

CHOISE: Cannabis Hemp Opportunity, Investment & Social Equity: a winning model for the 2020 referendum

V0.23 – August 2019 | Developed by Chris Fowlie for NORML NZ Inc

At the 2020 general election the government will hold a referendum making cannabis legal.¹ A simple Yes/No question will be based on a draft piece of legislation that will include: a minimum age of 20 to use and purchase recreational cannabis; regulations and commercial supply controls; limited home-growing options; a public education programme; and stakeholder engagement. It is unclear how retail stores would be regulated, even though they may be the most controversial aspect. The model presented here considers likely flashpoints and issues that have featured prominently in media coverage and civil society discourse. It builds social equity into the reforms, and uses a points-based licencing system to encourage good market behaviour, achieve social outcomes, while remaining competitive with the illicit market. Licensed premises would be run as social retail enterprises, or as private social clubs. A levy on cannabis sales would fund an expansion in drug education, treatment and research, support regional development, and a pool for local grants to be administered by the Lotteries Grants Board. The levy will also fund the collation and dissemination of data about the effect of the new law. A mandated timetable would see the new law take effect within 6 months of the referendum, and Social Retail operational 12 months later.

Introduction

The current law has failed. Cannabis prohibition has fuelled a lucrative illicit market ruled by violence, while not deterring use. The NZ Law Commission² estimated police spend \$300 million every year on cannabis law enforcement. Yet more than half the population has tried cannabis, and one-in-ten are regular consumers. New Zealand voters will decide whether to keep the current law or try a new approach. Decriminalisation models may lead to increased police activity and do not address the illicit market, whereas a free market could increase problematic use. A government-controlled and tightly regulated legal market can reduce harms from law enforcement, achieve public health objectives and comply with international drug treaties. Sales would be restricted to adults, and rules set by regulators. Legal cannabis products would be tested, clearly labelled, and providers would be responsible for consumer safety. Making cannabis legal could also raise

hundreds of millions of dollars in taxes and create thousands of jobs.

A Cabinet paper³ released by the Government says the referendum will be a choice between the status quo and a regulated approach that would:

- allow adults to possess and use cannabis in private spaces including private homes and licenced premises;
- provide for themselves and share with other adults; and
- purchase cannabis from licenced premises.

All the parties that make up the current Government have committed to abide by the outcome, effectively making it binding. Officials have been empowered to draft the legislation with stakeholder input. Ultimately the model must achieve public health outcomes while reducing illicit activity and discouraging a powerful industry.

¹ <https://www.beehive.govt.nz/release/new-zealanders-make-decision-cannabis-referendum>

² New Zealand Law Commission, Controlling and Regulating Drugs: A Review of the Misuse of Drugs Act 1975. (R122) Wellington, April 2011. <https://www.lawcom.govt.nz/our-projects/misuse-drugs-act-1975>

³ Cabinet paper, [2020 Cannabis Referendum – legislative process and overarching policy settings for the regulatory model](#). Office of the Minister of Justice. Considered by Cabinet on 6 May 2019.

The government has indicated the starting point for any model will be:

- Adults over 20 can use, possess and grow their own cannabis.
- Sales of cannabis will be permitted through physical stores.
- Potency will be limited.
- Consumption will be limited to private homes and licenced premises.
- Public use will remain prohibited. It would remain an offence to supply minors.
- Advertising and promotion will be heavily restricted.
- Driving and impairment will be treated consistently with alcohol and controlled regardless of the referendum results.
- Products attractive to minors, such as candy, are not expected to be available.
- Medicinal access and hemp will remain separately regulated.

