

# **CANNABIS & THE LAW IN QUEENSLAND**

## ***SUBMISSION TO CRIMINAL JUSTICE COMMISSION ADVISORY COMMITTEE ON ILLICIT DRUGS***

**by J E Ransley, Executive Member, QCCL**

### **PART I: COMMENTS ON DISCUSSION PAPER**

The authors of the Discussion Paper deserve to be congratulated. The Paper contains much new material about cannabis supply and cannabis law enforcement in Queensland, as well as a valuable survey of Queensland cannabis use and attitudes to use. The decision to restrict the scope of the study to cannabis seems very sensible. The critical review of the research literature by Peter Nelson is excellent.

The first part of the submission comments on some issues raised in the Paper and some that are not:

- Fitzgerald Inquiry
- Why People Take Drugs
- Drug Law Enforcement Costs
- Fixed Costs?
- Workplace Drug Testing
- Drug-Law Harm to Civil Liberties

### **FITZGERALD INQUIRY**

The Criminal Justice Commission was one of the outcomes of the Fitzgerald Inquiry. It is therefore appropriate to recall the views of Commissioner Fitzgerald, insofar as they touch on the issues raised in the Discussion Paper:

Properly enforcing laws which seek to prohibit behaviour which is widespread, difficult to detect and difficult to prove places enormous demands upon law enforcement resources. Laws should reflect social need, not moral repugnance. Unless there are pressing reasons to do so, it is futile to try and stop activities which are certain to continue. To do so takes resources away from policing other activities which the community considers undoubtedly wrong, such as violence and fraud. (Report of a Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, 1989, Sect 6.3.2)

The Australian laws relating to cannabis are excellent examples of 'laws based on moral repugnance'. As described in the Discussion Paper and elsewhere, the use of cannabis in Australia is widespread, not influenced by fashion or generational factors, and seems 'certain to continue'. A consideration of why people take drugs generally makes it clear that drug use will not go away and that our laws need to take this into account - otherwise they are bound to futility.

## WHY PEOPLE TAKE DRUGS

The following statement appears on p42 of the CJC Discussion Paper: "The fundamental question - Why do people use drugs or any particular drug? - is a tremendously complex issue on which there are many conflicting viewpoints but very little data." The CJC Paper does not expand on this question any further, except insofar as it provides a very useful review of the data relating to the 'subsidiary issue' of the effect of legal sanctions on drug use.

Whilst it is agreed that the 'why question' is fundamental to the formulation of cannabis policy, it does not have to be a 'tremendously complex issue'. This characterisation probably arises from analyses like that canvassed, for example, in Chapters 1 & 2 of Drugs in Australian Society, by McAllister I, Moore R & Makkai T (1991). The following remarks by Dr F A Whitlock, formerly Professor of Psychiatry at the University of Queensland, offer a useful antidote to the 'complex' view of drug use (DRUGS: Drinking and Recreational Drug Use in Australia, 1980, p136-7):

Why do people take drugs? The most obvious and natural answer is because they like them. We do not generally look for obscure, psychological or sociological explanations of most drug use in the community. People take alcohol, smoke tobacco, drink tea and coffee because they enjoy the effects of these substances.

Unfortunately, when it comes to prohibited drugs, all kinds of esoteric meanings are attributed to behaviour which, when legal drugs are being used, demands and receives a far simpler explanation. Why do we look for more recondite reasons for people using drugs that happen to incur social and legal disapproval?

Our greater familiarity with alcohol and tobacco makes it perfectly obvious that only a minority of individuals use them for reasons other than simple enjoyment or as aids to social intercourse. Those who use alcohol to excess, to allay anxiety, to alleviate depression or to 'escape from reality' are no different from the small minority of illegal drug users who take their favoured anodynes and soporifics for very much the same reasons as the anxious, insecure or depressed drinker. Experience has taught us that there is no need for complex psychological investigations into the normal use of alcohol. The average drinker is the average man or woman who has no greater load of neurotic symptoms than the rest of us.

Yet users of illegal drugs are often regarded as neurotic, 'sick', mentally ill, degenerate personalities who require 'treatment' to stop the drug-taking behaviour, refashion their lives, eliminate their neuroses and convert them into normal law-abiding citizens who will drink their beer and smoke their cigarettes with the best of us.

In summary, the search for mysterious or 'tremendously complex' reasons for drug use is not necessary. Illegal drugs are used by healthy, well-adjusted, competent, usefully employed, apparently normal people for the same reasons that legal drugs are used, i.e. for recreational purposes. Although there are problem users of both illegal and legal drugs, they amount to only a small proportion of total users.

What is needed is an acceptance on the part of the authorities that recreational drug use is a legitimate activity. Although the non drug-using groups in our society (including the modern variation of temperance opinion characterised by P P McGuinness as '**health fascism**', The

Australian, 22/9/93) will always be uncomfortable with this reality, their essentially moral concerns should not be allowed to dictate government policy.

It must be stressed that the mere existence of harmful side-effects is not an argument against the use of drugs for recreational purposes. The merits or otherwise of recreational drug use should focus on the question 'Is it OK to enjoy the effects of drugs that are completely safe?'. Like prescribed drugs, the harmful side-effects of recreational drugs are appropriate subjects of research that tries to reduce or eliminate their effects. Most informed commentators agree that nearly all the health risks associated with illegal drugs arise not from their intrinsic properties, but from their use in an illegal context.

### **DRUG LAW ENFORCEMENT COSTS**

The Discussion Paper estimates the 'Notional Cost of Drug Law Enforcement Qld 1991-92' on p95. Although this estimate may well be valid for the particular costs that are cited, it omits many other costs that are usually included in this sort of calculation. For example, Robert E Marks (What Price Prohibition? An Estimate of the Costs of Australian Drug Policy, 1991, Table 11, p209) estimates the 1987-88 costs of Australian illicit drug use as follows:

#### **LOSSES**

Drug-Law-Enforcement Costs	\$320 million
P.V. of Future Production Lost	\$178 million
Methadone Maintenance Costs	\$48 million
Defensive Costs Against Theft	\$230 million
<b><i>Total Losses</i></b>	<b><i>\$776 million</i></b>

#### **TRANSFERS**

Property-Crime Losses	\$466 million
Social Security Payments	\$190 million
<b><i>Total Transfers</i></b>	<b><i>\$656 million</i></b>

Sum of Total Costs & Transfers \$1432 million

Without attempting a detailed analysis, it appears that the Discussion Paper estimate of Queensland 1991-92 Drug Law Enforcement costs (\$27 million) is equivalent to the first item in the above table. This item amounts to only 22 percent of Marks' 'Total Social Costs & Transfers'. Although it is stated on p96 that 'the Committee did not consider there was any valid basis' for the accounting of the social costs of drug law enforcement, the Discussion Paper does not set out the reasons for this claim. Given the wide disparity between the Committee's accounting and the orthodox accounting presented by Marks, this seems unfortunate. Other examples of this type of orthodox accounting can be found in Collins D & Lapsley H, Estimating the Economic Costs of Drug Abuse in Australia, DCHS, Jan 1991 and James Ostrowski, Thinking About Drug Legalization, Cato Policy Report, no121, 25/5/89. The following points summarise Ostrowski's analysis of the costs of drug law enforcement in the USA:

\* Annual USA black market drug sales are commonly estimated at \$80 BILLION.

\* If the black market price of drugs is inflated 10-fold over the legal price, 90 percent of drug sales funds - \$70 BILLION - constitutes an economic loss caused (to the drug user and dependents) by prohibition.

\* The total USA cost to taxpayers of drug law enforcement - courts, police, prisons - is about \$10 BILLION.

\* To pay for black market drugs, poor users victimize the taxpayers by stealing \$7.5 BILLION from them.

\* The overall effect of prohibition in the USA is to take \$17.5 BILLION from taxpayers so as to raise \$80 BILLION for organized crime and drug dealers/producers, impoverishing many drug users in the process.

\* Additional negative economic consequences of prohibition include the lost productivity of those who die or who are imprisoned; government and private funds spent on prohibition-created illnesses such as AIDS, hepatitis, and accidental overdose; the funds spent on private security to fight drug-related crime; and the costs imposed by organised crime activities funded by drug profits.

