

# QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

## CANNABIS & THE LAW IN QUEENSLAND

### Submission to the Criminal Justice Commission Advisory Committee on Illicit Drugs

by Peter Applegarth, Vice President

#### Introduction

The Queensland Council for Civil Liberties ("the Council") submits that the present policy and legislation in relation to cannabis is wrong in principle and has failed in practice.

The Council supports the principle that individuals should be free to engage in conduct that causes no harm to others. Such a principle recognises scope for legislation to regulate and, in appropriate circumstances, prohibit conduct that causes harm to others. For example, the danger posed to individuals justifies legislation that prohibits the use of motor vehicles or dangerous machinery by persons under the influence of drugs.

The Council also recognises that the state has an interest in minimising drug-related harm because of the social cost involved, and its demands on public resources. This state interest justifies policies aimed at deterring the use of certain drugs. The Council recognises that different drugs pose different dangers to health and that particular drugs therefore call for different policy responses. In general, however, drug policy should be directed at the minimisation of drug-related harm. In formulating such a policy the social cost of prohibition should be taken into account.

In relation to cannabis, the Council notes the review which has been undertaken by the Advisory Committee on Illicit Drugs and, in particular, the review by Dr Peter Nelson which is appendix "A" to the Committee's Discussion Paper. The review undertaken by the Committee supports the proposition that cannabis represents no significant or unreasonable threat to the general public wellbeing. In the absence of any demonstration that cannabis use, as such, poses a significant threat to the community, the Council favours a policy of legalisation. The Council's support for a policy of legalisation, nevertheless, recognises scope for legislation which:

- (a) prohibits the use of motor vehicles and machinery whilst under the influence of cannabis or other drugs;
- (b) regulates advertising of cannabis;
- (c) prohibits the supply of cannabis to minors;
- (d) licenses the production and sale of cannabis.

The present policy of prohibition in relation to cannabis:

- (a) has not worked in practice in that it has not been shown to have any effect whatsoever on the use of cannabis;
- (b) is highly discriminatory in that only a very small minority of actual offenders are prosecuted;

- (c) has consequences for individuals who are successfully prosecuted (eg a term of 25 years imprisonment with a recommendation against parole until 14 years has been served: *Leeth v. The Commonwealth* (1992) 174 C.L.R. 455) which far outweigh any harm caused by the use of cannabis products;
- (d) is hypocritical when account is taken of the social cost caused by the use of licit drugs such as tobacco and alcohol;
- (e) confuses in the mind of the general public the use of cannabis with the use of other illicit drugs, such as heroin and cocaine.

The Council submits that it is inappropriate simply to decriminalise the personal use of cannabis. Such a policy represents an unsatisfactory compromise. If criminal penalties should not be imposed upon the personal use of cannabis, then it is difficult to understand why, in principle, there should be a prohibition on its cultivation and distribution. A policy which legalises or decriminalises personal use, but maintains a prohibition upon the cultivation and sale in large quantities of cannabis simply serves to increase the price of cannabis to users and ensures that the cultivation and supply of cannabis is undertaken by criminal organizations. It ensures a source of supply of funds to such criminal organizations. Such a policy creates a potential for police corruption. It inevitably brings users of cannabis into contact with such criminal organizations as a source of supply.

Even if the use of cannabis had been demonstrated to pose a potential public health problem, then the Council would not favour the present policy of prohibition. The Council considers that the policy prohibition comes at too high a social cost. In this regard, the Council considers that the cost of the present policy should not be confined to a notional costing of the criminal justice system resources devoted to drug law enforcement (see the Advisory Committee's Discussion Paper at pp.94-96). Account should be taken of the social costs arising from drug law enforcement, even if such an exercise cannot produce a dollar figure in terms of an accounting exercise.

For the reasons which will be developed in the course of this submission, the Council submits that the long-standing policy of prohibition in relation to cannabis:

- (a) was misconceived from its inception;
- (b) has not been shown to curtail cannabis use;
- (c) has many undesirable consequences, including significant legislative incursions upon traditional civil liberties; &
- (a) has produced a market that is completely out of control.