Retail sales are likely to be among the most controversial aspects of the model proposed for the referendum. The model presented for the referendum must incorporate local concerns over the availability of tobacco, alcohol, and legal highs sold under the Psychoactive Substances Act. Canada has already made cannabis legal and the provinces provide several examples for New Zealand to learn from, including state-run monopolies and local craft production. This model takes the social objectives of the Liquor Licensing Trusts but rejects both their *quasi*-governmental status and their monopolies which are typically disliked among residents and associated with higher prices and fewer choices. Instead, this model makes social equity a central part of the reforms, and supports good behaviour by market participants. This includes:

- Expunging criminal records for cannabis and removing reducing other barriers for experienced providers to go legal.
- Imposing a Cannabis Sales Levy with revenue targeted to treatment and education, law enforcement, research, public awareness, local grants administered by the Lotteries Board, and social equity programmes.
- Supporting regional development and helping communities most affected by previous policies.
- Taking stores away from shopping and residential areas, and making

consumption limited to member's Social Clubs (similar to RSAs or sports clubs).

- A points-based licensing system that supports social equity applicants, encourages retail to be run as social enterprises, and favours local, craft and artisanal production.

Cannabis levies would fund the costs of the scheme, increased research, education and treatment, and provide a contestable pool for local grants. This would be administered by the Lotteries Grants Board, not controlled by the licence holder or an entity run by local politicians. Local bodies who allow Social Retail and/or Social Clubs can opt to impose an additional Regional Cannabis Levy (of up to 3%) which they would receive.

Legislation should be passed with priority, ideally within 6 months of the referendum. The scheme should be operational 12 months later, with licences issued in several waves, and improved on an ongoing basis. Regulators must be empowered and adequately resourced to do this work. To speed this up, many of the rules can be copied from Canada or Uruguay. Some issues could be devolved to local government, although this could prolong any local controversy and media attention.

Social Equity

Allow self-provision: Adults would be allowed to grow their own cannabis in their own home or residence. This includes indoors and outdoors, and both owner-occupied and rental properties. The Government has signalled cultivation would be treated similarly to home-brewed alcohol, rather than setting arbitrary limits. Self-provision is an important counterpoint to the licit and illicit markets, providing competition in both quality and affordability. Seeds would be sold at licensed premises, although importing seeds without a licence would remain prohibited. Home growing must be done away from public view, and the crop must be stored where minors cannot access it. Adults should also be allowed to produce collectively at a shared premise.

Create opportunity and support local socially minded organisations: Licences should be based on a scoring process. There could also be restrictions on foreign-controlled

entities, and some licences set aside for small or regional producers, or the point system used to achieve this. Upfront costs would be reduced by not requiring a premise before applying; a provisional approval would give applicants 180 days to then find suitable premises, reducing start-up costs and opening access to smaller producers.

Craft or artisanal producers would be defined as a flowering area of less than 200m² producing up to 600kg/year⁴ and would have the same security requirements as retail stores and laboratories. Larger producers would have additional security requirements, reflecting their higher risks and intended outputs. QA/QC requirements would be the same for both, ensuring consumer safety.

Right the wrongs: those most affected by the previous approach should not be locked out. Cannabis convictions will be automatically expunged and would not be a barrier to entering the legal market. A new status will be established of “Social Equity Applicant”, which would be defined as: applicant with at least 51% of the ownership and control, and 51% of the employees, are individuals who have lived for more than 5 of the last 10 years in a disproportionately impacted area, and they or any member of their immediate family have been arrested or convicted for any offence eligible for expungement. A disproportionately impacted area is designated and will be one that is economically depressed and has high rates of arrest, conviction and imprisonment for cannabis. Social Equity Applicants would have:

- A proportion of licences set aside for them
- Access to low interest loans to help defray business startup costs
- Licence fee waivers of up to 50%
- Up to 25 points towards their licence score, with some additional “bonus points” for voluntary extras such as environmental programmes or community outreach.

Direct benefits to where they are needed: Imposing a levy rather than a general tax allows revenues from legal cannabis to be targeted, perhaps on this suggested basis:

- 25% to increase drug education, treatment and harm reduction services
- 25% to support social equity measures

- 25% to fund local grants
- 8% to law enforcement, training and equipment
- 5% to research cannabis and the law
- 2% to fund public awareness
- 10% left for general spending or debt repayment

Grants should be administered by the Lotteries Grants Board, avoiding the politically charged nature of local gambling and liquor trusts. The Lotteries Grants Board, which could be renamed to something like the Community Development Fund, would issue clear and objective criteria for assessing grant applications – not just lobbying or a popularity contest – and would also direct grants back to the communities in the proportion the levies came from. This could be defined by region or local body. Recipients would not be required to state the funding source, and levy payers would not be allowed to associate their products with their grants or the recipients.

