LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON HIV, ILLEGAL DRUGS AND PROSTITUTION

THIRD INTERIM REPORT

MARIJUANA AND OTHER ILLEGAL DRUGS

OCTOBER 1991

Select Committee on HIV, Illegal Drugs and Prostitution

Committee membership:

Mr M Moore (Presiding Member)

Mrs E Grassby [1]

Ms C Maher [2]

Mrs R Nolan [2] [3]

Mr W Stefaniak [4] [5]

Mr B Wood [6]

Secretary:

Mr R Owens

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1 Appointed 21 June 1991

2 Discharged from attendance 14 December 1989

3 Reappointed 22 February 1990

4 Appointed 14 December 1989

5 Discharged from attendance 22 February 1990

6 Discharged from attendance 21 June 1991

RESOLUTION OF APPOINTMENT [7]:

That –

(1) a select committee be appointed to inquire into and report on HIV, illegal drugs and prostitution in the ACT with particular reference to:

(a) the effectiveness of current legal and social controls enabling action to prevent the spread of HIV;

(b) the effectiveness of current legal controls on prostitution and drug–taking;

(c) alternative social, medical or legal proposals which may assist in restricting the further spread of HIV; and

(d) other such matters relating to the issues of HIV in the ACT which the committee considers should be drawn to the attention of the Assembly.

(2) the committee shall report at its earliest convenience;

(3) the committee shall consists of three members, namely, Mr Moore, Mrs Grassby and Mrs Nolan;

(4) the majority of members of the committee constitutes a quorum of the committee;

(5) the committee be provided with the necessary additional staff, facilities and resources; and

(6) the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

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7 MoP, No. 22; as amended – MoP, No. 40; MoP, No. 46; and MoP, No. 113

A time to rend and a time to sew;
A time to keep silence and a time to speak;

Ecclesiastics 3; 7

PREFACE

It is not surprising that there is so much confusion surrounding the use of illegal drugs. For the last half a century a propaganda war has been fought, and myth and counter–myth have been given various weights of credibility from time to time.

Illegal drugs have had a great political advantage. They have become the enemy when there was no real outside threat. For many countries some people have been able to unite into the "forces of good" against illegal drug, portrayed as the "forces of evil". If only things were so simple! They failed to count the casualties, which included civil liberties, the enormous financial burden and the damage done to the users who were marginalised. And that was before anyone started counting the deaths attributable to the spread of AIDS.

The confusion about fighting the "drug offensive" was aptly illustrated recently when the captain of the Canberra Rugby League Football Team – The Canberra Raiders, Mal Meninga, said in an interview that he thought players should not be tested, as a matter of course, for marijuana usage. The response of the League was immediate with Ken Arthurson attacking Meninga and saying the Rugby League was not going to be soft on drugs.

Mal Meninga was right. The Rugby League hierarchy has lost sight of its purpose for drug testing. There is very little dissent from the view that performance enhancing drugs are entirely inappropriate in sport. Marijuana, however, cannot be used to enhance sporting performance, and testing would have to be for some other purpose. Slogans like "No Drugs in Sport" serve their purpose, and one would expect a far more thoughtful approach from senior officials of the NSW Rugby League. The factor that makes the outburst even more ironic is that the most harmful drug, the killer drug tobacco, is given sponsorship rights for the sport.

In assessing the role of drugs in our society the committee has reinforced the harm minimisation approach to the use of drugs. The recommendations in this report, therefore, are made recognising the need for caution.

In recommending the decriminalisation of marijuana for personal use I hope to see a weakening of the links between provision of this drug and the provision of the rapidly growing amphetamine market. Dealers and profiteers need to be undermined as far as demand goes while being pursued for their assets gained from supplying.

It is the profiteers in illicit drugs who make more profits as supply decreases and hence this committee has advocated "asset stripping" for convicted suppliers. Proceeds from such assets should be used to help us understand how we can give people self confidence and hope, so that they will not feel the need to turn to such a dead end solution as using drugs inappropriately. They should also be used to promote and fund health and treatment facilities for the victims of their profiteering.

The assistance we received in the preparation of this report was extensive. I would like to thank, on behalf of the committee, all those people who contacted us to offer their ideas and advice. In particular I thank my Parliamentary colleagues and the committee's secretary, Mr Ron Owens, who has worked tirelessly in a most difficult area.

The committee is very grateful to Dr G Chesher and Dr A Wodak for the assistance they were able to give the committee during its drafting of the chapter on the medical implications of cannabis.

Dr Chesher has also provided the following additional information to the committee. Because of time constraints on the committee it has not been possible to incorporate them into chapter 2.2. I present them here to further elucidate the matters raised in chapter 2.2.

Pulmonary risks

The risks to lung function associated with cannabis use are real, recent research indicates that those who smoke both cannabis and tobacco are at greater risk than those who smoke either drug alone. The order of decreasing hazards is:

1. Smokers of both drugs;
2. Tobacco only smokers;
3. Marijuana only smokers; and
4. Nonsmokers.

It is unfortunate that most marijuana smokers also smoke tobacco.

Performance skills impairment

The intoxication with marijuana does impair performance skills and would be expected to interfere with the ability to drive a motor vehicle, or operate machinery, with safety. The extent of this effect, within commonly used social doses does, however, appear to be less sever than that produced by alcohol. There are also qualitative differences in the nature of the effects produced by alcohol and marijuana which are possibly of importance in the determination of the potential hazards to driving skills.

Dependency

Tolerance to most effects of cannabis have been demonstrated in experimental animals. The extent to which tolerance occurs in humans is still unclear. Experimental studies to examine this phenomenon are, naturally, inhibited by ethical considerations. Nevertheless, tolerance to repeated doses has been reported. In the context of the social use of small doses, the problem of tolerance is not likely to be a problem.

As with any psychotropic drug, psychological dependence is likely to occur.

Dependence of the physical or neuroadaptive kind, which is manifested by the exhibition of withdrawal signs, has been described in studies in which high daily doses of THC (up to 210 mg per day by mouth) for periods of 30 days were given (reference cited).

Therapeutic uses

In the United States a preparation of THC has been marketed under the trade name of *Marinol* and a generic name of *dronabinol*. This has the recommended restriction of use for the nausea and vomiting associated with cancer chemotherapy and radiation therapy. Also in the USA and in Canada there are two synthetic THC derivatives on the market for the same purpose.

I believe this report, along with the committee's 2nd Interim Report – *A Feasibility Study on the Controlled Availability of Opioids*, barely touches the surface of resolving our society's problems with illicit drugs, but together they are a step forward. We cannot afford to become complacent – too many lives depend on it.

It is appropriate that Australian authorities should pat themselves on the back. Through far sighted harm minimisation policies we have avoided the exponential spread of HIV. The danger now is a double one – that we allow ourselves to become complacent and that we allow our policies to stagnate.

(Michael Moore)
Chairman
14 October 1991

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INTRODUCTION

Establishment of committee

1.1 The Assembly appointed a Select Committee on HIV, Illegal Drugs and Prostitution on 28 September 1989, [1] to report at its earliest convenience.

1.2 At the request of the committee, the Assembly, on 20 February 1991, authorised the committee to submit an interim report on Prostitution in the ACT. [2] The interim report was presented to the Assembly on 18 April 1991. [3]

1.3 The Assembly, at a further request of the committee, authorised it, on 18 April 1991, [4] to submit an interim report on illegal drugs. The committee sought this additional authorisation as it believed it would be appropriate to take the remainder of its tasks in two parts, reporting first on illegal drugs and then presenting a final report on HIV. [5]

1.4 On 15 August 1991 the committee presented its second interim report on a feasibility study on the controlled availability of opioids to drug dependent people in the ACT. [6] The tabling of this report followed the authority of the Assembly to submit an interim report on the feasibility study. [7]

Marijuana and other drugs

1.5 At a meeting of the committee, held on 1 August 1991, the members of the committee resolved to present a third interim report to the Assembly on the effectiveness of the current legal and social controls on drug taking, with particular reference to marijuana. It is important to note that the consideration of the licit drugs alcohol and tobacco is outside the committee's term of reference. Where appropriate, however, the committee will make comparisons between the use, and established health risks, of these drugs and the use , and associated health risks, of illegal drugs.

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1 MoP, No. 22, p. 89

2 MoP, No. 96, p. 408

3 MoP, No. 106, p. 449

4 *Ibid*

5 *See Hansard*, 18.4.91, p. 1557

6 MoP, No. 119, p. 505

7 MoP, No. 117, p. 496

Submissions

1.6 The committee received eight submissions specifically relating to illegal drug use and a further three submissions which dealt, *inter alia*, with illegal drugs. Of the submissions received only six discussed the question of changes in the law with regards to marijuana; four proposing law reform and two opposed.

Witnesses

1.7 The committee heard evidence from 54 witnesses (see Appendix A) at nine public hearings; because of the sensitivities of the issues involved and the fact that, in some instances, the committee was dealing with illegal activities a number of witnesses, including the Australian Federal Police (AFP), gave evidence to the committee *in camera*.

Interstate visits

1.8 During the course of its inquiries the committee made a number of interstate trips to visit each of the mainland state and territory capitals.

Melbourne, Adelaide and Perth

1.9 During June 1990 the committee visited Melbourne, Adelaide and Perth. Whilst in Melbourne the committee visited the Withdrawal Support Unit in Geelong (a drug rehabilitation unit), the Victorian IV Drugs and AIDS Unit in Collingwood and the Prostitutes Collective of Victoria.

1.10 In Adelaide the South Australian Health Commission organised a 'round table' discussion which included representatives of:

- AIDS Co–ordinator
- Communicable Disease Control Unit
- Department of Community Medicine, University of Adelaide
- Drug and Alcohol Services Council
- Public and Environmental Health Division
- South Australian Police Department
- STD Services.

1.11 Whilst in Perth the Assistant Commissioner, Public Health, of the health department of WA arranged a business itinerary for the committee. Through the agency of the Assistant Commissioner the committee was able to hold discussions with the following people and organisations:

- AIDS Advisory Committee
- Alcohol and Drug Authority
- Alcohol and Drug Information Service
- Chairperson of WA Community Panel on Prostitution
- Director, WA AIDS Council
- Disease Control Branch, Health Department
- Managers, AIDS Bureau

SIERRA (Prostitutes Collective).

Sydney

1.12 The committee visited Sydney in August 1990, and with the consent of the Premier was able to hold discussions with:

- The Criminal Law Division of the Attorney–General's Department
- Officers from the Department of Health, including Epidemiology and the AIDS Bureau
- The Drug Enforcement Agency, NSW Police Department.

1.13 The committee also spoke with the AIDS Action Council, SWOP (Sex Workers Outreach Program); the NSW Users and AIDS Association (NUAA); Dr A Wodak of St Vincent's Hospital; and Ms R Perkins of the University of NSW and associated with PROS (Prostitutes Rights Organisation for Sex Workers).

Brisbane and Darwin

1.14 During November 1990 two members of the committee visited Brisbane and Darwin.

1.15 Again, with the consent of the Queensland Premier's Department, the committee was able to share in a 'round table' discussion with representatives of:

- AIDS Education Unit, Department of Health
- Alcohol and Drug Dependence Service
- Criminal Justice Commission
- Department of the Attorney–General
- Department of Family Services and Aboriginal and Islander Affairs
- Department of the Premier
- Division of Specialised Health Services
- Queensland Police Department.

1.16 The committee also held discussions with the AIDS Action Council, SQWISI (Prostitutes Collective); Queensland Intravenous AIDS Association (QuIVAA); Dr Mukherjee of the

Queensland Criminal Justice Commission; Brisbane Youth Services; and Mr P Beattie, MLA, Chairman, Parliamentary Criminal Justice Committee.

1.17 Once again in Darwin, with the consent of the Northern Territory Attorney–General, the committee was able to share in a 'round table' discussion with representatives of:

- Aboriginal AIDS/STD Program
- AID/STD Program
- Attorney–General's Department
- Communicable Diseases Centre
- Department of Health and Community Services
- Urban AIDS/STD Program.

1.18 The committee also held discussions with the Territory Users Forum (TUF); AIDS Action Council; and the Prostitutes Association of the Northern Territory for Health, Education and Referral (PANTHER).

Background

1.19 As stated in its second interim report the committee, during the course of its inquiries, came to the conclusion that current policy implementation, with regard to controlling and/or reducing the use of illegal drugs (ie a policy of prohibition) might not be effective. [8] This would appear to be the case with regard to marijuana.

1.20 At the National level seizures of cannabis remain very high in relation to seizures of other drugs such as heroin and cocaine; for example in 1988 some 9,000 kgs of cannabis were seized as against 96 kgs of heroin and 18 kgs of cocaine. [9] In the ACT, over the period 1987–88 to 1990–91, the number of charges laid for cannabis offences increased by over 150 % (*see* Table 1, p. 30). Yet in a paper given to the Second National Drug Indicators Conference in 1990, Ms L Spooner, summarising the data presented to the conference said, in part:

> "In general, it does appear that there has been an increase in cannabis use though this drug has not led to many health problems. Where the availability of cannabis has been restricted, however, this seems to have led to an increase in amphetamine use as a cheap substitute" [10]

1.21 A similar proposition has also been put by the South Australian Office of Crime Statistics

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8 Second Interim Report, *A Feasibility Study on the Controlled Availability of Opioids, 1991*, p. 1

9 'Epidemiology of Illegal Drug Use in Australia 1990', *Proceedings of the Second National Drug Indicators Conference, Canberra, 12–14 March 1990*, Canberra 1991. p. 26

10 Epidemiology of Illegal Drug Use, *op cit*, p. 15

in a booklet reviewing that State's expiation, or infringement notice, approach to marijuana. In a chapter called 'The legislation in the context of reform debate' the report says:

> "There is evidence that, despite rising numbers of prosecutions over many years and significant penalties, cannabis use remains widespread and may be increasing." [11]

1.22 It is in the context of this evidence, a rise in usage that is not being combated by rising enforcement practices, that the committee has sought to evaluate alternative policy proposals.

1.23 In the area of hard drugs, other than questions surrounding the use of heroin which the committee addressed in part in its 2nd interim report, where it recommended proceeding with a feasibility study into the controlled availability of opioids, the committee believes it is inappropriate, at the current time, to suggest major changes in both the current policy approaches and in the current law. The committee is concerned, however, about some of the treatment, assistance and detoxification programs available in the ACT; and the lack of such programs targeted to specific groups, particularly for women and young people.

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11 Sarre, R, Sutton, A, Pulsford, T, *Cannabis – The Expiation Notice Approach*, Series C, No. 4, June 189, Office of Crime Statistics, SA Attorney–General's Department, p. 6

PART ONE – ILLEGAL DRUGS

1.1 PROHIBITED SUBSTANCES AND DRUGS OF DEPENDENCE

Introduction

> "[The] image is of alienated individuals with problematic lifestyles manifesting in a constellation of problems. Their daily routine is concentrated on running around trying to get drugs, raising money by prostitution or committing a range of crimes which often lead to imprisonment. Their lifestyle shows little regard for their own physical or mental health, and is characterised by unemployment and poor family and social relationships, including neglect of their children" [1]

1.1.1 As with so many stereotypes the stereotypical illegal drug user does not exist, although many users do, of course, present with some of the problems identified above. In the ACT the life styles of users ranges from single mothers with part time jobs, to university students, to senior public servants. As the backgrounds vary so does the drug use dosage; non dependent users range from once a month to 2–4 times a week and dependent users can use up to 3–4 times a day. It is quite probable that there are upwards of 7000 intravenous drug users in the ACT.

