

## Feedback from the Mental Health Foundation of New Zealand on the proposed regime for cannabis regulation

11 October 2019

Tuia te rangi e tū nei  
Tuia te papa e takoto nei  
Tuia i te here tangata  
Tihei mauri ora  
He hōnore, he korōria ki te atua ki te runga rawa  
He whakaaro maha ki a rātou kua haere ki te wāhi ngaro  
Rau rangatira mā, ānei ngā whakaaro me ngā kōrero nā Te Tūāpapa Hauora Hinengaro

### Introduction

Thank you for the opportunity to follow up on our feedback at the Ministry of Justice’s wānanga (West Auckland, 19 September) with a written submission about the proposed regulatory regime for cannabis.

The Mental Health Foundation (MHF) is a non-government organisation that works towards creating a society where all people can flourish – that is, feel good and function well most of the time. The MHF takes a public health approach to our work and we are committed to improving health outcomes for Māori. Our submission speaks to these core aims, and our comments are broadly aligned with those expressed by the New Zealand Drug Foundation in its submission (based on several consultation hui that the MHF contributed to) and the Helen Clark Foundation’s *The case for YES* report.

**The MHF supports the health-approach to drug regulation where drug use is treated as a health and social issue and not a criminal one.** Under the current system, criminal convictions from cannabis possession cause significant social harms, particularly for Māori, and there are multiple barriers to accessing health care, support and treatment for problematic cannabis use.

### Clear public information ahead of the 2020 referendum

We are pleased that the Prime Minister’s Chief Science Advisor and its panel are developing a short and accessible summary of the evidence-base around cannabis. This will go some way to providing the general public with non-biased information ahead of the referendum. It will be vital that there is a clear plan to disseminate this work so that it is widely available and accessible to all groups within Aotearoa New Zealand, including Māori, Pacific communities, young people, rainbow communities, people with disabilities, older people and those people with limited access to the internet or communication technologies.

**The MHF will be preparing a public information factsheet that outlines the likely impacts (both harms and benefits) that legalising cannabis and the current law have on mental health and wellbeing.** This will be a plain-English and accessible factsheet to inform and educate the public ahead of the referendum vote. This will include, for example, that eight percent of cannabis users reported that its use had a harmful effect on their mental health and that among susceptible individuals (eg, with a family history, or people currently experiencing mental distress) cannabis use may bring on symptoms of psychosis, depression and anxiety<sup>1</sup>. Benefits might include helping with symptoms of anxiety or stress or used by people seeking to self-medicate through withdrawal from opioids. It will also seek to address the harmful narrative put forward by some groups that links cannabis use with violence via psychotic illness when the evidence is less than clear.<sup>2</sup> The factsheet will be based on the best available international and national public health research but also the perspectives and views of diverse communities, such as those with lived experience and of Māori.

The Ministry of Justice might want to consider whether it, or another group, could provide a central platform in which to house good quality and unbiased information ahead of the referendum to help facilitate this much needed public information campaign.

### Public health approach

The MHF is pleased to see that the cabinet paper for the proposed regime states that the primary objective of legislation will be to address the wellbeing of New Zealanders and harm reduction. **In applying this wellbeing approach, we believe that the key outcomes of the cannabis regulatory regime should seek to:**

- reduce the availability and use of cannabis (which would reduce harms overall)
- delay the age at which people use cannabis (because young people are more vulnerable to the effects of cannabis and are more likely to experience long-term negative consequences)
- minimise the harms from cannabis, including on mental health (for example through public health education and awareness, targeted health promotion etc)
- increase access to early intervention and mental health and addiction services
- ensure equity in these outcomes across all groups in Aotearoa New Zealand, particularly for Māori.

**The MHF supports the inclusion of explicit public health principles in the legislation** and the Bill should make clear that these principles take precedent when or if they conflict with other principles or objectives in the legislation, such as community development goals or acquiring government revenue.

