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Re-thinking Drug Policy in New Zealand

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"Sometimes, when we are threatened, we go to war, and sometimes we go to war against our own people. If we decided to wage war against cancer, would we do that by bombing the people who have cancer? Many nations have joined up to wage a war against drugs and have ended up attacking and harming people who really are in need of our help and our support."
— *Tuaru Potiki, UNGASS, 2016*

The ways in which government officials address social problems such as poverty, disease, or crime are often affected by the terminology or rhetoric they use to describe them. What might be considered mere political hyperbole, at times has a deeper resonance and causes unintended consequences. In 2016, Tuari Potiki, an indigenous Māori who is also Chair of the New Zealand Drug Foundation, gave a speech at a special UN General Assembly.[1] In his five-minute allotment he outlined how that as a young 28-year-old, he was hauled before the courts on drug charges. Ordinarily, Potaki would have been jailed, yet the judge gave him a second chance by offering him a choice of health intervention, rather than jail. Potiki was convinced that if he had not been given that chance, he would have become another statistic of New Zealand's war on drugs. Māori make up around 15% of the New Zealand population, yet represent 40% of those who are arrested for drug offences. A similar pattern of over representation in the incarcerated population occurs in indigenous peoples of Canada the United States and Australia (Potiki, 2016).

The United Nations Office on Drugs and Crime's *World Drug Report 2012* estimated that cannabis usage in Oceania was nearly triple the global average (New Zealand Drug Foundation (NZDF), 2013). But this fact may not be so surprising in light of the historical facts regarding cannabis and other illicit usage in New Zealand. Until the 1920s there were few restrictions on drug usage and it was common for doctors to prescribe opium, cocaine and cannabis for common ailments. They were also commonly used for recreation (Hil, & Tait, 2004) However, in line with many other Western countries, New Zealand introduced legislation in 1927 to prevent the distribution of narcotics outside of medical use (Hil, & Tait, 2004). It was then that New Zealand began to crack down hard on drugs, with the

government coming to view them as having the potential to cause wide-spread community decay and contribute to crime and social disorder. It was in the 1960s, that the spread of the hippie movement contributed to an uptake of illicit drug use, particularly marijuana (Hil, R., & Tait, 2004). Following this, there began a series of law changes, culminating with the introduction of the Misuse of Drugs Act 1975, which strictly enforced the control of drugs.

Under the Act, it is also forbidden to cultivate prohibited plants, such as cannabis, which can lead to seven years imprisonment. Finally, possessing the seed or fruit of a prohibited plant can lead to a one-year imprisonment and/or $500 dollar fine (New Zealand Police). And, although the Act has been updated over the years,[2] the original three classes remain. The maximum penalty for dealing in Class A drugs is imprisonment for life; a Class B drug 14 years; and a Class C drug eight years (Table 1).

Although the use of cannabis was classified as a Class C drug, which is the least strict class of drug the fact is that even Class C drugs included stiff fines and the likelihood of imprisonment for the supply or its manufacture. One of the most damaging parts of the law was the charge of allowing your premises or motor vehicle to be used by someone to make, use or carry drugs. This charge could result in up to three years imprisonment, similar to asset forfeiture laws in the United States that allow confiscation of physical property used, even tangentially, in the drug trade. In comparison, the cultivation of cannabis could lead to two years in jail and or a $2,000 fine.

Table 1: Classification of drugs, according to the Misuse of Drugs Act, 1975

		Type of penalty		
Class	Drug type	For possession	For supply or manufacture	For allowing your property or vehicle to be used to make use or carry drugs
A (Very High)	methamphetamine, magic mushrooms, cocaine, heroin, LSD (Acid)	6 months imprisonment and/or $1,000 fine	Life imprisonment	10 years imprisonment
B (High)	cannabis oil, hashish, morphine, opium, ecstasy and many amphetamine-type substances	3 months imprisonment and/or $500 fine	14 years imprisonment	7 years imprisonment
C (Moderate)	cannabis seed, cannabis plant, codeine	3 months imprisonment and/or $500 fine	Indictment — 8 years imprisonment. Summarily — 1 year jail and/or $1,000 fine	3 years imprisonment

Source: https://www.police.govt.nz/advice/drugs-and-alcohol/illicit-drugs-offences-and-penalties (Compiled by author)

Changing Attitudes

The Misuse of Drugs Act strictly criminalised drugs according to class, leading to a situation in which even simple possession of any class of drug according to the Act could lead to a simple fine, or even jail time. Enforcement of the Act is problematic as it fails to define how much of a drug one could possess before it is deemed supply (leading to a stricter penalty). This has led to many inconsistencies in the application of the law, especially for Māori, who tend to be overly persecuted and discriminated against under the Act. (MacLennan, 2016; Enoka M, 2016).