Before developing those submissions, something should be said about the proper approach to the issue of reforming the present policy.

### **Approaching the Problem**

The onus should not be on those favouring law reform to demonstrate that cannabis is harmless and, in particular, that it has no adverse health effects. To create such an onus is unfair and wrong in principle. All substances have some side effects, especially if used to excess. A simple illustration is soft drink which may cause tooth decay and have other ill effects, especially if consumed to excess. But no one seriously contemplates a prohibition on

the manufacture, sale and consumption of soft drink. Similarly, the consumption of alcohol, especially if used to excess, has health effects and anti social consequences. However, users of alcohol are subject to formal control only for defined public behaviour. By contrast, the use of cannabis is subject to prohibition, irrespective of the behaviour which that drug induces. This approach misses the mark of social concern, and results in imposing control on many persons who have posed little risk to self or society and have not exhibited behaviour of the kind which normally warrants application of the criminal law. (See generally the Shafer Commission page 249).

It may be pointed out that legislators are not required to be consistent and that the long-standing use of alcohol and tobacco does not justify any relaxation of the law with respect to cannabis. However, this argument is unprincipled. Moreover, a comparison between the potential for harm between, on the one hand, alcohol and tobacco, and, on the other hand, cannabis, reveals a gross hypocrisy and brings the law into disrepute.

A variant on the argument which attempts to justify present policy in relation to alcohol and tobacco but maintain the prohibition on cannabis is that, whereas alcohol and tobacco use is widespread, there is no point in giving official sanction to the use of a "new drug". However, this argument ignores the current widespread use of cannabis. As the Chairman of the Parliamentary Joint Committee of the National Crime Authority, Mr Peter Cleeland, stated:

“Anyone who pushes law anti 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).”

The proper approach, it is submitted, is for those who favour a continuation of the policy of prohibition to justify such a policy in principle, identify the objectives of that policy and to assess whether those objectives have been met. Those who favour a continuation of the policy of prohibition not only carry the onus of demonstrating harm arising from the use of cannabis which would justify the use of the criminal law, but that the cost of applying the criminal law under a policy of prohibition does not outweigh that harm. As the Le Dain Commission stated in its final report (page 131), in each case, the issue must be decided on an estimate of the balance of cost and benefit.

Fox and Mathews (Chapter 9) state:

“Some political leaders think it is for the public to show, seemingly beyond a shadow of a doubt, that no harm will ensue if prohibitions are relaxed or removed. This approach, they might think, permits a comfortable evasion of their own responsibilities. The idea that guaranteed absence of resulting harm is a pre-condition for change is, however, fundamentally unsound. There should be an exercise of judgement, a balancing of all considerations, for and against. The question is whether change will produce a situation, taken as a whole, which will be more satisfactory than it now is. This should include a close examination of the present position and a comparison of costs and benefits, or the advantages and disadvantages of present policy.”

## The Use of the Criminal Law

The principle that the criminal law should not govern private behaviour which causes no harm to others has widespread acceptance. Indeed, one of the functions of law in a civilised community is to secure a sphere of self-determination for individuals to act. The right of the individual to self-determination is recognised by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

The imposition of the criminal law is justified by the idea of preventing harm to others. The mere **possibility** of harm to others is not normally sufficient unless the harm in contemplation is very serious. When one applies these principles to drug-taking in private, the advocates of imposing the criminal law must identify a "harm" which justifies criminalizing such activity. The fact that such drug taking may have adverse consequences for an individual's health does not justify the imposition of the criminal law. If this were so, the consumption of alcohol or tobacco would be prohibited by the criminal law. But whereas the consumption of alcohol and tobacco and numerous other drugs has been well demonstrated to cause adverse health effects, cannabis has not been demonstrated to cause such harm (see the review of the literature in Appendix A to the Discussion Paper).

The fact that an individual's conduct has adverse health consequences and the potential to impose a burden on the health system does not justify use the criminal law. For example, deaths in Australia from skin cancer due to excessive exposure to the sun occur at over three times the rate of deaths from the use of all opiates, but sunbaking is not an offence!