**The MHF supports a regulatory model that prohibits commercial interests that could conflict with and erode public health principles,** for example a commercially driven industry that seeks to increase overall cannabis use for profit. As such we see merit in the various not-for-profit or public ownership regulatory models. We support strict regulations on advertising and sponsorship of cannabis products so that it does not compete with, and outweigh, harm minimisation messaging, as well as ensuring that licensed retail outlets (stores) are situated with a minimum distance from schools and other sensitive areas.

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<sup>1</sup> Ministry of Health. 2015. *Cannabis Use 2012/13: New Zealand Health Survey*. Wellington: Ministry of Health

<sup>2</sup> See the critique in Boden & Spittlehouse. 2019. What we know, and don't know, about cannabis psychosis and violence. *New Zealand Medical Journal*, 132, 1499.

**The MHF supports the intention to control the potency and quality of cannabis products, along with clear labelling and health warnings, in order to minimise mental health harms.** Regular, heavy and abusive use of cannabis, particularly high THC potency cannabis, may increase the risks of symptoms of poor mental health, including psychosis.<sup>3</sup> Clear labelling of the potency and risks of products could give people more control over their cannabis use and help to mitigate any associated mental health problems.

### Māori equity

**The objectives of the Bill must explicitly acknowledge Te Tiriti O Waitangi and the Crown's responsibility to uphold and protect Māori wellbeing and to promote Māori equity and justice.** It should explicitly recognise Māori equity as an objective or a goal of the legislation and be mindful that cultural principles included in legislation, such as consultation with iwi, hāpu and whānau, must be fully mandated (not optional or to be used 'where practicable') to avoid tokenism or inconsistent use. The implementation of the Bill will need to consider tikanga and ensure that how cannabis is regulated in Aotearoa New Zealand is able to meet Māori aspirations. This will need to be considered, for example, in whether or how Māori land including wahi tapu (sacred land) is used for cannabis cultivation or manufacturing and how cannabis is used in and around the Marae.

The MHF advocates that careful consideration be given to the following issues.

1. **Expunging cannabis-related convictions:** There is a strong argument that cannabis convictions have been applied inequitably over the years, to a small minority of those who use cannabis, with significant and disproportionate impact on lives and livelihoods. This is particularly the case for Māori, who are disproportionately prosecuted and convicted of low-level drug offences, with one study finding that Māori rates of arrest and conviction were three times higher than those of non-Māori even with ethnic differences in cannabis use and other factors were taken into account.<sup>4</sup> Any provision in the Bill to expunge previous non-violent cannabis-related convictions should a) at a minimum ensure possession convictions are erased b) this is done in a timely way so there are no delays for people to enter the legal market once the regime is in place and c) individuals do not have to cover the cost.
2. **The potential for Māori economic development:** This is in line with international approaches to address equity issues and might include, for example, priority production rights for Māori-led organisations and mechanisms to support Māori communities who might want to participate in the legal market.
3. **Police discretion and racism:** We note that the current system, which relies on police discretion to use a public interest test to decide whether or not to prosecute for possession and use of all drugs, is subjective and, although it will likely reduce the overall number prosecutions, ethnic disparities in prosecutions and convictions for drug possession will likely continue, especially for Māori. We also note that issues of Māori equity in the criminal justice system are pervasive and systemic and extend beyond drug-related crime. In the event of a 'no vote' at the referendum next year, a review of institutional and individual racism in the

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<sup>3</sup> Di Forti et al. 2019. [The contribution of cannabis use to variation in the incidence of psychotic disorder across Europe \(EU-GEI\): a multicentre case-control study](#). 16, 5, p427-436.

<sup>4</sup> Fergusson, Swain-Campbell, & Horwood. 2003. Arrests and convictions for cannabis related offences in a New Zealand birth cohort. *Drug Alcohol Depend*, 70(1):53–63.

use of the drug-related discretionary powers should be instituted as a first step to a full review of racism within the justice system.

