Question 1: I want to drill down a little bit into the bit right at the end of your submission around the cost-benefit analyses that you did and basically how you undertook the analysis. What kind of data or calculation or model were you using to conduct those?

The cost-benefit analysis comparing a legalised-regulated model of cannabis with the status quo (at the time, police diversion) was published in 2014. The full journal article is freely available here: https://doi.org/10.1371/journal.pone.0095569

In summary, these analyses involved the following steps:

1. Specifying the features of a legalised-regulated model of cannabis for NSW.

The key characteristics of the legalised–regulated option conformed to a public health-focussed regulatory model and included licensing consumers, cannabis only retail shops, disallowing promotion and advertising, monopoly distribution and retail, age restrictions; restrictions on location of consumption, and pre-negotiated purchase contracts with growers. The status quo model was as given at that time in NSW: cannabis was illegal, with a police cannabis cautioning program

2. Documenting the costs and benefits associated with the two policy options to be included.

The costs that were included covered: the direct intervention costs (e.g. police and CJS costs for the caution program, regulatory costs associated with legalisation etc); costs or cost savings for other agencies, individuals or families as a consequence of the policy (e.g. cannabis treatment program costs), benefits or costs gained or lost by individuals/families (e.g. cost impact of a criminal record), and externalities (e.g. increased tobacco use).

The included costs are shown in the below table:

Direct intervention costs	**Costs or cost savings for other agencies, individuals, and families**	**Benefits lost or gained for the individual or family**	**Externalities**

Criminal justice system
• Police
• Courts and court diversion program
• Prosecution/ Legal Aid
• Corrective services
	• Prevention programs
	• Health care costs
	  ○ Cannabis treatment
	  ○ Other health consequences
		• Impact on number of persons with criminal record & potential stigma from criminal record	• Accidents /injuries to third parties as a consequence of increased cannabis use

Grower • Growers permit • Legal costs to negotiate contract • Cost of complying with NSW workplace laws and	Personal • Fines • Legal defence costs • Parents' lost productivity when attending court	• Value of the enjoyment from cannabis use	• Attitudinal changes: cannabis use becomes more acceptable - use increases • Impact on use of tobacco

agricultural regulations • Testing for potency			
Distributor /retailer • Infrastructure costs • Staffing/ training • Website • Transportation		• Impact on educational attainment and subsequent earnings	
Consumer • Licence/course			
Enforce regulations • Police • Regulatory body (licensing/standards etc.) • Contract negotiation • Black market • Drug driving testing programs			

3. Quantifying these costs for the population of NSW

Multiple sources were used to quantify each of the costs listed above, included unit record data from police, budgets for courts and legal costs, wages lost due to imprisonment (applying minimum wage), a new willingness to pay study for the costs of a criminal record, healthcare data on treatment numbers and healthcare costs, and epidemiological data on cannabis use rates. All details are provides in the source document.

4. Conducting the cost benefit analysis

Once the values were obtained for each component, the costs and benefits were summed to generate the Net Social Benefit for each policy. In addition to the primary NSB estimates, a range was constructed for every variable using credible assumptions. Where none were available, a range of +/−20% was used. All costs were in 2007 Australian dollars. Monte Carlo simulation with a normal distribution and 1000 repetitions was conducted to generate the 5^{th} and 95^{th} percentiles around the mean.

Question 2: In terms of the way that you're modelling drug policy, are you looking for outcomes when you conduct your analysis? Are you starting from what data you're presented with, or are you searching for data? If you're searching for data to analyse particular jurisdictions, what kind of datasets or data points are really valuable for you to come up with a good analysis with modelling?

Modelling different cannabis regulatory options requires a large suite of data from a variety of different data sources. This includes:

- Good population data on cannabis consumption patterns and harms (ideally longitudinal data)
- Treatment seeking data, including data on brief interventions in non-specialist alcohol and drug settings such as with GPs
- Cannabis price data, and price elasticities of demand
- Data on the costs associated with monitoring compliance with regulations (under a regulated model)
- Data on policing activity, charges, arrests convictions, and court outcomes
- Data on the costs associated with treatment, policing, and any other interventions.
- Outcome data – what happens to people who receive a law enforcement response for their cannabis use, what happens to people who receive brief interventions and what happens to people who receive treatment.

We have access to excellent data in Australia, but the key missing gaps are:

- Costs associated with treatment, policing, and other interventions
- Longitudinal epidemiological data on cannabis consumptions patterns, and cannabis harms
- Outcome data post-intervention

Our modelling work aims to develop a model that reflects all the key elements of interest, not just those for which we have available data. When we do not have data available, we use proxy measures and then apply statistical techniques to deal with uncertainty (as per previous question about our cost-benefit analyses, where we used Monte Carlo simulations to derive uncertainty ranges).

Q3. Have you seen any correlation between increase in use of things like rehabilitation services overseas, for example, and decriminalisation or legalisation?

A report commissioned by the Irish government on different regulatory schemes for illicit drugs provides a summary of the evidence, including about treatment access under different legal models (Hughes, Stevens, Hulme, & Cassidy, 2018). Their summary suggests different models of decriminalisation may increase the uptake of treatment and harm reduction services, either due to direct referrals associated with a diversion program, or reduced stigma which may encourage people to access services. The authors report that increased uptake of treatment services has been observed in diversion models with referrals to health/treatment, civil or administrative penalty schemes, and models where there is no penalty associated with possession of drugs for personal use.

It should be noted that these effects are often difficult to differentiate from other policies introduced at the time. For example, Portugal increased funding for treatment and harm reduction services alongside the introduction of a decriminalisation approach. Removing criminal penalties without increasing resources and funding for health interventions may not lead to any substantial changes in treatment utilisation. For example, one cross-national European study found no changes in treatment uptake or drug use associated with cannabis regulatory policies (Adam & Raschzok, 2017).

References

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Hughes, C., Stevens, A., Hulme, S., & Cassidy, R. (2018). *Review of approaches taken in ireland and in other jurisdictions to simple possession drug offences: a Report for the Irish Department of Justice and Equality and the Department of Health*. Paper presented at the Irish Government response to the report-outlining proposed adoption of police diversion schemes for first and second offence involving use and possession of any illicit drug.

Question 4: In your submission, you put the social costs associated with cannabis at around $5 billion. That's an enormous number. Could you talk to how you arrive at that figure and what some of the component factors of that are? Or if your modeller is the person who did that, maybe you can take that on notice.

Our submission noted that the social costs of cannabis could be $5.34 billion.