A government health survey found that 25% of Māori adults had used cannabis within the past 12 months, compared to just 11% of Europeans. They also found a connection with Māori poverty and cannabis use, with Māori in poorer areas reporting using cannabis weekly (Cannabis Use 2012/13). And while Māori account for just 15% of the population of New Zealand, Māori aged between 17–25% account for 37% of those convicted of possession of an illegal drug. Regarding Māori youth, "a combination of early and regular cannabis use negatively impacts on young people's health and wellbeing…. they are more likely to be criminalised for its use from a young age even when they have similar levels of use to non-Māori." (Reremoana, Ngāpuhi, et al, 2020).

While the social and health ills are tragic on a personal level, it can be difficult to picture how they affect society as a whole. One way is with a cold economic calculus, and the Ministry of Health estimated that the social costs, including personal, community harm and interventions, due to the abuse of all classes of illicit drugs was 1.8 billion dollars (The New Zealand Drug Harm Index, 2016). The report emphasizes that illicit drug use is not just a personal issue, but one that has a wide social and economic impact.

In 2007, the New Zealand Law Commission was commissioned to undertake a review of drug policy in New Zealand. One of the commission's recommendations was a move toward accepting that drug use is primarily a health issue and should be addressed through health-based approaches. In the report, the commission defines harm minimisation as, "an approach that is designed to limit the overall harms that result from the consumption of drugs" (2011, p. 37). In their final report, the commission recommended repealing the Misuse of the Drugs Act, 1975 and replacing it with a new one, to be implemented by the Ministry of Health, which would include modifying the criteria and approval process for regulating new classes of psychoactive substances. It would continue to have strict penalties against large-scale commercial dealing of illicit drugs, yet be more flexible regarding small-scale dealing and personal possession and use, especially in cases of drug dependency. As a result of the report, the government agreed that the Act should be replaced, and new legislation developed for

unregulated psychoactive substances (Misuse of Drugs Act 1975). Such an approach attacks the government's issues with illicit drugs in several ways: it discourages supply by providing for strict criminal punishment for large suppliers, and protects individual users from becoming criminals, while treating their underlying health problems.

The New Zealand Drug Foundation (NZDF) is committed to reducing and preventing the social and health harm caused by illicit and licit drugs in New Zealand.[3] According to the NZDF, drugs can, "cause social, health and economic harms, and the ongoing cost to individuals, Whanau (families) and communities is high." However, "Our current drug laws are no longer fit for purpose, and do not address those harms. We want the government to take a more compassionate approach to drugs, and to support people who are struggling instead of punishing them." In their Statement of Directions 2018–22, they outline four ideal outcomes:

Ⅰ: Schools keep young people engaged in education.
Ⅱ: Laws are changed to treat drug use as a health issue.
Ⅲ: Prevention, harm reduction and treatment interventions are fully resourced and are made more responsive to community need.
Ⅳ: Innovative solutions to reducing drug harm are developed that supported communities to respond to new challenges.

These proposals reflect a humanistic approach to mitigating the negative effects of drug use and drug enforcement policy. They add a human element to the crime statistics and consider the social impact of the stigma of a criminal record for what is popularly considered a minor offence. The increasing social acceptance of cannabis use also drove a movement in New Zealand and around the world to not only change enforcement priorities, but to legalise cannabis completely and regulate it on par with alcohol and tobacco.