### Prevention, health promotion, treatment and support

We are pleased that the cabinet paper recognises that the regulatory model needs to sit alongside greater investment in resources for prevention, early intervention and wrap-around health and treatment services for substances abuse disorders, and these need to be culturally appropriate services. The MHF understands that **significant investment will be needed into drug rehabilitation and treatment services to accommodate the likely increase in referrals** and increased help-seeking from individuals and whānau. Investment allocation should be based on predictive modelling of the best available data of cannabis prevalence, use and dependence in New Zealand.

To reflect disproportionate Māori cannabis use and harm, the **MHF recommends the government commit to significant funding of kaupapa Māori treatment models** and that more is done to ensure that mainstream services and the non-Maori workforce understand their responsibility to participate in cultural competency training. Whānau Ora pathways to wellbeing need to be fostered and better funded to ensure that Māori with substance dependence and their whānau are supported. This includes supporting tikanga healing practices, including the use of storytelling, those with lived experience and te reo me ona tikanga.

Furthermore, **investment in health and addiction services should be prioritised regardless of the outcome of the referendum vote**, in line with the recommendations of the Mental Health and Addictions Inquiry and to which the government has started to recognise through the Wellbeing Budget.

**The government must guarantee adequate funding for prevention, early intervention and public education about harm minimisation that reduce the risk of drug harm** and this should be provided regardless of how much government revenue is gained through cannabis sales. Materials and messages must be culturally-specific and delivered in an appropriate way to Māori, for example through increasing Māori health promotion and prevention initiatives through additional funding of kaupapa Māori health services. Investment in early intervention/primary care approaches should focus on social and community-based support services and innovation in support models, including innovative community-based models for Māori.<sup>5</sup>

### Research and data

Finally, it is vital that Aotearoa New Zealand has the mechanisms in place to gather clear information about cannabis prevalence and use, and the impacts of this use, before any law change, and that this is tracked over time post any law change. This will help New Zealanders to make an informed decision ahead of the referendum, help decision-making about health and treatment service funding, and it will be crucial in evaluating the impact of any law change as well as providing data for evaluation of future drug law reform here and internationally.

### Summary

The MHF is supportive of a shift towards a health-approach to drug regulation away from a system that treats drug use as a criminal issue. In developing a regulatory framework we recommend a cautious approach that puts public health and Māori equity at the centre of regulation and in the policy and services that support the legalisation of cannabis in the event of a 'yes' vote at the public referendum next year.

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<sup>5</sup> For example, innovative primary care models such as ProCare's Te Tumu Waiora.

## About the MHF

The MHF's vision is for a society where all people flourish. We take a holistic approach to mental health and wellbeing, promoting what we know makes and keeps people mentally well and flourishing, including the reduction of stigma and discrimination (particularly on the basis of mental-health status).

The MHF is committed to ensuring that Te Tiriti o Waitangi and its Articles are honoured, enacted, upheld and incorporated into our work, including through our Māori Development Strategy. We are proud that Sir Mason Durie is a Foundation patron.

The MHF takes a public health approach to our work, which includes working with communities and professionals to support safe and effective suicide prevention activities, create support and social inclusion for people experiencing distress, and develop positive mental health and wellbeing. Our positive mental health programmes include Farmstrong (for farmers and growers), All Right? (supporting psychosocial recovery in Canterbury, Kaikōura and Hurunui), Pink Shirt Day (challenging bullying by developing positive school, workplace and community environments), Open Minds (encouraging workplaces to start conversations about mental health) and Tāne Ora (working with tāne Māori and their whānau to build wellbeing skills). Our campaigns reach tens of thousands of New Zealanders each week with information to support their wellbeing and help guide them through distress and recovery.

We value the expertise of tangata whaiora/ people with lived experience of mental distress and incorporate these perspectives into all the work we do. Established in 1977, the MHF is a charitable trust, and our work is funded through donations, grants and contract income, including from government.

Signed,

**Shaun Robinson** | Chief Executive

Mental Health Foundation of New Zealand

A handwritten signature in black ink, appearing to read 'S. Robinson', with a long horizontal flourish extending to the right.