There are other Australian costs, not mentioned in the Discussion Paper, that carry a drug law enforcement cost for Queensland. For example, Coastwatch aerial patrols for the Customs and Quarantine departments, which cost about \$20 million per year (Courier Mail, 26/7/93), have as one of their tasks the interception of illegal drug shipments. The transaction reporting procedures required by the Australian Transactions Reports & Analysis Centre (AUSTRAC), whose function is to intercept laundering of criminal cash including drug cash, currently costs the banking and finance industry \$43 million per year (Australian Financial Review, 4/6/93). Use of the tax file number system for data-matching exercises cost the Australian Taxation Office \$17 million (Australian Financial Review, 23/0/93). This sample of costs is only illustrative, not exhaustive, and does not take account of 'returns' (by way of additional tax and confiscated cash) although it is widely reported that these are much less than the expenditure (Keeping an Eye on Big Brother, Canberra Times, 7/12/92).

Last but not least, setting aside the Queensland Police force, there are many law enforcement agencies operating in Queensland that incur State based drug-law enforcement expenditure. The following list of *'agencies with responsibility [in Queensland] for policing organized crime and gathering intelligence'* is largely taken from the Fitzgerald Report (1989): The Australian Federal Police; The Australian Customs Service; The Coastal Protection Authority; The Australian Bureau of Criminal Intelligence; The National Crime Authority (NCA); The Australian Transactions Reports & Analysis Centre (AUSTRAC); and the Commonwealth Attorney-General (particularly its Law Enforcement Access Network or LEAN). Plus The Criminal Justice Commission!

### **FIXED COSTS?**

On pp94-95 of the Discussion Paper it is stated 'that many, if not most, criminal justice system costs are relatively fixed' and 'if the costs of enforcing current criminal sanctions on drug use were to be removed, it would be unrealistic to expect 'savings' of even a small proportion of such estimates.'

This statement must be contested. If the Queensland Police Force spends \$16 million on drug law enforcement, and if drug law reform means that this money no longer needs to be spent, surely the Public Sector Commission and every management guru there ever was would agree that this is a 'saving'? It does not matter that the staffing numbers and administration costs don't change: the resources are NOT spent on drug law enforcement. Presumably the resources could be diverted to enforcement in areas such as fraud and violence, which the public thinks are more important.

## **WORKPLACE DRUG TESTING**

The Discussion Paper does not devote any space to the issue of workplace testing for illegal drugs, which can also be regarded as a drug-law-enforcement cost. As demonstrated by the following remarks, James Ostrowski (1989, p18) argues the key issue for workplace drug testing is worker productivity:

Some legal drugs, such as caffeine and nicotine, seem to make people more productive. Others, such as alcohol, seem to make them less productive. Many illegal drugs could impair productivity if used on the job. As with alcohol, however, on-the-job use of a drug is no reason to make a drug illegal.

As a general rule, a worker's productivity is visible and measurable. Thus, when productivity falls, the employer can take action, including firing the worker if appropriate. However, the fact that many companies are adopting drug testing suggests that the impact of illegal drug use on the job is not readily apparent. If it is difficult to discern, it is unlikely to be significantly affecting productivity.(emphasis added)

Fortunately, workplace drug testing is confined to relatively few workplaces in Australia. The practice seems to be quite widespread in the United States, where it has led - quite logically - to new forms of employer-initiated discrimination wherein people are sacked or denied jobs because they smoke tobacco (Courier Mail, 20/11/91) or because they carry 'bad' genes (The Australian, 25/4/92).

Workplace drug testing appears to be often driven by a distaste for drug use, including alcohol use, rather than for reasons of safety and productivity, that are used as justification. The following comments are endorsed:

Drug testing, particularly urine testing, appears to be becoming an increasingly acceptable option to many employers and some unions. This movement is occurring in the absence of any convincing evidence about the ability of such a process to detect impairment let alone have impact on safety and productivity. The method is costly with no controlled evidence for cost effectiveness. The cost in potential legal suits and industrial relations are self evident let alone the infringement on the personal lives of employees.

(Allsop S & Phillips M, Drug Testing in the Worksetting: Legitimate Intervention or Toxic Infringement? 1991)

It is acknowledged that for some occupations, there are totally legitimate concerns about the

workplace use of alcohol: nobody wants to be at the mercy of a pilot or coach driver who is inebriated. However, whether this concern is either effectively or legitimately managed by random/compulsory drug testing remains a vexed issue.

## **DRUG-LAW HARM TO CIVIL LIBERTIES**

1. The notion of drug-law enforcement harm, although mentioned on p103, is not developed in the Discussion Paper. There is a large body of opinion in Australia and elsewhere that supports drug law reform on the basis that the laws cause more harm than the drugs could ever cause themselves. One of the major areas of harm is civil liberties:

Attempts to stamp out the illegal drug trade have failed all over the world, and have consumed more and more resources. Wider powers have been granted to police, customs officers and other law enforcers. More jails have been built, and more people jailed. As well, drugs have caused more incursions on the civil liberties of ordinary people, more corruption and more interference in normal life than almost anything else. **(Fitzgerald Report, 1989, p196)**

My argument is that when a moral panic is created, as was the case after the Royal Commissions of the late 1970s and early 1980s, when the end of civilisation as we know it seems nigh, when a social object, like the elimination of organised crime or drug-trafficking seems worthy enough, the pressure to create legislation that allow fewer rights to individuals is intense and often proves irresistible. **(Frieberg, A, 23/4/91)**

It is the rhetoric of war that has enabled inroads to be made into personal liberty [in the United States]. Some trends noted by observers include the use of military personnel to help foreign drug enforcement agencies; the use of military forces to provide equipment, training and information to civilian drug law enforcement personnel; the introduction of compulsory urinalysis of all United States military personnel, federal public servants, sports participants, and some workers in private enterprise companies; the increased use of wire tapping and entrapment; the seizure of land on which drugs have been grown, prior to any criminal charges being laid; and granting school officials the right to search student's possessions and undertake strip searches. **(McAllister et.al., 1991, p209)**

2. It is helpful to focus more closely on the relevant Australian legislation. The following remarks by Professor Frieberg set the scene:

Over recent years it has become evident that crime is being 'civilised'. By this I mean that there is under way a process by which civil law is used in addition to, or instead of, the criminal law, or where civil procedures are integrated into criminal prosecutions. In practice, 'civilisation' represents a process of stripping citizens of their rights. **(Frieberg, 1991, p7)**

Burden shifting allows the government to make frequent and better use of confiscation by easing its evidentiary burden, a practice which has been severely criticised by federal and State Parliamentary Committees. **(Frieberg, 1991, p12)**

3. The following examples of drug-law related erosion of civil liberties in Australia are taken from McAllister (1991, pp 210-212). Note that shifting the burden of proof and reverse onus provisions remove the requirement for the government to prove its own case:

- (a) 1971 amendments to the *Customs Act* which substituted a reasonable suspicion standard in place of the beyond reasonable doubt standard in determining whether illegal substances had been illegally imported;
- (b) the reversal of the onus of proof associated with the introduction of the notion of a 'trafficable quantity' in the *1970 NSW Poisons (Amendment) Act*;
- (c) the reversal of the onus of proof associated with the introduction of the concept of a 'commercial quantity' in the 1979 amendments to the *Customs Act*;
- (d) the introduction of pecuniary penalty orders in the 1979 amendments to the *Customs Act*, which can be obtained by the Commonwealth without a conviction being secured;
- (e) the Commonwealth *Proceeds of Crime Act 1987*. Although conviction-based, the onus of proof is once again reversed by requiring the defendant to prove lawful sources for the funds used to acquire assets;
- (f) the parallel *Proceeds of Crime* legislation enacted by the States. Of particular concern is the expansion of the pecuniary penalty to cover all assets regardless of whether they can be linked directly to the proceeds of drug sales, adopted by most States including Queensland;
- (g) the *NSW Trafficking and Criminal Proceeds Act 1990* which allows for 'confiscation without conviction' on the balance of probabilities standard of proof;
- (h) the *1987 Telecommunications (Interception) Amendment Act* which gave several law enforcement agencies (e.g. NCA) greater powers to intercept and record telephone conversations and electronic communications;
- (i) the 1987 amendments to the *Postal Services Act* making it an offence to send illicit drugs through the mail; and
- (j) the *1988 Commonwealth Cash Transactions Reports Act* which makes it a criminal offence to maintain a bank account in a false name, and requires financial institutions and gambling bodies to report all cash transactions suspected of being associated with tax evasion or other breaches of the law.