It may well be asked in those circumstances why the prohibition on cannabis was introduced.

As Bonnie and Whitebread pointed out in their 1970 *Virginia Law Review* article, law may be rooted in fiction as well as fact. So it has been with cannabis. A consideration of the legislative history of cannabis control of the kind undertaken by the Le Dain Commission and by Bonnie and Whitebread leads to the conclusion that legislative action has been a knee-jerk response uninformed by scientific study or public debate and coloured by racial bias and sensationalistic myths. Bonnie and Whitebread conclude that racial prejudice was the most prominent influence in legislative action: use of the drug was primarily limited to Mexican-Americans who were immigrating in increased numbers to the United States. The pharmacological effects of the drug were immaterial to the decision to suppress it. Since marijuana was an intoxicant consumed only by immigrant Mexicans in the south and west and by ghetto blacks in the east, legislators apparently reflected a public hostility to the drug wholly without regard to its pharmacological effects. Thus was generated the ongoing public hysteria towards "the killer weed".

The policy of prohibition has been carried forward since by a mixture of passion, prejudice and misinformation.

## Cost-Benefit Analysis

The cost-benefit assessment suggested above requires that exercise to be performed in respect of each drug. The assessment in respect of cannabis may be different from that in respect of other drugs, whose health effects and social costs are quite different from those of cannabis.

In this respect, it is important to disengage the case for or against prohibition of cannabis from the ongoing public hysteria directed towards "hard drugs" and their consequences. Even if a careful cost benefit analysis of other drugs, such as heroin, supported a continuation of a prohibition on their use, this would not justify a continued prohibition on cannabis. Indeed, the legalisation of cannabis would have the important consequence of depriving criminal organisation of an important source of funds.

Cannabis has not been demonstrated to pose any significant or unreasonable threat to public health. In fact, many people obviously find the use of cannabis a pleasant, relaxing and comforting experience. The psychological benefits derived from use according to users are detailed in the Le Dain Commission's Report at page 50.

One social cost arising from drug use is the risk of injury to others in the workplace or on the roads from persons using machinery or vehicles under the influence of a drug. Such a risk exists in respect of cannabis during a period shortly after its use. However, this risk does not justify a blanket prohibition on the use of cannabis. Further, the current policy of prohibition has not been shown to have limited the use of cannabis in general, and by persons engaged in driving or using machinery in particular. Nevertheless, a law which is directed at the specific danger posed by persons using motor vehicles or machinery under the influence of a drug can be justified. The proper enforcement of such laws depends upon the development of appropriate forms of detection, and is discussed below.

As to the costs of the current policy of prohibition, the discussion paper estimates the national cost of drug law enforcement at page 95. However, other costs are omitted.

The Council commends to the Advisory Committee an article by Robert E. Marks, "What Price Prohibition? An Estimate of the Costs of Australian Drug Policy", Vol. 16 Australian Journal of Management, December 1991, pp. 187 - 212. Marks concludes that the prohibition against illicit drugs is ineffective but still imposes a high burden on Government revenue and indirectly contributes (because of its ineffectiveness) to additional costs by Australian households. Marks argues that the Cleeland Report underestimated the true costs of the law enforcement against illicit drug use by a factor of at least two. He argues that a large proportion of these costs would be eliminated if drugs were made available, at cost, to regulated drug users. Marks estimates a total annual cost to Australia of \$776,000,000 as well as forced transfers of \$656,000,000.

The social costs of the present policy of drug prohibition are well-canvassed in the following articles and books: James Ostrowski, "Thinking about Drug Legislation", CATO Policy Report No. 121, 25th May, 1989; Russell Fox and Ian Mathews, "Drugs Policy"; Derek Whitlock, "Drugs"; Terry Carney, "Drug Users and the Law in Australia"; Carney, Drew, Mathews, Mugford and Wodak, "An Unwinnable War Against Drugs: The Politics of Decriminalisation"; I. McCallister, R. Moore and T. Makkai, "Drugs in Australian Society". The Council adopts the analysis and submission contained at pages 3-5 of the submission made by one of our members, Mr Ransley, on 30 September 1993.