The text from the submission is:

> "The substantial social costs associated with cannabis in Australia are well-known (valued at $4.4 billion in 2015/16) (Whetton et al., 2020). If we applied CPI to that figure, it would represent $5.34 billion in 2022/23.[1] " (p. 6)

This $5 billion figure applied CPI (using the RBA calculator – see footnote) to a previously published figure by a separate research team, led by Steve Whetton. The Whetton et al (2020) reference can be found here: https://ndri.curtin.edu.au/ndri/media/documents/publications/T287.pdf

Whetton et al (2020) included a range of social costs in their estimate of $4.4 billion for the year 2015/16. The summary table from their report is pasted below.

The largest cost component of the $4.4 billion is criminal justice system costs (policing, courts), comprising half the social costs of cannabis nationally for 2015/2016. The second largest component is healthcare costs. The details are below.

Summary Table 1: Summary of costs (with ranges [a]) in 2015/16

Domain	Central estimate ($)	Low bound ($)	High bound ($)
Tangible costs			
Tangible costs of premature mortality (gross) (Chapter 3)	29,548,645	11,068,072	46,042,699
Avoided healthcare costs (Chapter 3)	-627,598	-235,444	-979,807
Hospital inpatient care (Chapter 4)	128,511,008	54,530,555	142,324,790
Other health care (Chapter 5)	585,443,189	291,415,257	914,973,523
Other workplace costs (Chapter 6)	560,208,687	372,338,723	748,078,651
Criminal justice (Chapter 7)	2,399,542,566	1,742,029,110	3,558,210,831
Traffic accidents (Chapter 8)	193,886,949	102,408,456	277,730,883
Miscellaneous costs (Chapter 11)	469,979,798	441,795,093	498,164,503
Total tangible costs	**4,366,493,243**	**3,015,349,822**	**6,184,546,073**
Intangible costs			
Intangible cost of premature mortality (Chapter 3)	106,199,655	10,113,497	490,317,262
TOTAL COSTS	**4,472,692,898**	**3,025,463,319**	**6,674,863,335**

[a] High and low values were not calculated for all domains

[1] Calculated using RBA Inflation calculator, which notes that the total change in cost is 21.3 per cent, over 7 financial years from 2015/2016 to 2022/23, at an average annual inflation rate of 2.8 per cent. https://www.rba.gov.au/calculator/financialYearDecimal.html

Question 5 - There's a bit of a focus in your submission on the pros, if you like, of the home cultivation of cannabis and then the non-commercial supply of that to people. On my understanding, in New South Wales, there's obviously New South Wales law, which defines supply very broadly and, for example, includes, within the concept of "supply", supply to someone not through a commercial process. So to gift marijuana is, under the law—obviously, it would be treated differently in court—in terms of the strict parameters of a criminal offence, the same as if you're selling drugs for money. And then the Commonwealth regime treats supply only as supply in a commercial sense—for example, you're not guilty of commercial trafficking under the Commonwealth scheme if you give marijuana or a drug to someone. **Independently of what changes in terms of cannabis regulation in terms of decriminalisation or legalisation models in the future, are you of the view that the Commonwealth model is preferable in terms of only treating dealing as that which is done with a commercial intent, i.e., to make money?** Sorry, that's quite a long and complicated question.

We have detailed the supply/trafficking offences in both NSW and Commonwealth legislation in the table below. Our understanding of both the NSW and Commonwealth legislation is that an exchange of money is not required for a trafficking/supply offence. The Commonwealth law use the term 'sell' rather than 'supply', however it is not clear if this indicates that money must have been exchanged. Possession above the associated threshold quantities indicates possession with the intent to traffic.

We are not aware of any evidence on whether there is a preferable model for the definition of drug supply in law.

Legislation	**Offence**
*Criminal Code 1995 (*Cwlth*)*	**302.1 Meaning of** traffics
	(1) For the purposes of this Part, a person traffics.in a substance if: (a) the person sells the substance; or (b) the person prepares the substance for supply with the intention of selling any of it or believing that another person intends to sell any of it; or (c) the person transports the substance with the intention of selling any of it or believing that another person intends to sell any of it; or (d) the person guards or conceals the substance with the intention of selling any of it or assisting another person to sell any of it; or (e) the person possesses the substance with the intention of selling any of it. (2) For the purposes of paragraph (1)(b), preparing a substance for supply includes packaging the substance or separating the substance into discrete units.
	302.5 Presumption where trafficable quantities are involved
	(1) For the purposes of proving an offence against this Division, if a person has: (a) prepared a trafficable quantity of a substance for supply; or (b) transported a trafficable quantity of a substance; or (c) guarded or concealed a trafficable quantity of a substance; or (d) possessed a trafficable quantity of a substance; the person is taken to have had the necessary intention or belief concerning the sale of the substance to have been trafficking in the substance. (2) Subsection (1) does not apply if the person proves that he or she had neither that intention nor belief.

	Note 1: A defendant bears a legal burden in relation to the matters in subsection (2) (see section 13.4). Note 2: This section does not apply where quantities are combined for the purposes of section 311.2 (see subsection 311.2(3)).
Drug Misuse and Trafficking Act 1985 (NSW)	**1.3 Definitions**
	supply.includes sell and distribute, and also includes agreeing to supply, or offering to supply, or keeping or having in possession for supply, or sending, forwarding, delivering or receiving for supply, or authorising, directing, causing, suffering, permitting or attempting any of those acts or things.
	25 Supply of prohibited drugs
	(1) A person who supplies, or who knowingly takes part in the supply of, a prohibited drug is guilty of an offence.
	29 Traffickable quantity—possession taken to be for supply
	A person who has in his or her possession an amount of a prohibited drug which is not less than the traffickable quantity of the prohibited drug shall, for the purposes of this Division, be deemed to have the prohibited drug in his or her possession for supply, unless— (a) the person proves that he or she had the prohibited drug in his or her possession otherwise than for supply, or (b) except where the prohibited drug is prepared opium, cannabis leaf, cannabis oil, cannabis resin, heroin or 6-monoacetylmorphine or any other acetylated derivatives of morphine, the person proves that he or she obtained possession of the prohibited drug on and in accordance with the prescription of a medical practitioner, nurse practitioner, midwife practitioner, dentist or veterinary practitioner.

Question 6: have you got any thoughts on the international law aspects of all of this, in the sense that there's two UN conventions—I think '67 and '88—that oblige signatory States to criminalise possession, distribution and so forth? Have you got any knowledge of anything emerging in international law or trends, or anything that bears upon this question?

There are 3 UN conventions regarding drugs: The Single Convention on Narcotic Drugs (1961 as amended by the 1972 Protocol), the Convention on Psychotropic Drugs (1971) and the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988). All three conventions take a prohibitionist stance towards illicit drugs (as named in the schedules) for purposes other than 'medical and scientific' and are interpreted by some as being a serious obstacle in the reform of drug policies concerning non-medical use, away from criminalization of drug use, possession, production and distribution (Hall 2018).

