

**Submission  
No 76**

## **INQUIRY INTO USE OF CANNABIS FOR MEDICAL PURPOSES**

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**Bolt Findlay**  
SOLICITORS & MEDIATORS

14 February 2013

Inquiry into Medical Use of Cannabis  
NSW Legislative Council  
Macquarie Street  
Sydney NSW 2000

Dear Sir/Madam

**Submission**  
**Inquiry into Medical Use of Cannabis**

Please find enclosed my submission to the Legislative Council Inquiry into Medical Use of Cannabis.

I am a solicitor with many years of experience in representing people charged with cannabis offences, a significant number of whom present with the explanation that their only reason for cannabis possession or use or cultivation is for medicinal purposes.

I have also been involved in the drugs policy debate since the 1990s. I worked as project officer for Redfern Legal Centre's drug law reform project from 1993 until 1996. I am the author of several articles and papers on drugs policy, and I am the author of *Rough Deal*, a plain English book about the NSW drug laws.

Thank you for considering this submission.

Yours faithfully,

Steve Bolt  
Solicitor

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## Submission

### Inquiry into the Use of Cannabis for Medical Purposes

NSW Legislative Council

#### **Reasons for Reform – Why Change the law?**

There is abundant evidence that cannabis can provide genuine relief from the symptoms of a range of medical conditions and illnesses, some of them very serious.

The prohibition of the medicinal use of cannabis is an incidental effect of laws designed and enforced to deter “recreational” drug use. The strength of the argument for change to remove the prohibition of medicinal cannabis is irresistible.

It is an unnecessarily cruel policy that sick people continue to be denied lawful access to an effective medicine.

It should not matter whether there are legal pharmaceutical alternatives to cannabis available, making cannabis unnecessary. We do not ban aspirin because we have paracetamol.

Nor should it matter whether there is a professional medical consensus about the relative merits of cannabis and more conventional remedies. There is no professional medical consensus about acupuncture or hypnosis or colonic irrigation.

#### **The “supply problem” problem**

It appears to be conventional political wisdom that the government cannot ease the laws prohibiting medicinal cannabis without first comprehensively addressing the framework for supply to medicinal cannabis users (aka patients). Why?

If the present law impacts harshly on people suffering significant pain and other symptoms – which it unquestionably does – then that impact should be addressed as quickly and efficiently as possible.

Identifying and delivering an acceptable, ethical model for supply of cannabis to patients is certainly possible. But it will require time to develop and establish any model, amidst a predictably contentious community debate about the mechanism (but not, we would confidently submit, the principle) of providing cannabis to patients.

There is no valid reason to delay legislative reform until an appropriate mechanism is identified, debated, accepted and established.

### **The simple solution**

The simple solution is to introduce a defence to prosecutions for criminal offences involving cannabis used for medicinal purposes.

The provisions of the *Drug Misuse and Trafficking Act 1985* dealing with possession, use, cultivation and supply of cannabis should be amended to provide a defence where the use of cannabis possessed, used, supplied or cultivated is solely medicinal.

It would be preferable to leave decisions about the appropriate application of the defence in particular cases to the courts, rather than attempt to prescribe a list of "approved" illnesses and conditions.

Suggested legislative amendments are:

#### Possession

Amend subsection 10(2) of the *Drug Misuse and Trafficking Act 1985* to add a new paragraph

By a person who has cannabis in his or her possession solely for a medicinal purpose.

#### Use

Amend section 12 of the *Drug Misuse and Trafficking Act 1985* to add a new section.

It is a defence to a prosecution for an offence under this section if the prohibited drug is cannabis and the cannabis was administered solely for a medicinal purpose.

And also amend section 13 of the *Drug Misuse and Trafficking Act 1985* to add a new section

It is a defence to a prosecution for an offence under this section if the prohibited drug is cannabis and the cannabis was administered solely for a medicinal purpose.

#### Cultivation

Amend section 23 of the *Drug Misuse and Trafficking Act 1985* to add a new section

It is a defence to a prosecution for an offence under this section if the prohibited plant is cannabis and the plant was cultivated, supplied or possessed solely for a medicinal purpose.

#### Supply

Amend section 25 of the *Drug Misuse and Trafficking Act 1985* to add a new section

It is a defence to a prosecution for an offence under this section if the prohibited drug is cannabis and the drug is supplied solely for a medicinal purpose.

#### Definition

To allay concerns about defendants with no genuine medical need abusing the defence, "medicinal purpose" could be defined so that the defence applied only where the person suffered a recognised and diagnosed illness or condition, and the efficacy of cannabis as a treatment was reasonably indicated.

#### **Effect**

These amendments would allow patients in appropriate cases to lawfully use cannabis for medicinal purposes.

If these amendments were adopted, a person using cannabis or possessing cannabis for their own use for medicinal purposes would not be guilty of an offence.

It would also allow spouses, friends and family members of patients to lawfully assist in the provision of cannabis to patients, by acts of supply or cultivation.

Someone possessing cannabis solely to supply to another person for that person to use for medicinal purposes would also not be guilty of supply or possession. So for example, someone acquiring cannabis from a black market source for use by their cancer-afflicted spouse would be legally protected while they possessed the cannabis on their way home. And they would not be guilty of supply when giving the cannabis to their partner.

A person who cultivates cannabis for their own medicinal use, or for someone else's medicinal use, would not be guilty of an offence. Practically speaking, the defence would be available only for cases involving relatively small numbers of plants. Courts would not usually if ever accept that larger crops were cultivated for medicinal purposes, so the potential for abuse of the defence would be limited.

These proposed amendments should provide a realistic degree of comfort that the relaxation of the law about medicinal cannabis would not lead to an unintentional relaxation of the cannabis prohibition laws generally.

And these amendments would also be consistent with any model of delivery of medicinal cannabis that might be contemplated.

It should be expected that the scope of any amendment is tested in practice and in the courts. Over a period of perhaps a few years, the enforcement and application of the law around medicinal cannabis should become settled, and hopefully be guided by a sensible and humane approach to allowing patients access to the treatment of their choice.

Steve Bolt  
Solicitor  
14 February 2013