## Costs to Civil Liberties

Present drug laws; and the enforcement of the prohibition on cannabis in particular, come at a high cost to traditional civil liberties. Commissioner Fitzgerald wrote in his 1989 report:

"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."

These interference's include the increased use of electronic bugging, attempted entrapment by undercover agents and the seizure of property prior to and without any criminal conduct being proved. Such incursions into civil liberties are achieved by numerous federal and state statutes which, in many cases, reverse the onus of proof. Many of these provisions infringe international instruments relating to civil and political rights.

Ostrowski, in his 1989 article "Thinking about Drugs Legalisation" states:

"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 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" (pp. 21-22).

The Parliamentary Joint Committee reported on the consequences of the present laws for civil liberties:

"Prohibition has also been responsible for an erosion of generally accepted civil liberties. This has been particularly marked in relation to police raids on rural areas where helicopters have disturbed innocent citizens, properties have been entered by

heavily armed police in search of non-existent drugs and roadblocks have been set up for random search of passing vehicles. Persons may be liable to intrusive searches upon suspicion and persons' reputations may be damaged not because of any crime that has been proved against them but because they are suspected of having had some involvement in the drug trade.

The laws themselves have eroded traditional liberties, one typical feature being the reversal of the onus of proof in respect of offences of supplying illegal drugs whereby a person found in possession of a quantity of drugs above a statutory amount is deemed guilty of supply unless he or she can establish that the drugs were for personal use only and not for sale."

## **Obstacles to Reform**

One of the greatest obstacles to reform is a stubborn resistance on the part of politicians to recognise the futility of the existing prohibition on cannabis. A second is the vested interest of law enforcement officials and bureaucrats in maintaining a system that provides them with funding and power. Reform is thwarted by a concentration upon the harms, real or imagined, posed by cannabis and a failure to take proper account of the adverse consequences of the present policy of prohibition. As Fox and Mathews remark:

"The argument commonly used to support prohibition, although it is really no argument at all, is to reiterate the ills now associated with drugs. The misfortunes which flow from the existing pattern of laws are not extracted and distinguished. What is relied upon instead is a horror story, an emotional exercise designed to frighten everyone into supporting 'the war'.

Oddly, the essential element is not discussed, namely how further pursuing the failed strategy will somehow relieve the existing woes. It is sufficient, apparently to catalogue existing concerns, with an added leavening of hyperbole. The authorities virtually admit that at present the costs greatly outweigh the benefits, but the notion persists that we should press on, casualties notwithstanding, to have more of the same."

A more honest and sensible approach on the part of policy makers and legislators would be to recognise that our community is, and long has been, a drug taking society and, in the main part, committed to the pursuit of pleasure. Simple recognition of the extent of alcohol and caffeine consumption in our community shows the extent to which it is a drug taking society. Therefore, it is hypocritical of a community with a long-standing acceptance of the part of drugs in everyday life to prohibit cannabis, whose adverse health effects are far less than the commonly accepted drugs.

Even if one assumes for the purpose of argument that cannabis is disapproved of by a majority of the community, then this alone is not a sufficient justification for the continued policy of prohibition. Apart from the moral or civil liberties argument against the use of the criminal law to punish conduct which causes no real and substantial harm to others, more practical considerations intrude. These include the futility of the existing law, that it is

counter-productive and that it breeds disrespect for the law in general and has enormous adverse consequences.

### **The Futility & Costs of the Existing Policy of Prohibition**

Notwithstanding the long-standing hysteria directed at cannabis, arguments about its alleged risks have been insufficient to convince a large part of the population not to use it. It is difficult therefore to imagine that the threat of criminal sanction does much, if anything, to deter cannabis use. The absence of a strong social consensus supporting the continued prohibition on marijuana weakens the deterrent effect of the law. Defenders of the present policy of prohibition make the facile assumption that perpetuation of the current policy is justified by whatever deterrent value it has. However, as the Shafer Commission pointed out (pp. 251-2) one need not assert that the law is no deterrent at all to argue that at some point its modest effectiveness as a mechanism of control is outweighed by the social costs of its enforcement.

