Submission No 69

INQUIRY INTO USE OF CANNABIS FOR MEDICAL PURPOSES

Organisation: Australian Drug Law Reform Initiative

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Inquiry into the use of cannabis for medical purposes
Submission to NSW Parliament by the Australian Drug Law Reform Initiative[1]

Standing Committee's terms of reference:

1. That General Purpose Standing Committee No. 4 inquire into and report on the use of cannabis for medical purposes, and in particular:

   (a) the efficacy and safety of cannabis for medical purposes;
   (b) if and how cannabis should be supplied for medical use;
   (c) legal implications and issues concerning the use of cannabis for medical purposes; and
   (d) any other related matters.

The Australian Drug Law Reform Initiative (ADLaRI), as a group formed within the University of New South Wales Faculty of Law, is pleased to make submissions on paragraphs (b) and (c) above. The general position of ADLaRI is that criminal prosecution is not appropriate when people use marijuana as a bona fide medication that they believe relieves their symptoms or treats their illness.

Should the Standing Committee find that marijuana does have medical benefits, the legal barriers to allowing such use are not formidable.

New South Wales is well within its rights to experiment with medical treatments that may benefit its citizens. Any proposed medical marijuana project should be subject to rigorous clinical testing. Such a program could be characterised as a research based project and brought within the exemptions contained within the *Drug Misuse and Trafficking Act 1985* (NSW) ('*DMTA*'). This may also avoid the problems posed by the *Therapeutic Goods Act 1989* (Cth) in relation to the supply or prescription of cannabis.

Proposed Model

From a legislative point of view it would seem appropriate to prefer a system with the least impact and requirements for change. Therefore a clinical trial of medical marijuana provides the simplest way to allow patients to use the drug whilst also allowing research into its efficacy.

[1] The Australian Drug Law Reform Initiative (ADLaRI) is a UNSW law faculty project formed at the end of 2011 with the intent of pursuing a variety of pathways towards drug law reform, education and the achievement of social justice.

Of the 18 states in the US with medical cannabis schemes, most have favoured a model based on medical diagnosis of conditions recognised in the medical research literature as benefiting from the use of cannabis as either a palliative or curative measure. These conditions could be specified in legislation or regulations. Once a patient is diagnosed with one of these conditions by a medical practitioner, they could issue patients a registration card.[2] Possession of the card would then provide an exemption to prosecution for possession and use of a prescribed amount. It is recommended that this amount be adopted as the possession limit in NSW. Of relevance, a "small amount" under the *DMTA* is defined as 30 grams.

Changes to the current Law

In order to implement a medical cannabis scheme, minimal amendments to NSW law would be required. A clinical trial program could still operate with patients having an exemption from prosecution under the *DMTA* on producing evidence in the form of a photo identification card.

In relation to s 10 possession, s 10(2)(b) provides an exemption for research when the possession is authorised by the Secretary of the Department of Health. Section 10(2)(c) already allows for an exemption in the case of lawful possession and supply where the drug has been lawfully prescribed or supplied, and s 10(2)(d) allows for an exemption for caregivers.

Any registration card issued by the Secretary of the Department of Health should state that the holder is part of a clinical trial and their possession and use of cannabis is not unlawful pursuant to s 10(2)(b) of the *DMTA*.

Registration

As noted above, medical marijuana should be subject to a program of clinical trials. Registration of patients could also be useful as part of the clinical assessment. In addition to providing safeguards as to eligibility, the requirement of registration will also assist in the monitoring and evaluation of the program. ADLaRI recommends that this process be viewed as an opportunity for the collection of data, within the bounds of doctor/patient confidentiality. Regular reviews (3 or 6 monthly) could be required to ensure that program guidelines are complied with and data collection is facilitated.

Statutory defence of necessity

It may be necessary to allow for the use of the defence of necessity outside the parameters of the registration scheme. Highly restricted under the common law, it may be necessary to introduce a statutory defence in order to avoid unfairness to patients who are unable to comply with the requirements of registration.

Retrospective certification should also be considered where there is compelling evidence of inability to comply with registration requirements.

Lawful sources of cannabis for medical use

As part of a clinical trial, the government could license agencies to grow cannabis. As noted by the Working Party in 2000 the field trials of low THC hemp which started in 1995 could be used as a guide. As the Working Party noted, the Australian Register of Therapeutic Goods, established under the *Therapeutic Goods Act* allows clinical trials of therapeutic goods not on the register.

[2] This is, in effect, the model proposed by the Working Party on the Use of Cannabis for Medical Purposes in August 2000. See Recommendation 19, p. 41 of the Executive Summary.

Under s 25(4)(b) of the *DMTA*, the Secretary of the Department of Health may authorise an agency to supply cannabis.

Another option, that could operate in the alternative or in addition to a government approved supplier, is to allow a small amount of personal self-supply.

Implications for Police

Police have often had to modify their practice regarding implementation of the criminal law in relation to drug policy, for example needle and syringe exchange programs and other harm minimisation policies. Careful drafting of practice guidelines may be necessary and the involvement of the NSW Ombudsman in monitoring police responses to the program would be desirable.

Conclusion

- ADLaRI strongly supports the introduction of a medical marijuana scheme in NSW.
- Medical marijuana should be subject to a clinical trial.
- A clinical trial is allowed under current New South Wales and Commonwealth law, in particular s 10 of the *DMTA* and the *Therapeutic Goods Act 1989* (Cth).
- The Secretary of the Department of Health can authorise people to use marijuana for medical purposes.
- The Secretary of the Department of Health should issue policy or regulations for medical conditions that can be treated with marijuana.
- A registration system using identification cards should be established for people diagnosed with a condition by a medical practitioner.
- Individual holders of these cards should be exempt from prosecution under the *DMTA*.
- As part of a clinical trial, the New South Wales government could supply marijuana or authorise agencies to grow and supply marijuana. The Secretary of the Department of Health may authorise supply of marijuana under s 25(4)(b) of the *DMTA*.
- Alternatively, registered patients could be allowed to possess a small number of marijuana plants.