

**Submission
No 137**

**INQUIRY INTO IMPACT OF THE REGULATORY
FRAMEWORK FOR CANNABIS IN NEW SOUTH WALES**

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To the PORTFOLIO COMMITTEE NO. 1 – PREMIER AND FINANCE

**A Submission to the
Inquiry into the impact of the regulatory framework for Cannabis in
New South Wales**

Mr Macciza Macpherson

Introduction

I am a 61 years old Cannabis advocate who has lobbied for Cannabis law reform for over 45 years since attending the J-Day Rally in Hyde Park, Sydney in 1979. In the early 1980's I joined NORML, the National Organisation to Reform Marijuana Laws, and spent most of the next decade as a full-time lobbyist. The South Australian Royal Commission into the Non-medical Use of Drugs, 1979, had recommended a Partial Prohibition model and we lobbied NSW politicians of the time to introduce a similar model. We collected over 200,000 paper petition signatures that were presented to Premier Wran which were later returned unrepresented to parliament. We had high hopes of reform in 1985 but at the same time that South Australia relaxed their laws in NSW the Drug Misuse and Trafficking Act, a complete overhaul of the Poisons Act that had previously prosecuted drug offences, instead increased penalties and range of offences.

After the failure of the first NSW Community Conference On Drug Use in 1985 to enact Cannabis reform, we had high hopes that the Federal Drug Summit and subsequent Drug Offensive would finally deal with the issue only it didn't.... Ultimately the 1999 New Drug Summit also failed to adopt a reform agenda... More recently the Ice Inquiry was soundly ignored and here we are again... Yet another inquiry.

I have contributed to more than several other inquiries over the decades. Forgive me if I am not excited by this opportunity to contribute to this inquiry given my disillusionment of over 40 years of inaction... Over the past 4 decades almost every official inquiry has recommended reform of Cannabis laws and yet no positive action is ever taken.

This submission should be unnecessary. The breadth and depth of the numerous official enquiries into the general problem of Cannabis prohibition is enormous and I would hope that they have been investigated and referred to by the Committee. It is only because these various reports and recommendations have been largely ignored that we find ourselves in the situation we are today in regards to Cannabis. The rejection of the overwhelming majority of those positive recommendations, or de novo re-evaluation of them, is a situation we have become all too familiar with and it should not be tolerated. It makes a mockery of the committee style of government and should not be allowed to continue. We hope that this trend does not continue and that any recommendations for positive reform of Cannabis legislation be implemented immediately. To do otherwise would be unconscionable.

This submission is made on behalf of the millions of recreational Cannabis users who do so with little harm to themselves or society other than risking criminal prosecution and the attendant consequences. It is also on behalf of the majority of ordinary Australians who support the right of other Australians to legally use Cannabis for medical and or recreational purposes.

Note: I had intended a more extensive, fully referenced, submission but for various reasons was not able to do so, and it has all been said before by more respected authors. Writing this submission has been extremely depressing due the fact that I have been arguing for the simple solution to this issue for over 40 years with so little result that it leads to me to despair.

RESPONSES TO THE TERMS OF REFERENCE

(a) the historical development and implementation of the regulatory framework for cannabis

Historically, the development of drug policy worldwide has been steeped in racism, and its implementation has been one focused on social control. It was initially due to moral, rather than medical concerns about Cannabis as a drug. Indeed it was a major medicinal drug in use in the early 1900's when 'drug' prohibition began to replace Alcohol (another drug) Prohibition in the US.

The early legislation was more focussed on Opium and controlling its availability to the Chinese and Aboriginal communities as well as concern over its use in the commission of other crimes such as robbery.

I will focus on the more modern development of Cannabis prohibition within the context of the current Drug War, from the 1960's onwards.

The Poisons Act 1966 was the first real 'anti recreational drug use' regulatory framework. It was introduced primarily in regards to legitimate medicines which were widely abused at the time. Cannabis, Marijuana, was included despite very little knowledge about the substances they were prohibiting.

Hansard (HANSARD-290296563-1451.pdf) for the Legislative Councils Second reading debate on the Poisons Bill, 29th March 1966, reveals the low quality of the information they had available about Cannabis at the time.