1.1.2 In the ACT the illegal drugs most commonly used, with their predominant mode of use, are:

- cannabis – smoked
- amphetamines – injected
- heroin – injected
- LSD – orally
- mushrooms – orally
- barbiturates – orally
- cocaine – injected/nasally.

1.1.3 It is also important to bear in mind that many illicit drug users are polydrug users. According to the National Centre for Epidemiology and Population Health:

> "... 91 percent reported using more than one drug in the last 1–3 months, with 63 percent reporting use of 3 or more drugs. Heroin users took an average of 4 drugs; the middle 50 percent taking between 3 and 6 drugs, 25 percent taking 2 or less, and 25 percent taking 7 or more. Seventy–six percent of the heroin users also smoked cannabis, 50 percent took amphetamines, 46 percent benzodiazepines and 28 percent cocaine." [2]

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1 Stevens A, P Dance, G Bammer, "Illegal Drug Use in Canberra" in *Feasibility Research into the Controlled Availability of Opioids*, Report by the National Centre for Epidemiology and Population Health, Volume 2, Background Papers, Canberra, 1991, p. 2

2 *Ibid*, p. 5

Illegal drugs

What are they?

1.1.4 Schedule 2 of the *Drugs of Dependence Act 1989* lists 81 prohibited substances in addition to admixtures and salts of those substances, and drug analogues, which include stereoisomers, structural isomers, alkaloids and structural modifications, of the prohibited substances. Included in the schedule are 25 amphetamine derivatives, cannabis, cannabis oil, cannabis resin, heroin, lysergide (LSD), 3,4–Methylenedioxy–N α–dimethylphenylthylamine (ecstasy) and tetrahydrocannabinols. Schedule 5 lists 25 prohibited plants, which include cannabis, *erythroxylon spp* from which cocaine is extracted, and *papaver somniferumi* the poppy from which opium, and subsequently heroin, comes. For the purposes of the Drugs of Dependence Act cocaine is not listed in schedule 2 as a prohibited substance, it is listed in schedule 1 as a drug of dependence.

1.1.5 Schedule 1 of the Act list some 118 drugs of dependence in addition to admixtures and salts of those drugs. Included in the schedule are amphetamine, cocaine, codeine, methadone, morphine, opium and pethidine.

1.1.6 Cannabis, which is a schedule 2 prohibited substance, is discussed in detail in Part Two of this report. The discussion of illegal drugs in this Part will, except where necessary, exclude references to cannabis.

The law

1.1.7 The major relevant sections of the Act dealing with drugs of dependence and prohibited substances or plants are sections 162 (cultivation), 163 (wholesaling), 164 (sale or supply), 166 (advertising), 169 (possession and administration of drugs) and 171 (possession and administration of prohibited substances).

1.1.8 The cultivation of a prohibited plant is proscribed by section 162 (*see* Appendix B). This section differentiates between cannabis plants and other prohibited plants in terms of the penalties to be imposed. These penalties range from a fine of $5,000 or imprisonment for 2 years or both, for a simple cultivation offence, through to life imprisonment for the cultivation of more than 1,000 plants.

1.1.9 Section 163 prohibits a person from conducting or participating in a business that sells drugs of dependence or prohibited substances wholesale. The penalty to be imposed is a fine of $20,000 or imprisonment for 10 years or both. The section, however, does not apply to those who are authorised by licence to sell drugs of dependence by wholesale.

1.1.10 The sale or supply of drugs of dependence or prohibited substances is proscribed by section 164 (*see* Appendix B). Cannabis is specifically excluded from the operation of this section. The penalties to be imposed for offences against this section range from a fine of $10,000 or imprisonment for 5 years or both to imprisonment for life where the quantity of the drug or prohibited substance is a commercial quantity. Where the drug or prohibited substance is sold or supplied to a young person, and the amount is less than a traffickable amount, the penalty to be imposed is a fine of $100,000 or 25 years imprisonment or both. Subsections 4 and 5 of the Act provide for exemptions from the proscription.

1.1.11 Advertising of drugs of dependence and prohibited substances is prohibited by section 166 which also imposes a penalty of $5,000 or 2 years imprisonment or both.

1.1.12 Pursuant to section 169, it is illegal to possess a drug of dependence and it is illegal to administer a drug of dependence to one's self or to another person. The section also imposes a penalty of $5,000 or 2 years imprisonment or both. Section 170 provides for exemptions in the possession and administrations of these drugs.

1.1.13 Under section 171 (*see* Appendix B) it is also illegal to possess a prohibited substance and it is also illegal to administer a prohibited substance to one's self or to another person. The section also imposes a penalty of $5,000 or 2 years imprisonment or both for possession and administration offences.

Heroin

1.1.14 The committee has already reported on the vexed problems associated with heroin use in the ACT. [3] In that report, the committee, having reached a conclusion on the ineffectiveness of current prohibition policies, recommended a feasibility study into the controlled availability of opioids:

> "... to discover whether or not a policy of controlled heroin availability could ameliorate the massive burden which illegal heroin use currently imposes on Australian and ACT societies." [4]

1.1.15 The recommendations made by the committee in its 2nd interim report are set out in Appendix E to this report.

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3 *See* 2nd interim report "*A Feasibility Study on the Controlled Availability of Opioids*", August 1991

4 *Feasibility Research into the Controlled Availability of Opioids*, Report by National Centre for Epidemiology and Population Health, Volume 1, Report and Recommendations, Canberra, 1991, p. ix

Illegal drug use

1.1.16 It is of some concern to the committee that, despite the strength of the relevant sections of the Act, despite school and adult education programs, and despite societal sanctions, there appears to be, at least, no diminution of the use of illegal drugs in our community and at worst a substantial increase in illegal drug use. Table 1 (*see* p. 30) shows that over the four year period 1987–88 – 1990–91 there has been a 100% increase in heroin and other drug related charges and convictions in the ACT (excluding marijuana offences).

1.2 ANOTHER APPROACH

Philosophy

1.2.1 Where the use of drugs, particularly illicit drugs, has demonstrable effects that impair a person's health (physically, mentally or emotionally), is a threat to the public health of the community (through the spread of disease, through the rising costs of health care), causes damage to the social fabric of our society (through breakdowns in family units, through criminal or antisocial activity), then this committee cannot condone that use.

1.2.2 It is an unfortunate fact of life in our community, however, that despite health warnings, despite educational programs, despite criminal and social sanctions, some people, for a variety of reasons, will always seek to live at the margins of society. Young people will always continue to experiment with life; people in desperate situations will always seek desperate remedies; thrill seekers will always seek to go beyond the bounds. No matter what the disincentives there will always be some who will continue to use illicit drugs.

1.2.3 It is necessary therefore, in the opinion of the committee, to find an appropriate context in which the position outlined in paragraph 1.2.1 can accommodate the people identified in paragraph 1.2.2.

1.2.4 In its first interim report, *Prostitution in the ACT*, the committee made use of the following quote from John Stuart Mill:

> "... the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not sufficient warrant." [1]

And went on to express the view that the personal morality of individuals ought not to find expression in the criminal law, other than to ensure that the rights of others are protected. [2] The committee believes this is a fundamental principle of personal liberty that can not be abrogated.

1.2.5 Society ought not, through an act of paternalism, seek to protect people from themselves; individuals must shoulder the responsibilities accruing from, and the consequences of, their own choices and actions. Society must, however, be able to protect others from the consequences of the actions of individuals where it considers that protection necessary. Further, if it is part of the function of a society to collectively render some assistance to the individuals that make up that society in the pursuit of their daily lives, then possibly society also has an obligation to provide

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1 J S Mill, "On liberty", in *John Stuart Mill – Three Essays*, Oxford University Press, 1975, p. 15

2 Interim Report, *Prostitution in the ACT*, paragraph 7.23

some means whereby any harm that might accrue to an individual, and consequently to society itself, as a result of a personal choice is minimised to some degree.

1.2.6 This philosophy of harm minimisation is one which the committee fully supports. It is an appropriate context in which the condemnation of a certain activity (ie illegal drug use) and assistance to people marginalised by that activity can both be accommodated.

Harm minimisation

Current policy

1.2.7 The ACT already has a policy of harm minimisation operating in a number of drug related areas. There is an active needle exchange program which is well supported by users, by the health bureaucracy and law enforcement agencies. There are a number of drug referral and information centres, a number of drug detoxification centres and a methadone program.

1.2.8 These programs and centres offer a range of assistance within the policy of harm minimisation. Needle exchange programs and drug information services provide advice on safe injecting procedures, on maintaining a healthier diet and life style, and on safe sexual practices to people whose current wish is to continue to use drugs. The detoxification centres and the methadone program, philosophically at least, offer non–judgemental assistance to those people who wish to change to a drug free life style.

1.2.9 The objectives of harm minimisation should be similar to the objectives set out in the National Methadone Guidelines:

- to reduce illegal drug use;
- to reduce the risk of premature death associated with illegal drug use;
- to improve the physical health of illegal drug users;
- to decrease the spread of infection associated with illegal drug use;
- to improve the social functioning of illegal drug users; and
- to decrease the criminal activity associated with illegal drug use.

1.3 FUTURE DIRECTIONS

Introduction

1.3.1 In the opinion of the committee a number of positive steps still need to be taken if our community is to assist illegal drug users in improving their general health status and social well being with a view to, though not necessarily a goal of, achieving abstinence from the use of illicit drugs.

Personal use

1.3.2 If these objectives are to be achievable then there needs to be a re–examination of the way in which the ACT approaches the problems associated with the personal use of illicit drugs. The primary change, in the opinion of the committee, should be a change in the basic policy focus relating to personal use. We must move away from the policy approach of using criminal sanctions to deal with the problem; after 40 years of operation this policy has neither eradicated the problem nor has it been able to effectively contain it – people are still using.

1.3.3 It is time, the committee believes, to re–focus the debate onto the questions surrounding the adoption of a policy approach based on meeting the health and social needs of personal users of illicit drugs in ways that are beneficial to them, to their immediate family and to the whole of the ACT community. Rather than continuing to marginalise illicit drug users because of their choice of a life style that some might find unacceptable, other than where that choice entails, or results in, causing harm to others, society should seek to ensure they and their life style remain part of the rich and diverse social fabric of the ACT.

Illegal drug profiteers

1.3.4 In seeking to raise the debate concerning the personal use of illicit drugs to a more humane level sight must never be lost of those people who seek, through the suffering of others, to amass profits to themselves. It is the committee's conviction that those who seek to profit from the suffering of others through the manufacture, production, sale or supply of illicit drugs should in turn suffer the full penalty of the law.

1.3.5 In seeking to further strengthen the penalties imposed by the law against those profiteering from illegal drugs, the committee considered the additional penal provisions of the Victorian Drugs, Poisons and Controlled Substances Act dealing with the forfeiture of the assets of people convicted of serious drug and drug related crimes (*see* ss 85, 86 and 87).

1.3.6 Should the ACT follow the legislative practices of Victoria, then the assets forfeited to the ACT community by convicted profiteers could be used, as they are in Victoria, to fund and further health and treatment programs for illicit drug dependent people. Having considered this matter the committee has come to the following conclusions:

(a) that the *Drugs of Dependence Act 1989* should be amended to provide for the forfeiture of assets of those convicted of major offences against the Act; and

(b) that the assets forfeited be use to promote, fund and further health and treatment programs for illicit drug dependent people.

Recommendations 1, 2 and 3

1.3.7 The committee recommends:

That the assets of people convicted of serious crimes against the *Drugs of Dependence Act 1989* be subject to forfeiture by the courts.

That assets ordered to be forfeited by the courts pursuant to the *Drugs of Dependence Act 1989* be use to promote, fund and further health and treatment programs for illicit drug dependent people.

That the *Drugs of Dependence Act 1989* be amended as follows:
After section 197 insert the following new section –
"Forfeiture of assets
197A (1) In this section, unless the contrary intention appears, Territory means the body politic established by section 7 of the *Australian Capital Territory (Self–Government) Act 1988* of the Commonwealth.
(2) Where a person has been convicted of an offence under this Act and the penalties prescribed for that offence are equivalent to, or greater than, $20,000 or imprisonment for 10 years or both the court may, in addition to imposing the relevant penalties, order that some or all of the assets of that person be forfeited to the Territory.".

Assistance, help and treatment

General

1.3.8 All of the services available in the ACT to assist people with problems related to drug use are either gender neutral or men only, and, in the opinion of the committee, this fact hinders the effective delivery of services to a wide range of people. The Working Party on Alcohol and other Drug Issues, in their submission to the committee, stated the problem, in relation to women, quite succinctly:

> "Where there are services set up for both sexes, these are less appropriate for women than for men clients as these services are primarly (*sic*) based on the experience of men.

> Research shows that while men do well in mixed therapy groups, women do not do well in these groups." [1]

It is the committee's belief that a similar problem would apply in the provision of services to young people.

Methadone Program

1.3.9 During the course of its inquiries the committee heard a number of complaints concerning the methadone program in the ACT. Primarily those complaints dealt with the limited number of places on the program and, what was seen as, some inflexibility in the regime for the dispensing of methadone doses. Both these problems now seem to have been addressed. In June 1991 the number of places on the program was increased from 86 to 107 as an interim measure and it is proposed to further increase the number of places to 150 during the current 1991–92 fiscal year and by a further 50 places in the next fiscal year.

1.3.10 In August 1991 the Minister for Health, Mr Berry, MLA, announced that he was looking at the possibility of methadone being dispensed through those community pharmacies who would volunteer to do so. The committee welcomes both of these moves.

Services for women

1.3.11 In the opinion of the committee the limited drug related services available for women in our community are inadequate. The Working Party on Alcohol and other Drug Issues identified the problem in the following terms:

> "Within the ACT itself, where there are services set to cater for men's needs there are no corresponding services for women. For example, there is no Mancare equivalent, nor is there a Half–way house such as Maxworthy Street Kambah, specifically for women as there is for men. There is no women's rehabilitation centre, nor women's de–toxification service. There is only one drug and alcohol worker for women." [2]

1.3.12 There is no doubt but that the physical, emotional and social environmental problems faced by women who use illicit drugs are different to those faced by men. Being different they therefore require different treatments and different solutions.

1.3.13 There is sufficient evidence available, in the opinion of the committee, to support the contention that those treatments and solutions can best be offered to women in a gender specific environment. This committee is of the opinion that a gender specific service is necessary to

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1 Submission, dated 27 June 1990, p. 3

2 Submission, dated 27 June 1990, p. 4

provide adequate assistance, help and treatment to the women in our community who, for a variety of reasons, are users of illicit drugs.

Recommendation 4

1.3.14 The committee recommends:

That there be established in the ACT a drug assistance and treatment services to meet the specific needs of women.

Services for young people

1.3.15 The committee heard very little evidence concerning the drug related problems peculiar to young people. This being due in part no doubt to the fact that most illicit drug users do not start using 'hard' drugs (ie heroin, amphetamines, crack or cocaine) until their late teens or early twenties. It is the committee's belief that the drugs most widely used by young people are, or at least appear to be, tobacco, alcohol and marijuana. Also of concern to the committee is the use of pharmaceutical and prescription drugs by young people.

1.3.16 This is not to deny that there are some young people in our community who have a problem with, or are addicted in some way to, illicit drugs, and are thus in need of appropriate social support structures.