The 2020 Cannabis Referendum

In recent years, there has been a move in New Zealand toward a more hands-off approach to the use of drugs, in particular for personal use, with the Police encouraged to take a softer stance on the possession of class C drugs, which includes cannabis. There were several reasons for the desire for reform of cannabis regulations. According to the New Zealand Drug Foundation, 80% of New Zealanders had tried cannabis by the age of 21. New Zealanders are estimated to consume as much as 8.9 million dollars of illicit drugs per week, to the point that it is detectable in municipal wastewater treatment centres (Leanz, 2019). It is clear the current laws do not deter many people from using illicit drugs, most of all cannabis; indeed the government must invest a great deal of time and resources on enforcement which is a huge cost to taxpayers. There is a disproportionate effect on Māori, who are three times more

likely to get a cannabis conviction than someone of European descent for the same level of use and are twice as likely as the national norm to suffer a substance use disorder. Māori also have less access to health and treatment services.

The proposed legislation (Refer to Appendix 2) was designed to "reduce the harms associated with cannabis use experienced by individuals, families, whānau, and communities." (Parliamentary Counsel, 2019). Cannabis Legalisation and Control Bill Draft). The new regime would: 1. Raise public awareness of the risks associated with cannabis consumption; 2. improve access to health and other relevant support services; 3. restrict young people's access to cannabis and limit public visibility to cannabis; and 4. provide access to a legal and quality-controlled supply of cannabis for those aged 20 or older (Parliamentary Counsel, 2019). Even the New Zealand Medical Journal encouraged New Zealanders to vote in favour of change, in a "once-in a lifetime opportunity."

The Cannabis Referendum, which was non-binding, was held on 17th of October 2020 along with the 2020 general election which included a referendum on euthanasia. The referendum questioned voters whether they agreed on the legalisation of the sale, use, possession and production of cannabis (Appendix 1). In the months leading up to the referendum, there was much debate for and against, with polls showing a pretty much even split in the electorate. Although the referendums were technically non-binding, Prime Minister Jacinda Ardern publicly stated that the government would respect the decision of the electorate. Opinion polls just before the referendum indicated that the trend was for younger votes under the age of 40 and the overwhelming majority of Māori to be in favour of the proposed law change.[4] In the end, the "No" vote only just edged out the "Yes" vote by 48.4% to 50.7%. Although it ultimately did not pass, it is notable that a referendum on this topic would even be put forth for consideration, let alone have such a close result. However, it may not be so surprising as New Zealand has consistently been a leader in many social issues, such as being the first country in the world to grant women the vote and the first to recognize same-sex marriage.

Lessons from Canada

It is clear that there is changing sentiment in New Zealand regarding the legalisation of cannabis, and even an indication that the government may push ahead independently to reform drug laws towards a harm-reduction approach and eventual legalization of some "soft" drugs. For a vision of what the social and economic effects of full legalisation would be, it is useful to look at the example of Canada to see the benefits and pitfalls of cannabis legalisation.

On June 18th, 2018 Canadian lawmakers voted 205–82 to legalize its recreational use (Anapol, 2018), making it the second country after Uruguay to do so (Watson & Erickson, 2019). These

changes were implemented as a result of being included as a part of the Trudeau government's 2015 election platform that was partly responsible for his election (Watson & Erickson, 2019). Following the public debate and formal guidelines, official legalization began on October 17th, 2018 (Tasker, 2018).

In the process of legalisation, the government's objectives are both to create a healthier product for consumption by youth and to remove profits from criminal organizations in the name of public safety (Watson & Erickson, 2019). Another aspect of the plan was the fairness issue of trying to address the plight of marginalized minorities who were disproportionately affected by criminal involvement in "soft" drugs. (Austen, 2021) In the implementation there were ten recommendations that were introduced referred to as the *Lower-Risk Cannabis Use Guidelines* (*LRCUG*) (Table 2), (Fischer, et al., 2019).

In the two years since legalisation, there have been a number of changes, including the legal reforms that allowed those that were convicted of earlier drug offences to have criminal offences expunged from records. Austen (2021), points out that "in 2018, the police recorded 26,402 possession cases until legalisation went into effect in mid-October. In 2019, that number dropped to 46". A recent study analysed the newly expanded cannabis industry and found that "Black and Indigenous people, and women, are vastly underrepresented in leadership positions in the Canadian cannabis industry … while white men overrepresented" (Maghsoudi, et al., 2020). So, while the legal changes have allowed minorities to be free from higher incarceration rates, the economic market is not free. One unintended consequence is that success of a legal cannabis market which focuses on high-end consumers and expensive boutique strains, coupled with relatively high "vice taxes" may prove to be too expensive for the lower-income users who in turn will have to resort to creating new black markets for cannabis, perpetuating the cycle or criminality.