Local bodies could also opt to impose an additional Regional Cannabis Levy of up to 5% of the gross retail revenues of any Social Retail and/or Social Clubs operating within their boundaries (including deliveries).

Social Retail & Licensed Producers

Products: A range of products would be available, including flowers, oils, concentrates, topicals and edibles, as well as seeds for home growing and utensils for safer use. Licensed premises would not sell alcohol and could monitor or limit daily purchases of cannabis.

Social Retail: Sales to adults would be through licensed premises operated by social enterprise retail (SER) organisations. These would be supplied by licensed producers (LP).

Licensed Producers: LPs could include iwi, charities, private industry, cooperatives, individuals or government organisations. LPs and cannabis retail SEs could be for profit and vertically integrated but may also be limited in size, either by area or turnover. Licences would be available for large-scale and craft

⁴ This is the same as the Canadian regulations.

producers. Outdoor production would be allowed for low-THC/high-CBD crops.

Meet community expectations: Licenses would carry an expectation of social outcomes. These could include targets for reducing harm, supporting treatment, community initiatives, and so on. Retail licence holders would be audited against their social outcomes. Some licences in each region could be set aside for iwi organisations, charities, private industry, cooperatives, individuals or NGOs. Licences should not be arbitrarily limited in number. An adequate number of licences must be issued to serve the local population.

Delivery services should be allowed: including web sites, for those unable to travel or in rural areas (subject to local controls).

Locations would be appropriate: licensed premises would not be in main shopping centres, near schools or community centres, or in residential areas.

Local control: Local bodies could issue Local Cannabis Plans to set out additional rules including whether social use premises and/or delivery services can operate within their boundaries, and whether or not to impose an additional Regional Cannabis Levy and if so what the rate should be. Local bodies could choose to prohibit Social Retail and/or Social Clubs but cannot choose to prohibit LPs or self-provision.

Ensure the market functions: Licence-holders could run multiple premises to reach scale and function economically, but they would have no monopoly rights and consumers would have choices. This model does not limit the total number of licences however the number of stores any licence-holder may control could be limited.

Social Clubs

Social use: Adults need safe legal spaces to consume cannabis. Cannabis Social Clubs are licensed premises that are restricted to members and have social and economic objectives. Social clubs could be onsite tasting

rooms co-located where cannabis is sold, or BYO consumption lounges.

Services: Social clubs would provide information, referrals to treatment if needed, monitoring and oversight of consumption, and would be subject to the same controls for products and location as retail stores. Some could provide communal growing facilities and distribute the crop among members.

Ownership: Social clubs may be non-profit collectives or private enterprises with social objectives. Consumers could join existing social clubs or start their own. Social clubs may only provide cannabis to their members.

Duty of Care: Social clubs could be given a legal obligation to act in the best interests of their members.

Appropriate Controls

Unlicensed supply would remain illegal. Supply to minors would remain an offence. Public use would be a civil offence.

Driving: The Government has announced drug-impaired driving will be addressed separately to the referendum. This model assumes it will remain an offence to drive while impaired by drugs including cannabis. The existing Field Sobriety Test is considered the most accurate predictor of impairment. The cannabis levy will fund FST training for every law enforcement officer, and dash cams to record the test. The FST could be confirmed with an evidential blood test, with a limit set for THC⁵, with no allowance for any concurrent alcohol use. Consumers must choose between cannabis, alcohol, or neither.

Workplace impairment: This would remain largely unchanged, with employers able to prohibit workplace use and impairment just as they can now with alcohol. Nothing in the proposal would prevent employers from adopting reasonable employment practises regarding consumption, storage and use of cannabis in the workplace, and nothing in the proposal prevents and employer from disciplining or terminating any employee for failing to comply.

⁵ Grotenhermen et al demonstrated a blood THC level of 7-10ng/ml was equivalent to a BAC of 0.5. The state of

Colorado uses 6ng/ml with a positive defence available for heavy users who may retain higher levels.