1.3.17 With regard to the health and safety of our community's young people, society has, in the opinion of this committee, a dual responsibility, in tandem with those normal parental responsibilities which it cannot usurp, in respect of drug use. As well as providing support for those children who have drug or drug related problems, society must also provide information, through its education services, to young people on the physical, emotional and mental effects of drug abuse.

1.3.18 In the opinion of the committee there is a need, in the ACT, for services, such as counselling assistance and health related treatment, that are specifically directed towards young people with problems associated with illicit drug use. The nature and direction of those youth services will depend on a number of factors, including the number of young people who self identify, or are identified by others, as having drug related problems, the nature of the problems encountered, the drug, or drugs, involved and the qualifications, professional and otherwise, of the staff to be employed.

Recommendation 5

1.3.19 The committee recommends:

That there be established in the ACT a drug assistance and treatment services to meet the specific needs of young people.

Additional services

1.3.20 The committee is concerned that the additional services recommend at paragraphs1.3.14 and 1.3.19 be appropriately designed and properly staffed. To that end the committee would like to see a small working party established, consisting of government and non–government representatives and with a duration limited to approximately six months, charged with the task of designing appropriate illicit drug related assistance and treatment services for women and young people.

PART TWO – MARIJUANA

2.1 GENERAL DESCRIPTIONS

Introduction

2.1.1 The committee has been unable to discover the initial reasoning that led to the policy decision to proscribe the use of cannabis. It would seem that often the proponents of prohibition, in seeking to support their stance, argue from the position that the drug is illegal and conclude, therefore, that it should be illegal rather than seek to demonstrate those intrinsic qualities of the drug which of themselves necessitate its illegal status.

The plant

2.1.2 Marijuana (sometimes spelt 'marihuana') is the herbaceous annual plant; species *Cannabis sativa*, genus *Cannabis*, which belongs to the hemp family *Cannabaceae* of the nettle order *Urticales*. There is only one species of the plant with two subspecies (*sativa* and *indica*) which have wild and cultivated varieties. *Sativa* is a tall, canelike variety raised for the production of hemp fibre and *indica*, a short branchier variety, is the main source of a mildly hallucinogenic drug. Seeds of the plant germinate in less than a week when the soil is moist and grow as rapidly as 60–70 cm a week resulting plants 1 – 6 m high at maturity (3 – 5 months).

2.1.3 It is a natural plant product which contains many substances in varying proportions and is more comparable to tobacco in this respect than to alcohol which is a single substance.

2.1.4 There are basically three preparations of cannabis used as an hallucinogen:

(a) the dried flowers, brachts and leaves;
(b) cannabis resin; and
(c) hashish (which is prepared from the resin).

Chemical composition

2.1.5 Recent evidence suggests that marijuana contains some 421 chemical compounds which include 61 known cannabinoids. Included amongst the chemical compounds are: nitrogenous compounds, amino acids, proteins, glycoproteins, enzymes, sugars and related compounds, hydrocarbons, simple alcohols, aldehydes, ketones, acids, fatty acids, simple esters, lactones, steroids, terpenes, non–cannabinoid phenols, flavinoidglycosides, vitamins and pigments.

2.1.6 The tar content of marijuana smoke is comparable to that of tobacco smoke and some precursors of carcinogenic hydrocarbons have also been found in marijuana smoke. [1] According to Maykut:

> "Compounds other than cannabinoids found in the plant and (marihuana) smoke have the possibility of being converted to carcinogenic substances which raises concern as to potential carcinoma development." (emphasis added) [2]

Psychoactive component

2.1.7 The principle psychoactive component of marijuana is delta–9 tetrahydrocannabinol (Δ^9 THC). The concentration of THCs, including Δ^9 THC, differ in various cannabis preparations; some 3 per cent in marijuana (the dried leaves, brachts and flowers) and up to 30–50 per cent in hashish. [3]

2.1.8 THC may be absorbed by smoking, in cigarette form or by means of a pipe or bong, by being taken orally, commonly in the form of 'hash cookies', or through intravenous injection. It is very fat–soluble and binds readily with human plasma lipoproteins, *ie* it is taken up by the fatty tissues of the body such as the liver, lung, spleen and gut.

2.1.9 Psychotomimetic reaction to Δ^9 THC is faster if the drug is smoked or intravenously injected but there is a more long–lasting reaction if it is ingested orally. Smoking is the most common form of injestion because:

> "[W]ith smoking, 50% THC is absorbed into the bloodstream with bioavailability being 10x greater than with oral THC." [4]

2.1.10 The half–life of THC is approximately one week and it will not be completely eliminated from the body for one–month.

2.1.11 It is possible to classify cannabis as

> "... a central euphoriant with the psychotropic group of psychodysleptics with morphine–like and hallucinogenic properties." [5]

Emotional responses to cannabis, however, vary from:

> "... pleasant tranquilizer (*sic*) and hypnosis, to euphoria with body sense and time illusions, or, to dysphoria ranging from mild irritability and hypochondriasis to episodic panic and terror resembling paranoid schizophrenia." [6]

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1 Maykut, M O, *Health Consequences of Acute and Chronic Marihuana Use*, Ottawa, 1984, p. 8

2 *Ibid*, p. 240

3 *Ibid*, p. 13

4 *Ibid*, p. 241

5 *Ibid*, p. 104

6 *Loc cit*

Social background

2.1.12 There is no profile of a typical cannabis user in Australia. Surveys carried out in 1978 (Adelaide metropolitan area) and 1985 and 1988 (Australia wide) seem to suggest a wide socioeconomic spread of people who have used marijuana, and this situation would appear to be no different in the ACT.

2.1.13 The Adelaide survey seemed to suggest that the profile of cannabis users was:

> "... complex and did not follow simple socio–economic variables. Use of cannabis was wide spread among some age groups and a number of indicators suggested that there was at least as many, if not more, users in higher as in lower socio–economic groups." (7)

2.1.14 Nor is this an Australian phenomenon. Research in the United States of America is consistent in many respects with the findings of the Adelaide survey and the surveys conducted by the National Campaign Against Drug Abuse (NCADA) in 1985 and 1988. The South Australian Office of Crime Statistic suggest that:

> "In particular, NIDA [US National Institute on Drug Abuse] surveys have also found that cannabis use is not confined to specific socio–economic, age and gender groups or concentrated in a narrow social stratum." (8)

2.1.15 One further matter of concern in the social context of cannabis users is the intimation from the SA Office of Crime Statistics that the profile of people charge with marijuana related offences do not correlate with the profile of marijuana users. The Office expressed concern that far fewer women appeared in police statistics than should be the case if the user profile was valid and that in the 'detected offender' data there was a disproportionate concentration on evidence about Aboriginal people, people with criminal records and lower status cannabis users.

2.1.16 The conclusion reached by the Office of Crime Statistics was, as appears to be the case in the United States, that:

> "... current and future trends in detected offences ... are unlikely to bear a strong relationship to actual cannabis use or possession in the community." (9)

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7 Sarre, *et al, op cit*, p. 15

8 *Ibid*, p. 19

9 *Ibid*, p. 34

2.2 MEDICAL IMPLICATIONS OF CANNABIS USE

The committee wishes to express its appreciation for the valuable assistance given it by Dr G B Chesher [1], M Sc, Ph D and Dr A Wodak, MBBS, FRACP, FAFPHM, during the drafting of this chapter. Any errors of fact, interpretation or presentation are solely the responsibility of the committee.

Introduction

2.2.1 The research that has been done on the health effects of cannabis use in humans has been done with laboratory animals (from mice and rats, to rabbits, to rhesus monkeys) and with acute (ie casual or recreational users) and chronic users. Laboratory research has also been carried out *in vitro* and *in vivo*. When reviewing the literature on the health affects of cannabis it needs to be borne in mind that many issues surrounding its hazards are controversial and ambiguous. This ambiguity may be attributed to a number of factors:

(a) it has been difficult to prove or disprove health hazards in man from animal studies;
(b) cannabis is still used mainly by young people who are in good health;
(c) cannabis is often used in combination with tobacco and alcohol, as well as other illicit drugs; and
(d) the issue of cannabis use is so ladened with emotion that serious investigations have been coloured by the prejudices of the experimenters. [2]

2.2.2 It is also necessary to separate out the proven side effects from those identified as probable or possible, and to bear in mind that many of the laboratory or biochemical changes induced by marijuana use are of unknown significance. Making comparisons between chronic marijuana use and other chronic drug use can also be misleading; both marijuana and alcohol suppress the immune system – alcohol suppression is significant but the significance of marijuana suppression is unknown; both alcohol and marijuana can lead to short term memory loss – with alcohol this can be severe; it is relatively minor with cannabis use; although both cannabis smoke and tobacco smoke contain carcinogens the associated risk levels are not comparable; there are some possible similar effects on exercise performance with marijuana and nicotine, however the marijuana effects are probable and not proven, whereas the effects of nicotine have been clearly demonstrated.

2.2.3 Using Maykut's text (which basically is a literature review) and Hollister's paper as primary documents it is the purpose of this chapter to summarise the known health effects of

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1 Additional information provided by Dr Chesher is included in the Chairman's Preface

2 Hollister, L E, "Health Aspects of Cannabis", *Pharmacological Reviews*, Vol 38, No 1, March 1986, p. 2

acute and chronic marijuana use on the following body systems:

(a) chromosomes, cell metabolism and immunity;
(b) reproductive system;
(c) central nervous system;
(d) pulmonary system; and
(e) cardiovascular system.

Chromosomes, cell metabolism and immunity [3] [4]

Chromosomes

2.2.4 There appears to be some evidence, of uncertain clinical significance, to suggest that heavy marijuana smoking can damage or reduce chromosome numbers in human cells. The work cited by Maykut, however, also demonstrated that abstinence of greater than 10 days results in a return to normal cell development. It would appear that the incidence of chromosomal abnormalities among polydrug users is less than that in irradiated cancer patients; whilst among occasional marijuana users there is an apparent absence of correlation between drug use and incidence of chromosomal alterations. There is, however, a demonstratable effect of THC on human sperm leading to a decreased ability to move, a swelling on the mid portion of the cell which contains its principle energy source, and there is rupturing of the inner and outer membranes of the cell.

Cell metabolism

2.2.5 Some DNA functions are impaired by cannabinoids and THC but that impairment appears to be no greater than the impairment caused by aspirin, caffeine and other fat soluble psychotropic drugs such as anaesthetics and tranquillisers. Cell growth rate is inhibited by both psychoactive and non–psychoactive cannabinoids, but that inhibition is reversed some 48 hours after stopping the use of the drug. Chronic hashish users have shown alterations in chromatin structure which represents an altered cellular metabolism. Although not proven, it is theoretically possible that these modifications of DNA may lead to mutations and to carcinogenesis, which may be transmissible to future generations. The clinical implications of some of these findings is, however, obscure. Exposure to smoke from marijuana may be carcinogenic, yet the changes in nucleic acid synthesis, were they to be specific for rapidly dividing cells, such as those of malignancies, might be useful therapeutically.

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3 Maykut, *op cit*, pp 36, 46–47, 242–245

4 Holfister, *op cit*, pp 3–5

Immunity

2.2.6 The susceptibility of tolerant and non–tolerant marijuana users to various infectious diseases has not been established. In chronic marijuana smokers T–cell forming rosettes appear to be decreased implying some T–cell functional disturbance; such rosette formation is not altered by tobacco, alcohol or aspirin. The clinical significance of T–cell rosette formation abnormalities in marijuana smokers is, however, unknown, although a decrease in T–cells may increase the incidence of some tumours. Nonetheless the 'decreasing' effect appears to be transient, returning to normal by approximately eight days post smoking. According to Maykut the immunological status and possible genetic alterations in chronic marijuana users remains to be established. According to Hollister no clinical evidence has been discovered:

> "... that sustained impairment of cell–mediated immunity might lead to an increased prevalence of opportunistic infections, or an increased prevalence of malignancy ... " [5]

Reproductive system [6] [7]

2.2.7 It has been suggested, but not proven, that reproductive function or fertility can be affected by chronic marijuana use as indicated by decreased sex hormone release (oestrogen, progesterone and testosterone), decreased sex cell maturation (ova, sperm) and adrenal effects. The significance of these observed changes is uncertain. Other effects of chronic moderately large THC doses appears as embryonic and fetal toxicity.

The female system

2.2.8 Data on the effects of cannabis on the female reproductive system are sparse. In a preliminary study of 26 chronic marijuana users abnormal menstrual cycles were noted in the form of anovulatory cycles [8] and inadequate luteal phases [9] the possible outcome of which could be infertility. Hormonal alterations (returning to normal post drug usage) were observed as slower post ovulatory increases in progesterone with a lower peak concentration, lower prolactin levels and higher testosterone levels. One epidemiological study of the effects of marijuana during pregnancy revealed a shorter gestation period, precipitant labour and prolonged labour. There are also some indications that during pregnancy the use of marijuana can induce a greater tendency towards anaemia, less weight gain and intrauterine growth retardation.

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5 *Ibid*, p. 3

6 Maykut, *op cit*, pp 65–66, 71–72, 245–246

7 Hollister, *op cit*, pp 9–10

8 Menstrual cycles without ovulation

9 That phase in the menstrual cycle during which progesterone and other hormones are secreted

2.2.9 The possibility exists that women exposed to marijuana in amounts commonly used may have an increased risk of reproductive loss, with surviving infants being at increased risk for subsequent behavioural and development abnormalities, and possibly increased risk of physical abnormalities.

Prenatal and neonatal effects [10]

2.2.10 One study concluded that the use of marijuana during pregnancy can lead to offspring who are irritable, have high pitched cries with behavioural impairment to stimulus, indicative of an altered immature, nervous system. According to the study these effects were independent of cigarette and alcohol use, but resembled narcotic and alcohol effects. A few reports of prenatal marijuana use indicate some similarities to other prenatal psychotropic central nervous system depressant drug effects in the progeny, such as decreased birth weight with physical features reminiscent of the fetal alcohol syndrome. Nursing mothers also concentrate THC in their milk.

The male system

2.2.11 In men the abnormalities observed among cannabis users include spermatic maturation arrest, altered acrosomal morphogenesis and incomplete chromatin condensation in sperm heads. Research with some chronic users of marijuana have also revealed a decreased sperm count associated with decreased motility [11] and abnormal morphology, [12] the clinical significance of which is unknown, indicating that sperm production during marijuana exposure may have structural or biochemical functional defects. Cessation of marijuana smoking, however, resulted in a return to normal conditions with respect to sperm counts, motility and morphology. A dose related decrease in plasma testosterone level has been observed in acute and chronic marijuana smokers, with the testosterone level increasing following the cessation of drug use. Sexual function of users, predominantly polydrug users, has varied from normal to impotence. Those suffering impotence have returned to normal function within two months of drug discontinuance.

2.2.12 Although the significance of decreased testosterone levels is not clear, possible or potential implications resulting from acute and chronic cannabis use include decreased aggression; interference with sexual differentiation during the first trimester of pregnancy; delay in the onset or completion of puberty and sexual maturation; possible interference with sperm

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10 *And see* Hollister, *op cit*, pp 4–5

11 The ability to move

12 Physical structure

development and fertility; and possibly impotence.