Apart from the moral or civil liberties arguments against the policy of prohibition, a practical consideration is that legislation should not be enacted unless there is a reasonable prospect of enforcing it successfully. Because there is no demonstrated proof that the existing policy of prohibition of cannabis has reduced consumption (and it may even have increased it because of the allure created to the immature by the policy of prohibition) the continuation of that policy is called into doubt. This is not simply a question of futility. Unenforceable laws, by their nature, lead to disrespect for the law in general, disrespect for the institutions which are called upon to enforce the laws and aid corruption amongst police, prosecutors and the courts.

This is so especially in the case of cannabis where the absence of a strong social consensus in support of the continued policy of prohibition may lead to an ambivalence on the part of some police officers as to whether the law should be enforced at all and a temptation to corruption.

Overseas experience, such as the US Marijuana Eradication Drive demonstrates the futility of the existing law. As the Wall Street Journal of 8 January 1990 reported in respect of the seven year old Campaign Against Marijuana Planting:

"... Despite all the effort spent on the destruction of marijuana, between 4,350 and 4,850 metric tons of domestic marijuana came to market in 1988, or twice as much as in 1986... . If anything, CAMP has been something of a blessing for many small-scale marijuana growers in northern California. California's marijuana eradication drive has managed to drive the wholesale price from \$200 in the early 1970's to more than \$3,000 today. ... Californian Court of Appeal Justice Colman Blease has called the aerial surveillance 'an unacceptable harbinger of a totalitarian failure'."

The policy of prohibition may be counter-productive. The prohibition of cannabis may in fact provide an allure for particularly younger people to rebel against authority because of the attraction of acting in disregard of a controversial law without being caught. Rather than deter, the policy of prohibition may incite greater drug use amongst the young.

Dr John Ellard in an article in "The Independent Monthly" in April 1990 identified the consequences of allocating greater resources towards the struggle against drugs, increasing penalties and enacting new laws. He stated if there were any consequences of such action, they are likely to be:

- (a) Some users and small operators will be identified and convicted. Others will take their place immediately.
- (b) The supply and distribution will be tightened up and become more concentrated.
- (c) The price of the drug will increase, as will the profit from its sale, thereby attracting more entrepreneurs.
- (d) The larger profits will provide more money to corrupt those whose new duties are being created.
- (e) The larger operators will not be identified and will continue their activities.

The Nobel Laureate economist, Milton Friedman, observed:

"Law enforcement temporarily reduces the drug supply and thus causes prices to rise. Higher prices draw new sources of supply and even new drugs onto the market, resulting in more drugs on the street. The Government reacts with more vigorous enforcement - and the cycle starts anew. (New York 8 Times, May 9, 1993.)"

The policy of prohibition is an exercise in futility because of the community demand for intoxicants. A reduction in the supply and ongoing demand simply leads to a rise in price. Black markets develop and flourish. A phenomenon described as the "natural selection of gangsters" occurs with the cleverest, richest, most ruthless and most violent criminals surviving with vast sums of money being laundered. The most efficient operators remain. Even coercive laws, such as those that strip drug dealers of their assets, simply eliminates competition from those more adept at crime and laundering. The only means to avoid a continuation of the cycle of escalation is to eliminate the conditions which give rise to it. The ending of alcohol prohibition in America is a case in point.

Instead of concentrating on the characteristics of drugs and any conceivable harm which they may produce, the proper approach is to make a cost-benefit analysis of harm and benefit. This is not done under the present policy.

The costs and consequences of the present policy of prohibition against cannabis include:

- (a) contempt for the law which can be seen to be unenforceable;
- (b) massive government expenditure upon the futile attempt to enforce existing law;
- (c) the diversion of government expenditure from more deserving ends;
- (d) the creation of a black market which is ungoverned and unregulated;
- (e) users of cannabis are brought into contact with criminal organisations;
- (f) corruption; and
- (g) violence and other criminal conduct between organisations within the black market and in enforcing debts.