Medical use would remain separately regulated. Patients would continue to access medicinal cannabis products through doctors and pharmacies.

No advertising: Broadcast advertising and outdoor billboards would be prohibited. Instore (point of sale) and internet promotions would be allowed, recognising the importance to consumers of providing information about products, dosages, quality and availability.

Potency: Product strength would be controlled by increasing the cannabis levy based on the THC level. Products with lower THC levels would incur a lower levy. There would be a credit for CBD content, which reduces the psychoactivity of THC.

Dosage: Cannabis products would be batch tested and true to label. A dose would be defined as 10mg THC (or CBD) per dose, with packages clearly displaying the total doses and total amount of cannabinoids. Packages would be tamper-evident and child-resistant.

Edibles will have each dose clearly separated (for example, as lozenges, or segments of a chocolate bar). Edibles would be prohibited from resembling foods attractive to children, such as gummy bears.

Utensils would be allowed for harm reduction purposes and would display health warnings.

Provision of information: It would be mandatory for certain information to be provided on cannabis retail packages and at the point of sale. Packaging must be accurate and display the cannabinoid content (THC, CBD, and any other that is over 0.2% by volume), as well as the ratio of THC:CBD. Packaging must not contain information that is false or misleading; is designed to encourage excessive consumption; depicts consumption by a minor; or is designed or likely to appeal to minors.

Levy based on THC, with credit for CBD: Sales levies would be based on net THC content, discouraging higher-strength products, and ensuring those who choose concentrates and other potent forms are contributing an appropriate levy. A credit for CBD content would further encourage balanced products.

Local control: some aspects could be devolved to local bodies, such as zoning

decisions, signage, opening hours, recommendations for local grants, and whether to allow Social Retail, Social Clubs, delivery services, or none within their local area boundaries. These Local Cannabis Plans should be within a consistent national framework and broadly like alcohol licencing. If a local body chooses to allow cannabis retail, it may also impose an additional Regional Cannabis Levy of up to 5% of gross retail revenues. To prevent continual toing-and-froing, local bodies must set their Local Cannabis Plan within 12 months and amendments are by local referendum.

Ownership & control: Ownership of both Social Retail and LPs is open to non-profits, iwi, private enterprise, partnerships or collectives. A suitability test for licenced producers and retail SEs will prohibit key people, directors, significant shareholders and those having any effective control from having violence or dishonesty convictions. There could also be restrictions on residency (such as requiring total- or majority-ownership by NZ residents).

Agency: legislation should be administered by the Ministry of Health. An agency would be set up inside the Ministry to oversee the legal market and ensure compliance with international treaties.

Implementation and transition period: Consideration could be given to allowing existing licenced medicinal producers to convert any surplus inventory to adult-use products, for the first 12 months of the scheme. Any transition period should be carefully managed and properly resourced. To encourage better operators to enter the market first, the licence system could require higher points in the first round. Subsequent rounds of licences could be allocated in response to how the market develops, with points adjusted accordingly.

Ongoing education and training: provision must be made for ongoing public awareness campaigns as well as targeted consumer education, training for regulators and law enforcement, and implications for health professionals.

References

The following have been considered in developing this model:

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- Cabinet paper, [2020 Cannabis Referendum – legislative process and overarching policy settings for the regulatory model](#). Office of the Minister of Justice. 6 May 2019.
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- Marijuana Policy Project, [New Illinois Legalization Bill Means Unprecedented Social and Criminal Justice Reform](#)
- Marta Rychert, Chris Wilkins, Jose S. Romeo, Thomas Graydon-Guy, [“Could the community alcohol licensing trust model be applied to regulate legal cannabis?”](#), Massey University, 2019.
- Transform Drug Policy Foundation, [How to Regulate Cannabis: A Practical Guide](#) (2nd Ed), 2016

Questions & Answers

How would retail work? Give an example of social retail.