Central nervous system [13] [14]

2.2.13 In Maykut's literature review the opinion is expressed that stable people use marijuana for social purposes while unstable people use it as an escape mechanism for emotional problems; preexisting psychopathology may predispose some people to adverse psychological reactions. Marijuana use has been shown to impair psychomotor performance, although at levels much lower than alcohol, and to decrease judgement, care and concentration [15]. Further, there is no doubt that cannabis use can produce serious psychic effects, particularly in people who are already unstable, and disrupt a person's social frame work. One study of 96 youthful offenders (18–28 years old) concluded that individuals using only marijuana appear to be less mature emotionally and more socially deviant whilst heavy users are often maladjusted with possible psychopathology. Light use by healthy people engenders less aggressive feelings whilst acute or chronic use may increase aggression because of tolerance development.

2.2.14 On the whole, however, human hostility and aggression appear to be reduced with marijuana in the absence of stress in healthy people.

2.2.15 A workable clinical classification of psychiatric conditions associated with marijuana use consists of:

i) drug dependence;
ii) non–psychotic organic brain syndrome;
iii) psychosis; and
iv) schizophrenic–like condition.

Drug tolerance/dependence

2.2.16 The question of tolerance/dependence is still one of controversy. Tolerance only becomes a major factor with high, sustained, and prolonged use of marijuana. According to some studies physical dependence becomes apparent after 10–21 days of chronic use. The dependence may be mild, depending on the dose, as noted by the mild withdrawal symptoms occurring one to two days following regular smoking (5–10 cigarettes a week) and lasts for

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13 Maykut, *op cit*, pp 96, 247–249

14 Hollister, *op cit*, pp 5–9

15 This is an acute effect of the drug and is an effect which is of concern to all marijuana users (it is not related to stability of user)

about four days. There is some evidence to suggest that physical dependence has occurred in heavy chronic users of hashish who become dysphoric and very irritable between cannabinoid doses. As most social use of marijuana does not involve high, sustained, and prolonged use, neither tolerance nor dependence has been a major issue in its social use.

Non–psychotic organic brain syndrome

2.2.17 In marijuana and hashish smokers investigations of the gross pathology of the brain revealed differing results of possible cerebral atrophy as well as no structural brain damage. Assessed THC effects on the functional condition of the brain showed changes from vigilance to the drowsy state; chronic users became dysphoric instead of euphoric. Early animal tests with heavy and moderate marijuana ingestion suggested acute behavioural changes with changes in brain activity which persisted for seven to eight months after regular chronic use suggesting possible permanent brain function and structural alterations. Two studies in 1977, however, using the technique of tomography, have effectively refuted the original claim of brain atrophy. The persistent changes in limbic structures in the brain, produced by moderate to heavy marijuana use, may contribute to psychopathological states. *Toxic delerium*, an acute brain syndrome, might be an acute response to high doses and/or potency of marijuana, *ie* a toxic psychosis or poisoning.

Psychosis

2.2.18 A cannabis psychotic effect may occur in regular marijuana users, and is thought to be due to chemical damage to brain cells caused by THC. This effect is observed as mental confusion, slowed time sense, difficulty with recent memory and an inability to complete thoughts during a conversation resulting in confused responses. Acute psychosis in heavy hashish users has progressed to a chronic psychosis similar to a schizophrenic reaction in predisposed individuals. It has been suggested that once a saturation point is reached with marijuana (beyond tolerance) further dosage leads to decompensation of mental functioning leading to a functional, as opposed to a toxic, psychosis. Evidence for a specific type of psychosis associated with marijuana use is, however, still elusive.

Schizophrenic–like condition

2.2.19 High doses of cannabis may produce schizophrenic–like psychotic states depending on the personality structure of the individual involved. Marijuana use during stressful situations by

emotionally vulnerable people, and by those predisposed to developing psychiatric disorders, entails running the risk of long lasting adverse effects.

Other effects

2.2.20 Other possible chronic effects which are non–psychotic include flashbacks (spontaneous recurrent feelings and perceptions similar to the original drug effect), amotivational syndrome (depression with flattening of affect (apathy) and mental confusion), moderate use of cannabis, however, does not seem to be associated with this outcome, and personality changes. Side effects of the social use of marijuana impairing psychomotor performance include lower performance levels in car driving and in piloting aircraft and the associated hazards these can lead to.

Pulmonary system [16] [17]

2.2.21 Marijuana smoke is potentially carcinogenic and the potentiality resides in the tar which has both tumorigenic and tumour–promoting properties. The carcinogenic risks associated with marijuana are comparable to cigarette and pipe tobacco; the concentration of the largest known groups of chemical carcinogens (polynuclear aromatic hydrocarbons) being almost twice that of tobacco. The significance of this data, however, needs to measured against the different smoking patterns of marijuana and tobacco. For example, whereas chronic marijuana use is defined as 6 –10 cigarettes per week, a heavy tobacco user might smoke a packet of twenty cigarettes a day (ie 140 per week), a 14x – 20x increase.

2.2.22 The acute pulmonary marijuana effects are bronchodilation and respiratory depression. Chronic marijuana use (large doses over a long period of time) has resulted in pulmonary disorders involving the whole respiratory system and the pathological findings are similar to those found with tobacco associated with the development of emphysema and carcinoma. Marijuana is thus capable of altering pulmonary function observed as airway obstruction and ineffective removal of particulate matter, including bacteria, leading to the development of bronchitis; emphysema and pulmonary carcinoma have not yet been documented. Neither has an increased susceptibility to bacterial infection been clinically documented and currently:

> "... it is far easier to find pulmonary cripples from the use of tobacco than it is to find any evidence of clinically important pulmonary insufficiency from smoking cannabis. [18]

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16 Maykut, *op cit*, pp 249–250

17 Hollister, *op cit*, p. 10

18 *Loc cit*

Cardiovascular system [19] [20]

2.2.23 Marijuana has been shown to have peripheral vasodilating properties such as:

(i) increased peripheral blood flow in the prone position;

(ii) prevention of peripheral vasoconstriction; and

(iii) reddening of the eyes (hyperemia).

It also appears to interfere with compensatory vascular adjustments. All studies with marijuana have revealed a dose related heart rate increase. Both smoking of marijuana and oral ingestion of THC resulted in varied electrocardiogram (ECG) changes, the severity of which depends on intake habits. Reported ECG alterations have included:

(i) P–wave changes;

(ii) T–wave or repolarisation abnormalities;

(iii) ST–segment variation from the isoelectric line; and

(iv) Cardiac arrhythmias or heart beat irregularities.

All ECG abnormalities reverted to normal upon cessation of drug use. The possibility exists, though not proven, that cardiac electrical changes due to marijuana effects may become irreversible with continued drug use leading to permanent heart damage. Marijuana smoking also appears to decrease platelet aggregation suggesting possible impairment of blood coagulation.

2.2.24 Some studies have concluded that exercise performance is decreased in both healthy and angina patients with marijuana use, due mainly to increased heart rates. Similar effects have also been observed with nicotine use although the decreased exercise performance was less than with marijuana.

2.2.25 As marijuana is being used for its intoxicating effects the cardiovascular responses are really toxic dose effects and may be a form or state of shock. Such effects include decreased blood pressure, increased heart rate and postural hypotension, including unconsciousness as well as anxiety brought about by a derangement of circulatory control producing vasodilation with some respiratory depression.

Therapeutic uses [21]

2.2.26 According to Hollister therapeutic uses for marijuana, THC or cannabinoid homologues

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19 Maykut, *op cit*, pp 182–187, 250–251

20 Hollister, *op cit*, pp 10–11

21 *Ibid*, pp 13–17

are being actively explored. Whilst there is little doubt that marijuana and THC are effective as antiemetics, particularly in respect of cancer chemotherapy, there are other drugs that are equally as effective and with fewer adverse effects. Although marijuana reduces intraocular pressure associated with glaucoma there is a need for a feasible topical preparation of cannabinoids. Some cannabinoids have analgesic properties but the abundance of new opioid analgesics with little dependence liability limits their choice as an option. The use of marijuana as a muscle relaxant has not yet been adequately studied and clinical studies to establish the efficacy of cannabidiol as an anticonvulsant, or to compare it with other anticonvulsants, are still to be done.

2.2.27 Other possible or potential therapeutic uses of marijuana, such as treatment of bronchitis, asthma, insomnia, hypertension, abstinence syndromes, migraine, anorexia and alcoholism, are most unlikely.

Conclusions

2.2.28 Any judgements concerning the adverse health implications of marijuana usage must take into account the inconclusive nature of current research, other drug related, and socially accepted, health threat levels, the duration of the perceived adverse effects and possible therapeutic effects.

Current research

2.2.29 It is apparent that current research has failed to demonstrate the premise that cannabis, used as a mind altering drug, is more harmful to people than legally available drugs such as tobacco and alcohol; nor has the research demonstrated that chronic cannabis use is as harmful as these other drugs. It is the committee's opinion that the current state of research into the effects of acute and chronic marijuana use indicates, in fact, that marijuana is less harmful than tobacco or alcohol.

Health threat levels

2.2.30 As the committee believes that marijuana usage is less harmful than either tobacco or alcohol usage then it follows that, in the committee's opinion, the perceived health threat levels associated with cannabis usage will be well within current socially accepted threat levels, particularly with moderate or controlled usage patterns.

Effect duration

2.2.31 It is also important to note the limited duration of a number of the possible and probable adverse effects of marijuana usage, as shown by the studies mentioned in this chapter.

Chromosomal damage is reversed some 10 days post drug use (*see* paragraph 2.2.4); the inhibition of cell growth rate is reversed within 48 hour of drug use cessation (*see* paragraph 2.2.5); the dampening effect on T-cell rosette formation is alleviated some eight days after smoking has stopped (*see* paragraph 2.2.6); hormonal alterations in women return to normal post drug use (*see* paragraph 2.2.8); on the cessation of smoking sperm production returns to normal, testosterone levels return to normal, sexual functions return to normal (*see* paragraph 2.2.11); and all ECG abnormalities revert to normal on cessation of drug use (*see* paragraph 2.2.23).

Therapeutic effects

2.2.32 Unlike tobacco or alcohol, the use of which can, simplistically, be seen as toxic, there is some substantial evidence to suggest that cannabis, in the form of a number of its constituents or derivatives, has some therapeutic benefits. Any analysis of the health threat levels posed by marijuana must take this into account.

2.3 THE CURRENT LAW IN AUSTRALIA

Introduction

2.3.1 It is a commonality of all Australian law that marijuana be regarded as a prohibited substance; although the force of that prohibition varies from state to state. Thus, in general, the laws with respect to marijuana in the several Australian jurisdictions fall along a continuum. At one end of the continuum there are the South Australian laws which provide for the expiation of simple marijuana offences by payment of a fine without the recording of a conviction and at the other end there are the harsh penalties of the Queensland legislation for possession of even small amounts of cannabis.

2.3.2 The purpose of this chapter is to present a summary of the current laws operating in each of the States and Territories, with a summary of the effects of the changes made in 1986 to South Australia's cannabis laws.

The moderate approach

ACT legislation

2.3.3 In the Australian Capital Territory the use of cannabis is prohibited under the *Drugs of Dependence Act 1989*. The cultivation, sale, supply and possession of marijuana is prohibited under sections 162, 165 and 171 (*see* Appendix B). There is an attempt in the ACT legislation to differentiate between personal and non–personal use of marijuana; although not explicitly expressed as personal use, "personal use" offences carry much lighter penalties. Paragraph 162 (2)(a) provides for a penalty of $100 for the cultivation of not more than five cannabis plants; whereas cultivating more than five plants carries a penalty of $5,000, two years imprisonment or both (paragraph 162 (2)(b)) and cultivating for sale or supply carries penalties up to imprisonment for life (paragraph 162 (3)(a)).

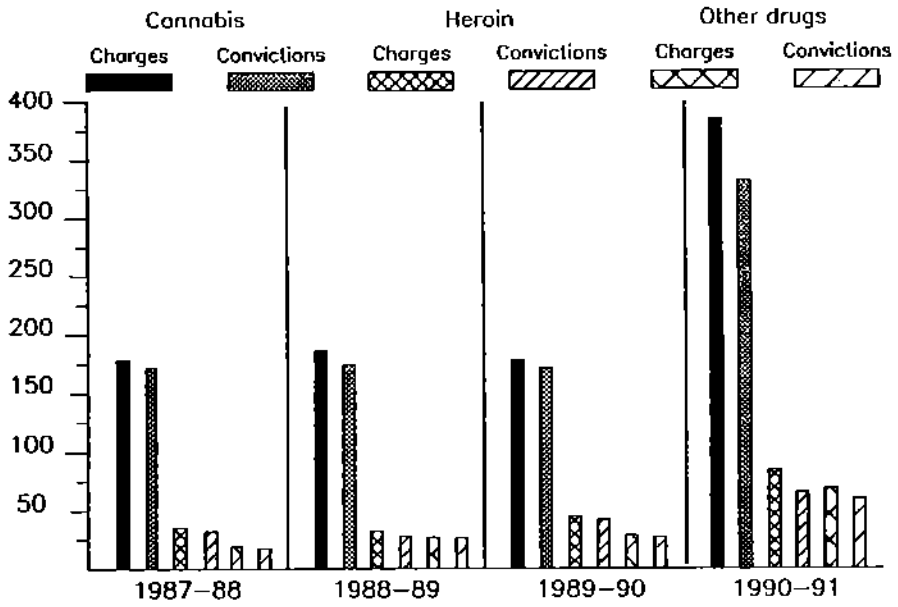
2.3.4 The distinction is also maintained with regard to possession of a prohibited substance. If the offence relates to a quantity of marijuana which does not exceed 25 grams in mass there is a penalty of a $100 fine (paragraph 171 (1)(a)); in the case of all other prohibited substances, where the quantity is less than a traffickable amount, no matter how small, the penalty is $5,000, two years imprisonment or both (paragraph 171 (1)(b)).

2.3.5 The distinction is not maintained in offences that relate to the sale and supply of cannabis. Section 165, which deals with the sale or supply of cannabis, carries penalties ranging from $5,000 and two years imprisonment to imprisonment for life. And for the purposes of

section 165 it is presumed that where a person has more than a traffickable quantity of cannabis that cannabis is for sale or supply (subsection 165 (5)).

2.3.6 Table 1 shows the number of charges and convictions for drug related offences in the ACT over the period 1987–88 to 1990–91. It will be seen that cannabis related offences during the period maintained a ratio of 4:1 as against heroin related charges.

Table 1 – Illegal Drug Use – Charges and Conviction in the ACT – 1987–88 – 1990–91



Source: Commonwealth Director of Public Prosecutions Annual Reports 1987–88 – 1989–90 and unpublished figures for '90–91

Driving under the influence

2.3.6 It is also an offence, under the *Motor Traffic (Alcohol and Drugs) Act 1977*, for a person to drive a motor vehicle on a public street or in a public place whilst under the influence of a drug to such an extent as to be incapable of having proper control of the vehicle (*see* section 24). Under section 16 a police officer may require a person to submit to a medical examination to ascertain the presence of a drug other than alcohol in the body of that person.

Victorian legislation

2.3.7 Victoria, through the *Drugs, Poisons and Controlled Substances (Amendment) Act 1983*, has gone some way to decriminalising the personal use of cannabis. [1]

2.3.8 Under the principle legislation, the *Drugs, Poisons and Controlled Substances Act* 1981, as amended by the 1983 Act, it is an offence to possess a drug of dependence (s.73), to use a drug of dependence (s.75) or to traffic in a drug of dependence (s.71) without authorisation. With regard to the first two offences the penalty is considerably less if the drug is cannabis than it is for other drugs. The maximum penalty for possession of a "small quantity" of cannabis (less than 50 g) where the offender was not trafficking the drug is five penalty units which is a fine of $500.