However, the last 15 years has witnessed a shift away from a hard stance on prohibition by many UN agencies towards a health and human rights-focussed approach. A range of UN agencies argue that maintaining a zero-tolerance and prohibitionist stance towards drugs conflicts with state responsibilities under international human rights treaties including in the provision of health and harm reduction initiatives (note the Lancet paper on this by (Csete et al. 2016)). Many UN agencies have openly called for the removal of criminal sanctions for personal drug use and possession (see Table 1 below).

While the UN agencies responsible for the international drug conventions (the Commission on Narcotic Drugs - CND, the International Narcotics Control Board - INCB and the UN Office on Drugs and Crime - UNODC) have stopped short of openly advocating for cannabis decriminalisation, the CND and UNODC in particular have notably softened their language around drug regulation in official documents (Bridge et al. 2021). For instance, while the 2024 High-Level Declaration by the CND reaffirmed commitment to the three drug conventions (paragraph 4), they also stated the "*urgent need to take further ambitious, effective, improved and decisive actions, including, where appropriate, innovative measures in accordance with applicable international law, to propel concrete,* comprehensive?balanced?integrated?multidisciplinary.and. scientific.evidence_based.policies.and.initiatives*, in order to promote better implementation of all international drug policy commitments,* placing.the.health.and. well_being?human.rights?public.security.and.safety.of.all.members.of.society?in. particular.those.most.affected.by.or.at.risk.of.illicit.drug_related.activities?at.the. centre.of.our.efforts" (III.A paragraph 27) (Commission on Narcotic Drugs 2024).

The INCB has historically remained opposed to 'flexible' interpretations (Blickman et al. 2019), using their annual reports to "finger wag" at countries adopting more liberal cannabis regulation and harm reduction interventions, including provision of cannabis for medicinal purposes (Australia has at times been included in this finger wagging for the implementation of harm reduction initiatives such as Sydney's Medically Supervised Injecting Centre). However, in statements accompanying the 2021 INCB annual report, the INCB President also agreed that "the use of alternatives to conviction and punishment [for use and possession], as provided for by the conventions, can form an integral part of a balanced and human-rights based approach to drug policy" (INCB 2022).

A range of scholars have additionally interpreted there being flexibility both within the interpretation of UN conventions and also in how countries implement them in domestic responses, leading to a reorientation towards public health approaches for drug use away from criminal sanctions (Collins 2018, Csete et al. 2016). A document by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA 2023) notes three elements concerning the flexibility that countries have in responding to the conventions:

- The safeguard clause[1] referring to constitutional principles and basic concepts
- The different national interpretations of what constitutes a 'criminal offence'
- The explicit possibilities of providing alternatives to conviction or punishment.

Looking at interpretation of the Conventions themselves, a commentary in the Addiction journal by three high-level staff members of the UNODC (Carpentier, Niaz, and Tettey 2018) noted:

    - The Conventions do not impose obligations on signatory countries to incarcerate people who use drugs for consuming drugs (Carpentier, Niaz, and Tettey 2018)
    - "The use of drugs is not identified explicitly as a punishable offence, leaving it to each country to decide whether to penalize non-medical

[1] 1961 Convention, art. 36, para. 1; 1961 Convention as amended, art. 36, para. 1, subpara. (a); 1971 Convention, art. 22, para. 1, subpara. (a)., contain the safeguard clause "subject to its constitutional limitations". 1988 Convention, art.3, para.2 has similar language: "subject to its constitutional principles and the basic concepts of its legal system each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention.". This is interpreted to mean that the requirement to criminalise drug use, possession, cultivation and purchase for personal consumption is subject to each State Party's constitutional principles and basic concepts of legal system and has led to varying legislation to control possession of drugs for personal consumption. See this UNODC presentation for more information: https://www.unodc.org/roseap/uploads/archive/documents/2015/03/drug-law/International_Drug_Control_Conventions_presentation_Myanmar_CM_16.01.2015.pdf

consumption or to prevent such use solely by administrative and penal measures"

- Conventions suggest "the possibility to apply alternatives to incarceration in particular for offences of a minor nature and possession for personal consumption"
- "The Conventions call for prevention, treatment and rehabilitation of people with drug problems, requiring countries to 'coordinate their efforts to these ends".

Many countries have shared the flexible interpretations above, regulating access to cannabis for medical purposes and then decriminalising the personal possession, use and cultivation of cannabis for recreational purposes. Recently, provisions allowing exemptions of the rules for medical and scientific research have been used to pilot trials of commercial supply models (see the response to question 7 on European compliance for more detail on this). Other member states have openly engaged in 'systemic breaches' "whereby a handful of governments openly adopted and embraced alternative drug policies in direct contravention of their treaty obligations" (Sischy and Blaustein 2018) through implementation of legal regulatory systems – notably, without penalty. This incudes the US who previously held a primary role in creating and maintaining the international drug prohibition system (Room 2018).

It is our view that many UN bodies view the conventions as antiquated, not reflective of best practice evidence in relation to the use of drugs and can lead to serious breaches of other international conventions – notably the UN charter of human rights. We believe that the conventions remain unaltered due to logistical and political reasons, not philosophical alignment. Changing the conventions requires the consent of all signatory states and this is unlikely to ever be obtained (as documented by (Hall 2018)) given ongoing international political polarisation concerning approaches to drugs with some member States remaining deeply opposed to reform (Blickman et al. 2019).

For this reason, rather than attempting to revise the conventions, many UN agencies have taken a pragmatic approach to state responses to drug use and possession, highlighting the need for states to confirm to international human rights treaties that include a responsibility for provision of health and harm reduction initiatives. Table 1 below provides a sample of UN documents that have called for the removal of criminal penalties for the personal possession and use of drugs.

