a lot of the evidence is quite mixed. We are looking at Canada, Portugal and a number of different areas that have both legalisation and decriminalisation.

Senator SCARR: You referred to the evidence there as mixed. What are you basing that on? Does that mean you're maintaining a database or resource or tracking different papers that are published in that area or is this just an ad hoc interest, following what's happening?

Ms Cairney: A bit of all things.

Mr Engel: Yes, I think it's a general part of our day-to-day role, but I wouldn't define it as a set project laid out as you described. I think when we talk about mixed, I think it probably also refers to drawing lessons. Yes, of course, we look internationally, but I think it's very key when you look internationally that it depends on those jurisdictions and those environments. You can look at like-minded countries, but even with like-minded countries like Canada or the US, it can be vastly different in terms of the particular jurisdiction, the types of organised crime groups they may or may not have there, the different health systems and their impacts, and what programs are in place. So there are very geographically dependent factors where you can draw some lessons, but I guess just picking them up and looking in the Australian context is where the mixed part comes in.

Senator SCARR: What is the Attorney-General's Department's view with respect to the constitutionality of this bill?

Mr Engel: We wouldn't provide, I guess, constitutional advice to the committee.

Senator SCARR: I thought I'd try.

CHAIR: There was a slight gleam in Senator Scarr's eye.

Senator SCARR: If nothing else, the Attorney-General's Department is consistent. I have no further questions. Thank you.

Senator SHOEBRIDGE: I'm sure the chair is about to ask you for the advice now, though.

CHAIR: No, it's not published anywhere.

Senator ROBERTS: Thank you all for participating today. My questions go to the health department. I note the list of expert committees on your website. Didn't you once have an expert committee or advisory group on cannabis? If so, what happened to it? I guess that's a question to Mr Henderson.

Mr Henderson: I might refer this question to my colleague Professor Langham.

Prof. Langham: We did have an advisory council that was established for the ministerial appointments. That term of that committee came to an end in December 2023. We have just re-established the committee with a new membership as part of a working group.

Senator ROBERTS: Thank you. Is it true that, unless a product has a sponsor, there's nobody to put an application through the TGA? You don't do public interest applications such as cannabis—is that correct? It needs a sponsor?

Prof. Langham: That's correct. We require a sponsor to present a product to us for consideration of safety, quality and efficacy in order for it to be registered.

Senator ROBERTS: Thank you. So cannabis can never be scheduled for medication on the PBS because there's nobody to sponsor the application because there's no patent to make that a profitable proposition. Is that correct?

Prof. Langham: That's not correct. Scheduling is an entirely different consideration. The requirements around scheduling have to do with the particular toxicity, the potential for abuse, the potential for diversion and the potential for addiction. They are the particular properties of particularly THC-containing compounds that have been placed on as schedule 8. Schedule 4 are those that be prescribed and must be on the ARTG for schedule 4.

Senator ROBERTS: Could you use the reports of lack of harm for the products available under the pathway scheme? We've now had several years—is it six years?—of the pathway scheme. I asked in Senate estimates and was told that the department was not recording harm from cannabis prescribed under the pathway scheme. Is that still correct?

Prof. Langham: It's correct in a way. When we are dealing with unregistered drugs, such as cannabis and other unregistered medicines that we provide access to, there is no requirement or no opportunity to act on adverse events. So we don't legally require sponsors to report under the act.

Senator ROBERTS: Okay, thank you. So you've now added the word 'legally'. Document discovery around that answer produced a document that listed harm from the pathways prescriptions for cannabis. Do you record harm resulting from cannabis prescriptions under the pathway scheme—yes or no? I heard there's no legal requirement, but I want to know if you're recording it anyway.

Mr Henderson: As Professor Langham noted, we don't legally require the adverse events to be recorded, but I do have some numbers here. Since 2016 to 30 January 2024, we have received 614 adverse events in relation to medicinal cannabis products. The most commonly reported adverse events are nausea, diarrhoea, dizziness, sleepiness and headache. So, although they're not legally required to report to us, we do record and keep record of those adverse events.

Senator ROBERTS: Thank you. Couldn't you use the six years of prescribing data to authorise cannabis by THC CBD terpene flavonoid profile for schedule 4 based on the pattern of safe use over the last six years—if you wanted to, that is?

Prof. Langham: The data requirements, the dossier requirements and the evidence requirements for substances such as medicinal cannabis to lead to registration—I might add that there are two medicinal cannabis compounds that have been registered. The dossier requirements are extensive in that there's a requirement to prove efficacy through a series of randomised control trials and also through safety in terms of laboratory production and quality as well. That's, I guess, the source of evidence. The data that you're suggesting would really not be sufficient to support registration of a medicinal cannabis drug, if that's your question.