4. Many of these provisions represent clear infringements of two key articles of the United Nations sponsored International Covenant on Civil and Political Rights, to which Australia is a signatory:

**Article 14, para 2.** Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law;

**Article 17, para 1** No one shall be subjected to arbitrary or unlawful interference with their

privacy.

5. Attorney James Ostrowski provides an eloquent American perspective that applies almost equally well to Australia:

The recent drug hysteria has created an atmosphere in which long-cherished rights are discarded whenever drugs are concerned. Urine testing, roadblocks, routine strip searches, school locker searches without probable cause, preventive detention, and nonjudicial forfeiture of property are now routine weapons in the war on drugs.

These governmental intrusions into our most personal activities are the natural and necessary consequence of drug prohibition. Because drug transactions are illegal but their participants are willing, the transactions are hidden from police view. Thus, to be at all effective, drug agents must intrude into the innermost private lives of suspected drug criminals. Because firm evidence of guilt, if it exists, is not obtained until after such intrusions, the privacy of large numbers of innocent people must be violated in the process of enforcing drug laws.

Roadblocks, used with greater frequency in the war on drugs, impose an inconvenience on all citizens for the sake of allowing the police to ferret out a few drug suspects. One of the main purposes of currency reporting laws is to allow government agents to trace cash from drug transactions that is being 'laundered'. Thus, to allow government agents to search for a relatively small number of drug criminals, the financial privacy of all must be sacrificed.

The dangerous precedents described here are tolerated in the war on drugs, but they represent a permanent increase in government power for all purposes. The tragedy is how cheaply our rights have been sold. Our society was once one in which the very thought of men and women being strip-searched and forced to defecate in the presence of witnesses was revolting. And all this for a policy that does not work, since it is prohibition itself that causes the very problems that make these extreme measures seem necessary to a befuddled public.

(Ostrowski, 1989, 121-22)



## PART II: COMMENTS ON 'ISSUES TO BE ADDRESSED'

### 1. GENERAL ISSUES

#### 1.1 WHAT CRITERIA SHOULD BE USED IN DETERMINING WHETHER A DRUG SHOULD BE DECLARED AN ILLICIT DRUG?

1. It is assumed for the purposes of this answer that licit and illicit drug policies refer respectively to full legalisation (current alcohol policy) and total prohibition (current cannabis policy). The following extract from Ostrowski (1989, p9) is very much to the point:

Much of the confusion surrounding drug policy discussions could be alleviated by asking the right question initially. The question that must be addressed in determining whether to legalize drugs is this: Do drug laws do more harm than good?

The focus here is not how dangerous drugs are or how much damage drug users inflict upon themselves. *If these factors were decisive, then surely alcohol and tobacco would be banned.* Rather, the proper focus is how effective drug laws are in preventing damage from drugs, compared with the amount of injury the laws themselves cause. (emphasis added)

2. According to Ostrowski (1989, p10), the case for legalisation is sustained if **ANY OF THE FOLLOWING PROPOSITIONS** is true :

- (A) prohibition has no substantial impact on the level of illegal drug use;
- (B) prohibition increases illegal drug use;
- (C) prohibition merely redistributes drug use from illegal drugs to harmful legal drugs; or
- (D) even though prohibition might decrease the use of illegal drugs, the negative effects of prohibition outweigh the beneficial effects of reduced illegal drug use.

3. Therefore, adapting Ostrowski's argument, **a drug should only be declared illicit if ALL THE FOLLOWING PROPOSITIONS** are satisfied (Ostrowski, 1989, p9):

- (a) prohibition substantially decreases the level of illicit drug use.
- (b) prohibition results in a substantial reduction in drug-intrinsic harm (arising from the properties of the drug) because of the decreased level of illicit drug use.
- (c) the reduction in drug-intrinsic harm is **NOT EXCEEDED BY** the prohibition-harm caused by the following:
  - \* a substantial rise in black market harm (by making drug use far more dangerous);
  - \* a substantial increase in the use of dangerous licit drugs (e.g. substitution of alcohol for cannabis);

- \* the creation of a lucrative demand-driven black market that leads to a substantial increase in crime and corruption;
- \* the transfer of millions of dollars from other government programs into drug law enforcement;
- \* criminalisation of large numbers of otherwise law-abiding citizens; and
- \* the introduction of legislation that results in substantial erosion of long-standing civil liberties.

(d) prohibition does not result in the banning of a drug whose intrinsic dangers are no worse than the intrinsic dangers of alcohol and tobacco.

4. Much of the accounting of the prohibition harms has been canvassed in Part I of this submission. Although '**black market harm**' is not really an issue for cannabis (except insofar as prohibition leads to the development of more potent and concentrated products with stronger effects), it is a major issue for other illicit substances. Ostrowski (1989, p14, p45) describes the North American situation:

Illegal drugs contain poisons, are of uncertain potency, and are injected with dirty needles. At least 3,500 people will die from AIDS each year from using unsterile needles. As many as 2,400 of the 3,000 deaths attributed to heroin and cocaine use each year - 80 percent - are actually caused by black market factors. For example, many heroin deaths are caused by an allergic reaction to the street mixture of the drug [containing quinine] while 30 percent are caused by infections [tetanus, hepatitis]. Adulterants and uncertain potencies play a major role in cocaine-related deaths.

5. In relation to criterion (d), many commentators have noted the hypocrisy of the existing illicit drug policies, as compared to policies for alcohol and tobacco. For example,

Addiction to cigarettes is reckoned to be the chief avoidable cause of death in the world. Alcohol deprives boozers of their livers and their memories, and ends the lives of all too many innocents who get smashed on the roads by the inebriated. Yet here the idea of dissuasion within the law [of drug abuse] is broadly accepted. (Editorial in The Economist 15/5/93, 'Bring Drugs within the Law')

Because there is not the slightest hint that use of tobacco and alcohol will be prohibited in Queensland, the most basic criterion for determining whether a drug should be declared illicit must be CONSISTENCY WITH THE TREATMENT OF ALCOHOL AND TOBACCO.

## 1.2 WHAT SHOULD BE THE AIM OF POLICY ON ILLICIT DRUGS GENERALLY?

1. The following list of 'reasons for setting limits to drug use of all kinds' is probably a good start (Whitlock, 1980, p169):

- (a) To protect drug users from harm as a result of their drug use.
- (b) To protect society from harm caused by the action and behaviour of drug users.
- (c) To protect young people and other vulnerable individuals from the harmful effects of drugs.
- (d) To eliminate crime that occurs wholly or partly because of drug use.

2. As stated by the Sackville Royal Commission, the overall preferred objective should be to minimise the harmful consequences of the non-medical use of drugs (Royal Commission into the Non-Medical Use of Drugs in South Australia 1979, Final Report, p89). This is very similar to the national drugs policy adopted by the April 1985 Special Premier's Conference ('National Drug Summit'): 'to minimise the harmful effects of drugs on Australian society' (quoted in Alex Wodak's article in An Unwinnable War Against Drugs: The Politics of Decriminalisation, p57)

3. If we have to continue with laws that make popular substances illicit, then the laws should at least be reformed in accordance with the "minimisation of drug-related harm" principle (as long as this is clearly understood to mean minimisation of both drug-intrinsic harm and drug-prohibition or black market harm).