A social enterprise called Arataki successfully bids for a retail licence. It allows them to run six retail stores in West Auckland, including two on-site Social Clubs. They compete with three other licence holders operating similar numbers of premises. The social outcomes offered as part of Arataki’s licence include having a counsellor and nurse on staff, a trained pharmacist dispensing products, on site café, wellness facilities for clients, community working bees, and limiting very potent products to experienced clients. Opening hours for adult sales are 12 noon to 10pm. They are located away from any schools. Arataki is supplied products by a variety of Licenced Producers, including Piha Grower’s Co-Op. PGC employs locals as growers and processors. Local adults may purchase cannabis from Arataki or the other licenced retail stores, grow their own, or be gifted small amounts from friends.

But what if I don’t like my local outlet, or I live in the country?

The model ensures there would be local choices, with multiple outlets run by competing licence-holders. You won’t be stuck with a monopoly. There will also be at least one mail order / website facility for those who are unable to travel, cannot make regular store hours, live rurally or otherwise cannot access a regular cannabis store.

What about driving and workplace impairment?

Driving under the influence of any drugs will be addressed separately to the referendum. It will remain an offence to drive while impaired. Some funding may be required for increased enforcement and/or training. Workplace impairment will be treated the same as for alcohol and will remain addressed through employment contracts and workplace health and safety policies. Part of the cannabis levy could be used to provide support for safer workplaces.

Why a cannabis levy and how would it work?

Taxes are usually given to the Government's general account and may not be targeted to specific projects. Cannabis sales should be levied, not taxed, as this allows levies to be (a) adjusted without needing an Act of parliament, and (b) targeted to specific projects or causes. These should include increased funding for regulators, researchers, educators, treatment providers, law enforcement, and a pool for local grants to be administered by the Lotteries Grants Board. The levy should be applied once, at the distributor level. This reduces the burden on small retailers and regulators alike.

Would imports and exports be allowed?

Imports of cannabis products, seeds and utensils would be allowed by LPs but not by consumers (who would have plenty of local options). Commercial exports of adult-use cannabis would be allowed to countries that are also legal.

How does this effect medical access?

The Medicinal Cannabis Scheme would continue to be regulated separately. LPs should be allowed to operate in both medical and adult-use markets. Products supplied under the medical scheme would not attract cannabis levies so may be cheaper (although that is not certain), however patients who are unable to obtain prescriptions for medicinal cannabis products would be able to purchase

adult-use products and/or grow their own under this model.

How much are people allowed?

It will be treated like alcohol or tobacco – adults can possess or purchase their preferred quantities, but they cannot on-sell it or provide it to minors (etc).

How will we know it's working?

A successful outcome should be clearly defined and regularly measured. The legislation and regulations should be reviewed in five years to see if they are achieving the objectives of reducing overall harm and reducing illicit activity. Funding from the levy should be used to research the effects of the model and how to make it work better, with particular emphasis on levels of problematic use including underage use, crime and violence, driving under the influence, ER visits, suicides, rates of use of other drugs including alcohol, and the financial costs or revenues resulting from these.

The NZ government has pointed to Canada. How does it work there?

Each Canadian province has different rules for adult retail sales, within a consistent national framework, which allows NZ to see the parts working well. Retail stores are supplied by licensed producers (LPs) and may be publicly- or privately-owned. BC encourages craft production and retail, whereas Ontario has a monopoly by state-run stores. Sales are taxed at \$1/gram. Age limits vary by province but are generally consistent with alcohol.

Table 1. Comparing expected outcomes of five policy options

Policy model → Feature ↓	Prohibition (NZ now)	Decriminalise (parts of Australia, The Netherlands)	Social Retail & Social Clubs (this model, Uruguay)	Private Enterprise (Canada, Colorado)	Free Market (lax alcohol regimes)
Age limit enforced	X	?	✓	✓	X
Testing and safety standards	X	X	✓	✓	X
Health info provided to consumers	X	X	✓	✓	X
Home growing allowed	X	✓	✓	?	✓
Reduces crime	X	X	✓	✓	✓
No children working in industry	X	X	✓	✓	X
Not sold on main street or in residential areas	X	X	✓	X	X
No big industry or gangs	X	X	✓	X	X
No driving	✓	✓	✓	✓	X
No advertising	✓	✓	✓	✓	X