Table 1: Selection of UN documents and reports that support removing criminal penalties for personal possession and use of drugs

Date	UN Body/Agency	Doc Number (hyperlink)	Key parts that support removal of criminal penalties for drug use
2010	Report of the Special Rapporteur on the Right of everyone to the enjoyment of the highest attainable standard of physical and mental health	UN General Assembly A/65/255	76. Member States should: • Decriminalize or de-penalize possession and use of drugs. • Repeal or substantially reform laws and policies inhibiting the delivery of essential health services to drug users, and review law enforcement initiatives around drug control to ensure compliance with human rights obligations. 77. The United Nations drug control bodies should: • Integrate human rights into the response to drug control in laws, policies and programmes. • Encourage greater communication and dialogue between United Nations entities with an interest in the impact of drug use and markets, and drug control policies and programmes. • Consider creation of a permanent mechanism, such as an independent commission, through which international human rights actors can contribute to the creation of international drug policy, and monitor national implementation, with the need to protect the health and human rights of drug users and the communities they live in as its primary objective. • Formulate guidelines that provide direction to relevant actors on taking a human rights-based approach to drug control, and devise and promulgate rights-based indicators concerning drug control and the right to health. • Consider creation of an alternative drug regulatory framework in the long term, based on a model such as the Framework Convention on Tobacco Control.
2014	World Health Organization Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations	Doc here	Recommends decriminalizing drug use, including injecting drug use, as doing so could play a critical role in the implementation of its recommendations on health sector interventions, including harm reduction and the treatment and care of people who use drugs
2014	UNAIDS 'the Gap Report'	Doc here	Recommends decriminalising drug use as a means to reduce the number of HIV infections and to treat AIDs
2015	UN General Assembly Resolution	70/1: Transforming our world: the 2030 Agenda for Sustainable Development	65. Taking into account the severe impact that a conviction for a drug-related offence can have on a person's life, consideration should be given to alternatives to the prosecution and imprisonment of persons for minor, non-violent drug-related offences. Reforms aimed at reducing overincarceration should take into account such alternatives.
2015	Human Rights Council: Study on the impact of the world drug problem on the enjoyment of human rights	A/HRC/30/65:	Includes call for member states to consider "removing obstacles to the right to health including by decriminalising the personal use and possession of drugs": II Right to health:

Date	UN Body/Agency	Doc Number (hyperlink)	Key parts that support removal of criminal penalties for drug use
			D. Obstacles to achieving the right to health - criminalizing use and possession, Portugal good (30). (29)"The Special Rapporteur has identified many ways in which criminalizing drug use and possession impedes the achievement of the right to health. He has called for the decriminalization of drug use and possession as an important step towards fulfilling the right to health"
2016	UNAIDS Do no harm: health, human rights and people who use drugs	Doc here	Starts with quote from Ban Ki-Moon advocating a rebalance of international drug policy in compliance with human rights - away from criminalization and incarceration of use - to focus on supply, public health, prevention, treatment and care as well as economic, social and cultural strategies. "Above all, do no harm" "Global efforts to control narcotic drugs and psychotropic substances are based on the premise that the misuse of these substances can lead to serious harm to the individual and society." "the harms caused by international drug control to people who use drugs require much greater attention" "people who use drugs, especially those who inject drugs, have been isolated and often denied the means to protect themselves from HIV, hepatitis C virus, tuberculosis and other infectious diseases"
2017	UNAIDS Joint UN Statement on Ending Discrimination in Healthcare settings (noting that UNODC only UN agency that didn't endorse this statement)	Document here	We, the signatory United Nations entities, call upon all stakeholders to join us in committing to taking targeted, coordinated, time-bound, multisectoral actions in the following areas: **Reviewing and repealing punitive laws that have been proven to have negative health outcomes and that counter established public health evidence.** These include laws that criminalize or otherwise prohibit gender expression, same sex conduct, adultery and other sexual behaviours between consenting adults; adult consensual sex work; **drug use or possession of drugs for personal use;** sexual and reproductive health care services, including information; and overly broad criminalization of HIV non-disclosure, exposure or transmission.
2017	UN General Assembly: International cooperation against the world drug problem. Report of the Secretary General	A/72/225	**2. Proportionate and effective policies and responses** 53.UNODC, together with WHO, organized a meeting of experts from approximately 30 countries to exchange **experiences on effective strategies for treatment and care as alternatives to conviction or punishment for people with drug use disorders in contact with the criminal justice system**. A handbook aimed at mapping existing experiences and good practices in this area is currently under development, in collaboration with WHO.
2018	United Nations system common position supporting the implementation of the international	CEB/2018/2 (Annex I)	Document reiterates UN commitment to evidence and human rights-based approach to world drug problem within framework of SDGs.

Date	UN Body/Agency	Doc Number (hyperlink)	Key parts that support removal of criminal penalties for drug use
	drug control policy through effective inter-agency collaboration		This document supports "policies that put people, health and human rights at the centre' and promotes 'measures aimed at minimizing the adverse public health consequences of drug abuse, by some referred to as harm reduction', 'sustainable livelihoods through adequately-sequenced, well-funded and long-term development-oriented drug policies in rural and urban areas affected by illicit drug activities', and '**alternatives to conviction and punishment in appropriate cases, including the decriminalization of drug possession for personal use".**
2018	Implementation of the joint commitment to effectively addressing and countering the world drug problem with regard to human rights: Report of the Office of the UN High commissioner for human rights	A/HRC/39/39	**14. A major obstacle to accessibility of treatment is the criminalization of personal use and possession of drugs.** A study shows that over 60 per cent of people who inject drugs have been incarcerated at some point in their lives. The Committee on Economic, Social and Cultural Rights (see E/C.12/PHL/CO/5-6), the United Nations High Commissioner for Human Rights (see A/HRC/30/65), the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (see A/65/255) and the Global Commission on HIV and the Law have recommended that **consideration be given to removing obstacles to the right to health, including by decriminalizing the personal use and possession of drugs**. Reports also indicate that decriminalizing drug use and possession, together with the provision of a continuum of support, prevention and treatment measures, can result in a decrease in overall drug use and in the drug-induced mortality rate. 15. In its submission, Portugal stated that "criminal sanctions are ineffective and counterproductive and do not address the consequences of drug use". Its policy on drugs encompasses a model of decriminalization as part of a broader approach designed to dissuade drug use and promote measures directed at public health concerns, with social benefits for all involved. The implementation of a more health- and evidence-based approach has been facilitated by the decriminalization of consumption and possession for personal use of all drugs, in quantities below defined thresholds.
2019	UN system coordination Task Team on the Implementation of the UN System Common Position on drug-related matters: What have we learned over the past ten years: A summary of knowledge acquired and produced by the UN system on drug-related matters	Document here	**3.4 Proportionate and effective policies and responses (including evidence on alternatives to incarceration and decriminalization/depenalization of drug use)** The international drug control conventions expressly allow the provision of measures such as treatment and education as alternatives to conviction or punishment for personal consumption offences and for all other relevant offences in "appropriate cases of a minor nature". Examples of this approach are the diversion of minor cases from the criminal justice system through the exercise of police or prosecutorial discretion, and the use of non-custodial measures as an alternative to pretrial detention or imprisonment. This is in line with the international drug control conventions and with the requirements of an effective and human rights-compliant penal policy.