4. It is absolutely essential that one of the very highest priorities of illicit drug policy should be the control of **AIDS**. Although 'we are one of the few Western countries with a high incidence of AIDS but still with a very low rate of HIV infection in injecting drug users' (Wodak, 1991, p53), there is no room for complacency. The short term goal should continue to be one of safe injection (by making needles and syringes cheap and legal), but the highest priority goal must be to discourage users from *injecting* drugs at all (by providing cheap and legal drugs that can be smoked or swallowed: Wodak, 1991, p54).

### **1.3 TO WHAT EXTENT SHOULD THERE BE DIFFERENT POLICY GOALS FOR LICIT AND ILLICIT DRUGS?**

The overall policy goal should be the same: minimisation of any harmful consequences associated with the non-medical use of drugs.

### **1.4 ARE EXISTING MEANS OF EVALUATING THE EFFECT OF ILLICIT DRUG POLICY ADEQUATE AND, IF NOT, WHAT MEANS SHOULD BE ADOPTED?**

1. Existing means are not adequate, but this is not a new observation. For example, it was stated in Drugs, Crime & Society (Report by the Parliamentary Joint Committee on the National Crime Authority, 1989, p122):

The Committee has made three recommendations which should enable a better evaluation of the effectiveness of present law enforcement strategies to take place. The Committee considers it regrettable that up until now there has been very little attempt to link law enforcement efforts to the stated ends of the policy of prohibition, namely to reduce or eliminate the use of the prohibited drugs in our society. What the Committee is proposing in this regard is not new. The Williams Royal Commission in 1980 ... [defined a set of indicators to evaluate the effectiveness of drug law enforcement]. Nothing has been done to gather information on these indicators in any systematic

fashion in the intervening years and no attempt has been made to set targets in terms of these indicators ...

**2. This submission supports:**

- (a) Regular, nationally standardised surveys of the general population and of illicit drug users (as per NCADA surveys);
- (b) Collection of data in accordance with nationally agreed protocols on the price, purity and availability of street drugs;
- (c) Collection of data in accordance with nationally agreed protocols on the incidence of drug-injection related AIDS; and
- (d) Commonwealth and State governments setting target indicators so that the cost-benefit of drug expenditures and initiatives can be properly evaluated.

The collection of all of this data comes at a considerable cost. Possibly a sensible reform of the laws would reduce these costs by reducing the need for the data.

**3.** This submission questions the appropriateness of the parameters proposed by the Williams Royal Commission for evaluating the effectiveness of drug law enforcement (Report by the Parliamentary Committee on the NCA, p122-23). The parameters don't take account of Whitlock's goal of 'protecting drug users from harm as a result of their drug use'. As stated by Alex Wodak (An Unwinnable War Against Drugs, p54):

Current drug policies are evaluated by their success in keeping street drugs expensive and impure. In Australia, injecting drug users almost without exception inject rather than smoke or swallow drugs principally because street drugs are expensive and impure. Injecting expensive, impure drugs achieves maximum 'bang for the buck'. If street drugs were cheap and of high purity, this might minimise the behaviour of drug injecting, which is associated with the sharing of injection equipment and the attendant risk of HIV transmission.

Even under prohibition injection practice could be made safer by enhancing needle exchange programs with improved technologies such as reusable needle-less injectors (Sydney Morning Herald 1/10/90) and non-reusable syringes (The Australian 31/1/91).

**1.5 IN TERMS OF EFFECT UPON INDIVIDUALS WHICH DRUGS, LICIT OR ILLICIT, ARE OF GREATEST CONCERN AND WHY? WHICH ARE OF LEAST CONCERN AND WHY?**

**1.** It is the argument of this submission that most of the concern attached to illicit drugs arises out of prohibition, not from their intrinsic effects. It is unclear whether the question is asking to rate concerns taking prohibition as a given (so that a concern is generated by the illicit nature of the drug), or to rate concerns due to the biochemical effects of the drugs. The latter is assumed to be the case and the answer is framed in these terms.

**2.** Comparative damage of *legally administered* drugs has been assessed as follows:

Cigarette smoking is unquestionably more damaging to the human body than heroin. (E M Brecher and editors 1972, Consumer Report, Licit and Illicit Drugs, p25)

Heroin is non-toxic. If you took pharmaceutical heroin in clean administration procedures - nice clean needles and syringes - your brain would be as clean and shiny as someone who hadn't taken anything. Alcohol is a toxic drug. It shrinks your brain, it enlarges your heart, it rots your peripheral vascular system, it rots your peripheral nervous system. Alcohol is toxic to all the major organs of the body. Heroin isn't. (Bill Saunders, Professor of Addiction Studies, Curtin University, Sunday Mail 22/7/90)

There can be no doubt about the overwhelming evidence of damage being caused by alcohol and tobacco. Stimulants and hallucinogens have some inherent hazards, but compared with alcohol and tobacco these are relatively trivial. (Whitlock, 1980, p92)

Tobacco and alcohol are more deadly than either heroin or cocaine would be if legally available, and infinitely more deadly than marijuana, which apparently has caused no deaths at all. Not only are alcohol and tobacco inherently more dangerous than heroin and cocaine, their danger is magnified because they are more popular. (Ostrowski, 1989, p40, p48)

3. The relative *addictiveness* of drugs is often at the forefront of any drug debate. Following Ostrowski (1989, p48), the 'recidivism rates' (percentage of repeat users) for the main drugs can be estimated as follows:

Alcohol	71 percent
Tobacco	51 percent
Cocaine	24 percent
Heroin	20 percent

4. The specific medical conditions associated with drug use/abuse are canvassed in detail elsewhere (e.g. Fox R & Mathews I, 1992 DRUGS POLICY: Fact, Fiction and the Future, Chapt.4). Ostrowski makes a helpful distinction between the *chronic* and *acute* harmful effects of drug consumption on health. The mainstream drugs can be evaluated in these terms as follows:

**Tobacco** - *acute* effects of smoking are mild although an overdose of nicotine can cause respiratory arrest. *Chronic* effects are devastating mainly because of the contribution (with genetic and constitutional factors) to lung disease and cardiovascular disease.

**Alcohol** - *acute* effects range from mild to severe including possible fatal overdose. *Chronic* effects are devastating because of major organ damage as described by Bill Saunders (see above). In addition, alcohol intoxication is closely associated with motor vehicle accident morbidity and mortality, and domestic and other forms of violence.

**Cannabis** - *acute* effects of smoking are very mild. *Chronic* effects are also mild although there is some potential in smokers for respiratory tract compromise.

**Amphetamines** - *acute* effects of nasal or oral intake are mild, but when injected a fatal overdose is possible. *Chronic* effects appear to be mild for low level nasal or oral use. Repeated, *chronic* use of escalating doses can cause a range of serious physical and mental adverse effects.

**Cocaine** - *acute* effects of nasal intake are mild, but when injected a fatal overdose is possible. *Chronic* effects appear to be mild for low level nasal use. Repeated, *chronic* use of escalating doses can cause a range of serious adverse physical and mental effects, including seizures.

**Heroin** - *acute* effects are mild but fatal overdose via injection is possible. *Chronic* effects are mild: 'heroin can be injected safely by individuals for decades' (Alex Wodak, in An Unwinnable War Against Drugs, 1991, p64).

**Prescription and OTC Drugs** - (included in this group of drugs are steroids and stimulants - eg pseudoephedrine - whose main form of abuse is instrumental, e.g. athletics, body building and interstate truck driving.) Because this is such a complex area, an analysis is not attempted here. It is clear that the overriding consideration determining availability has to be medical therapeutics, but even when they are prescribed many of these substances cause considerable damage (see, for example, Beatrice Faust in The Australian 8/10/93, p13). And if some abuse is acceptable as a side-effect of therapeutically driven availability, the same principle could be applied to heroin (cancer pain relief superior to morphine) and 'crack' (crack=esterene, used for fatigue and relief of chronic pain).