2.3.9 The most serious offence is trafficking in a commercial quantity of the drug (for cannabis, 100 kg). A person found in possession of a "traffickable quantity" of a drug of dependence (250 g of cannabis) must prove that the drug was not intended to be used for trafficking (s.72(2)). Trafficking need not be for profit and may include acting as an intermediary between a buyer and a seller of drugs. The maximum penalty for such trafficking is 25 years' imprisonment and 2,500 penalty units which is a fine of $250,000 (s.71(2)). The court may also order that the offender pay an additional pecuniary penalty "equal to the value of the benefits derived by the person from the commission of the drug related offence" (s.86(3)). The offender's property related to the offence including money obtained from the sale of drugs may also be forfeited (s.85(2)).

2.3.10 Cultivation of a "narcotic plant", seen as a precursor to trafficking, carries a fine of up to $100,000 and fifteen years' imprisonment if the cultivation is for trafficking and up to $2,000 fine and one year's imprisonment if it is not for trafficking (s.72(1)).

2.3.11 The changes to the Act in 1983 were designed to impose heavier penalties on trafficking, including cultivation, and lighter penalties on smaller users, addicts and those who possess small quantities of a drug of dependence. The amending Act (1983) empowers a magistrate to grant an adjourned bond in certain circumstances when a person is convicted of an offence relating to a small quantity of cannabis (up to 50 g). Under section 76 an offender may be given an adjourned bond if:

- the offender has not previously been convicted of a drug–related offence or been dealt with under the section;

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1 Skene, L, "Cannabis Policy In Victoria", in *Law Institute Journal* Vol. 61, No. 7, July, 1987, pp. 696–700

- the offence was one of possession, use or cultivation of cannabis;
- the order is appropriate having regard to "the character and antecedents of the person and to all the circumstances and the public interest"; and
- the offender enters into a recognisance to be of good behaviour for twelve months and to observe any conditions imposed by the court.

2.3.12 The implications of this section are that if offences concerning small quantities of cannabis which are not for the purpose of trafficking, then they are decriminalised to the extent that a conviction may not be recorded for first–time offenders. There is still a judgement of guilty, however, so that if an offender is convicted of a subsequent offence then he or she will not be able to take advantage of this section a second time.

2.3.13 Although Magistrates are given the power to grant a bond they have the discretion whether to award an adjourned bond. If the court "considers it appropriate to proceed to a conviction" it may do so even if the offender is a first–time small user of cannabis. The circumstance in which this could occur is that the offender may have used violence or there are related property offences.

South Australian legislation

2.3.14 Of the Australian States and Territories, South Australia has adopted the most liberal laws with regard to cannabis use. In 1979 the South Australia's Royal Commission into the Non–medical Use of Drugs recommended that minor cannabis use not be treated as a criminal offence. The Commission pointed to overseas examples in the United States. The resulting changes in South Australia can be considered comparable to some of the overseas reforms.

2.3.15 Although the South Australian approach cannot be described as 'decriminalisation' in the strict sense it does remove some of the criminal stigma attached to the use of cannabis. A cannabis infringement notice system for possession, cultivation or use of small amounts of cannabis by adults came into effect on 30 April 1987.

2.3.16 A simple cannabis offence relating to possession concerns the possession of less than 100 grams of cannabis or less than 20 grams of cannabis resin; with regards to cultivation a simple offence applies to plants that are not cultivated for commercial purposes [(2)]. The fines imposed are:

i) less than 25 grams of cannabis $50;

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2 No arithmetical number is specified in the legislation and a decision as to whether or not the plants have been cultivated for commercial purposes is at the discretion of the Police Officer involved. (Telephone advice from the SA Drug Squad)

ii)	less than 100 grams of cannabis	$150;
iii)	less than 5 grams of cannabis resin	$50;
iv)	less than 20 grams of cannabis resin	$150;
v)	administration of cannabis	$50; and
vi)	non–commercial cultivation	$150.

2.3.17 Under the new section 45a (*see* Appendix C) of the *Controlled Substances Act, 1984* adults detected committing the simple marijuana offences are to be issued with a written 'infringement notice' by police. Court appearance and record of conviction can be avoided if the specified fines are paid. The amount of the fine are roughly equivalent to those previously imposed by magistrates. Section 45a (2) provides for the issuing of notices 'on–the–spot' to adults alleged to have committed a 'simple cannabis offence'. These offences cannot be prosecuted in court ('an infringement notice must be given to an alleged offender') unless the recipient of the notice has failed to pay the 'prescribed infringement fee' within 60 days.

2.3.18 Infringement notices are not issued to juveniles who are usually required to appear before a children's court or aid panel. In addition consumption of cannabis in public including in a vehicle parked publicly is not expiable and carries a fine of up to $500.

2.3.19 The purpose of these legislative changes were to distinguish between serious and minor drug offences. It provides for 'simple cannabis offences' and large and small scale trafficking. The infringement system provides a clearer distinction between private consumers of cannabis and large scale operators.

2.3.20 The Controlled Substances Act continues to provide severe penalties for other non–expiable cannabis offences which were increased at the time of introduction of the infringement notice system (the substance quantities are provided for in Regulations No. 74 of 1985):

- possession of 100 g or more of cannabis, or of 20 g or more of resin, will deem an offender (unless the court can be satisfied to the contrary) to be a 'small scale' dealer for whom penalties of up to $50,000 or 10 years imprisonment (or both) are available (subsection 32(3) and sub–regulation 5);
- person found with more than 1000 growing plants, 100 kilograms of cannabis or 25 kilograms of resin similarly can be deemed 'large scale' traffickers, and face penalties of up to $500,000 and 25 years imprisonment (sub–paragraph 32(5)(*a*)(*i*) and sub–regulations 6 and 7); and
- the Act continues to proscribe the production, sale or supply of cannabis – regardless of amount – in circumstances where a court is satisfied that the offender has been engaged in 'commercially' oriented activities (section 32).

The middle of the road approach

New South Wales legislation

2.3.21 The principle legislation in NSW is the Drug Misuse and Trafficking Act 1985. Under that Act the possession, manufacture, production, supply and administration of cannabis is proscribed. Offences of possession (s. 10) and administration (ss. 12, 13 and 14) are prosecuted summarily (s. 9) and the associated penalties are a fine of $2,000, imprisonment for two years or both (s. 21). Offences relating to cultivation (s. 23), manufacture and production (s. 24) and supply (s. 25) are prosecuted on indictment (s. 22). The penalties involved depend on the quantity of prohibited substance involved.

2.3.22 Where the number of plants involved is no greater than five or the amount of leaf involved weighs no more than 25 grams then the penalties involved are a fine of $2,000, imprisonment for two years or both (s.30). Where the amount of prohibited substance is no greater than the indictable quantity (20 plants and 750 grams of leaf) the penalties are a fine of $5,000, imprisonment for two years or both (s. 31). Where the amount of prohibited substance is no greater than the commercial quantity (1,000 plants and 100 kgs of leaf) the penalties are a fine of $200,000, imprisonment for 10 years or both (s.32). Where the amount of prohibited substance is a commercial quantity or more the penalties are $500,000, imprisonment for 20 years or both. The differing quantities are set out in Schedule 1 of the Act.

Northern Territory legislation

2.3.23 The primary enactment in the Northern Territory is the Misuse of Drugs Act 1990. This legislation differs from the NSW legislation in one important respect; it specifically targets the supply of dangerous drugs to children for which it imposes the severest penalties – imprisonment for 25 years or life imprisonment (s. 5).

2.3.24 The penalties for administering a dangerous drug are a fine of $2,000 or imprisonment for two years (ss 13 and 14). As with the NSW legislation penalties for possession depend on the amount of cannabis involved; possession of a less than traffickable quantity attracts penalties ranging from a $2,000 fine to five years imprisonment; less than a commercial quantity attracts penalties ranging from a $10,000 fine to imprisonment for 14 years; possession of a commercial quantity attracts penalties ranging from 14 to 25 years imprisonment (s. 9). The penalties for cultivation offences also depend on the quantity cultivated; commercial quantities carry a 25 year prison term; traffickable quantities carry a seven year prison term; and other cases attract a penalty of a fine of $5,000 or imprisonment for two years (s. 7).

2.3.25 The manufacture and production of a dangerous drug carries penalties ranging from imprisonment for seven years to imprisonment for life (s. 8). Supplying dangerous drugs attracts penalties ranging from a fine of $10,000 to imprisonment for life. As mentioned in paragraph 2.3.23 supplying dangerous drugs to children carries the severest of penalties – imprisonment for 25 years to life imprisonment (s. 5).

Tasmanian legislation

2.3.26 The relevant legislation in Tasmania is the Poisons Act 1971 and the *Criminal Code*. The sale, supply and trafficking of marijuana is proscribed by subsection 47(3); and any person who has in their possession more than the maximum permissible quantity is deemed to have that amount for the purpose of sale, supply or trafficking (subsection 47 (7)). The maximum permissible quantities are 25 grams of marijuana, five plants and five grams of resin (Schedule 1 Part III). The possession of marijuana is proscribed by subsection 49 (1) with a penalty of a fine of $3,000, two years imprisonment or both. Cultivation is also proscribed and carries a penalty of a fine of $4,000, two years imprisonment or both (subsection 52 (1)).

2.3.27 In Tasmania, under the Criminal Code, the court has discretion in imposing penalties. The penalties for offences against subsection 47(3) are covered by the Criminal Code and have involved prison terms of up to 21 years. Minor offences (ie possession of less than 25 grams or five plants) have been dealt with in Tasmania on a similar basis as the ACT with small fines of $100. [3]

Western Australian legislation

2.3.28 The Misuse of Drugs Act 1981 is the primary Western Australian legislation. This legislation makes a covert distinction between personal and non–personal use by means of categorising offences as indictable (*see* subsections. 6(1) and 7(1)) or simple (*see* subsections 6 (2) and 7 (2)). In terms of penalties the legislation also differentiates between cannabis offences and other drug offences (see subsection 34 (2)).

2.3.29 The manufacture, preparation, sale and supply of cannabis is an indictable offence (subsection 6(1)) which carries a penalty of a fine of $20,000, imprisonment for 10 years or both (subsection 34 (2)). The cultivation of cannabis for supply and the selling or supplying of plants are also indictable offences (subsection 7(1)) which carry a penalty of a fine of $20,000, imprisonment for ten years or both (subsection 34(2)). The Act also deems a person to have the

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3 Advice provided by the Police Department of Tasmania

intent to sell or supply if they have in their possession quantities of cannabis or cannabis plants no less that the amounts specified in Schedules V and VI (s. 11).

2.3.30 The possession and use of marijuana is a simple offence (subsection 6(2)) which carries a penalty of a fine of $2,000, imprisonment for two years or both (paragraph 34(1)(e)). The possession and the cultivation of cannabis plants are also simple offences (subsection 7(2)) and likewise carry a penalty of a fine of $2,000, imprisonment for two years or both (paragraph 34(1)(e)).

Stringent prohibition

Queensland legislation

2.3.31 In Queensland the law relating to the use of cannabis is the Drugs Misuse Act 1986. This Act does not distinguish between personal and non–personal use of marijuana and carries the harshest penalties of any Australian jurisdiction.

2.3.32 A person convicted of the offence of unlawfully trafficking in a dangerous drug (s. 5) is subject, where the offence relates to cannabis, to a penalty of imprisonment, with hard labour, for 20 years (paragraph 5(a)). It is a crime to supply a dangerous drug to another person (subsection 6(1)); the Act distinguishes between aggravated supply (supply by an adult to a child, to an intellectually handicapped person, to a person within an educational institution, to a person within a correctional institution, or to a person not knowing that the drug is a dangerous drug) and other cases (subsection 6(2)). The penalty for aggravated supply is imprisonment for 20 years (paragraph 6(1)(c)) and in other cases imprisonment for 15 years (paragraph 6(1)(d)).

2.3.33 It is an offence to unlawfully produce (the definition of which includes 'to manufacture' and 'to cultivate') a dangerous drug (s. 8). If the quantity produced is not less than 500 grams or not less than 100 plants (Third Schedule) then the penalty is imprisonment, with hard labour, for 20 years (paragraph 8(d); if the quantity is less than that specified in the Third Schedule then the penalty to be imposed is imprisonment for 15 years (paragraph 8(e)). It is also an offence to unlawfully possess a dangerous drug (s. 9). If the quantity possessed is not less than 500 grams or less than 100 plants (Third Schedule) then the penalty is imprisonment, with hard labour, for 25 years (paragraph 9(c); if the quantity is less than that specified in the Third Schedule then the penalty to be imposed is imprisonment for 15 years (paragraph 9(d)).

The South Australian experience

2.3.34 In 1989 the Office of Crime Statistics, Attorney–General's Department, South Australia, commissioned a report on the implications of the cannabis infringement notice legislation. The study assessed whether properly collated and interpreted statistics provided any basis for believing that the:

> "... advent of a notice system would lead to more widespread experimentation with cannabis and to higher rates of reoffending among established users." (4)

2.3.35 The main conclusion reached by the study was that available evidence does not support such a hypothesis. It is the report writers' view that the available evidence:

> "... is consistent with a view that amendments to the South Australian legislation have not precipitated major changes in the extent or nature of cannabis possession, cultivation or use." (5)

2.3.36 The report was able to demonstrate that the rate of police detection of minor cannabis offences has continued to rise under the infringement notice system. What is important to note, however, is that the statistics on offences detected by police after the introduction of infringement notices closely match those recorded before the law was changed. The increase rate (11% per annum), however, is apparently less than the long term rate of increase (25% per annum) which had applied over the last thirteen years of the previous legislation and is less than the rate of 16% per annum applied over the first two years of the Controlled Substances Act. In the opinion of the writers, because all rates were well within normal variability ranges:

> "[I]t seems unlikely that the mild increase in detected offences has any direct relationship with the introduction of the scheme." (6)

2.3.37 The data on the characteristics of offenders which were reviewed by the writers showed a remarkable consistency between offenders detected before and after the introduction of the scheme. The findings also failed to establish the hypothesis that there had been an increase in detections at high risk locations such as schools; they also failed to support concerns that rates of re–detection had increased. (7)

2.3.38 According to the writers, 55% of infringement notices are finalised by payment of the requisite fine without a court appearance. (8) And given that the number of offences detected

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4 Sarre, *et al, op cit*, p. 2

5 *Loc cit*

6 *Ibid*, p. 24

7 *Ibid*, p. 34

8 *Ibid*, p. 37

following the introduction of the scheme closely match those recorded before the scheme (*see* paragraph 2.3.36) there appears to have been a significant decline in marijuana related court appearances.

2.4 OPTIONS FOR REFORM

Introduction

2.4.1 It is apparent, in the committee's opinion, that the laws relating to the prohibition of cannabis have proven ineffective in combating the use of the drug. The intentions of the law to discourage the availability and use of cannabis and to punish those who use or supply it have not been fulfilled. This position appears to be reflected in ACT legislation where the law draws a definite, though covert, distinction between 'personal use' and other uses. The situation is similar in Victoria. In South Australia, providing the fine is paid, there is little chance of a recorded criminal conviction for simple marijuana offences.