Date	UN Body/Agency	Doc Number (hyperlink)	Key parts that support removal of criminal penalties for drug use
			The excessive use of imprisonment for drug-related offences of a minor nature is indeed ineffective in reducing recidivism, as well as having a disproportionate effect on the health and well-being of those arrested for minor offences. It also overburdens criminal justice systems, preventing them from efficiently coping with more serious crime. The provision of evidence-based treatment and care services to drug-using offenders, as an alternative to incarceration, has been shown to substantially increase recovery and reduce recidivism. Even the most costly forms of alternative interventions (such as drug courts, though care must be taken to ensure such alternatives do not result in forced treatment) are more cost-effective than imprisonment, although those approaches require effective coordination between the health and justice systems. Overuse of imprisonment for minor drug-related cases may lead to overcrowding and to the infringement of the human rights of those imprisoned, and may exacerbate the transmission of HIV and other diseases among people who inject drugs. In many States, low-level offences such as small-scale drug dealing or trafficking are punished with harsher penalties than other serious crimes, raising questions about proportionate sentencing.136 The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)137 encourage the use of non-custodial measures at all stages of criminal proceedings, including diversion and alternatives to pretrial detention, as well as alternatives to imprisonment at the sentencing and post-sentencing stages. They highlight that non-custodial measures serve to reduce overcrowding and to meet more effectively the social reintegration needs of offenders in the community. The Tokyo Rules recommend a wide range of non-custodial measures, suitable for different types of offences, which should be applied considering not only the nature and gravity of the offence but also the personality and background of the offender, the rights of victims and the protection of society.
2019	WHO - The public health dimension of the World Drug Problem	WHO/MVP/EMP/2019.02	Addressing structural issues is part of a public health approach, and on the basis of evidence, WHO has recommended that countries work towards decriminalization of consumption and possession of drugs for personal use, recognizing the major health care needs of people who use drugs and the importance of providing holistic care for them and ensuring they are not discriminated against in health care settings (p.8)
2019	UNAIDS - Health, rights and drugs. Harm reduction, decriminalization and zero discrimination for people who use drugs	Doc here	Calls on countries to commit to human rights based, people centred public health approach to drug use. Includes harm reduction approach to injecting drug use and decrim. Overall calls for a refocus of global drug policy to put public health and human rights at the centre “Decriminalization of drug use and possession for personal use reduces the stigma and discrimination that hampers access to health care, harm reduction and legal services. People who use drugs need support, not incarceration.”
2020	UNDP – International Guidelines on Human Rights and Drugs Policy	Doc here	**1.1 Harm reduction**

Date	UN Body/Agency	Doc Number (hyperlink)	Key parts that support removal of criminal penalties for drug use
			iv. Exclude from the scope of criminal offences, or other punitive laws, policies, or practices, the carrying and distribution of equipment, goods, and information intended for preventing or reducing the harms associated with drug use, ensuring also that criminal conspiracy laws do not capture people using drugs together for this purpose.

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Question 7: How have some of the European nations managed being part of the EU collective and going their own way on cannabis decriminalisation and legalisation? Germany—is Malta in Europe? I think it is. Germany, Malta, Switzerland now, Belgium—how are they managing that?

International and EU regulation of cannabis

Over the last 20 years a range of approaches to the regulation of cannabis have emerged in Europe, with a general trend towards reducing or removing criminal penalties (EMCDDA 2023). However, the detailed regulatory landscape across Europe is complex. For the purpose of this question and simplicities sake, we will use the examples of cannabis regulation in Germany, Malta, Switzerland and the Netherlands to explain how progressive cannabis regulation is emerging in parts of Europe in the shadow of the UN drug conventions.

The UN conventions have been signed by all EU Member States (EMCDDA 2023). Although as noted in response to Q6 – the UN conventions do not require that member states make drug use a criminal offence and many (including members of the UNODC) have interpreted the UN drug conventions as providing flexibility to nation states in their response to possession and cultivation of cannabis (Carpentier, Niaz, and Tettey 2018).

There is no harmonised EU law on cannabis with EU member states able to decide how they regulate cannabis use and possession (EMCDDA 2023). Drug trafficking however is covered by a 2004 EU Council Framework Decision (2004/757/JHA) but the definition of what drugs are included are also left to the interpretation of member states(EMCDDA 2023). Possession for personal consumption is explicitly excluded from this council Framework Decision (Article 2(2))(EMCDDA 2023).

The EU also provides guidance to states through a drug strategy, and actions for the EU under the EU drugs action plan. The most recent EU Drugs Strategy and action plan (2021-2025) does not advocate for specific policy responses to cannabis, but does promote ‘alternatives to coercive sanctions for people found in possession of drugs for personal use’ (Bąkowski 2024). A paper to the 67 session of the CND outlining treaty compliance options for cannabis regulation in the EU, noted that constitutional and supreme courts of many nation states have invalidated provisions criminalising personal conduct (concerning drug-related activities) based on constitutionally-recognised human rights (Riboulet-Zemouli and Jeanroy 2023). The same paper notes that personal use and possession can be extended to the activities of buying and cultivation for personal purposes since personal use and possession are only possible after substance acquisition (Riboulet-Zemouli and Jeanroy 2023).

Overview of approaches to cannabis regulation in Europe

In order to detangle the different regulatory models in operation in Europe it is useful to first distinguish between supply and personal possession and use. There are many more countries in Europe that allow (in one form or another) cannabis possession and use, and far fewer with regulated supply options for recreational use of cannabis.

Use and possession

Approaches to possession and use across Europe are varied (Greer et al. 2022), but can be broadly described as one of four systems that have either:

- Removed all penalties for use and possession from the criminal code
- Removed all penalties for use and possession from the criminal code but apply civil or administrative sanctions instead e.g. a fine, warning, referral to education or treatment or other diversionary tactic
- Retained penalties for use and possession in law but choose to deal with these 'offences' outside of the criminal justice system as above. There are many examples of this in Australia – such as diversion through Drug Courts and the Cannabis Cautioning Scheme
- Retained penalties for possession in law but no penalties (civil or administrative) applied for personal possession.

Malta became the first EU country to remove criminal penalties for use personal possession, and cultivation of cannabis in December 2021 and for use in private homes.

Models of supply

There are no full legal, commercial markets operating in Europe as per parts of the United States and Canada. It is unclear if creating a commercial regulated cannabis market for recreational use would contravene the 2004 EU Council Framework described above or obligations under the UN drug treaties (Bąkowski 2024) – although noting that note all countries in Europe are part of the European Union.

While Germany did propose the introduction of commercial production and trade of cannabis for recreational purposes, it appears that this policy was revised after meetings with the European Commission where perceived violations with UN international drug treaties were raised (Manthey, Rehm, and Verthein 2024).