5. There can be no doubt that the pernicious effects of alcohol and tobacco are primarily *chronic*. Currently the pernicious effects of heroin (and cocaine) are notoriously *acute*: the risk of sudden death. Although there is a widely-held view that heroin's death rate results from its intrinsic attractiveness and low threshold for overdose (The Sun, 8/6/90), this is mistaken:

The medical literature indicates that the main causes of acute heroin death are the use of heroin with alcohol, the presence of quinine and other impurities in the heroin street mixture, and the unpredictable and unknown potency of black market heroin. Each is largely the consequence of the black market context of drug use. (Ostrowski, 1989, p42)

There is no evidence that the low price of heroin (or cocaine) under legalisation would lead drug users to consume ever-increasing concentrations of the drug until they died from an overdose. Historically, very few users with cheap and ready access to narcotics have done so, whether in 19th-century England or America, in Vietnam during the war, or among physicians and pharmacists at any time. (Ostrowski, 1989, p44)

Although uncertain, in a legal context it is reasonable to predict that the risk of overdose would be much the same for heroin, cocaine and alcohol. And if injectors could be persuaded to switch to smoking and swallowing, heroin overdose deaths could probably be eliminated.

***Injection-related fatal overdose and fatal poisoning are artefacts of prohibition and can therefore be discounted in assessing the drugs of concern.***

## **SUMMARY**

In terms of their impact upon *individuals*, the main drugs can be rated as follows:

### **Major Damage**

- (a) Tobacco (high impact from intrinsic effects, only slightly offset by enjoyable effects)
- (b) Alcohol (severity of intrinsic impact similar to tobacco but this is offset by enjoyable effects experienced by most users)
- (c) Miscellaneous drugs such as 'datura' (*Brugmansia aurea* and other species), and strychnine.

Minor Damage

- (d) Cocaine\*
- (e) Heroin
- (f) Amphetamine and similar compounds\*
- (g) Miscellaneous drugs such as some psychoactive mushrooms and mandrax

*\*Except with repeated, chronic use of escalating doses, when the damage is better described as 'moderate' or worse.*

Minimal or Zero Damage

- (h) LSD
- (i) Cannabis

**1.6 IN TERMS OF THEIR IMPACT UPON SOCIETY WHICH DRUGS, LICIT OR ILLICIT, ARE OF GREATEST CONCERN AND WHY? WHICH ARE OF LEAST CONCERN AND WHY?**

The answer to this question is confounded by the present laws. Illicit drugs are currently of great concern, but this is because of their illicit status, not their nature. The impact of illicit drugs upon society is enormously amplified by prohibition, yet despite this effect, tobacco and alcohol still emerge in authoritative Australian assessments as the two drugs of greatest concern.

The following table of estimates is taken from the major study by Collins, D J & Lapsley, H M (1991) Estimating the Economic Costs of Drug Abuse in Australia (p116). The notional model 'identifying all possible costs and benefits of drug abuse' (p70-71) has been challenged (The Australian 19/491) but is stated by the authors to be extremely conservative.

**Tangible & Intangible Economic Costs of Drug Abuse, 1988**

	<b>ALCOHOL</b>	<b>TOBACCO</b>	<b>ILLICIT DRUGS</b>	<b>NON ALLOCABLE</b>	<b>ALL DRUGS#</b>
	\$Million	\$Million	\$Million	\$Million	\$Million
Tangible	3,245	813	1,042	80	5,182 (36%)
Intangible	2,782	6,028	399	0	9,209 (64%)
Total	6,027	6,842	1,441	80	14,390

## **Tangible & Intangible Economic Costs of Drug Abuse, 1988 (continued)**

	ALCOHOL	TOBACCO	ILLICIT	NON/A	ALL DRUGS#
<b>COST %</b>	<b>42%</b>	<b>48%</b>	<b>10%</b>	<b>1%</b>	<b>100%</b>

**NOTE: ALL DRUGS amount includes \$80M non-allocable tangible costs plus significant costs for pharmaceuticals (not quantifiable). Amounts are rounded to nearest million.**

These costings are similar to estimates reported in other studies such as that by the World Health Organisation (Australian Cost of Tobacco Use pa: \$3 billion) and the National Centre for Research into the Prevention of Drug Abuse (Australian Cost of Alcohol Abuse pa: \$4 - \$12 billion)(see The Australian, 6/3/91).

*Thus, current estimates unequivocally identify alcohol and tobacco as the two drugs of overwhelming major concern.*

Can any of the drug costs be eliminated or reduced? The answer for the illicit drugs is 'YES, VERY EASILY!' Because the majority of the costs associated with illicit drug use are produced by the laws themselves, there is an immediate potential for large savings through repeal of those laws. By contrast, reduction of alcohol/tobacco costs are a long term process because the damage wrought by current usage will not manifest for perhaps decades.

## **2. CANNABIS POLICY & LEGISLATION**

### **2.1 WHAT SHOULD BE THE GOAL OF POLICY IN RELATION TO CANNABIS? (SEE ALSO 1.2)**

In principle the primary goal of cannabis policy should be same as for any drug: to minimise any harmful consequences associated with non-medical use.

A modified set of policy objectives (see **1.2**) applicable to cannabis might read as follows :

(a) *To protect cannabis users from harm as a result of their cannabis use.*

Because cannabis has a low potential for harm (as stated in Dr Nelson's research review), the goal of protection is quite easily achievable. The best means of protection is education about the range of effects available from the drug and the safest means of consuming it. The credibility of education programs are at their highest in a legal setting. When cannabis is prohibited and there is an environment of misinformation (as now), their credibility suffers.

(b) *To protect society from harm caused by the action and behaviour of cannabis users.*

This submission opposes the introduction of random workplace cannabis testing programs for reasons discussed elsewhere, and for the same reasons opposes cannabis testing of motorists.



Although cannabis intoxication-related aggression is almost unknown (unlike alcohol), there is probably a place for regulating public cannabis use to minimise offence to non-users.

(c) *To protect young people and other vulnerable individuals from any harmful effects of cannabis.*

In a legal environment young people (say, under 18 years) can be partially protected by setting minimum age requirements for legal consumption, although the same difficulties can be anticipated as for policing under-age drinking. In a prohibition environment it is patently impossible to police under-age use. Additional means of protection in a legal environment include bans on advertising, restricted licensed outlets and restricted licensing hours, if these could be demonstrated to be practical.

## **2.2 SHOULD THE CURRENT LEGISLATIVE CLASSIFICATION OF CANNABIS BE ALTERED, AND IF SO, HOW?**

### **THE FAILURE OF PROHIBITION**

The 'current legislative classification of cannabis' is based on a drug prohibition model. According to G B Chesher (quoted in McAllister et.al., p214), drug prohibition generally has three major aims:

- (i) the complete abolition of illicit drugs;
- (ii) an increase in the price of illegal drugs; and
- iii) the provision of a high level of deterrence against future use.

McAllister and co-authors conclude from their analysis that none of these goals have been achieved in Australia. This view is shared by many commentators in the community (see, for example, Fox & Mathews, 1992). The former chairman of the 1989 Parliamentary Joint Committee on the National Crime Authority, Mr Peter Cleeland, is reported to have said :

Anyone who pushes law and order as a way to solve the illegal drug problem just doesn't understand or they are either an idiot or a liar. More than 57 percent of people up to the age of 25 have experimented or have been exposed to cannabis - that means more than 50 percent of Australians are criminals. The law is a joke when it is ignored by that many people. (Courier Mail, 18/2/89)

Well-known or prominent Australians who have called for drug law reform because of the failure of prohibition include:

- \* Philip Adams (radio host and columnist for The Australian newspaper). The Australian 3/3/90.
- \* Paddy McGuinness (columnist for The Australian newspaper & former editor of the Australian Financial Review). The Australian 4/10/89, 29/5/91.
- \* Bill Saunders (Head of Addiction Studies, School of Psychology, Curtin University). The Independent 1/10/93.

- \* Paul Wilson (Dean of Humanities & Social Science, Bond University). The Sun 9/8/91.
- \* Michael Kirby (former Federal Court judge & president of NSW Court of Appeal). The Australian 2/12/91.
- \* Michael Moore (Independent MLA, ACT). Canberra Times 2/9/92.
- \* John K Williams (Presbyterian Minister). The Australian 3/3/90 (P Adams column)
- \* Ian Mathews (editor Canberra Times 1972-88). Fox & Mathews, 1992.
- \* Russell Fox (federal judge 1967-89). Fox & Mathews, 1992.