The debate on penalties is of note particularly the focus on 'harsh penalties to deter use'. A trope we heard consistently during the 80's era of 'Tough on Crime' political campaigns that used the Cannabis issue as a political football. The penalty of

\$2,000 was still in place when I first started lobbying for reform in the early 1980's, and the penalty still sits at that same approximate level. \$2,000 1966 dollars is almost \$40,000 2024 dollars; an unimaginable penalty and yet that is what simple use offences would face if the penalties had kept rate with the economy. I'm am sure no politician would dare propose such an excessive penalty these days and certainly the community would not accept such extreme level of punishment

Little over a decade later, in the late 1970s, the cracks had already started to develop in Drug Prohibition, and Royal Commissions and Committees of Inquiry were already being asked to seek solutions to the prohibition problem. Asking very much the same questions as are still being asked today.

Both, The Social Welfare Standing Committee Baume Report 1977, and The South Australian Royal Commission into Non-Medical Use of Drugs, 1979, recommended reform of Cannabis laws. If their recommendations had been enacted at the time then the 'Drug problem' would never have developed the way it has.

In early 1985 the very first Community Drug Conference was held in NSW in response to various factors, I was involved with NORML at the time and actively lobbying. By mid 1985 the Drug Misuse and Trafficking act was introduced during a late night drunken parliamentary binge to get legislation through before a break. It drastically increased penalties on a number of fronts. We then saw a period of increasing 'Tough on Drugs' political campaigns and increased penalties, and offences. Campaign like 'Operation NOAH - Dob In A Dealer' were meant to finally eradicate the scourge of 'Drugs'... It didn't.... Eventually various Governments started backtracking

with various Diversion schemes, essentially admitting that criminalising personal Cannabis use is counter productive...

Drug Dogs were introduced as a carryover from the Olympics when a large dog squad was repurposed to sniff out drugs rather than bombs. The implementation of 'sniffer dogs' has been used by police in proactive policing and has been brought into question on many occasions. There are various reports into there problematic use.

The overall history of the development drug policy in Australia is best understood by reading these two documents, **'Pure Politics - A historical look at Australian drug policy'**, by James Rowe (attached) and **'From Mr Sin to Mr Big: A history of Australian drug laws'** by Desmond Manderson, (a review by David Denborough is attached).

Ultimately, the historical development of drug policy is of little use in the current debate, other than to highlight the ridiculousness of it all. It is perhaps the greatest travesty of the British legal system since the Witch Trials era of the 15th and 16th century, and will no doubt be viewed with similar incredulity and disdain in the not too distant future. It is equally comparable to anti-Homosexuality laws, which were reformed decades ago and is now being apologised for. What is most important is that the debate be concluded and that realistic reforms are initiated immediately.

(b) the socioeconomic impact of the current regulatory framework for cannabis

The socioeconomic impact is so immense as to be unmeasurable. It extends far beyond mere monetary cost to society to individual social costs that cross generations. It destroys lives by criminalising otherwise law abiding people. It erodes respect for law enforcement through the abuse of process and powers that Prohibition bestows on a Police force that actively lobbies for even greater power and less accountability.

Perhaps the greatest socioeconomic cost of Prohibition is, in fact, the most obvious and that is the creation and sustenance of criminal syndicates reaping huge profits in an essentially unregulated marketplace. This was obvious from the very start and the experience of Alcohol Prohibition in the US should be ample evidence.

(c) the historical, current and future financial cost of cannabis prohibition to the Government and the economy

The financial cost are inestimable... in the order of countless Trillions of dollars over the lifetime of prohibition. The additional individual and societal cost are equal or even greater. Future costs could easily be reduced substantially through law reform.

The overwhelming majority of current costs is operational cost of prohibition and the overwhelming number of peoples before the courts are matters of simple possession of small amounts for personal use. Several inquiries have noted this fact adding that the amount of monies wasted on such cases would drop dramatically if some form of decriminalisation were enacted.

These costs are surely clearly visible to the Government through the ordinary running of Government budgets. Government agencies continually report on the issues of costs associated with drug prohibition. Various inquiries and independent reports have also contributed continually to assessing the cost of Cannabis prohibition which the Committee should surely have reviewed for estimates of particular costs.

If we are to look at the costs of Cannabis prohibition then it is also logical to inquire as to the benefits of its prohibition as well. A Cost/Benefit analysis is a relatively standard procedure to evaluate the utility of any particular policy or procedure. What is the benefit?? I would argue that there is no tangible benefit to Cannabis prohibition, indeed there is no logical legal reason for its prohibition.

(d) the impact of the current regulatory framework for cannabis on young people, the health system, personal health, employment, road safety, crime and the criminal justice system

Unfortunately time precludes an exhaustive investigation so I will only be able to address a few points briefly .