However, supply of cannabis is permitted in the European nations selected for review here, under the following models that appear to circumvent the perceived restrictions of the treaties:

- Legal commercial markets introduced as a scientific pilot to assess the impact of commercial supply for non-medical use limited by time and place (Switzerland and Germany)
- Allowing not-for-profit supply through cannabis social clubs (Germany, Malta and Switzerland)
- Allowing people to self-supply through home cultivation of cannabis for personal use (Germany, Malta and Switzerland)

Additionally, the Netherlands have laws that criminalise cannabis possession and sale so that they can formally meet the treaties (Room 2018). However, the courts and government have an official policy of toleration regarding cannabis so that small amounts can be sold and consumed within regulated "coffee shops".

An overview of the different regulatory systems for adults in Germany, Malta, Switzerland and the Netherlands are provided in the table below (the ACT is provided for a comparison), followed by a brief explanation of the different regulatory systems for supply of cannabis.

Overview of cannabis regulation (for people aged 18 and over) in Germany, Malta, the Netherlands and Switzerland

Country	Commercial sale of cannabis permitted in law?	Not-for-profit supply allowed in law?		Criminal penalties removed from law for use and possession?	Non-criminal responses to use and possession exist?
		Home growing permitted?	Cannabis social clubs permitted?		
Germany	Yes┼ *	Yes	Yes	Yes	No
Malta	No	Yes	Yes	Yes	No
Switzerland	Yes┼	Yes	Yes	Yes~	Yes
Netherlands	No	No	No	Yes	Yes
ACT	No	Yes	No	Yes	No

┼ As part of a pilot program within strict parameters

*Has been sanctioned but yet to be implemented

Sale only through licensed coffee shops

~Possession of less than 10 grams not punishable. More than 10 grams can attract fine or criminal prosecution.

Scientific pilots: Switzerland and Germany

One of the general obligations set out under Article 4 (c) of the *Single Convention on Narcotic Drugs of 1961* is to "limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs".

It has been proposed that this clause makes it possible to operate a legally regulated cannabis market under international drug control treaties, as long as it is considered a 'policy experiment' (Lines and Barrett 2018). As noted by some scholars, the lack of

concrete definition of 'medical and scientific purposes' leaves it open to interpretation and therefore allows countries to make cannabis and other drugs available as long as it is for scientific purposes (Lines and Barrett 2018).

Switzerland, which is not part of the EU, revised their national NarcA law (which came into effect May 2021), allowing pilot trials to dispense cannabis for non-medicinal (i.e. recreational) purposes. There are seven trials in each of the major cities of Switzerland, limited to a maximum participation of 5,000 participants in each (Federal Office of Public Health 2024b). The nature of the trials varies, allowing a comparison of different distribution systems and regulation models and their impacts on a range of outcomes. Cannabis can be distributed via pharmacies, specialist (for-profit) stores, cannabis social clubs and non-profit specialist stores (Federal Office of Public Health 2024a). The trials are being overseen by the Swiss Federal Office of Public Health

In Germany (which is a EU member state), the German government announced the introduction a new model to allow for the controlled sale of cannabis to adults for recreational use in 2021. The aim of the model was to improve public health, public safety and protect youth. However, following a meeting with the European Commission, this plan was revised, with the government presenting a new two-pillar model in April 2023 (Bąkowski 2024). The first pillar removes criminal penalties for possession, use and cultivation of cannabis and allows self-supply of cannabis through home growing or through not-for-profit community-based associations i.e. cannabis social clubs – discussed below.

The second pillar foresees commercial cannabis production in licensed shops in a limited number of regions as part of a 5-year scientific pilot project (seemingly following the blueprint used by the Swiss government), although there is limited information available about how and when this might be implemented (Bąkowski 2024).

Self-supply: rules around home cultivation of cannabis and cannabis social clubs

Approximately 35 jurisdictions internationally have adopted provisions allowing for home cultivation of cannabis, including the ACT in Australia. It is argued by some scholars and member states that self-supply of cannabis either through home cultivation or via communal growing (see below) are allowed within the scope provided by the UN drug Conventions, as an extension of possession and personal use (Blickman 2018, Belackova, Tomkova, and Zabransky 2016, Belackova, Roubalova, and van de Ven 2019).

Cannabis Social Clubs

Cannabis Social Clubs (CSCs) are membership-based, legally constituted, not-for-profit organisations where adult members can collectively cultivate cannabis for their own personal consumption. Supply is typically to registered members only. There are

many examples of cannabis social clubs operating internationally both in legally sanctioned environments (as in Uruguay and parts of Spain), and in unregulated context (e.g. Belgium and the Czechia). The rules for clubs and their administration varies greatly between, and even within countries (depending on which level of government they are regulated at). Most often, CSCs are conceptualised as an extension of home grown supply options, as they essentially provide an alternative method/space for cultivation (Pardal et al. 2023).

Swiss cannabis clubs can operate under the authorised cannabis pilot trials (although details of administration and operation of the clubs is not readily available in English yet. German cannabis social clubs fall under their 'two pillar' approach to cannabis regulation. The German Cannabis Act ('Cannabisgesetz' or CanG) came into force 1 April 2024 removing relevant criminal penalties for possession, and a legal exception for distribution of cannabis via social clubs entered into force on 1 July 2024. To access cannabis through a social club requires registration with a CSC as a member (Manthey, Rehm, and Verthein 2024). There are a number of laws governing the operation of clubs, details of which can be found here.

Malta removed criminal penalties for personal use and cultivation of cannabis in December 2021. The rationale for this policy shift was to prioritise public health and reduce harms by shifting from an unregulated illicit black market to a regulated non-profit sector that avoids commercialisation and does not promote or encourage use (Bąkowski 2024). In Malta, CSCs are called 'cannabis harm reduction associations'. Members must be at least 18 years old and can only belong to one association. Associations are capped at 500 members, cannot be located near schools or youth clubs, cannot advertise and can only distribute cannabis they have grown themselves to their members. Tourists and short-term visitors cannot access cannabis from the Associations. The Associations must be registered with the governing body - the Authority for the Responsible Use of Cannabis (ARUC), and individual members must be registered with the club (Bąkowski 2024). The first licenses for cannabis associations were granted in December 2023.

The Netherlands coffee-shop model

Under national law it remains illegal to possess, supply or produce drugs in the Netherlands. However, small amounts of cannabis can be purchased in "coffee-shops" and consumed on premise or taken away without fear of prosecution. Coffee shops exist due to an official policy of tolerance regarding cannabis and other soft drugs and non-prosecution by the Public Prosecution Service (Government of the Netherlands 2024b).