2.4.2 If the law is not capable of fulfilling the role assigned to it and if the law makers, the law enforcers and those prosecuting the law seek to lessen the effect of the law in certain areas, then, in the opinion of the committee, the law must be reformed. The committee believes this to represent the current social position on the Territory with regard to the marijuana laws and, therefore, law reform is necessary.

2.4.3 In the committee's opinion, it is possible to identify three broad options for cannabis law reform within the ACT. They are:

i) to provide for a more stringent prohibition policy with harsher penalties, more police officers, additional powers to the police, greater economic cost and a necessary further diminution of civil liberties;

ii) to remove all criminal sanctions associated with cannabis from the statute books; and

iii) to provide for partial law reform which would represent a middle ground between the first two options above.

Option 1 – A stringent prohibition policy

2.4.4 The committee has stated elsewhere its belief that current drug policies built around a basic policy of prohibition have failed. [1] Marijuana has been a prohibited substance since at least the 1920's and, despite ever increasing harsher penalties, people have, for nearly 70 years, continued to use it. [2] The continued personal use of marijuana has been given at least *de facto* recognition in legislation in most jurisdictions in Australia. Tables 2 and 3, which show seizures

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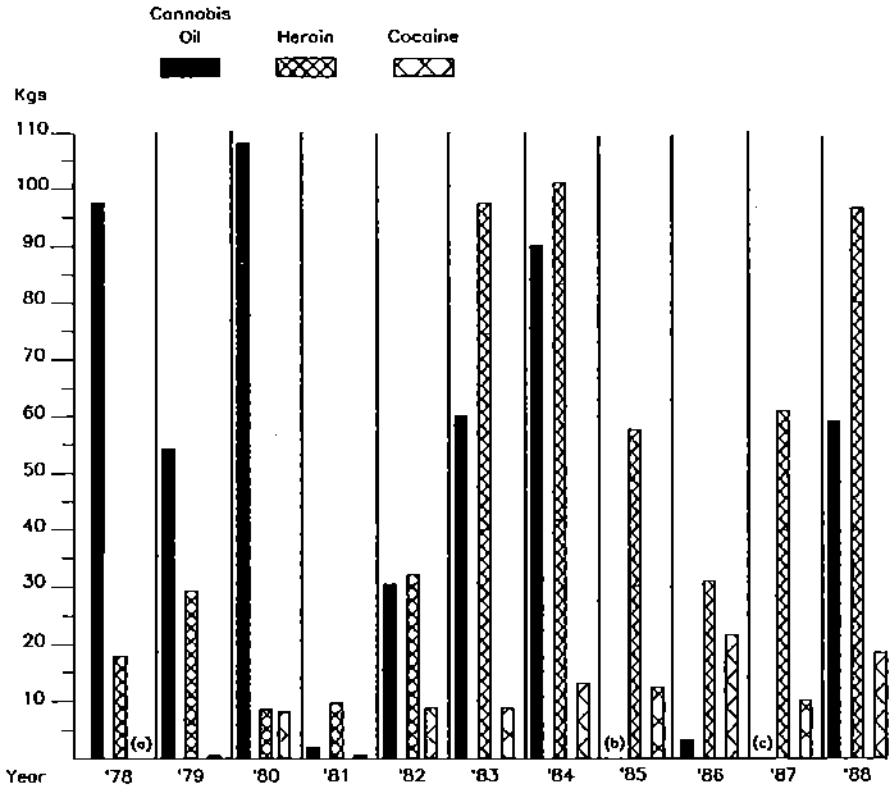
1 Second interim report, *A feasibility Study on the Controlled Availability of Opioids*, para 1.4

2 Usage among 20–29 year olds increased from 22% in 1973 to 57% in 1985 and police detection rates also continue to rise at approximately 11% per annum (*see* Sarre, *et al* pp 17 and 24)

of cannabis and other illegal drugs over the period 1978 – 1988, demonstrate the continuing high availability of cannabis in Australia.

2.4.5 There is no doubt, in the committee's opinion, that a stricter approach to marijuana law enforcement will lead to increased costs, both social and economic, and most probably without any increased benefit to the community. There would be a need to increase police staffing and to provide additional powers; there would be a need to provide additional human and financial resources to the courts system and to the penal system; and there may possibly be a need for further diminution of civil liberties – for example increased search and seizure powers; less stringent rules concerning telephone tapping; and increasing use of such procedures as entrapment.

Table 2 – Seizure of selected illegal drugs in Australia – 1978 – 1988



Source: Proceedings of 2nd National Drug Indicators Conference – March 1990, p. 26

(a) no cocaine seized; (b) 0.04 kgs of oil; (c) 0.02 kgs of oil

2.4.6 Such costs associated with prohibiting the social use of a drug that is less harmful than alcohol and tobacco cannot be justified. It is, in the opinion of this committee, inappropriate to revert to the failed policy of prohibition as a means of achieving the necessary law reform.

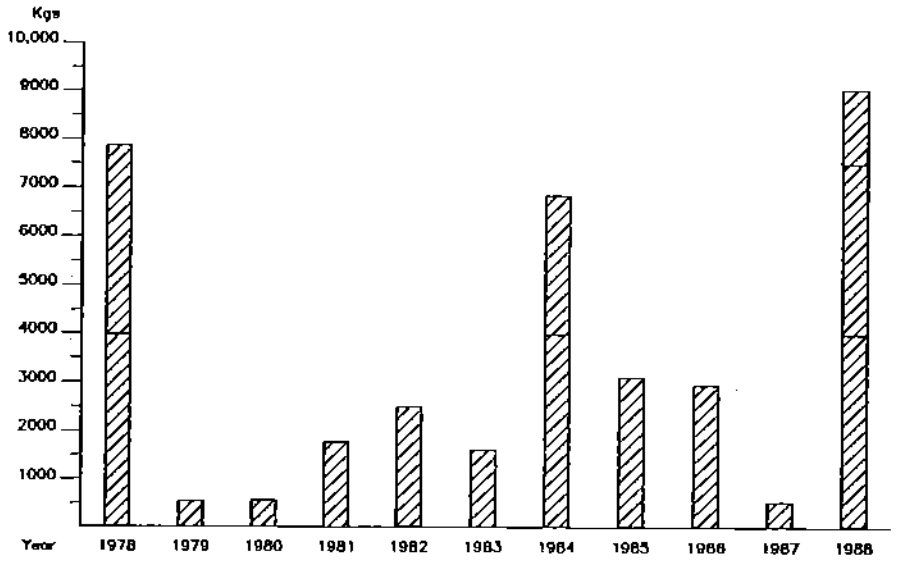
Option 2 – Removal of all criminal sanctions

2.4.7 The abolition of all criminal penalties associated with the supply, possession and cultivation of marijuana would most assuredly lead to a substantial reduction in the number of citizens being arrested, processed by the courts and being incarcerated. In the opinion of the committee, however, the removal of all criminal sanctions would be an extreme option at this time and one which no jurisdiction, nationally or internationally, has as yet adopted.

Public perceptions

2.4.8 A survey carried out by Morgan Gallup Poll and published in *The Bulletin* magazine in July 1987 found that, of the Australia–wide sample of 1203 men and women aged 14 years and over, there was not a majority support for legalising marijuana smoking in any sex–age group. Even among tobacco users only 38 per cent were in favour. People who have smoked marijuana at some time were in favour (58 per cent) of legalising it. [3]

Table 3 – Marijuana seizures in Australia – 1978–1988



Source: 2nd National Drug Indicators Conference – March 1990, p. 26

2.4.9 Given these attitudes it is unlikely that such a drastic social change would be widely accepted by the community and would probably lead to public outcry.

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3 *The Bulletin*, 15 September 1987, p. 38

Option 3 – Provide for partial law reform

2.4.10 Partial law reform has been attempted in several jurisdictions overseas and, of course, in South Australia and to some extent in Victoria. Except in Alaska, where in late 1990 liberal marijuana related laws were repealed in favour of more stringent law enforcement, studies of these more liberal approaches seem to indicate there has been no untoward or unacceptable consequences resulting from these legal changes to marijuana laws.

Overseas initiatives

2.4.11 The 1970s saw the relaxation of cannabis laws in a number of the States of the United States and in some European countries such as Holland. The changes generally confine possession of cannabis to a defined small amount for personal use in which the penalties are reduced and do not include imprisonment. The possession of large quantities of cannabis, however, still remains illegal and still carries heavy penalties including large fines and prison sentences. The apparent reasons behind the changes in the relevant laws were that the existing laws were seen as unduly severe and assumed links between casual users of cannabis and those involved in the organised production and distribution of cannabis and other harder drugs.

The United States of America

2.4.12 The states of Alaska, Maine, Minnesota, North Carolina and Ohio all passed legislation in which no specific provision was made for a mandatory court appearances for the least serious cannabis offences while the states of California, Colorado, Mississippi, New York and Oregon changed their laws but retained the requirement for court appearances. As mentioned in paragraph 2.4.11 Alaska has now repealed its liberal marijuana laws in favour of harsher penalties.

The Netherlands

2.4.13 The Netherlands, in 1976, introduced legislation which amounted to a *de facto* deciminalisation of minor offences relating to cannabis. [4] The legislation draws a distinction between "drugs presenting unacceptable risks" for which severe penalties are provided and "hemp products" which for small quantities up to 30 g is punishable with a small fine. There is also a tendency in the Netherlands for prosecutors to refrain from instigating criminal

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4 Sarre, *et al, op cit* p. 1

proceedings against cannabis users because of the perceived lack of benefit of such action.

New Zealand

2.4.14 The New Zealand Minister for Justice, Mr D Graham, MP, has recently announced a proposal for the down grading of penalties for smoking marijuana to match certain traffic offences. Part of the rationale for this move appears to be a recognition that police investigations and court cases over the drug's use were expensive and unnecessary. The proposed changes in the law would mean that apprehended cannabis users would have a choice of paying a fine or contesting police evidence in court. (5)

The effects of partial law reform

2.4.15 Analysis of the overseas changes do not show that they have had untoward consequences. Surveys of the eleven American states which have decriminalised personal cannabis offences suggest that there has not been a great change in patterns of use of the drug after decriminalisation. Maine's evaluation of the changes concluded that the change from criminal to civil penalties had not caused a significant increase in marijuana use either among high school students or adults. California passed legislation in 1975 which changed the offence of possessing small amounts of cannabis from a felony with up to 10 years imprisonment, to a 'citable misdemeanour' with a fine of not more than $100. In an assessment of this change it was concluded that the reduction of penalties did not appear to have been a major factor in people's decision to use or not to use the drug. (6)

2.4.16 The report of the Office of Crime Statistics, South Australia, on the consequences following the introduction of infringement notices for simple marijuana offences would appear to reflect the consequences identified in the United States.

Arguments in support of partial law reform

2.4.17 It is apparent that the use of cannabis as a recreational drug is not only common but widely condoned (*see* Appendix D – 1987 Morgan Gallup Poll). The current law as it stands is, therefore, inappropriate since it treats as a criminal offence an activity which is regarded by may people as acceptable and harmless. And given that there is no conclusive or strong evidence to

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5 *See* report in *The Canberra Times*, 1.10.91. p. 6

6 Sarre, *et al, op cit*, p. 8

suggest that marijuana is a drug as, or more, harmful than alcohol and tobacco the law also appears to be at odds with the health issues surrounding the drug.

2.4.17 In line with these arguments, ie personal use of cannabis has some degree of social acceptability and perceived health threat levels are no greater than alcohol or tobacco, it can be proposed that people should not be stigmatised by a criminal conviction nor be subjected to being searched, arrested and brought before a criminal court for indulging in an acceptable and relatively harmless activity.

2.4.18 As the committee has already argued, the formal prosecution process has not eliminated the drug problem and, therefore, can be seen as ineffectual and wasteful of police and court resources. The laws are expensive to enforce in terms of both law enforcement costs as well as court costs. The problems, if any, associated with cannabis use require solutions other than the criminal law.

2.4.19 Detection and prosecution practices appear to be discriminatory with a small, unrepresentative sample of cannabis users routinely prosecuted. [7] In some jurisdictions penalties are seen as unduly punitive and harsh particularly for the young. In addition there has been evidence that convicted cannabis users do not change their behaviour. Offenders are often left with a criminal record which can disqualify them from a range of professions and job opportunities; this can be seen as an unduly harsh double punishment (the payment of a fine or other penalty to be followed by job discrimination), especially as it applies to the relatively small proportion of users who are caught. As tobacco and alcohol use, the most commonly used drugs in our community, is not outlawed, the outlawing of cannabis (a drug with demonstrably less harmful health effects) can be seen as the imposition of a social double standard sanctioned by the law.

2.4.20 In proposing cannabis law reform the policy makers in the Netherlands put forward the argument that the illegality of drugs may encourage their use by making them a symbol of rebellion, particularly amongst the young who are by far the greatest users of marijuana in our society.

2.4.21 Cannabis is already freely available and it is unlikely that liberalisation of the laws will make very little difference to current supply:

> "... amendments to the South Australian legislation have not precipitated major changes in the extent or nature of cannabis possession, cultivation or use. [8]

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7 *Ibid*, p. 34

8 *Ibid*, p. 2

2.4.22 It is also possible that the illegal status of cannabis use and possession may also expose users to more serious criminal activity and may link their conduct to 'hard' drugs and organised crime. This would appear to be the case because sellers of cannabis often sell other, more serious drugs as well such as amphetamines:

> "... and they say 'There is not any grass but we have got some speed, how about trying this for a change?' Or, 'We have got some heroin' and that happens." [9]

So when cannabis is in short supply buyers may be offered other harder drugs as a substitute and more often at a lower price than marijuana:

> "In fact you can get a hit of speed for about $10 where you would be looking at $20 or $30 for marijuana at the equivalent. [10]

2.4.23 The lifting of criminal sanctions against the personal use of cannabis, particularly with regard to the cultivation of a small number of plants, could have important consequences for the black market in illegal drugs. It is possible to argue that if people can grown their own marijuana then there will be little or no need for them to seek out suppliers and the problems enunciated in the preceding paragraph would be nullified. It could also mean that the potential market for other more harmful drugs would be seriously undermined – the argument being that if buyers do not go to the dealers for marijuana the dealers cannot sell them other drugs.

2.4.24 Changes to the Victorian marijuana laws did not excite public outrage and appear to have been generally accepted by the community. [11] Changes to the law in South Australia have been similarly accepted. Victorian experience also shows police are exercising their discretion not to prosecute those whom they believe have only a small quantities of cannabis for their own use.

Arguments opposed to partial law reform

2.4.25 Decriminalisation of cannabis for the sake of the civil libertarian view so that "honest" men are not made into criminals is said to be irresponsible. In this way it is argued, by those who believe in the symbolic and educative value of the law, that any move to repeal criminal sanctions will devalue the seriousness of drug taking and intimate some social tolerance of the offence.

2.4.26 Legalisation will mean the introduction of another harmful drug. It would also mean an increase in the availability of the drug and, therefore, an increase in the number of users and

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9 Transcript, 23.11.90, p. 41

10 Transcript, 23.11.90, p. 36

11 Skene, *op cit*, p. 697

those who use it regularly, widespread experimentation with cannabis and a higher rate of reoffending among established users.

2.4.27 The decriminalisation of cannabis may make it appear that the government has sanctioned its use and health authorities regard the risk associated with its use to be so slight as not to require the restriction of the drug. Although this could be countered with warnings of the danger, the social acceptability of the drug could lead to a reduction in the perception of risk associated with its use.