One issue with legalisation is the false perception by the public, especially those inexperienced with cannabis use, that if the government says a product is "legal" it is also implied to be "safe." It is true that almost anything can be toxic in high enough doses, even water. A common cause of drug-related death is an "overdose" of water (hyponatraemia) by users of MDMA ("ecstasy") because the drug's stimulant effects cause users to want to drink an excessive amount of water (Baggot et al., 2016). There needs to be more guided research into the long-term health effects of these "soft" drugs. Cannabis products have many purported health benefits, but also significant risks to short-term physical or mental impairment, lung damage (if smoked), and perhaps exacerbated mental illness. Fisher, et al. (2019) have outlined the principles of risk reduction found in the medical and psychological research literature (Table 2).

Table 2: Overview of cannabis use recommendations

	Evidence
Recommendation 1: The most effective way to avoid any risks of cannabis use is to abstain from use. Users should recognize the acute and long-term adverse health and social outcomes. These risks will vary in their likelihood and severity with user characteristics, use patterns, and product qualities, and so may not be the same from user to user or from episode to episode.	None required
Recommendation 2: Early initiation of cannabis use (i.e., before age 16 years) is associated with multiple subsequent adverse health and social effects in young adult life, particularly in frequent or intensive usage. This may be in part because frequent cannabis use affects the developing brain. Prevention messages should emphasize that, the later cannabis use is initiated, the lower the risks will be for adverse effects on the user's general health and welfare throughout later life.	Substantial
Recommendation 3: High THC-content products are generally associated with higher risks of various (acute and chronic) mental and behavioral problem outcomes. Users should know the nature and composition of the cannabis products that they use, and ideally use cannabis products with low THC content and relatively higer CBD content.	Substantial
Recommendation 4: Recent reviews on synthetic cannabinoids indicate markedly more acute and severe adverse health effects from the use of these products (including instances of death). The use of these products should be avoided.	Limited
Recommendation 5: Regular inhalation of combusted cannabis adversely affects respiratory health outcomes. It is generally preferable to avoid routes of administration that involve smoking combusted cannabis material (e.g., by using vaporizers or edibles). Use of edibles eliminates respiratory risks, but the delayed onset of psychoactive effect may result in the use of larger than intended doses and subsequently increased (mainly acute, e.g., from impairment) adverse effects.	Substantial
Recommendation 6: Users should avoid practices such as "deep inhalation," breath-holding, or the Valsalva maneuver to increase psychoactive ingredient absorption when smoking cannabis, as these practices disproportionately increase the intake of toxic material into the pulmonary system.	Limited
Recommendation 7: Frequent or intensive (e.g., daily or near-daily) cannabis use is strongly associated with higher risks of experiencing adverse health and social outcomes related to cannabis use. Users should be aware and vigilant to keep their own cannabis use to approximately once a week.	Substantial
Recommendation 8: Driving while impaired from cannabis is associated with an increased risk of involvement in motor-vehicle accidents. Users should wait a minimum of 6 hours before driving. Besides these behavioral recommendations, users are bound by locally applicable legal limits concerning cannabis impairment and driving. The use of both cannabis and alcohol results in multiplied increased impairment and risks for driving, and categorically should be avoided.	Substantial
Recommendation 9: Some populations that have probable higher risk for cannabis-related adverse effects include individuals with predisposition for, or a first-degree family history of, psychosis and substance use disorders, as well as pregnant women (primarily to avoid adverse effects on the fetus or newborn).	Substantial
Recommendation 10: While data are sparse, it is likely that the combination of some of the risk behaviors listed above will magnify the risk of adverse outcomes from cannabis use. For example, early-onset use involving frequent use of high-potency cannabis is likely to disproportionately increase the risks of experiencing acute or chronic problems. The combination of these high-risk patterns of use should be avoided by the user and a focus should be placed on prevention.	Limited

Source: Fischer et al. (2019).