Senator ROBERTS: I'll come back to that in a minute. How can the TGA approve an untested experimental gene therapy based treatment, the mRNA vaccines, yet put off for years a safe treatment that millions of Australians are using? Millions of Australians are using medicinal cannabis. I was told by Professor Skerritt personally in Senate estimates that the TGA in Australia did no testing of the experimental gene therapy based treatments—mRNA vaccines. They relied upon the FDA in America. The FDA in America had already previously advised publicly that they had done no testing and they relied on Pfizer. Pfizer later confessed to not finishing its trials and having serious questions about those trials. Yet the mRNA was approved. We're getting millions of Australians on medicinal cannabis seeking it for the right reasons, by word of mouth. And, as Senator Scarr has been taking up consistently, the price is very high because it's not available readily. What's going on?

Prof. Langham: Senator Roberts, apologies—I do need to correct you. The mRNA vaccines are not gene therapies. That's No. 1.

Senator ROBERTS: So gene therapy based treatment—

Prof. Langham: I'm sorry, can you let me finish please? The mRNA vaccines are not gene therapies. Secondly, the clinical trials that were undertaken to prove their efficacy were not done in Australia, no. But that's not to say we don't register other drugs where the clinical trials are not done in Australia. They were extensive, they were robust and all of the processes, from production through to clinical trials and outcomes, were evaluated and assessed as robust, safe and efficacious by both the FDA and the TGA prior to their registration.

Senator ROBERTS: So the FDA publicly—

CHAIR: Senator Roberts, we might be veering into territory which is not relevant to this inquiry. Can you direct your question—I know you're asking about the comparison, but can we keep on the relevance of this inquiry. I'll have some questions at the end.

Senator ROBERTS: Out of respect for the chair, I will do that. I'd like to see the list of tests that were done by the FDA itself—not what they relied upon but the testing that the FDA had done on the experimental mRNA vaccines, please. Could you take that on notice?

Prof. Langham: Senator Roberts, I would be happy to send through to you the other information that was provided through Senate estimates process that we've already done. I'll undertake to do that for you. I might add also that a lot of the information we're talking about is already publicly available.

Senator ROBERTS: Thank you. Germany proposed a bill for sensible cannabis regulation. After trying to get consensus from regulatory authorities, they gave up and now propose decriminalisation. Do you concede that the risk in defending the status quo is that you force a wider deregulation, as Senator Shoebridge is doing here?

CHAIR: You might be asking those officials for an opinion. It might be best to ask about what the Commonwealth policy is or isn't, if that can assist you in any way. But officials aren't able to give you an opinion on an issue.

Senator ROBERTS: Okay. Are you aware that Germany proposed a bill for sensible cannabis regulation and, after trying to get consensus from regulatory authorities, they gave up and now propose decriminalisation? Are you aware of that?

Mr Engel: I'm not sure if other agencies have a view, but I'm not aware of that specific case in Germany.

Senator ROBERTS: Thank you.

CHAIR: I've got some questions for a few of the departments. I'll start with the department of health, if I can. What is the view or the position of the Commonwealth in relation to the division of responsibilities between the Commonwealth and states and territories over responsibility for legislation and policy relating to illicit drugs in the way that it stands at the moment?

Ms Chifley: Chair, would you mind repeating the question?

CHAIR: Of course. I'm just asking about what the current state of play is in terms of the division of responsibilities between the Commonwealth and the states and territories over the policy over legislation and regulation of illicit drugs.

Ms Chifley: I might suggest that, given that relates to the use of illicit drugs, that might be one that our colleagues at the Attorney-General's Department might be able to assist you with.

CHAIR: That would be great. Thank you.

Mr Engel: I think I'd probably answer in two ways. The overall drug strategy is more than just illicit drugs. Obviously, a strategy comes out of the department of health and illicit drugs is obviously a component of it. There are probably two elements or a couple of elements to it. At a Commonwealth level, there are a range of agencies, as you can see, that are involved. From an AGD point of view, we really focus on the supply side of the equation, with Health obviously looking at minimising harm effects. Then, between states and territories and the Commonwealth—when I'm talking about my patch, that's looking around illicit drugs and criminal aspects. While the Commonwealth code does have possession and those sorts of things in it, generally speaking, the AFP and AGD will focus on the transnational and serious and organised crime elements—the organisers of trafficable quantities and those sorts of things. But, in a general sense, states and territories take more of the lead on illicit drugs at a day-to-day sort of level. I won't speak on behalf of Health, but I think it would be similar. When you're looking at health programs or harm minimisation programs, all of that is led by state and territory health departments. But, obviously, at a national level, there's always a leadership role for the Commonwealth.

CHAIR: Thank you. I understand we've got someone who can give advice from a Therapeutic Goods Administration point of view. I'm just wondering what the current regulatory arrangements are for the cultivation, production and importation of medical cannabis in Australia. I understand they're quite complex and there are a

lot of safeguards in place to ensure that happens in a safe way. But I was wondering if you could step through some of those that are presently in place.

Ms Chifley: I'm happy to assist you with that one. Australia is committed to the international drug control regime that's established by the United Nations international drug convention. In Australia, the medicinal cannabis scheme that was implemented in 2016 involves a licence and permit scheme under the Narcotic Drugs Act, which regulates the cultivation, production and manufacture of medicinal cannabis for medicinal and scientific purposes. The Office of Drug Control legislative framework also includes administering the Customs (Prohibited Imports) Regulations and Customs (Prohibited Exports) Regulations as they relate to the import and export of prohibited drugs, including cannabis-based products.