2.4.28 Increase in use could in turn lead to a greater demand for hashish and the illegal growing of crops in Australia will continue to meet the demand. This could also be supplemented by an increase in smuggling from overseas. To meet demand, more subtle uses of hashish could also be developed such as the production of "oil" to add to "pot" or to ordinary cigarettes.

2.4.29 It is widely believed that cannabis use opens the door to heroin use. While this does not always follow most heroin addicts commenced their drug–taking habits with cannabis and cigarettes.

2.4.30 Advertising of the drug could be permitted in a manner similar to that of alcohol and tobacco with the possible glamorisation of its use.

2.4.31 Society would have to meet costs of cannabis use similar to those associated with alcohol and tobacco use such as the costs of health care of users.

2.4.32 While accepting the inconsistency in banning cannabis but allowing alcohol and other drugs to be used, cannabis however, is still used by a comparative minority so that formal prosecution may prevent its use from becoming widespread and entrenched.

2.4.33 With regard to the South Australian legislation, it is argued that it increases opportunity for sellers and distributions. In this way a dealer who carries 100 g or less at any one time can sell portions and if caught try to pose as a cannabis user and thereby escaping a conviction for a more serious offence as a trafficker. In addition, there are no provisions for increases in penalties for second and subsequent offences.

2.4.34 It is also argued that an infringement system, similar to that adopted in South Australia, will put extra burden on police as the need to specify offences will require weighing and analysing which could be difficult to organise. Added to this police will have the extra task of following up the prosecution of those who do not pay their fine within 60 days.

2.5 CONCLUSIONS AND RECOMMENDATIONS

Introduction

2.5.1 In the committee's opinion, it is apparent, that those laws enacted by society relating to the prohibition of cannabis use have proven ineffective in combating the use of the drug. If it is the intention of these laws to discourage the availability and use of cannabis and to punish those who use or supply the drug then those intentions have not been fulfilled. This proposition appears to be reflected some what in the ACT legislation, the *Drugs of Dependence Act 1989*, where the law draws a definite, though covert, distinction between 'personal use' and other uses.

2.5.2 It is also the committee's opinion that the current law in its intent, with its strong dependence on a philosophy of prohibition, either ignores or denies current scientific research which suggests that marijuana is less harmful than tobacco or alcohol and in effect may have some therapeutic benefits.

Health threat

2.5.3 It is the committee's belief that the primary reason for continuing to proscribe the personal use of cannabis would be overwhelming scientific evidence that such use represented severe health threats which, in turn, were at levels which are unacceptable to the community. The committee has found no such evidence. On the contrary the works referred to in this report – Maykut, *Health Consequences of Acute and Chronic Marihuana Use*, Commonwealth Department of Health, *Cannabis A Review of Some Important National Inquiries and Significant Research Reports*, and Hollister, *Health Aspects of Cannabis* – suggest marijuana is less of a health threat than previously thought:

> "Compared with other licit social drugs, such as alcohol, tobacco, and caffeine, marijuana does not pose greater risks. ... Marijuana may prove to have greater therapeutic potential than these other social drugs, but many questions still need to be answered." [1]

'Gateway' drug

2.5.4 Marijuana is often regarded as a 'gateway' drug in that its use leads on to the use of other, more harmful, drugs. A number of researchers have noted that many people who are using heroin have previously used marijuana. Often these same researchers fail to note that all heroin users have used or are using alcohol and tobacco which, of course, are not seen as 'gateway' drugs. If marijuana is in some sense a 'gateway' drug then, in the opinion of the

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1 Hollister, *op cit*, p 17

committee, it is its illegal status that makes it so. A point the committee made in paragraphs 2.4.22 and 2.4.23.

Personal choice

2.5.5 If marijuana is no more a health threat than alcohol and tobacco, and is in fact probably less of a threat, then the committee feels the use of this social drug should be left to individual choice. For as long as this community continues to condone the personal use of licit drugs, with proven deleterious health effects, then, in the opinion of the committee, to proscribe the personal use of a drug which is demonstrably less deleterious, is untenable.

Criminal record

2.5.6 The committee is concerned that offenders, particularly young people, are often left with a criminal record which can disqualify them from a range of professions and job opportunities; this, in the opinion of the committee, can be seen as an unduly harsh double punishment (the payment of a fine or other penalty to be followed by job discrimination), especially as it applies to the relatively small proportion of users who are caught. Marijuana is not a drug of social harm, other than that engendered by its illegality, nor is it a drug of proven medical harm. To criminalise people for using such a drug is, in the opinion of the committee, also an untenable position.

The next step

2.5.7 In the opinion of the committee the legal changes put in place in South Australia have proved to be quite effective. They have managed to reduce the number of offenders appearing before the courts by some 55 per cent [(2)] and there has been, at a significant level, public acceptance of the move to take personal use of cannabis out of the criminal arena. This committee can see no reason why the ACT should not cautiously take the next step in this ongoing process of social reform.

2.5.8 That caution is needed the committee has no doubt and in taking the next step procedures need to be put in place to review the situation after a reasonable time in an attempt to assess the impact of the proposed changes.

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2 Sarre, *et al, op cit*, p. 37

Personal use

2.5.9 The committee has come to the conclusion that the personal use of cannabis should no longer be an offence at law.

Recommendation 6

2.5.10 The committee recommends:

That the possession, cultivation and use of cannabis for personal purposes not be an offence at law.

Cultivation

2.5.11 In an attempt to break the nexus between the buyer and the seller who, more often than not, also sells other, more dangerous, drugs, as spelt out in paragraphs 2.4.22 and 2.4.23, the committee would like to see the philosophy behind section 162 of the Drugs of Dependence Act, which deals with the cultivation of prohibited plants, extended to take into account recommendation 1. Currently under subsection 162 (2) there is a fine of $100 for the cultivation of no more than five cannabis plants. It is the committee's belief that the cultivation of this number of plants should no longer be a criminal offence; five plants should be sufficient to meet the personal needs of most cannabis users and thus obviate any need to seek out a seller and, hopefully, also undermine the illegal sale of other drugs. The cultivation of more than five cannabis plants should, however, continue to be an offence.

2.5.12 The changes to the Drugs of Dependence Act recommended by the committee at paragraph 2.5.13 make it an offence, in relation to cannabis plants, to cultivate or participate in the cultivation of more than five plants and maintains the current penalty for that offence. The suggested amendment to paragraph 162(2)(b) makes it clear that the cultivation of up to five cannabis plants is not an offence. It is the committee's intention that the cultivation of any other prohibited plant remain an offence.

Recommendation 7

2.5.13 The committee recommends:

That subsection 162 (2) of the *Drugs of Dependence Act 1989* be amended as follows:
(i) Paragraph 162(2)(a):
(a) Delete "not"; and

(b) Omit "$100" substitute "$5,000 or imprisonment for 2 years, or both"; and

(ii) Paragraph 162(2)(b):
Omit "any other case" substitute "respect of any other prohibited plant".

Possession

2.5.14 Current ACT legislation, in line with similar legislation in Victoria and South Australia, regards the possession of a small amount of marijuana as a minor offence subject only to a fine. In Victoria the fine is $500 and the amount is 50 grams; in SA the fine is $50 and the amount is 25 grams; and in the ACT the fine $100 and the amount is 25 grams. It is the committee's belief that the personal possession of 25 grams of marijuana should no longer be an offence in the Territory. The committee is also persuaded by the South Australian experience whereby the personal possession of an amount of marijuana greater than 25 grams but less than 100 grams should carry, as a penalty, a fine only of $150.

2.5.15 The changes to the Drugs of Dependence Act recommended by the committee at paragraph 2.5.16 make it an offence, in relation to cannabis, to possess more than 25 grams in mass . It is the committee's intention that the possession of an amount of cannabis greater than 25 grams but less than 100 grams in mass carry as a penalty a fine of $150; and that the possession of 100 grams or more should carry the full penalty of $5,000, imprisonment for two years or both. The suggested amendment to paragraph 171(1)(b) makes it clear that the possession of up to 25 grams of cannabis plants is not an offence. It is the committee's intention that the possession of any other prohibited substance remain an offence.

Recommendation 8

2.5.16 The committee recommends:

That section 171 of the *Drugs of Dependence Act 1989* be amended as follows:

(i) Paragraph 171(1)(a):
Omit the paragraph and substitute the following new paragraphs:
"(a) where the offence relates to a quantity of cannabis exceeding 25 grams in mass but not exceeding 100 grams in mass – $150;
(aa) where the offence relates to a quantity of cannabis of 100 grams in mass or more – $5,000 or imprisonment for 2 years, or both; and"; and

(ii) Paragraph 171 (1)(b):
Omit "any other case" substitute "respect of any other prohibited substance".

Self administration

2.5.17 In line with the committee's three previous recommendations it should no longer be an offence for a person to administer cannabis to themselves. Therefore, at paragraph 2.5.18, the committee has recommended that subsection 171 (2) of the Act be amended to exclude cannabis from the operation of that subsection. It is the committee's intention that the self administration of any other prohibited substance should remain an illegal act.

Recommendation 9

2.5.18 The committee recommends:

That subsection 171 (2) of the *Drugs of Dependence Act 1989* be amended as follows:
After "substance" insert ", other than cannabis".

Driving under the influence

2.5.19 In recommending that the personal use of cannabis no longer be an offence at law, the committee is concerned to ensure that the safety of others is protected, particularly on the Territory's roads. To this end the committee feels it necessary to recommend some changes to the Motor Traffic (Alcohol and Drugs) Act strengthening those provisions which make it an offence to drive a motor vehicle whilst under the influence of drugs. Independent advice given to the committee by Dr G Chesher indicates that a concentration of 15 nanograms of Δ^9 THC per millilitre of blood would be sufficient to impair a person's driving ability to the point where it could be said they were not in sufficient control of the motor vehicle. The impairment effects at this concentration level are some what similar to the impairment effects of a blood alcohol level of 0.05 grams per 100 millilitres of blood.

2.5.20 For the purpose of legal clarity the committee would like to see "drugs" defined in the Motor Traffic (Alcohol and Drugs) Act; it believes that the definition of "prescribe concentration" in the Act should be widened, at least, to include a prescribed concentration of the principle psychoactive component of cannabis, Δ^9 THC; and it sees a need to amend sections 20 and 21 of the Act to include a reference to drugs.

Recommendation 10

2.5.21 The committee recommends:

That the *Motor Traffic (Alcohol and Drugs) Act 1977* be amended as follows:

(i) Section (4) –
(a) After the definition of 'drive a motor vehicle' insert the following definition –
"'drug' means –
(a) a drug of dependence, which has the same meaning as in the *Drugs of Dependence Act 1989*; and
(b) a prohibited substance, which has the same meaning as in the *Drugs of Dependence Act 1989*;";
(b) Omit the definition of "prescribed concentration", substitute the following definition –
"'prescribed concentration' means –
(a) in relation to alcohol a concentration of 0.05 grams of alcohol per 100 millilitres of blood;
(b) in relation to cannabis a concentration of 15 nanograms of delta–9 tetrahydrocannabinol per millilitre of blood;
(c) in relation to any other drug a concentration determined by the Minister under section 6A;";
(ii) Insert the following new section –
"Prescribed concentration
6A. The Minister may, by notice in writing, determine the prescribed concentration of a drug for the purposes of this Act.";
(iii) Section 7 – Omit "and 6", substitute ", 6 and 6A";
(iv) Section 20 – After "alcohol" insert "or a drug"; and
(v) Section 21 – After "alcohol" insert "or a drug".

Review

2.5.22 The committee is aware that it is recommending some important social changes in the way in which our community deals with the ever increasing problems associated with licit and illicit drug abuse. The committee has not taken this stand lightly, it has closely and seriously examined the material before it; it has spoken to many Australian experts in the field, particularly with regard to the health aspects of marijuana use; it has consulted with user groups around Australia; and it has consulted with many of Australia's law makers.

2.5.23 Whilst convinced that the recommendations made above to remove the personal use of marijuana out of the criminal/judicial arena are sensible and a step forward in dealing with drug abuse, the committee is also aware that to some extent the impact of these recommendations are unknown. To rectify this position and to ensure that reasoned and logical debate can continue to take place the committee is of the opinion that the implementation of these recommended changes in the law be monitored by government with a view to identifying possible impacts on:

(a) marijuana and other drug usage
(b) police resource; and
(c) court and penal resources.

2.5.24 The committee also believes that after three years of operation the amended legislation should be reviewed with objectives similar to those set out in paragraph 2.5.23.

2.5.25 In the opinion of the committee the results of the monitoring should be tabled in the Assembly every six months and the out come of the review should also be tabled in the Assembly for the information of members.

Recommendations 11 and 12

2.5.26 The committee recommends:

That the legislative reforms advocated at Recommendations 6 to 10 be monitored by government and that the results of that monitoring be tabled in the Legislative Assembly every six months.

That after three years of operation of the legislative reforms advocated at Recommendations 6 to 10 the effectiveness of the amended legislation be reviewed and the out come of that review be tabled in the Legislative Assembly.

3 SUMMARY OF RECOMMENDATIONS

Introduction

3.1 The committee has carefully considered the matters before it relating to the current legal and social controls that deal with illicit drugs. In its 2nd interim report the committee made a number of recommendations concerning a feasibility study into the use of heroin in our society; the recommendations in this report suggest a new, more humane, approach in dealing with the difficult problems associated with illicit drug usage.

Forfeiture of assets

3.2 The committee wishes to ensure that those in our society who profit from the suffering of illicit drug users recompense society, in a meaningful way, for the damage their profiteering causes. It believes this can best be done by the forfeiture of the assets of convicted people.

Recommendation 1

That the assets of people convicted of serious crimes against the *Drugs of Dependence Act 1989* be subject to forfeiture by the courts.

Recommendation 2

That assets ordered to be forfeited by the courts pursuant to the *Drugs of Dependence Act 1989* be used to promote, fund and further health and treatment programs for illicit drug dependent people.

Recommendation 3

That the *Drugs of Dependence Act 1989* be amended as follows:
After section 197 insert the following new section –
"Forfeiture of assets

197A (1) In this section, unless the contrary intention appears, Territory means the body politic established by section 7 of the *Australian Capital Territory (Self–Government) Act 1988* of the Commonwealth.

(2) Where a person has been convicted of an offence under this Act and the penalties prescribed for that offence are equivalent to, or greater than, $20,000 or imprisonment for 10 years or both the court may, in addition to imposing the relevant penalties, order that some or all of the assets of that person be forfeited to the Territory.".

Women's services

3.3 The committee found that there was an unacceptable paucity of drug related services available to women, and has recommended that this be rectified.

Recommendation 4

That there be established in the ACT a drug assistance and treatment services to meet the specific needs of women.

Young people's services

3.4 Although there are many services available to meet the needs of young people there are, unfortunately, no specifically drug related services. The committee has sought to rectify this.

Recommendation 5

That there be established in the ACT a drug assistance and treatment services to meet the specific needs of young people.

Personal use of marijuana

3.5 There is, in the opinion of the committee, nothing intrinsic to marijuana that would justify its personal use being an offence at law. The evidence examined by the committee demonstrated no adverse health effects that are greater, or merely as great as, the health effects of licit drugs such as alcohol and tobacco.

Recommendation 6

That the possession, cultivation and use of cannabis for personal purposes not be an offence at law.