The failure of the existing policy of prohibition leads to demand for greater resources, more enforcement and tougher penalties. These are unlikely to produce any great improvement.

But even if such measures result in partial success, they simply create a "crime tariff" which enables those suppliers who are not detected to pass on this tariff to users through higher prices.

Most importantly, traditional civil liberties are abrogated: not only the civil liberties of those involved in the drug trade and in cannabis consumption, but those whose private affairs come under official scrutiny.

The potential for corruption has been well documented by numerous official inquiries. The parliamentary joint committee reported on the same noting that the enormous profits which had been made from the drug trade also promote corruption within law enforcement agencies. As one witness told the committee:

"One wonder in this society is not that we have got bent coppers, it is that we've got straight ones."

The Fitzgerald Inquiry noted that attempts to stamp out the illegal drug trade failed all over the world and it consumed more and more resources. As it stated:

"The drug trade's high prices, huge profits, large numbers of organised criminal suppliers, and the lure of the forbidden fruit are notorious."

## **Special Measures**

A case may nevertheless be made for the enactment of laws specifically directed at the consumption of drugs in circumstances which constitute a risk of injury to others in the work place or on the roads. But such legislation should be specifically directed to that risk. One encounters some difficulties in proof, since cannabis metabolites collect in the fat tissue of the body and are likely to remain there for up to two months, long after any possible physical effects on performance. Nevertheless, urine and blood testing may facilitate proof, as would the demonstration on the spot of a relevant skill (see Burns (1985).) One possibility is to provide for a certain percentage upon blood testing to be prima facie proof of intoxication. While there may be a case for testing of drugs in some industrial situations, this should be only countenanced where a person presents a real risk of injury. The extent of random drug testing in the work force in America should not be countenanced.

The principle of self-determination which the Council relies upon to support the abolition of the current policy of prohibition, would not prevent laws being enacted to prevent the promotion and sale of cannabis to young children. The principle of autonomy in the matters of drugs does not apply to people lacking rational capacity, such as the young or the mentally disabled.

The need to enact special measures to protect persons from injury, or laws regulating the purity of substances and their packaging and labelling and the need to protect the young and the infirm do not support a continuation of the policy of prohibition.

## Ending the Policy of Prohibition

"The basic defect in our present system is that the prohibitions are too widespread and indiscriminate. The matters which they should deal with are not identified and selected for concentrated treatment. This results in an unenforceable regime on the one hand and the inadequate treatment of serious social problems on the other. We have lost control over the market, to the detriment of the health and welfare of the community. Because of pervasive corruption, enforcement measures are intrinsically flawed. There is only one solution: to diminish the ambit of the prohibitions and look at ways of handling the real problems effectively." (Fox and Mathews, Chapter 23).

A number of policy options are available. These are identified by the Parliamentary Joint Committee in Chapter 6 of its Report.

The Council does not favour the compromise solution of decriminalizing personal use and possession. An obvious inconsistency exists between permitting possession for personal use and yet criminalizing conduct which must necessarily precede such possession at some point. Some would argue that such an inconsistency is justified as an interim measure: (see, for example, Bonnie and Whitebread), or as a recognition of practical political considerations (see the Sackville Commission which recommended a partial prohibition model for South Australia). The enactment of such policies, including those which provide minor civil penalties for use of small quantities of marijuana, has apparently had no adverse effects. However, a policy of decriminalisation on personal use fails to make any significant inroad on the unregulated black market governing supply. It is only by breaking that unregulated black market that many of the serious consequences of the policy of prohibition can be redressed.

The Council notes the views advocated by Professor Marie Bertrand, who as a member of the Le Dain Commission, recommended, amongst other things, government action to have the sale and use of cannabis placed under controls similar to those governing the sale and use of alcohol, including legal prohibition and unauthorised distribution and analogous age restrictions. Her recommendation was that "government-distributed cannabis should be marketed at a quality and price that would make the "black market" sale of the drug an impractical exercise."