## **ILLCIT DRUG TEST**

According to the argument presented in this submission, a drug can only be declared illicit if ALL THE PROPOSITIONS listed in the response to 1.1 can be satisfied. The propositions are repeated below together with the *assessment for cannabis*:

### **Benefits of Prohibition**

- (a) prohibition substantially decreases the level of illicit drug use. ***No convincing evidence that cannabis use has been decreased.***
- (b) prohibition results in a substantial reduction in drug-intrinsic harm because of the decreased level of illicit drug use. ***Not applicable because cannabis use not decreased.***

### **Costs of Prohibition**

- (c) the reduction in drug-intrinsic harm is ***NOT EXCEEDED BY*** the prohibition-harm caused by the following:

- \* a substantial rise in black market harm (by making drug use far more dangerous). ***Cannabis potency has increased although this has not been shown to cause much harm.***
- \* a substantial increase in the use of dangerous licit drugs ('substitution effect'). ***Probably not much effect given cannabis' ready availability.***
- \* the creation of a lucrative demand-driven black market that leads to a substantial increase in crime and corruption. ***True for cannabis.***
- \* the transfer of millions of dollars from other government programs into drug law enforcement. ***True for cannabis.***
- \* criminalisation of large numbers of otherwise law-abiding citizens. ***True for cannabis.***
- \* the introduction of legislation that results in substantial erosion of long-standing civil liberties. ***True for cannabis.***

### Consistency Test

- (d) prohibition does not result in the banning of a drug whose intrinsic dangers are no worse than the intrinsic dangers of alcohol and tobacco. ***The intrinsic dangers of cannabis are certainly no worse than those for alcohol and tobacco.***

It is absolutely clear from these considerations that cannabis fails the Illicit Drug Test proposed in this submission.

There are **no identifiable benefits** from prohibition: cannabis use has not been decreased and therefore reduction in any cannabis-related detriments to health have not been achieved.

On the downside there are very many serious harms caused by prohibition, and the vast hypocrisy of the different treatments of cannabis and alcohol guts government drug policy of any pretence to credibility.

The **supreme irony of cannabis legislation** is that an apparently worthy objective - the reduction or elimination of cannabis "abuse" - has caused immense harm to the people it was supposed to protect, ie the users, plus massive collateral damage to non-users. Fox & Mathews (1992) provide a lucid and comprehensive account of the historical influences that led us into this absurd situation.

This submission supports the legalisation of cannabis in accordance with the legalisation models provided by alcohol and tobacco (with the proviso that all forms of advertising be banned, at least for an initial period).

### **THE PROBLEM WITH DECRIMINALISATION**

It is anticipated that many cannabis submissions to the CJC will support decriminalisation. Some comments are therefore included on this position.

In its simplest terms, the choice between decriminalisation and legalisation is a choice between solving part of the problem and solving the entire problem, or close to it. Since the black market in illegal drugs is the cause of most drug-related problems, the goal of reform should be to eliminate the black market. Legalisation would do that; decriminalisation would not. For example, dispensing drugs in federal clinics staffed by psychiatrists would probably draw some business away from the black market. But how many drinkers would go to hospital to drink liquor while being harangued by a psychiatrist? (Ostrowski, 1989, p36).

Decriminalisation fails the 'Illicit Drug Test' proposed in this submission (see above), for much the same reasons as does prohibition (the usual form of decriminalisation favours pecuniary penalties for personal cultivation and use):

### Benefits of Decriminalisation

- (a) prohibition substantially decreases the level of illicit drug use. ***Cannabis use is not decreased under decriminalisation.***

- (b) prohibition results in a substantial reduction in drug-intrinsic harm because of the decreased level of illicit drug use. *Not applicable.*

### Costs of Decriminalisation

- (c) the reduction in drug-intrinsic harm is *NOT EXCEEDED BY* the prohibition-harm caused by the following:
- \* a substantial rise in black market harm (by making drug use far more dangerous). *Black market harm not significant under decriminalisation or prohibition.*
  - \* a substantial increase in the use of dangerous licit drugs ('substitution effect'). *Drug substitution not significant under decriminalisation or prohibition.*
  - \* the creation of a lucrative demand-driven black market that leads to a substantial increase in crime and corruption. *Under decriminalisation there is still a lucrative black market with attendant crime and corruption.*
  - \* the transfer of millions of dollars from other government programs into drug law enforcement. *Under decriminalisation millions of government funds are still spent on drug law enforcement.*
  - \* criminalisation of large numbers of otherwise law-abiding citizens.  
CRIMINALISATION OF LARGE NUMBERS OF CITIZENS IS AVOIDED (THE ONLY ADVANTAGE).
  - \* the introduction of legislation that results in substantial erosion of long-standing civil liberties. *Anti-civil liberties legislation still flourishes under decriminalisation.*

### Consistency Test

- (d) prohibition does not result in the banning of a drug whose intrinsic dangers are no worse than the intrinsic dangers of alcohol and tobacco. *Under decriminalisation there still remains a contradiction between the legal treatment of alcohol/tobacco and the legal treatment of cannabis, although less so than for prohibition.*

If the Discussion Paper (pp60-62) is correct about the existence in Queensland of two modes of production (national versus local/regional), then decriminalisation would still leave 'national' black market production in the hands of sophisticated business operators. Additionally, there seems no reason why the rate of seizures under decriminalisation would change from the present rate. The black production market has consistently demonstrated a high capacity for innovation and the ability to rapidly replace the minority of suppliers who are caught by police. Therefore, under decriminalisation, the black market would probably continue operating at the present levels.

The fashionable form of decriminalisation amounts to 'leave the users more or less to themselves and go after the big producers and traffickers with everything you've got'. This cute formula has benefits for the users (who, however, become a potentially lucrative government revenue target via on-the-spot fines: see 'Highway Robbery', The Independent, October 1993, p36), but it increases prices, makes the market more profitable, and ups the criminal ante for everyone (Discussion Paper, p99).

### **2.3 SHOULD THE PENALTY STRUCTURE IN RELATION TO CANNABIS, OR SOME CANNABIS RELATED OFFENCES, BE ALTERED? SHOULD SOME OFFENCES BE DECRIMINALISED?**

This submission supports the legalisation of cannabis.

However, if the Queensland Government decided to go down the path of decriminalisation, then a robust and genuinely reformist type of decriminalisation should be the goal. The inclusion of at least the following elements in such a *decriminalisation scenario* would be very desirable:

**Possessing cannabis (use)** - legalise possession of up to 20 plants or 250 grams.

**Possessing things** - delete penalties from the Act.

**Supplying cannabis** - legalise transactions that involve amounts of up to 20 plants or 250 grams.

**Producing cannabis** - legalise production of up to 20 plants.

**Trafficking in cannabis** - legalise transactions that involve amounts of up to 20 plants or 250 grams.

**Permitting Use of Place** - only an offence where amounts exceed those described above.

One further very attractive reform would be to drastically reduce the ridiculous levels of maximum penalties (20 and 25 years) embodied in the *Drugs Misuse Act 1986*.

The question is not asked but any reform of the strictly drug-related legislation would be greatly improved by reforms to the associated legislation (*Proceeds of Crime Act, Cash Transactions Reports Act, Telecommunications Interception Act, Customs Act*) which causes so much collateral damage to civil liberties (recognising that Commonwealth legislation can only be amended federally).

### **2.4 SHOULD A SYSTEM OF MANDATORY PENALTIES FOR SERIOUS OR LARGE SCALE DRUG OFFENCES BE RE-INTRODUCED INTO QUEENSLAND? IF SO, FOR WHICH OFFENCES AND/OR FOR WHICH DRUGS, AND AT WHAT SCALE OF PENALTIES?**

This submission is absolutely opposed to mandatory penalties. As discussed in Dearden I, Sutherland N & Ransley J (1991) Queensland Drug Laws: Reform? (LSB 16/2, p60), the Queensland experiment with mandatory penalties completely failed to meet its objectives. The failure was predictable (Dearden I, 1988 Drugs Misuse & the Injustice of Life, LSB 13/4, p151) and flows partly out of the nature of the sanction, and partly out of the realities of drug law enforcement.