Young People

The impact of the current prohibition of Cannabis is immense and immeasurable. I grew up in the era of 'the Policeman is your friend..' Only to discover via Cannabis prohibition that they were not. Prohibition has allowed excessive abusive exercise of Police powers such that they are no longer trusted by young people.

Young people receive inadequate and severely biased information of drugs in general, and Cannabis specifically, whilst the socially acceptable drug Alcohol is in fact the major drug of concern in health regards.

Young people are potentially exposed to 'career criminals' in order to obtain Cannabis and as such are at risk of being offered other substances or enticed into other criminal actions. This criminal nexus exists purely because of prohibition.

Young people exposed to the criminal justice system can be further disadvantaged in their lives due to criminal convictions affecting housing, study, employment, travel, etc.

The Health System

The health system is brought into disrepute by the continuing prohibition of Cannabis.

Many people are aware of the history of Cannabis as a respected medicine

Personal Health

In general Cannabis is one of the safest drugs available. The official records are noteworthy for the absence of complications of Cannabis use other than court proceedings.

Many people choose to use Cannabis as a safer alternative to Alcohol for the purpose of relaxation and socialising and experience no negative health effects. Many Cannabis users have basically been 'self-medicating' via their Cannabis use. Overall Cannabis has a positive effect on personal health, though prohibition creates many negative side effects due the unregulated nature of the product.

The Criminal Justice System

The criminal justice system is severely overburdened by Cannabis prohibition. When you have decent people engaged in what the laws stamp as an illegal activity, and the decent people see no wrong in that activity, it is time to change the law.

It is important that more people begin to realise that escalating statistics of drug offenders and seizures of drugs are a sign of laws failing, not of laws succeeding. There is no policing solution that will prohibit Cannabis use, if there were then surely it would have had some sort of impact by now.

(e) the impact of the regulatory framework for cannabis on Aboriginal, LGBTIQ+, regional, multicultural and lower socioeconomic communities

All of these groups have been severely disadvantaged and disparately affected by Cannabis prohibition. Academic and social research will have been conducted into each of these precise topics and a Google Scholar search will reveal the breadth and depth of such research. A search on the 'impact of Cannabis prohibition on Australian aboriginals' reveals over 10,000 results. The other searches would give similar results.

Drug prohibition has created a massive 'Drug and Alcohol' industry (predicated on the lie that Alcohol and Drugs are different things) and huge amounts of research has been done on on the negative impact that has affected these obvious groups.

Overwhelmingly

I would invite the committee to also consider the impact that the current framework has on certain 'advantaged' groups within the Cannabis community who for the most part completely ignore prohibition with absolutely no consequence. There are hundreds of thousands of ordinary working citizens who go about their lives relatively unaffected by prohibition. They are able to grow and consume their own quality Cannabis in the sanctity of their home and never draw undue attention from the law. They are white and blue collar workers, doctors, solicitors, police and politicians;. everyday Australians

(f) alternative approaches to the regulatory framework for cannabis in other jurisdictions

The alternative approaches in other jurisdictions are too numerous to discuss them all. Obviously, the experience of America, Canada and Spain provided a wealth of evidence for reform. And the recent experiences of Thailand and Germany deserve intense scrutiny. And of course locally the recent A.C.T. alternative approach.

The DRUG LAW REFORM – ANNOTATED BIBLIOGRAPHY by the Drug Policy Modelling Program (DPMP) (attached) provides a list of relevant Australian and international reference material.

Release, the UK centre for expertise on drug laws document ‘A Quiet Revolution: Drug Decriminalisation Across the Globe’, 2016 (attached) provides analyses of over 25 jurisdictions around the world that have decriminalised drugs since 1977.

Obviously whilst international experience is important in providing guidance to policies and expected results they often do not translate easily to our country. So it is perhaps pragmatic to look at the unique Australian reforms that have been enacted.

From a purely pragmatic perspective the Australian Capital Territory laws are perhaps the best option immediately available with sufficient precedent to be easily enacted. The proposed Regulation Of Personal Adult Use of Cannabis Bill ideally should mirror the ACT law, in doing so we would be on path to one of the original Drug Offensive goals, that of Uniform Drug Legislation across all states, which has never actually been addressed yet alone implemented.

Of course, much of this discussion would become purely academic, and meaningless, should the Federal Greens push for legalised Cannabis come to fruition. With Cannabis legalised at a federal level then the various state laws would no longer be enforceable.

The overwhelming majority of peak bodies, independent research institutes and academic research believes it is time to legalise Cannabis, it is not a radical concept. It is increasingly occurring across the world and is proven to be an effective policy.