CHAIR: The way the bill is drafted at the moment, it's essentially silent on how it cuts across those regulations and would complement or override some of them. I just wondered whether you could comment on what legislative changes would be needed to complement those regulations.

Senator SHOEBRIDGE: Sorry, Chair, were you saying that in relation to medicinal cannabis?

CHAIR: I'm not answering questions, especially not from you. I'm asking questions today.

Senator SHOEBRIDGE: I was only seeking clarification.

CHAIR: I'm asking about the regulations that we just discussed and I got an answer about the fact that there might need to be some changes to those regulations if this bill is passed.

Senator SHOEBRIDGE: Was it about medicinal cannabis?

CHAIR: Yes.

Senator SHOEBRIDGE: Okay.

Ms Chifley: I'm sorry, Chair—we're having just a little bit of difficulty with the line here. Would you mind repeating the question?

CHAIR: You've stepped me through the regulations that are in place for the cultivation, production and importation of medical cannabis in Australia. This bill, on my reading, is silent on how the bill would work in relation to those regulations and the safeguards that would need to be in place on medical cannabis. What legislative changes would need to be made to current laws and systems if this bill was passed in relation to medical cannabis?

Senator SHOEBRIDGE: Chair, I do have a point of order.

CHAIR: What is the point of order?

Senator SHOEBRIDGE: You are misleading the witness.

CHAIR: It's not a point of order. We've gotten to the end of the day. I have a different opinion than you, and it's difficult for you to accept that. But it's not a point of order. I'm not misleading the witness.

Senator SHOEBRIDGE: It expressly says it.

CHAIR: No. I have a different opinion to you, and that's okay.

Senator SHOEBRIDGE: It's just not true.

CHAIR: It's okay to have a different reading of the bill. The bill is so thin on this stuff. I am asking—

Senator SHOEBRIDGE: It's in there.

CHAIR: It's not in there. Do you want to continually interrupt me or would you like me to ask a question that might clarify my position? The department of health can answer.

Ms Chifley: I guess I would just make two comments in response to your question. Any moves to legalise drugs in Australia would need to be considered in the context of Australia being a signatory to the international drug control conventions. But, in addition to that, in terms of the bill, noting that the intention of the bill includes establishing a new regulatory agency that will have oversight in relation to activities of growing, selling, manufacturing, licensing and various trading aspects, there would just need to be careful consideration to make sure that there's no duplication of responsibilities currently held by Therapeutic Goods Administration or the Office of Drug Control.

CHAIR: Understood. Thank you. The last couple of questions that I have are probably best for Home Affairs. I wanted to understand if you could explain the way in which organised crime involves itself in the trade of illicit drugs in Australia as the law presently stands.

Mr Smith: The best way to describe it in terms of organised crime activity is the same across all commodities. Where there is a lucrative business that can be made from a black market, the interest of organised crime is

obviously going to increase as well. We see that across other commodities such as illicit tobacco, and vaping products is also commencing now. Once we put strict regulations in place and it becomes difficult at the border, organised crime sees it as a lucrative opportunity and capitalises on that.

CHAIR: I'll ask this question. I understand there are parts which you may or may not be able to answer. The law creates a series of offences. What we established today is that, because this is a Commonwealth law, where there are state laws that deal with the same issues, the Commonwealth law would take precedent. There are a number of state jurisdictions that have offences for dealing drugs to children. In Victoria, you can be imprisoned for up to 20 years for selling marijuana to children. In Queensland, you can be imprisoned for up to 25 years for selling marijuana to children 16 years or under. In South Australia, you can actually be imprisoned for life for selling marijuana to children. The bill has an offence in relation to selling marijuana to children, but it only imposes a maximum penalty of six months. Offences under federal law that impose a maximum penalty of six months—are they considered summary offences?

Mr Smith: That would possibly be a question that could be directed towards the Attorney-General's Department, I think, in terms of working through the legislative position on that.

Mr Engel: I've always described it that it would be hard to characterise these things, but at the lower end of penalties that we have currently around illicit drugs—I think at possession level there are penalties of up to two years, but obviously, over and above that, for trafficable and marketable quantities, it goes up from there.

CHAIR: Thank you. What is the difference between a summary offence and—I don't know what the opposite of that is right now, because I've been here for a lot of hours. What are the implications of a summary offence as opposed to an offence with a larger sentence?

Mr Engel: Apologies—I won't be able to give you a direct answer. I might have to talk to my colleagues and my sister branch which has a shadow over the top of—the CDPP about how that operates in the actual court system. But I can take that on notice.

CHAIR: All right. Perhaps you could take that on notice for us. We have reached the end of our hearing. I think Senator Shoebridge has some questions that he'll put on notice to you in relation to data, to get some information to the committee. Thank you very much. The committee has agreed that answers to questions on notice at this hearing should be returned by close of business on Friday 15 March. I thank all witnesses who have given evidence to the committee today. Thank you also to Broadcasting and the secretariat. I declare the hearing adjourned.

Committee adjourned at 17:02