**2.5 SHOULD CANNABIS OFFENCES HAVE ANY FIXED EQUIVALENCE TO ANY OTHER NON-DRUG CRIMINAL OFFENCES? IF SO, TO WHICH OFFENCE(S)?**

This submission supports legalisation.

However, if there have to be sanctions (as in one form of decriminalisation), the penalties for cultivation and possession for personal use should be not be any worse than for the basic level of parking fine (e.g. \$25). If current practice is defacto equivalence to minor assault (Discussion Paper, p106), this is absurd.

**2.6 SHOULD THE POSSESSION OR SALE OF CANNABIS PARAPHERNALIA REMAIN AN OFFENCE? IF NOT, HOW SPECIFICALLY SHOULD CURRENT LEGISLATIVE PROVISIONS BE AMENDED?**

This submission supports the legalisation of cannabis, and therefore supports the legalisation of cannabis paraphernalia.

If decriminalisation is the preferred option, then it would be logical to completely expunge the possession of paraphernalia as an offence, for three reasons:

- \* the offence relies in part on the objectionable reversal of onus of proof provisions;
- \* because possession of paraphernalia lies entirely in the province of the small scale user/grower, it should not be subject to legal sanction in a decriminalised context; and
- \* as described in the Discussion Paper (p106), water pipes may reduce the risk of harm to the user.

**2.7 SHOULD QUEENSLAND INSTITUTE A CANNABIS ERADICATION PROGRAM? WHAT SHOULD THE PARAMETERS OF ANY SUCH PROGRAM BE AND HOW SHOULD IT BE FUNDED?**

This submission is absolutely opposed to a Queensland cannabis eradication program. Such a program would be a gross and irresponsible waste of public funds, as well as leading to terrorisation of provincial and rural populations (as has occurred in NSW).

**3. CANNABIS USE**

**3.1 IS THERE AN APPROPRIATE LEVEL OF CANNABIS USE IN SOCIETY AND IF SO, AT WHAT LEVEL SHOULD CANNABIS USE BE TOLERATED?**

It is probably both impossible and undesirable to try to determine socially appropriate levels of cannabis use. The levels of use can only be ultimately determined by the (informed as much as possible) democratic choice of the citizens.

### 3.2 WHAT SOCIAL HARMS ARISE FROM CANNABIS USE AT CURRENT LEVELS? WHAT ADDITIONAL SOCIAL HARM WOULD ARISE FROM ANY INCREASED LEVEL OF CANNABIS USE?

This question and the ones following seem to focus on possible social harms arising from the intrinsic effects of cannabis. Although the position adopted by this submission is that the real harms are drug-law-related, the following commentary is confined to intrinsic harm issues.

1. This submission wholeheartedly concurs with Peter Nelson's conclusion that 'cannabis represents no significant or unreasonable threat to the general public well-being', (Discussion Paper p144). Dr Nelson's review is a model of objectivity and the judicious application of scientific principles, values which are all too often lacking in the cannabis debate.

2. The Nelson conclusion accords with my **personal experience**. Like a lot of middle-aged people, I have had passing acquaintance with many tens of cannabis smokers over the past 25 years. I have never in all this time seen any evidence of significant side-effects let alone the severe side-effects seen with alcohol and tobacco.

In the same way the accumulated personal experience of hundreds of thousands of Australian cannabis users over the last 25 years has led to a **widespread consensus** that it is a relatively safe drug and that its intoxication to side-effects ratio is very good - much better for example, than alcohol (the effects of an acute alcohol hangover are well known but it is reported that acute use of cannabis will often cause no hangover effect or only mild effects comparable to the effects of a light tobacco habit - such as a dry mouth, strong thirst and a mild cough).

3. A commonly perceived 'social harm' is cannabis *experimentation by adolescents*. As demonstrated by Dr Nelson's review, adult concern - so far as it relates to intrinsic effects - is almost totally misplaced. As well, 'it is in fact now fairly widely accepted that experimental drug use is characteristic of many competent adolescents' (McAllister et.al., 1991, p15). Of course the current illicit status of cannabis experimentation creates a genuine concern, due to the risks of arrest and conviction.

4. The idea that cannabis is a *gateway or stepping stone drug* to hard drugs is another perceived 'social harm' of cannabis. Like the prediction of increased use under legalisation, it ignores the ease with which cannabis and other illegal drugs can be obtained in this country. Streetwise informed choice - not drug law enforcement - is the reason for the existence of 83,600 weekly users of cannabis in Queensland (Discussion Paper, p56), versus almost negligible numbers of heroin users (McAllister et.al., 1991, p123).

5. The following comment from Whitlock (1980, p169) addresses the second part of the question relating to the threat of increased 'social harm' associated with *increased cannabis use*:

It is sometimes argued about cannabis that we have enough problems with alcohol, tobacco and other substances without legalizing yet another recreational drug. As the South Australian Royal Commission observed (p79), the argument misses the point because cannabis use is already widespread.

Cannabis is so widely available in Australia that anyone who wishes to experiment with it or use it on a regular basis can easily obtain it. Australians have for years been exercising a choice about cannabis as if it were a legal drug. Ease of availability under prohibition is also the most

probable reason why, as described in the Discussion Paper (pp42-48), decriminalisation in other countries has made no difference to the prior levels of consumption under prohibition.

### **3.3 DO ANY SOCIAL BENEFITS ARISE FROM THE USE OF CANNABIS?**

Obviously cannabis users enjoy the effects of cannabis, otherwise they would not risk losing their liberty and assets by smoking it. Provided this individual enjoyment comes at no cost to non-smokers or the community generally, it can safely be identified as a social benefit. Group cannabis consumption shares with alcohol the social benefits of conviviality and social cohesion, but without alcohol's side-effects of aggression and poisoning.

### **3.4 TO WHAT EXTENT DOES HARM OUTWEIGH BENEFIT, OR VICE VERSA?**

Benefit greatly outweighs harm. (See also response to 4.5.)

### **3.5 IF MEDICAL USES ARE ESTABLISHED FOR CANNABIS, SHOULD THESE BE PERMITTED?**

Yes. If in the Western scientific medicine context, cannabis preparations have value in the treatment of glaucoma and cancer treatment-related nausea, then they should be used (see 'Forbidden Medicine', New Age Journal, October 1993, p87-91).

The use of cannabis preparations should also be permitted in Traditional Chinese Medicine, wherein cannabis has a minor role as a laxative and as a hypertension therapy (Handbook for Chinese Herb Formulas, by Him Che Yeung).

### **3.6 SHOULD CANNABIS CULTIVATION FOR THE PURPOSES OF FIBRE PRODUCTION (I.E. FOR PAPER MANUFACTURE) BE PERMITTED?**

Absolutely, yes: see 'Up in Smoke' (Marihuana - A Papermaking Revolution), Simply Living, V7/3, March 1993, p20.

## **4. CANNABIS LAW ENFORCEMENT**

### **4.1 WHAT ARE THE PROPER GOALS OF LAW ENFORCEMENT IN RELATION TO THE REGULATION OF CANNABIS USE, SUPPLY AND PRODUCTION?**

If by 'law enforcement' the Committee means enforcement of laws similar to the present suite of prohibition laws, then the position taken by this submission has no response. If 'law enforcement' includes policing of cannabis laws similar to those regulating alcohol and tobacco, then the 'proper goals' would be the same as for those substances.



#### 4.2 BY WHAT SPECIFIC LAW ENFORCEMENT MEASURES SHOULD THESE GOALS BE MET?

The same range of measures as for alcohol and tobacco.

#### 4.3 HOW SHOULD LAW ENFORCEMENT MEASURES IN RELATION TO CANNABIS BE EVALUATED?

See responses to 4.4 and 4.5.

#### 4.4 WHAT SOCIAL BENEFITS ARISE FROM CURRENT LAW ENFORCEMENT PRACTICE IN RELATION TO CANNABIS?

None.