I would invite the committee to review the 'FRAMEWORK FOR THE LEGALIZATION AND REGULATION OF CANNABIS IN CANADA' from the Government of Canada, and the 'How to Regulate Cannabis - A Practical Guide' from the Drug Policy Foundation, documents in the References and Recommended Readings section below for further details, as well as the publications of the various organisations cited.

I believe that implicit to this question is an admission that the current regulatory approach is not fit for purpose and that a new approach is necessary immediately. Continued prohibition is no longer an acceptable option, if it ever were, which it wasn't.

(g) the provisions of the Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023, and

Obviously I would support any effective reform that moves away from our current total prohibition model even if it does not go far enough in addressing all the problems of our current punitive approach.

Review bill

Equipment for administration of Cannabis - Currently is illegal to possess, sell or display for sale, equipment for the administration of a prohibited drug, ie Cannabis. If the personal use of Cannabis is to be allowed then it is logical that the equipment for its use should also be allowable to possess and to purchase.

* Possession, sale and display for sale, of equipment for the administration of Cannabis for personal use should not be an offence

Seed and growing technology - Any reforms should also address the legality of seed stock as there is little value in allowing cultivation without allowing for the obtaining and possession of suitable seeds. Quality seed stock is needed to realise best potential end product.

* Possession and gifting of Cannabis seeds for personal cultivation purposes should not be an offence.

Similarly, the use of common growing technology for the purpose of personal Cannabis cultivation should not be an offence. The same technology, lights and grow media, that are allowable for other plants should be allowable for Cannabis. There is no logical reason to limit the allowable growing location or technology used, other than to disallow access by minors. Hydroponics and artificial lighting are commonly used for security and to provide a controlled environment to maximise growth.

* Possession and use of artificial cultivation of Cannabis should not be an offence.

Current offences before the court - If there are case before the court that fall within the scope of the reformed laws then they should be discontinued as there is no legitimate reason legally or economically to continue the prosecution. This should be written into the bill rather than needing to be argued on a case by case basis.

* Current cases before the court that are no longer offences under the new law should be discontinued.

A stated 'Drug War' has been conducted for decades and has long been regarded as a complete and utter policy failure. This legislation is best viewed as merely a 'ceasefire' or minor cessation of hostilities during which 'Drug Peace' negotiations may be effectively discussed. The real end goal should be legalisation.

(h) any other related matters.

The number of related matters are immense and too diverse to cover them all but I will cover only a few of the more important ones.

Driving - An exemption must be allowed for medicinal users of Cannabis in line with other exemptions currently provided for other prescription substances.

Further, the Drug Driving laws and process need to be reviewed so as to test for impairment not simply presence as the current system does. This is a complex problem and I urge the Committee to recommend that an Expert Working Group be established to address the matter.

Legalisation - Prohibition has completely failed as a policy and partial prohibitions only allowing personal use suffer from many of the same problems as full prohibition. The only logical solution is legalisation. I refer the Committee to A FRAMEWORK FOR THE LEGALIZATION AND REGULATION OF CANNABIS IN CANADA - THE FINAL REPORT OF THE TASK FORCE ON CANNABIS LEGALIZATION AND REGULATION by the Government of Canada for further information. The committee should also investigate the recent legalisation of Cannabis in Thailand and Germany.

CONCLUSIONS AND RECOMMENDATIONS

“You have been weighed, and measured; and found wanting...”

Various interpretations of this simple premise perfectly sum up the question of Cannabis prohibition in its many guises.

The moral argument supporting prohibition claims that the person who uses Cannabis is in some way deficient and should justifiably be punished in order to be rehabilitated. The simple possession or use is evidence of errant, immoral behaviour. This is a ridiculous abuse of the law comparable to ancient crime of ‘Witchcraft’. The quote Justice Jim Staples (1980) regarding Cannabis prohibition “How absurd is a law that seeks to classify a plant as a crime, as if there were something feloniously wrong with Nature...”

The impact of Cannabis prohibition, and Drug Prohibition generally, has been weighed, measured, and found wanting since its very inception. Immediately upon prohibiting Opium importation it was noted that a huge import tariff had been lost and overnight a nascent blackmarket had been created reaping massive profits. In the modern era it took less than a decade after the NSW Poisons Act, 1966, for the overall principle of Prohibition to be called into question by various committees of inquiry and Royal Commissions. The overwhelming majority of these inquiries highlighted the negative impacts and consequences of the current approach and recommended reforms. Unfortunately these recommendations have been ‘weighed and measured’ anew by the various governments receiving them and roundly ignored.

