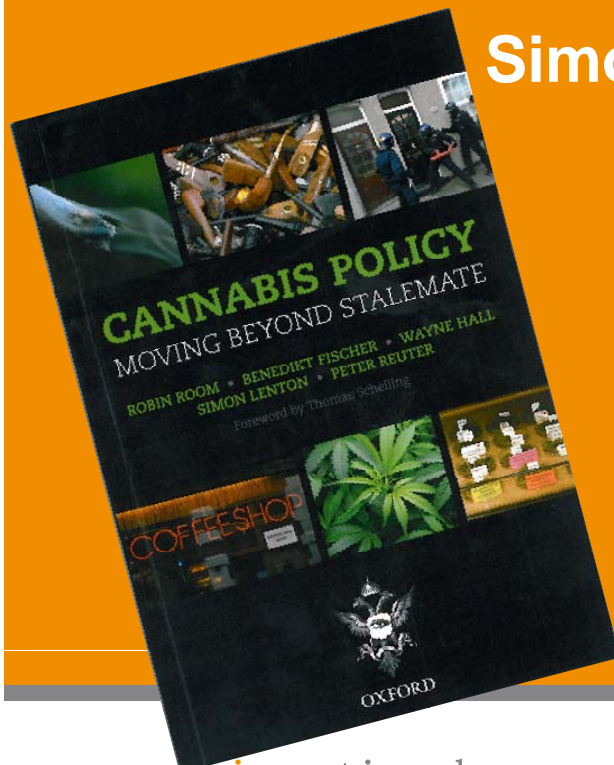


# Introduction to law reform options: **Clarifying terminology**

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Room, R., Fischer, B., Hall, W., Lenton, S. and Reuter, P. (2010) *Cannabis policy - moving beyond stalemate*. New York: Oxford University Press.

# Terms and ideas

- *De-penalisation, decriminalisation, legalisation*
- ‘Law on the books’ (*de jure*) versus ‘law in action’ (*de facto*)
- Country wide classifications are difficult
- Conceptual ‘ideal-types’ of reform models for purpose of analysis, yet reality in national jurisdictions is messy or ‘non-ideal’

# Legislative options

1. Total Prohibition - **illegal and strict criminal penalties**

Legislative Prohibition with an Expediency Principle - **'defacto legalization'**

2. Prohibition with Civil Penalties - **'decriminalized' – illegal but civil penalties**

3. Partial Prohibition - **'legalization' of small amounts**

4. Regulated availability - **legal government controlled supply**

5. Free Availability - **full legalization – no controls**

(McDonald et al., 1994)

# Cannabis Control/Reform types

Room, Fischer, Hall, Lenton, Reuter (2010)

- Full prohibition (i.e., no reform)
- Prohibition with cautioning or diversion ('depenalization')
- Prohibition with civil penalties ('decriminalization')
- Partial prohibition, based on
  - a) '*de facto*' legalization (e.g., expediency principle)
  - b) '*de jure*' legalization (including Medical Marijuana - example of regulated availability)

# Full Prohibition

- Possession, use, manufacture, supply is illegal
- Criminal, rather than civil, penalties apply
- The status quo in many places
- Issues:
  - Clearly consistent with the international drug treaties
  - Seen as giving an 'unambiguous message' against drugs
  - Evidence suggests deterrent effects are weak
  - Individual social costs of conviction are great
  - Economic costs of enforcement are considerable
  - Focus on use reduction doesn't consider net harm

# Prohibition with cautioning or diversion (de-penalization)

- Use of informal or formal diversion measures at various stages of criminal justice process (e.g., arrest, pre-trial or sentencing level)
- Examples:
  - Diversion schemes in Australian states and territories
- Issues:
  - Usually only apply to small number of offences - Use, limited prior offences
  - Only selective reduction of punitive effects (e.g., conviction may remain)
  - The way it is implemented can result in 'net-widening' & decr. 'warnings'
  - Best use of limited (and valuable) treatment resources?
  - Effectiveness?

# Prohibition with civil penalties ('decriminalisation')

- Possession, use is illegal, but civil, rather than criminal, penalties apply (Fine or suspension of MDL) to some offences. Criminal penalties to others.
- Australia (SA, ACT, NT), Belgium, Italy, Portugal (some aspects?)
- Issues:
  - No worse than strict prohibition at deterring drug use
  - Social costs of infringement far less than conviction
  - Financial costs of far less than strict prohibition
  - The way it is implemented can result in 'net-widening'
  - Can disadvantage those less able to pay fine – who may get criminalised
  - The proportion of fines paid can be low

# *De facto* Legalisation

- Cannabis possession prohibited by law yet key principles of justice (e.g., 'expediency') provide basis of non-enforcement of given law in practice under specific circumstances
- Parts of Netherlands, Germany, Austria, Spain
- Issues:
  - Dutch experience is that cannabis supply has been separated by that for other drugs by this model
  - Has been implemented despite the international drug treaties
  - Increased number cannabis coffeeshops *may* have increase use by youth
  - Pressure from other countries and international bodies
  - If wholesale supply is not legal – the 'backdoor' problem



# *De jure* Legalisation

- Legality of cannabis possession/use implicitly or explicitly enshrined in standing drug control law
- Alaska: Supreme Court (1975) barred criminalization of use in privacy of home – spatial ‘legalisation’ - in state law
- India – govt. controlled Bhang shops, Cannabis Social clubs in Spain
- ‘Medical Marijuana’ control systems in US states & Canada: Licensed ‘medical marijuana’ users permitted by law to obtain, possess & use cannabis products - Legalisation for select population
- Issues:
  - Probably in violation of International Treaties Except - for ‘treatment’ – ie MM

# Cannabis Control/Reform types

Room, Fischer, Hall, Lenton, Reuter (2010)

- Full prohibition - Illegal and strict criminal penalties applied
- Prohibition with cautioning &/or diversion to treatment ('depenalization')
- Prohibition with civil penalties ('decriminalization') – illegal but civil penalties
- Partial prohibition, based on
  - a) 'de facto' legalization – illegal on books but not implemented uniformly
  - b) 'de jure' legalization - Legal on the books (includes 'Medical Marijuana')

# Cannabis Law

## Australia

- 35% ever used cannabis (2010)
- 10% used in last 12 mths (2010)



## Cannabis Law

Prohibition with civil penalties  
(infringement notices)

- South Australia (1987)
- Australian Capital Territory (1992)
- Northern Territory (1996)
- Western Australia (2004-2011 (07))

Prohibition with cautioning

- Tasmania (1998)
- Victoria (1998)
- New South Wales (2000)
- Queensland (2001)
- Western Australia (1998-2004, 2011)