Conclusion

New Zealand, along with many other countries around the world has realised that that the war on drugs that began in the 1970s has failed and inflicted much pain and hardship on many communities, especially the indigenous Maori, that have been severely impacted by out-of-date drug laws that tend to discriminate based on ethnicity. It is evident that current drug laws in New Zealand are not fit for purpose, and in urgent need of reform. It is heartening to see a move toward softer penalties for drug use combined with harm reduction measures, but ultimately, the way forward will probably be some form of decriminalisation and then eventually legalization, as has happened in several overseas jurisdictions. New Zealand can avoid the unanticipated consequences of these changes in the legal framework by learning from Canada's experiences, in particular, the impact on minority and indigenous communities. Economic opportunities will arise from legalisation, it is important that the benefits trickle into the wider society. Employment opportunities will boost the economy. Legalised sales will also provide opportunities to raise taxes on cannabis products which can be used to fund harm mitigation programs to treat drug dependency. Towards the end of the Cold War, the changes in long-standing political rivalries between the United states and the Soviet Union resulted in corresponding changes in policies and priorities. Politicians of the day promised a "peace dividend" in which the government funds allocated to the military buildup would be reallocated to social programs, economic development, or education. It is hopeful that if the drug war were to call a ceasefire, there could be a resulting peace dividend.

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《Notes》

1 Speaking at the Special session of the United Nations General Assembly on the World Drug Problem (UNGASS) 2016.

2 In 2019, several important amendments were made to the Act. Several synthetic cannabinoids became Class A drugs, the police were given more discretion to prosecute for possession and use of controlled drugs, and the possibility of temporary class of drug orders was introduced. See:https://www.health.govt.nz/our-work/mental-health-and-addiction/mental-health-legislation/changes-misuse-drugs-act

3 The New Zealand Drug Foundation is a charity that is supported by government funding, as well as by private grants and donations and members.

4 See for example: https://www.rnz.co.nz/news/national/427681/cannabis-referendum-narrow-support-for-legalisation-in-latest-poll

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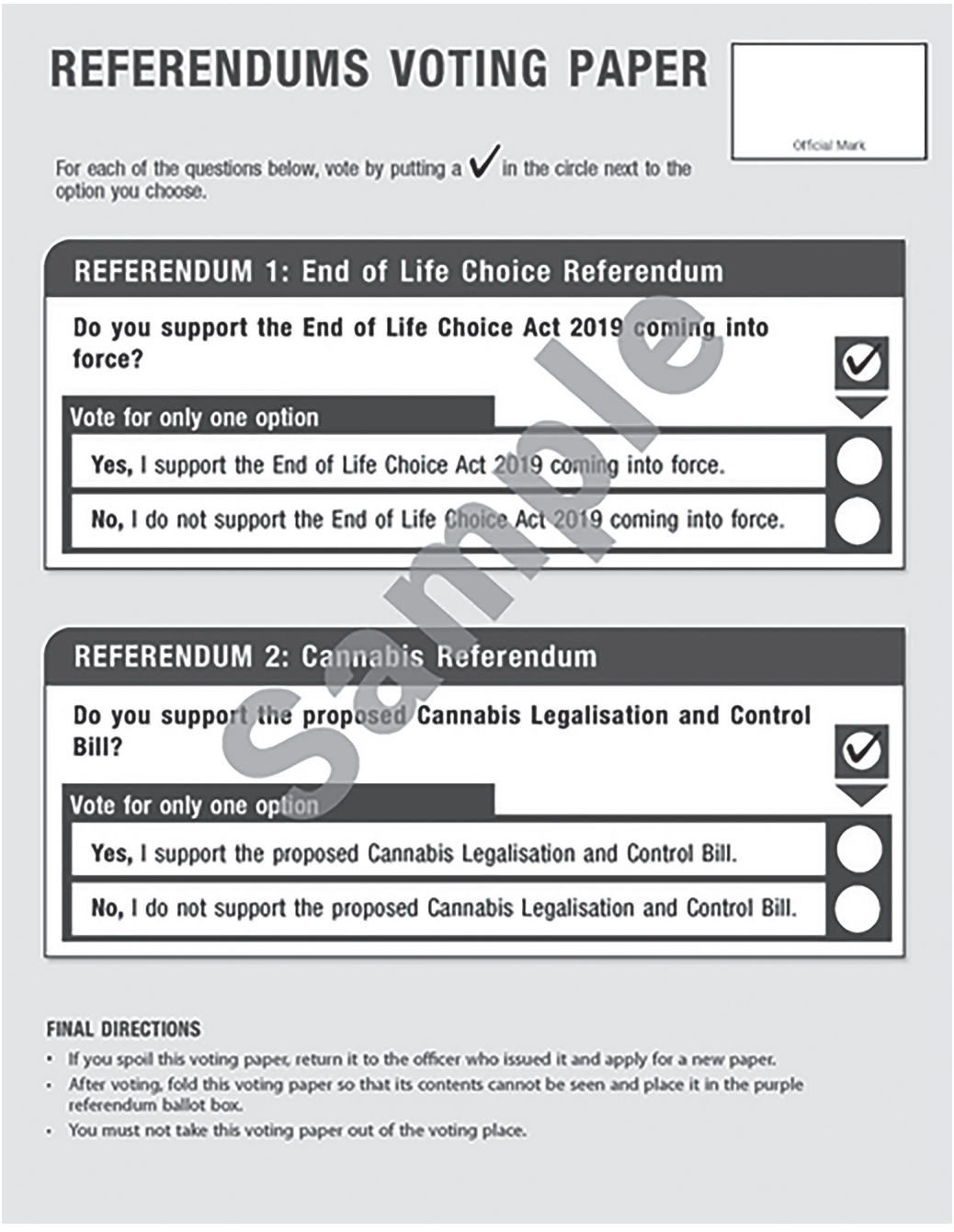
Appendix 1 Copy of the New Zealand Referendums Voting Paper.