And so we come to yet another inquiry...

I'm sorry, no offence intended... but this committee is a joke... It is completely unnecessary, it is an insult to the millions of hours of work by previous committees and inquiries. And as such it seems disingenuous to the committee members, organisations and individuals who make submissions, to go through the motions of 'reinventing the wheel' for a question that is largely settled. The questions posed in the terms of reference could quite simply be answered by a few parliamentary researchers in a few weeks as indeed similar questions have a few times previously.

The Premier, and the government, could simply enact reforms comparable to those recently enacted in the Australian Capital Territory if they so wished. The claim by the Premier that he "does not have a mandate" is preposterous. Cannabis law reform has been overwhelmingly recommended by previous inquiries and has overwhelming community and political support. I can only hope that the Premier is using the eventual recommendations of this inquiry and the upcoming Drug 'Law Reform' Summit as a defence against any possible detractors when he receives the anticipated recommendations for Cannabis law reform.

Cannabis prohibition was founded in racism and prejudice, manipulated by propaganda and erratically developed with no consistent rational underlying premise. Cannabis prohibition has completely failed in its stated intent of reducing use of Cannabis. It has completely failed in its implied intent of reducing harms to the community. Root and branch reforms are needed. The system and its application needs a complete overhaul.

I recommend:

- * that the committee unequivocally endorse the Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023,
- * that the committee insist that the Bill be supported by the government and be immediately debated, passed and implemented, prior to the proposed Drug Summit,
- * that the committee recommend exemptions be provided for medicinal Cannabis and the establishment of an Expert Working Group to address the issue of developing systems for testing of driver impairment rather than mere presence of Cannabis.
- * that the committee recommend an Expert Working Group be established to examine full legalisation as the preferred framework for the regulation of Cannabis in NSW.

REFERENCES AND RECOMMENDED READINGS

A brief list of reference material that have informed my opinions. My actual document list runs into the hundreds, with thousands of pages and millions of words read.... Be forewarned...

Decriminalizing the Marijuana User: A Drafter's Guide, R. Bonnie, 1977

State Standing Committee on Social Welfare, Baume Report, 1977.

“Social Policies on Drugs” AFFADD, 1981

South Australian Royal Commission into the Non-Medical Use of Drugs, 1979

Cannabis, the Law and Social Impacts in Australia
Australian Institute of Criminology, AIC 1995

Social supply of cannabis in Australia. Monograph Series No. 59
National Drug Law Enforcement Research, National Drug Strategy, 2015

Cannabis: The Contemporary Debate
Background Paper 1994/1 NSW Parliamentary Research

Illegal drug use and possession: Current policy and debates
Briefing Paper No 4/2016 NSW Parliamentary Research

Drug Law Reform – Annotated Bibliography, 2016 DPMP

Cannabis in Australia 2022 Pennington Institute

Cannabis in Australia 2023 Pennington Institute

A Framework For The Legalization And Regulation Of Cannabis In Canada
The Final Report Of The Task Force On Cannabis Legalization And Regulation
Government of Canada

How to Regulate Cannabis - A Practical Guide Drug Policy Foundation

Additionally the publications of the following organisations should be reviewed:

Transform Drug Policy Foundation transformdrugs.org/

Release www.release.org.uk

International Drug Policy Consortium idpc.net/

Global Commission on Drug Policy globalcommissionondrugs.org

QUOTES and ATTACHMENTS

Often a simple quote can convey a complex argument succinctly.

“It is important that more people begin to realise that escalating statistics of drug offenders and seizures of drugs are a sign of laws failing, not of laws succeeding” Baume Report, 1977

“The official records are noteworthy for the absence of complications of Cannabis use, other than court proceedings” SA Royal Commission 1979

“How absurd is a law that seeks to classify a plant as a crime, as if there were something feloniously wrong with nature” Justice Staples 1980

“When you have decent people engaged in what the laws stamp as an illegal activity, and the decent people see no wrong in that activity, it is time to change the law” NSW Premier Neville Wran, QC, MP, 1980.

“We should treat non-criminally those activities which are essentially non-criminal” NSW Police Commissioner Avery, 1984

The following documents are attached:

Pure Politics - A historical look at Australian drug policy, James Rowe

From Mr Sin to Mr Big: A history of Australian drug laws, (David Denborough)

Drug Law Reform – Annotated Bibliography, Drug Policy Modelling Program (DPMP)

A Quiet Revolution: Drug Decriminalisation Across the Globe, Release

TIME TO END PROHIBITION, Global Commission on Drug Policy