#### 4.5 WHAT SOCIAL COSTS OR HARM ARISE FROM CURRENT LAW ENFORCEMENT PRACTICE?

The social harms arising from current cannabis use are almost wholly drug-law-related harms, rather than drug harms per se. The social harms arising from cannabis prohibition include:

- \* **discriminating** against the minority who prefer cannabis to alcohol, thereby causing misery and suffering;
- \* **criminalizing** users of cannabis, creating disrespect for the law and the enforcers of the law, the police and judiciary;
- \* **stigmatizing** convicted offenders for what they regard as a trivial matter, with a criminal record for the rest of their days;
- \* **encouraging** young and unemployed people to become criminals by creating an extremely lucrative black market in cannabis;
- \* **forcing** users into contact with (at least part-time) professional law-breakers, such as growers and dealers;
- \* **removing** the settling of cannabis-related disputes from the legal process, creating a context of potential violence for large-scale cannabis transactions.
- \* the **arrest** and conviction of hundreds of Queenslanders leading to fines and gaol sentences;
- \* **disbarring** of convicted offenders from certain types of employment;
- \* **undermining** the credibility of official pronouncements on drugs, thereby encouraging experimentation with truly dangerous drugs (e.g 'datura');
- \* **depriving** consumers of perhaps 90 percent of the purchasing power of the money spent on cannabis (if the black-market price is, say, inflated 10 times the legal price).

\* the wholesale **waste** of very large amounts of public funds on cannabis law enforcement that is almost totally ineffective ('apprehension rate for persons about 2.3 percent', Discussion Paper p101);

\* serious **erosions** in the rights to privacy and civil liberties of all citizens.

*All of these harms would disappear with legalisation.*

#### **4.6 DO BENEFITS OUTWEIGH COSTS OR VICE VERSA? WOULD THIS BALANCE BE AFFECTED BY ANY AMENDMENT(S) TO LAW ENFORCEMENT PRACTICE AND IF SO, BY WHAT AMENDMENT(S) AND BY WHAT MEANS?**

Costs overwhelmingly outweigh benefits.

Continuation of the present levels of cannabis use within a decriminalisation framework would only produce a small decrease in law-related social harms.

A common focus of concern is that legalisation would cause an increase in cannabis use. Even if this did occur (see this submission, response to **3.2**), it would be accompanied by the elimination of all the law-related harms listed above. Given Peter Nelson's conclusion that 'cannabis represents no significant or unreasonable threat to the general public well-being' (Discussion Paper p144), it seems impossible to argue that the increase in intrinsic harms associated with increased cannabis use would even begin to compare with the benefits to be gained from legalisation.

#### **4.7 WHAT SIGNIFICANCE SHOULD BE ATTACHED TO CURRENT INEQUITIES IN THE IMPACT OF ENFORCEMENT? SHOULD THESE BE AMELIORATED AND IF SO, BY WHAT SPECIFIC MEASURES?**

The inequities identified in the Discussion Paper can only be overcome by legalisation of the production, supply and consumption of cannabis. It can confidently be predicted from the findings in the Discussion Paper, that decriminalisation would result in the continuation of inequities similar to those imposed by current prohibition.

#### **4.8 WHERE SHOULD THE MAIN BURDEN OF LAW ENFORCEMENT FALL?**

The 'burden of law enforcement' is not a relevant issue for the legalisation option favoured by this submission.

In a decriminalised context, the usual answer to this question is that the burden should fall on major producers and suppliers. However, even under prohibition, demand is the main driving force in the market. Decriminalisation, as usually conceived, defacto-legalises demand, but makes supply monstrously criminal. The contradiction inherent in this approach makes production and supply more lucrative and therefore more attractive, to those prepared to break the law.

**4.9 SHOULD ON THE SPOT FINES OR ANY SIMILAR SCHEME BE USED IN RELATION TO ANY CLASSES OF CANNABIS RELATED OFFENCES? IF SO, HOW, SPECIFICALLY, SHOULD THIS BE INSTITUTED? WHAT SPECIFIC MEASURES SHOULD BE USED AND WHAT TECHNIQUES ADOPTED IN THE EVALUATION OF ANY SUCH SCHEME? SHOULD ANY SUCH SYSTEM IN RELATION TO SOME OFFENCES BE ACCOMPANIED WITH ANY SPECIFIC ACTION IN RELATION TO OTHER OFFENCES?**

This submission supports legalisation of cannabis.

**4.10 SHOULD IMPRISONMENT REMAIN A SENTENCING OPTION FOR ALL CLASSES OF CANNABIS OFFENCES? IF NOT, FOR WHICH SPECIFIC OFFENCES SHOULD IMPRISONMENT BE AN OPTION AND FOR WHICH SHOULD IT NOT BE AN OPTION?**

This submission supports the legalisation of cannabis and therefore opposes imprisonment.

## **5. CANNABIS & DRUG EDUCATION**

**5.1 SHOULD THERE BE SPECIFIC DRUG EDUCATION OR MORE GENERAL HEALTH PROMOTIONAL CAMPAIGNS WHICH INCLUDE DRUG RELATED ISSUES?**

Drug education is probably worthwhile because of the abysmal lack of understanding of 'drug' issues in the community generally.

The community is in fact divided into drug subcultures, within which there is often a sophisticated knowledge of the effects and risks of the subculture's favoured drug or group of drugs.

A primary goal of drug education might therefore be the education of these subcultures about the drugs favoured by other subcultures. For many people, the definition of 'drug abuse' is 'the use of drugs I don't use by people I don't like'.

**5.2 SHOULD THERE BE SPECIFIC CAMPAIGNS IN RELATION TO ILLICIT DRUGS OR SHOULD EDUCATIONAL AND PROMOTIONAL CAMPAIGNS FOCUS ON DRUG ISSUES GENERALLY?**

Drug issues generally as per the National Campaign Against Drug Abuse. Specific campaigns against illicit drugs encourage the common misperception in the community that 'drugs' = illicit drugs and tends to lead to complacency about legal drug abuse. The correct focus of health campaigns should be on the most commonly abused drugs, ie alcohol, tobacco and prescription and OTC drugs.

Illicit drugs pose a special problem for education. Simply because they are illicit, honest and effective drug education is often impeded. It tends to become dangerous to tell people the truth

about illicit drugs and 'immoral' to teach people how to use illicit drugs safely.

**5.3 SHOULD THERE BE SPECIFIC CAMPAIGNS IN RELATION TO CANNABIS, OR SHOULD CANNABIS BE REFERRED TO IN THE CONTEXT OF ILLICIT DRUGS, DRUGS GENERALLY, OR HEALTH PROMOTION GENERALLY? (IF SPECIFIC CAMPAIGNS IN RELATION TO CANNABIS ARE PREFERRED, WHAT SHOULD BE THE CONTEXT OF SUCH CAMPAIGNS? [IN GENERAL TERMS].)**

The health risks of cannabis are now widely agreed to be trivial. It therefore seems difficult to justify public expenditure on specific cannabis education campaigns. The most appropriate methodology might be reference to cannabis in the context of drugs generally.

**5.4 BY WHAT SPECIFIC MEANS SHOULD THE EFFECT OF CANNABIS, DRUG EDUCATION AND HEALTH PROMOTIONAL CAMPAIGNS BE ASSESSED?**

The NCADA methodology of three-yearly household surveys is supported.

**5.5 WHAT IS THE APPROPRIATE LEVEL OF RESOURCING TO BE ALLOCATED TO DRUG CAMPAIGNS/HEALTH PROMOTIONAL CAMPAIGNS? IF NOT CURRENTLY ALLOCATED, FROM WHAT AREAS SHOULD THE NECESSARY RESOURCES BE DIVERTED?**

The National Campaign Against Drug Abuse (NCADA) has already spent large amounts of public monies on drug campaigns. In these recessionary times, it would seem very difficult to justify further large-scale campaigns. It would be even more difficult to argue for diversion of funds from naturally competing areas such as hospital funding unless a clear cost-benefit (decreased alcohol and tobacco consumption leading to decreased hospital admissions) can be demonstrated (that doesn't take 20 years to show up).

**J E Ransley, MSc  
Brisbane, 4 October 1993**

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