Her recommendations included the initiation of a programme to develop efficient practical methods of cannabis production and marketing, accompanied by multi-disciplinary epidemiological research to monitor and evaluate changes in the extent and patterns of the use of cannabis and to explore possible consequences to the health, personal and social behaviour resulting from controlled legal distribution of cannabis.

The Council's submission relates solely to cannabis. As already mentioned, not all drugs are the same and the cost-benefit analysis in respect of cannabis calls for a response which may not necessarily apply to other drugs. However, the policy of controlled availability may be strongly argued to be applicable to other drugs, such as heroin.

The Council submits that use and possession for personal use of cannabis should not be an offence or attract civil liability.

Growing marijuana under licence should be permitted, as would the sale under licence. This would require the licensing of centres to operate as points of sale to users. Consideration should be given to sale only being made upon production of a card which identifies the user and prevents the user from acquiring large quantities which would facilitate large-scale transfers. Of course, the system suggested, in practice, would permit small amounts of transfers to occur. No card should be issued to persons under the age of 16. Like a credit card, such a card would limit purchases both as to duration and in amount.

Although such a system may appear bureaucratic, the Council favours it over the immediate adoption of an open system whereby cannabis can be bought and sold freely.

Apart from political considerations which would militate against the open sale of cannabis, the Council is attracted to the arguments of Professor Bertrand as to the importance of evaluating changes in use and its effects under an initial policy of government control.

Even if, in time, the system of government control was abandoned and cannabis became freely available, scope would remain for regulation on matters such as purity, labelling, advertising, packaging and sale to minors.

An important attraction in enacting a policy of legalization, but with controlled availability by the government, is the effect which it would have on the presently uncontrolled black market. The sale of cannabis through a system of government licensing would enable cannabis to be sold at a price which would destroy the existing black market. The policy of legalization would deprive existing criminal organisations of an important source of income by denying such criminal organisations a guaranteed source of cash flow.

In summary, the present policy of prohibition is not soundly based, has numerous costly and undesirable consequences which outweigh its marginal benefits and has resulted in a black market which is completely out of control. It has not been demonstrated to have reduced cannabis use. The policy of prohibition has been a costly failure.

## Discussion Paper Questions

### General Issues

1.1 What criteria should be used in determining whether a drug should be declared an illicit drug?

The Council adopts the analysis of Ostrowski and the submission of Mr Ransley (pages 11-12), which requires the following criteria to be satisfied:

- (a) that prohibition will substantially decrease the level of illicit drug use;
- (b) that prohibition will result in a substantial reduction in drug-intrinsic harm because of the decreased level of illicit drug use;
- (c) the reduction in drug-intrinsic harm will not be exceeded by the prohibition-harm;
- (d) prohibition will not result in the banning of a drug whose intrinsic dangers are no worse than the intrinsic dangers of drugs to which former users probably will resort, e.g. alcohol and tobacco.

### Harm Minimisation

1.2 What should be the aim of the policy on illicit drugs generally?

The minimisation of drug related harm.

1.3 To what extent should there be different policy goals for licit and illicit drugs?

The policy goal should be the same: a 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?

No. The Council adopts the recommendations of the Parliamentary Joint Committee as to evaluation and the submission of Mr Ransley (page 14).

### Tobacco & Alcohol

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?

Cigarette smoking and alcohol abuse are of greatest concern because of their chronic health effects.

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?

Cigarette smoking and alcohol abuse are of greatest concern because of their chronic health effects, the anti-social consequences of alcohol abuse and the social costs imposed by their widespread use. The Council adopts the findings of Fox and Mathews as to the effects of various drugs and the analysis undertaken by Mr Ransley at pages 15 to 19 of his submission.

## **Cannabis Policy & Legislation**

2.1 What should be the goal of policy in relation to cannabis?

- (a) To inform potential users of its consequences;
- (b) to protect individuals and society from harm caused by certain behaviour induced by cannabis use, such as the use of motor vehicles and machinery whilst under the influence of cannabis;
- (c) to protect children and other vulnerable individuals from being encouraged to take up drug use.