Also of note is that prior to the introduction of the 1988 Illicit Traffic Convention (one of the three UN drug conventions), the Netherlands made an official "'Reservation' to

article 3, paragraphs 6, 7 and 8 stating, "[t]he Government of the Kingdom of the Netherlands accepts the provisions of article 3, paragraphs 6, 7, and 8, only in so far as the obligations under these provisions are in accordance with Dutch criminal legislation and Dutch policy on criminal matters." (van Ooyen-Houben 2017). The International Law Commission note that Reservations can be made by a State when signing or ratifying a treaty "whereby the State or organization purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State".

As noted by van Ooyen-Houben, the Netherlands made the Reservation in an attempt at "preserving the fundamental role of the national expediency principle, especially in its drug policy, and, as can be reasoned, specifically with regard to tolerance of criminal acts related to personal use. This reservation preserved the existing policy of tolerance with regard to coffee shops in the Netherlands" (2017).

Nevertheless, the Netherlands have been criticised by the UN's International Narcotic Control Board (INCB) and other European states for their coffee shop policy, but have persisted with the policy over many years without sanction (van Ooyen-Houben 2017). Historically, the Netherlands have defended their drugs policies as being in the best interest of public health and in combating organised crime, justifying coffeeshops by reason of the expediency principle as one of the basic legal concepts protected in the UN drug control conventions (Blickman 2018).

The history and operation of Dutch coffee shops

Coffee shops have existed in the Netherlands since 1968 and operated 'underground' until a change of the Opium Act in 1976 saw them transform into open enterprises (van Ooyen-Houben 2017). The revised 1976 Act removed drug use as a criminal act and reduced the possession of cannabis for personal use from a crime to a minor infraction (van Ooyen-Houben 2017). National drug policy also shifted to primarily acknowledge the use of drugs as a public health rather than a criminal justice issue, and a separation of cannabis from other 'hard drugs' (van Ooyen-Houben 2017). What followed was a system of tolerance for cannabis use and coffee shops by the police and public prosecutor, so while the law remains it is unenforced (van Ooyen-Houben 2017).

> "The judicial basis for the tolerance is the principle of discretionary powers of the Public Prosecutor, the "expediency principle." This principle, laid down in the Code of Criminal Procedure, gives the Public Prosecutor the power to refrain from prosecution of offences if this serves a general public interest" (van Ooyen-Houben 2017).

This tolerance is, however, subject to rules. National 'AHOJ-G' guidelines govern the retail sale of cannabis via coffeeshops, allowing it to be tolerated where they meet the following criteria: no overt advertising, no hard drugs, no nuisance, no underage clientele and no large quantities (Government of the Netherlands 2024b). The

Guidelines also determine that use, possession and home cultivation should not be prosecuted (Pardal et al. 2023).

In 1996 the national government provided local municipalities with a legal instrument and decision-making powers over the decision to allow coffeeshops (regardless of adherence to the AHOJ-G criteria). Some have opted for a zero-tolerance approach not allowing any coffee shops. Others municipalities have imposed licensing and additional operating restrictions for coffeeshops (for instance restricting the number of venues, or requiring shops to be a certain distance from schools)(Korf 2019).

While these provisions regulating the 'front door' of coffeeshops were seen to be in scope of the UN provisions, regulating the 'backdoor' of commercial supply, was not seen as possible under the conventions (Blickman 2018). Until recently, coffeeshops have relied entirely on the blackmarket production of cannabis for produce. In 2023 the Dutch government introduced a pilot scheme to evaluate the possibility for regulating the supply of cannabis to coffeeshops, and the impact on municipalities. Titled the 'Controlled Cannabis Supply Chain Experiment', the pilot sees coffee shops in participating municipalities sell regulated, quality-controlled cannabis (Government of the Netherlands 2024a).

The pilot scheme follows the publication of a Manifest Joint Regulation signed by Municipalities that called for the introduction of certified and regulated cannabis cultivation in order to better protect the health of consumers, improve safety and more effectively control cannabis-related organised crime (Korf 2019). Municipalities criticised the interpretation of international drug conventions as disallowing certified and regulated cannabis cultivation as "based on a onesided and politically biased interpretation of the treaties" (Korf 2019). A study commissioned by three cities with coffeeshops found that regulation of cannabis cultivation for reasons of public health were supported by international human rights conventions regarding health and safety (Korf 2019). The report concluded that "positive human rights obligations could result in allowing or even requiring the regulated production of and trade in cannabis" (Korf 2019).

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Commonwealth drug possession laws interaction with state/territory laws

The Commonwealth Criminal Code outlines the 'serious drug offences', which include drug possession. Our understanding is that this is primarily trialled under state and territory law, and the existence of these laws in Commonwealth law is for instances where possession is in relation to other offences or of 'Commonwealth interest', and was added to Commonwealth law in 2005 for the purpose of creating consistency with the state and territory legislations. In this document we have provided the relevant section of the Commonwealth legislation as well as other relevant information on this issue.

Commonwealth Criminal Code Act 1995
308.1 Possessing controlled drugs (1) A person commits an offence if: (a) the person possesses a substance; and (b) the substance is a controlled drug, other than a determined controlled drug. Penalty: Imprisonment for 2 years or 400 penalty units, or both. (2) The fault element for paragraph (1)(b) is recklessness. (3) If: (a) a person is charged with, or convicted of, an offence against subsection (1); and (b) the offence is alleged to have been, or was, committed in a State or Territory; the person may be tried, punished or otherwise dealt with as if the offence were an offence against the law of the State or Territory that involved the possession or use of a controlled drug (however described). Note: Subsection (3) allows for drug users to be diverted from the criminal justice system to receive the same education, treatment and support that is available in relation to drug offences under State and Territory laws. (4) However, a person punished under subsection (3) must not be: (a) sentenced to a period of imprisonment that exceeds the period set out in subsection (1); or (b) fined an amount that exceeds the amount set out in subsection (1).

Prior to 2005, drug possession was not an offence under Commonwealth law (see NSW Courts for history). The *Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Bill 2005* made amendments to the Criminal Code including the addition of drug possession as an offence. The Model Criminal Code Officers Committee (MCCOC) Serious Drug Offences Report (1995) was the basis for this legislation, however including an offence of drug possession was not recommended in the 'Model Criminal Code'. The explanatory statement to the 2005 Bill provides further detail about the purpose of this addition:

"If the prosecution shows that there is a trafficable quantity of controlled drug *involved in the offence and engages the trafficable quantity presumption, proposed subsection 302.5(2) makes available to the defendant a defence of absence of commercial purpose.* If the defendant can prove on the balance of probabilities that he or she did not have both the relevant intention and belief, the defendant would then only be guilty of a base possession offence *under proposed section 308.1, rather than any of the commercially motivated trafficking offences in proposed Division 302*."