REFERENDUMS VOTING PAPER

Official Mark

For each of the questions below, vote by putting a ✓ in the circle next to the option you choose.

REFERENDUM 1: End of Life Choice Referendum

Do you support the End of Life Choice Act 2019 coming into force?

Vote for only one option

- **Yes,** I support the End of Life Choice Act 2019 coming into force.
- **No,** I do not support the End of Life Choice Act 2019 coming into force.

REFERENDUM 2: Cannabis Referendum

Do you support the proposed Cannabis Legalisation and Control Bill?

Vote for only one option

- **Yes,** I support the proposed Cannabis Legalisation and Control Bill.
- **No,** I do not support the proposed Cannabis Legalisation and Control Bill.

Sample

FINAL DIRECTIONS

- If you spoil this voting paper, return it to the officer who issued it and apply for a new paper.
- After voting, fold this voting paper so that its contents cannot be seen and place it in the purple referendum ballot box.
- You must not take this voting paper out of the voting place.

Appendix 2 Copy of Proposed Cannabis Bill（2019）

PCO 22159/24.0
Drafted by Parliamentary Counsel
EXPOSURE DRAFT FOR
REFERENDUM

Cannabis Legalisation and Control Bill

Exposure Draft for Referendum

Explanatory note

General policy statement

This exposure draft of the proposed Cannabis Legalisation and Control Bill (the **Bill**) provides a regulatory framework to legalise and control the production, possession and use of cannabis in New Zealand for people 20 years and over.

The overarching objective of the regulatory regime is to reduce the harms associated with cannabis use experienced by individuals, families, whānau, and communities in New Zealand.

The harm-reduction objective is reflected in measures to—

- raise public awareness of the risks associated with cannabis consumption and improve access to health and other relevant support services; and
- restrict young people's access to cannabis and limit public visibility to cannabis; and
- provide access to a legal and quality-controlled supply of cannabis for adults (aged 20 years and over) who choose to consume cannabis; and
- place controls on the potency and content of licensed cannabis and regulate the whole supply chain to deter the illegal supply of cannabis; and
- provide for the limited home-growing of cannabis for personal use; and
- encourage compliance with the legislation and ensure that responses to breaches are proportionate and incorporate a focus on reducing overall harms.

The purchase, possession, and consumption of cannabis will remain illegal for people aged 19 years and under.

Definition of cannabis

The Bill establishes a definition of cannabis that distinguishes the proposed regime from the medicinal cannabis and hemp schemes.

Full text available at: https://www.justice.govt.nz/assets/Documents/Publications/Cannabis-Legalisation-and-Control-Bill-Exposure-Draft-for-Referendum.pdf