## **Cannabis Legalisation Supported**

2.2 Should the current legislative classification of cannabis be altered, and if so, how?

Yes. Personal use and possession of cannabis should be legalised. The cultivation, distribution and sale of cannabis should be licensed. Generally, cannabis should be subjected to the same form of legal regulation as alcohol and tobacco.

2.3 Should the penalty structure in relation to cannabis, or some cannabis related offences, be altered? Should some offences be decriminalised?

Yes. See answer to 2.2.

## **Mandatory Penalties Opposed**

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?

No. Use of mandatory penalties was a complete failure. See Dearden et al (1991) Legal Service Bulletin at page 60.

2.5 Should cannabis offences have any fixed equivalence to any other non-drug criminal offences? If so, to which offence(s)?

No. The Council supports legalisation.

2.6 Should the possession or sale of cannabis paraphernalia remain an offence? If not, how specifically should current legislative provisions be amended?

No. The Council supports legalisation.

2.7 Should Queensland institute a cannabis eradication program? What should the parameters of any such program be and how should it be funded?

No. Cannabis eradication programs in the United States have been a complete failure.

## **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?

This is an impossible question to answer.

## **Social Harms of Cannabis**

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?

Current levels of cannabis use arguably give rise to certain health consequences, however, these are not clearly demonstrated and, in any event, are far less serious than those posed by licit drugs.

It is doubtful whether decriminalisation would lead to an increased level of cannabis use, given the experience in South Australia and, more recently, in the Australian Capital Territory.

## **Social Benefits of Cannabis**

3.3 Do any social benefits arise from the use of cannabis?

Yes. Users report that the use of cannabis is a pleasant, relaxing and comforting experience. The use of cannabis has a social benefit in preventing users from resorting to drugs which cause greater damage to users and the community in general.

3.4 To what extent does harm outweigh benefit, or vice versa?

Benefit outweighs harm.

## **Medical Marijuana**

3.5 If medical uses are established for cannabis, should these be permitted?

Yes.

3.6 Should cannabis cultivation for the purpose of fibre production (i.e. for paper manufacture) be permitted?

Yes.

## **Cannabis Law Enforcement**

4.1 What are the proper goals of law enforcement in relation to the regulation of cannabis use, supply and production?

See answer to 2.1 above.

4.2 By what specific law enforcement measures should these goals be met?

See 2.2 above.

4.3 How should law enforcement measures in relation to cannabis be evaluated?

See 1.1 above.

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?

See Submission above.

## **Costs Outweigh Benefits**

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. This balance would be affected by the policy of legalisation advocated in this Submission.

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 current inequities in the impact of enforcement are an inevitable consequence of the system of law enforcement and cannot easily be ameliorated. Instead, they can be overcome by legalisation.

#### 4.8 Where should the main burden of law enforcement fall?

At specific behaviour induced by drug taking such as the impairment of skills by drivers and persons operating machinery under the influence of drugs.

4.9 Should on the spot fines or any similar scheme be used in relation to any classes of cannabis related offence? 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?

The Council supports a policy of legalisation.

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?

The Council supports a policy of legalisation. Imprisonment definitely should not remain a sentencing option in respect of offences of possession for personal use or small-scale supply.

### **Cannabis & Drug Education**

5.1 Should there be specific drug education or more general health promotional campaigns which include drug related issues?

Both.

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.

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 content of such campaigns? (in general terms)].

Given the insignificant health risks associated with cannabis use, specific campaigns should not be directed to cannabis.

5.4 By what specific means should the effect of cannabis, drug education and health promotional campaigns be assessed?

Regular surveys.

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?

This is a matter for government decision. However, funds saved from the money currently spent on enforcing the policy of prohibition could be usefully diverted into public education in relation to drugs and health in general and in combating the social consequences of widespread use of alcohol and tobacco.

PREPARED ON BEHALF OF THE QUEENSLAND COUNCIL FOR CIVIL LIBERTIES  
BY PETER APPLGARTH, VICE PRESIDENT

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