"The purpose of subsections 9647(9) (1) is to ensure that State and Territory drug diversion programs will be available to drug users who are charged with or convicted of with this offence. *The Australian Government has worked with States and Territories, through the Council of Australian Governments, to develop and fund the Illicit Drug Diversion Initiative. The primary objective of the Diversion initiative is to increase incentives for drug users to identify and treat their illicit drug use early. It provides an opportunity for drug users early in their relationship with the criminal justice system to get the education, treatment and support they need for addressing their drug problem, and at the same time, avoid incurring a criminal record. If an offender chooses not to be 'diverted' into education or treatment, or fails to attend or participate in the required education or treatment sessions, they will be returned to the criminal justice system"*

The Commonwealth Director of Public Prosecutions (CDPP) details the following in their 'Charging guidelines for serious drug offences under Part 9.1 of the Criminal Code:

"*In some cases the Commonwealth Director of Public Prosecutions (CDPP) will accept and prosecute Criminal Code serious drug offences referred to it by State or Territory police where:*
• no equivalent State or Territory offence is available (e.g. an importation offence);
• the matter involves other serious federal offending which should properly be prosecuted in a single trial or by a single prosecution agency;
• there is a significant connection to import or export activity; or
• the matter is of particular interest to a Commonwealth agency. The mere fact that a Commonwealth offence may carry a higher penalty is not, of itself, a sufficient reason for preferring Commonwealth offences to State or Territory offences."

Whilst the Commonwealth rarely prosecutes drug possession on its own, the mere existence of the law should be considered by NSW if considering a different regulatory scheme of cannabis or any other drug. We were not able to locate any recent data about the number of offences trialled under Commonwealth law for drug possession, however a report from 2014 reported 3 sentencing outcomes with a principal offence of S308.1 (possessing controlled drugs) between 2008 and 2012 (other cases may have involved a charge against S308.1 in addition to another principal charge, such as import or export).

Other jurisdictional drug possession laws that conflict with Commonwealth law
The ACT approach to cannabis possession did not remove the offence of possession from the legislation, but instead provided an exemption for adults from the offence. As we do not have a legal background we cannot comment on the sufficiency of the ACT legislation as a defence against Commonwealth law. However, a paper by legal scholar Murphy (2020) covers this issue in depth, and considers whether the conflict of the two laws is an issue conceptually and in practice. Murphy argues the ACT law may not sufficiently provide a defence against the Commonwealth law, and may therefore put people at risk of being prosecuted under Commonwealth law for cannabis possession. However, he explains that in practice, this appears unlikely considering the guidelines from the CDPP and the small number of sentencing outcomes against S308.1 of the Commonwealth Criminal Code. Murphy provides additional guidance on how this conflict could have been minimised by legislation amendments.

We recommend consulting the paper and other legal experts on this issue, but have provided some quotes below that may be useful.

"*The legal interaction of the new ACT law and the federal Criminal Code is controversial (and will be considered in the next section), however the effect of the new law within the ACT's legal landscape is straightforward. Essentially,* the.new.ACT.law.provides.a.defence.to.the.existing.low_level.cultivation.and.possession.offences – *which relate to cultivation of two plants or less and possession of 50 grams or less – by stating that each offence 'does not apply' to adults who possess or cultivate the cannabis within the ACT. Limits and protections have been built into the new law. Children are not affected by the recent decriminalisation, accordingly all pre-existing criminal offences continue to apply to children (including, most relevantly, possession of 50 grams or less or cultivation of two plants or less). Children are also protected by new criminal offences of storing cannabis within the reach of a child and exposing a child to cannabis smoke or vapour. It is an offence to smoke cannabis in public, and is also an offence to cultivate cannabis in a place accessible to the public (or a place where more than four plants are being grown). It remains an offence to grow cannabis artificially (ie, hydroponically). Perhaps most significantly, it remains an offence to supply cannabis to another person*." (Murphy, 2020, P.4, emphasis added)

"*The above analysis has suggested that,* in.order.to.engage.the.section.979¡7.defence.to.federal.prosecution?state.or.territory.law.must.positively.authorise.conduct. Unfortunately.for.proponents.of.the.new.ACT.law?it.does.not.go.so.far?instead.serving.merely.to.demarcate.certain.conduct.as.not.forbidden...*There are at least two ways that the ACT Parliament could have positively authorised cannabis possession and cultivation so as to successfully engage the defence to federal prosecution in section 313.1. First, the ACT could have created a statutory permit or licencing scheme, of the sort referred to in the explanatory memorandum to section 313.1.77 Alternatively, the ACT could have passed a provision positively authorising low-level cannabis possession and cultivation, rather than merely effecting a statutory non-prohibition. An example of such a provision is provided in the appendix to this article and designedly uses the following statutory phrases: 'protection from criminal liability', 'not criminally responsible' and 'authorisation, justification or excuse'. The first phrase is used because it appears in Odgers' example, which was apparently approved in Baker v Chief of the Army.78 The second phrase is used because it also appears in Odgers' judicially approved example, and constitutes a well-recognised formulation of statutory excuses.79* The.explicit.inclusion.of.the.words›authorisation?justification.or.excuse".is.recommended.to.avoid.the.possibility.that.the.provision.will.operate.merely.as.a.non_prohibition?rather.than.a.positive.authorisation." (Murphy, 2020, p.11-12, emphasis added)

"Even.if.the.ACT.Police.or.AFP.referred.a.matter.to.the.CDPP.it.seems.unlikely.that.the.case.would.be.prosecuted. *The CDPP guidelines with respect to federal drug offences acknowledge, by quoting from the relevant explanatory memorandum, that those offences are 'principally targeted at organised illicit drug traders and commercially motivated drug crime'. Unsurprisingly,* this.means.that.low_level.possession.offences.are.exceedingly.rarely.prosecuted.under.federal.law?whether.the.controlled.drug.is.cannabis.or.another.prescribed.drug *(such as heroin, cocaine, methamphetamine and pseudoephedrine). In fact, it appears that over a recent five-year period only three people were sentenced in higher courts across Australia for possessing less than a marketable quantity of any controlled drug contrary to section 308.1(1) of the federal Criminal Code.84* It.is.thus.safe.to.assume.that.ACT.residents.possessing.and.

cultivating.small.amounts.of.cannabis.for.personal.use.are.unlikely.to.be.deemed.appropriate.targets.for.federal.prosecution.” (Murphy, 2020, p.13, emphasis added)