Cultivation for personal use

3.6 In line with recommendation 6 the committee has recommended that cultivation for personal use not be an offence.

Recommendation 7

That subsection 162 (2) of the *Drugs of Dependence Act 1989* be amended as follows:

(i) Paragraph 162(2)(a):

(a) Delete "not"; and

(b) Omit "$100" substitute "$5,000 or imprisonment for 2 years, or both"; and

(ii) Paragraph 162(2)(b):

Omit "any other case" substitute "respect of any other prohibited plant".

Possession for personal use

3.7 In line with recommendation 6 the committee has recommended that possession for personal use not be an offence.

Recommendation 8

That section 171 of the *Drugs of Dependence Act 1989* be amended as follows:

(i) Paragraph 171(1)(a):

Omit the paragraph and substitute the following new paragraphs:

"(a) where the offence relates to a quantity of cannabis exceeding 25 grams in mass but not exceeding 100 grams in mass – $150;

(aa) where the offence relates to a quantity of cannabis of 100 grams in mass or more – $5,000 or imprisonment for 2 years, or both; and"; and

(ii) Paragraph 171 (1)(b):

Omit "any other case" substitute "respect of any other prohibited substance".

Self administration of marijuana

3.8 In line with recommendation 6 the committee has recommended that the self administration of marijuana not be an offence.

Recommendation 9

That subsection 171 (2) of the *Drugs of Dependence Act 1989* be amended as follows:

After "substance" insert ", other than cannabis".

Driving under the influence

3.9 The committee felt it necessary to strengthen the provisions of the Motor Traffic (Alcohol and Drugs) Act that deal with driving a motor vehicle whilst under the influence of drugs.

Recommendation 10

That the *Motor Traffic (Alcohol and Drugs) Act 1977* be amended as follows:

(i) Section (4) –
  (a) After the definition of 'drive a motor vehicle' insert the following definition –
  "'drug' means –
    (a) a drug of dependence, which has the same meaning as in the *Drugs of Dependence Act 1989*; and
    (b) a prohibited substance, which has the same meaning as in the *Drugs of Dependence Act 1989*;";
  (b) Omit the definition of "prescribed concentration", substitute the following definition –
  "'prescribed concentration' means –
    (a) in relation to alcohol a concentration of 0.05 grams of alcohol per 100 millilitres of blood;
    (b) in relation to cannabis a concentration of 15 nanograms of delta–9 tetrahydrocannabinol per millilitre of blood;
    (c) in relation to any other dug a concentration determined by the Minister under section 6A;";

(ii) Insert the following new section –
  "Prescribed concentration
  6A. The Minister may, by notice in writing, determine the prescribed concentration of a drug for the purposes of this Act.";

(iii) Section 7 – Omit "and 6", substitute ", 6 and 6A";

(iv) Section 20 – After "alcohol" insert "or a drug"; and

(v) Section 21 – After "alcohol" insert "or a drug".

Review of reforms

3.10 The committee is aware that to some extent the impact of its recommendations are unknown and, therefore, believes that over a period of three years the changes should be monitored and reviewed.

Recommendation 11

That the legislative reforms advocated at Recommendations 6 to 10 be monitored by government and that the results of that monitoring be tabled in the Legislative Assembly every six months.

Recommendation 12

That, after three years of operation of the legislative reforms advocated at Recommendations 6 to 10, the effectiveness of the amended legislation be reviewed and the out come of that review be tabled in the Legislative Assembly.

Appendix A

List of witnesses

ACT Intravenous Drug Users League
Mr M Rimmer
Ms J Byrne
Mr C Stoddart

ACT Women's Health Network – Working Party on Alcohol and Other Drugs
Ms K Elliot
Ms L Enright

AIDS Action Council (ACT)
Mr T McKay
Mr J Ballard

Alcohol and Drug Service (WVH)
Dr K Powell

Assisting Drug Dependants Inc
Ms M Watson

Australian Alcohol and Drug Foundation
Mr G Elvy

Australian Federal Police (ACT Region)
Ass Com B Bates
Dr L Pilotto
Ag Commander B Brinkler
Commander J Dau
Ms C Riethmuller
Commander D McCullock
Superintendent G Lanaham
Detective Serg R Peters

Australian Institute of Criminology
Professor D Chappell
Dr G Wardlaw
Ms A Stevens

Australian Medical Association (ACT)
Dr J Donovan

Ms S Bower and Mr S Nelson

Catholic Archdiocese of Canberra and Goulburn
Bishop Power

Ms P Dance

Department of Community Services
Dr A Butlin

Department of Housing and Community Services
Mr P Chivers
Ms L Harley
Ms M Haynes
Mr R Young

Mr L Drew

Family Planning Association
Ms S McKenzie

Bishop I George

Government Law Office
Mr L Sorbello
Ms H Woolf

Haemophilia Support Group (ACT)
Mr F Wensing

Mr I Mathews

Dr S Mugford

National Centre for Epidemiology and Population Health
Dr G Bammer
Professor R Douglas

Open Family Foundation (ACT)
Mr M Fitzgerald
Ms N Jones
Mr T Reid

People Living With AIDS (ACT)
Ms M Morrison
Mr C Roberts

School of Nursing – University of Canberra
Ms J James
Ms E MacKinlay

Short Cuts Information and Advocacy Service for Young People
Mr A Lockhurst

Society of St Vincent de Paul (ACT)
Mr E Frohlich

Workers in Sex Employment (WISE) in the ACT
Ms M Cresswell
Ms T McPartlan
Ms F Patten
Ms J Taylor

Appendix B

Drugs of Dependence Act 1989 – Sections 162, 164, 165 and 171

Cultivation of prohibited plants

162. (1) In this section–

'cultivate', in relation to a prohibited plant, includes plant, sow, scatter the seed, produced by, grow, nurture, tend or harvest;

'prohibited plant' means a plant specified in Schedule 5.

(2) A person shall not cultivate, or participate in the cultivation of, a prohibited plant.

Penalty:

(a) where not more than 5 cannabis plants are cultivated – $100; or

(b) in any other case – $5,000 or imprisonment for 2 years, or both.

(3) A person shall not cultivate, or participate in the cultivation of, a prohibited plant for the purpose of sale or supply.

Penalty:

(a) where more than 1,000 prohibited plants are cultivated – imprisonment for life;

(b) where more than 20 but not more than 1,000 prohibited plants are cultivated–

(i) in the case of cannabis plants – $20,000 or imprisonment for 10 years, or both; or

(ii) in any other case – $100,000 or imprisonment for 25 years, or both;

(c) where more than 5 but not more than 20 prohibited plants are cultivated –

(i) in the case of cannabis plants – $10,000 or imprisonment for 5 years, or both; or

(ii) in any other case – $20,000 or imprisonment for 10 years, or both; or

(d) where not more than 5 prohibited plants are cultivated –

(i) in the case of cannabis plants – $5,000 or imprisonment for 2 years or both; or

(ii) in any other case – $10,000 or imprisonment for 5 years, or both.

(4) Without limiting the generality of subsection (2) or (3), a person shall, for the purposes of whichever of those substances is applicable, be taken to participate in the cultivation of a prohibited plant or prohibited plants if the person –

(a) participates in any step or process, or cause or permits any step or process to be undertaken, in the course of that cultivation;

(b) provides finance or arranges for the provision of finance, for such a step or process; or

(c) being an owner, lessee or occupier of any premises, or concerned in the management of any premises, causes or permits those premises to be used for such a step or process.

(5) For the purposes of this section, where a person cultivates, or participates in the cultivation of, more than 5 prohibited plants, it shall be presumed that the cultivation is for the purpose of sale or supply, but the presumption is rebuttable.

Sale or supply

164. (1) In this section, "prohibited substance" does not include cannabis.

(2) A person shall not–

(a) sell or supply a drug of dependence to any person;

(b) participate in the sale or supply of a drug of dependence to any person;

(c) possess a drug of dependence for the purpose of sale or supply to any person.

Penalty:

(a) where the quantity of the drug to which the offence relates is a commercial quantity – imprisonment for life;

(b) where the quantity of the drug to which the offence relates is a traffickable quantity but not a commercial quantity – $100,000 or imprisonment for 25 years or both;

(c) where the quantity of the drug to which the offence relates is less than a traffickable quantity, and is sold or supplied to a person who has not attained the age of 18 years – $100,000 or imprisonment for 25 years or both; and

(d) in any other case – $10,000 or imprisonment for 5 years or both.

(3) A person shall not–
(a) sell or supply a prohibited substance to any person;
(b) participate in the sale or supply of a prohibited substance to any person;
(c) possess a prohibited substance for the purpose of sale or supply to any person.
Penalty:
(a) where the quantity of the substance to which the offence relates is a commercial quantity – imprisonment for life;
(b) where the quantity of the substance to which the offence relates is a traffickable quantity but not a commercial quantity – $100,000 or imprisonment for 25 years or both;
(c) where the quantity of the substance to which the offence relates is less than a traffickable quantity, and is sold or supplied to a person who has not attained the age of 18 years – $100,000 or imprisonment for 25 years or both; and
(d) in any other case – $10,000 or imprisonment for 5 years or both.

(4) Subsection (2) does not apply in relation to–
(a) the holder of a manufacture's licence or a wholesaler's licence where the licence authorises the sale or supply, or the possession for the purposes of sale or supply, of the relevant drug;
(b) a medical practitioner, intern, veterinary surgeon or pharmacist who sell or supplies the relevant drug in the course of his or her professional practice or employment for the treatment of a person's mental, or physical condition or, in the case of a veterinary surgeon, for the treatment of an animal's condition, or who possess the drug for the purpose of such sale or supply;
(c) a dentist who sells to a person a quantity of cocaine, pethidine or pentazocine which is administered by the dentist to that person or the person's child or ward for the treatment of a dental condition of that person, child or ward, as the case may be, in the course of the dentist's professional practice, or who possess a quantity of such a drug for the purpose of such sale and administration;
(d) a person who is, in accordance with professional, employment or training practice, acting under the supervision of a medical practitioner, intern veterinary surgeon or pharmacist referred to in paragraph (b);
(e) the supply of a quantity of the relevant drug by a person who is authorised under Part IV, Division 1 to supply that quantity for the purpose of a program of research or education, or the possession of such a quantity for the purpose of such supply; or
(f) the supply of the relevant drug by a person who is authorised under Part IV, Division 2 to have control of a first–aid kit containing that drug where the person believes that the supply was necessary for the emergency treatment of a mental or physical condition suffered by the person to whom the drug was supplied, or the possession of the drug for the purpose of such supply.

(5) Subsection (3) does not apply in relation to the supply of a quantity of the relevant prohibited substance by a person who is authorised under Part IV, Division 1 to supply that quantity for the purposes of a program of research or education, or in relation to the possession of such a quantity for the purpose of such supply.

(6) Paragraph (a), (b), or (c) of the penalty for an offence against subsection (2) does not apply in relation to a person who has been convicted on indictment of an offence against that subsection unless it is alleged in the indictment, and it is proved beyond reasonable doubt, that the quantity of the drug to which the offence relates was –
(a) in the case of paragraph (a) – a commercial quantity;
(b) in the case of paragraph (b) – a traffickable quantity; or
(c) in the case of paragraph (c) – sold or supplied, or possessed for the purpose of sale or supply, to a person who has not attained the age of 18 years.

(7) Paragraph (a), (b), or (c) of the penalty for an offence against subsection (3) does not apply in relation to a person who has been convicted on indictment of an offence against that subsection unless it is alleged in the indictment, and it is proved beyond reasonable doubt, that the quantity of the substance to which the offence relates was –

(a) in the case of paragraph (a) – a commercial quantity;
(b) in the case of paragraph (b) – a traffickable quantity; or
(c) in the case of paragraph (c) – sold or supplied, or possessed for the purpose of sale or supply, to a person who has not attained the age of 18 years.

(8) For the purposes of this section, where a person has more than the traffickable quantity of a drug of dependence or a prohibited substance in his or her possession, it shall be presumed that the possession is for the purpose of sale or supply to another person, but that presumption is rebuttable.

(9) Without limiting the generalities of subsection (2) or (3), a person shall, for the purpose of whichever of those subsections is applicable, be taken to participate in the sale or supply of a drug of dependence or a prohibited substance if the person –
(a) participates in any aspect of such sale or supply; or
(b) being an owner, occupier or lessee of any premises, or concerned in the management of any premises, causes or permits those premises to be used for such as sale or supply.

Sale or supply – cannabis

165. (1) A person shall not –
(a) sell or supply cannabis to any person;
(b) participate in the sale or supply of cannabis to any person; or
(c) possess cannabis for the purpose of sale or supply to any person.

Penalty:
(a) where the quantity of cannabis to which the offence relates is a commercial quantity – imprisonment for life;
(b) where the quantity of cannabis to which the offence relates is a traffickable but not a commercial quantity – $20,000 or imprisonment for 10 years, or both;
(c) where the quantity of cannabis to which the offence relates is less than a traffickable quantity, and is sold or supplied to a person who has not attained the age of 18 years – $10,000 or imprisonment for 5 years, or both; and
(d) in any other case – $5,000 or imprisonment for 2 years or both.

(2) Subsection (1) does not apply in relation to the supply of a quantity of cannabis by a person who is authorised under Part IV, Division 1 to supply that quantity for the purposes of a program of research or education, or the possession of such a quantity for the purpose of such a supply.

(3) Without limiting the generality of subsection (1), a person shall, for the purposes of that subsection, be taken to participate in the sale or supply of cannabis to a person if the first–mentioned person–
(a) participates in any aspect of such sale or supply; or
(b) being an owner, occupier or lessee of any premises or concerned in the management of any premises, causes or permits those premises to be used for the sale or supply of cannabis to any person.

(4) Paragraph (a), (b), or (c) of the penalty for an offence against subsection (1) does not apply in relation to a person who has been convicted on indictment of an offence against that subsection unless it is alleged in the indictment, and it is proven beyond reasonable doubt, that the quantity of cannabis to which the offence relates was –
(a) in the case of paragraph (a) – a commercial quantity;
(b) in the case of paragraph (b) – a traffickable quantity; or
(c) in the case of paragraph (c) – sold or supplied, or possessed for the purpose of sale or supply, to a person who has attained the age of 18 years of age.

(5) For the purposes of this section, where a person has more than a traffickable quantity of cannabis in his or her possession, it shall be presumed that the possession is for the purpose of sale or supply to another person, but that presumption is rebuttable.

Possession and administration of prohibited substances

171. (1) A person shall not possess a prohibited substance.
Penalty:
(a) where the offence relates to a quantity of cannabis not exceeding 25 grams in mass – $100; and
(b) in any other case – $5,000 or imprisonment for 2 years, or both.

(2) A person shall not administer, or cause or permit to be administered, to himself or herself a prohibited substance.
Penalty: $5,000 or imprisonment for 2 years, or both.

(3) A person shall not administer, or cause to be administered, a prohibited substance to another person.
Penalty: $5,000 or imprisonment for 2 years, or both.

(4) Subsection (1) does not apply to –
(a) a person who is authorised under Part IV, Division 1 to possess the quantity in question of the relevant substance;
(b) a drug inspector, in respect of samples of a prohibited substances taken under section 178;
(c) a police officer, analyst, or officer of a court acting in the course of his or her official duties;
(d) a person authorised under section 200 to possess a quantity of the relevant substance; or
(e) a person other wise authorised under any law in force in the Territory to possess the quantity in question of the relevant substance.

Appendix C

Controlled Substances Act Amendment Act, 1986 (of South Australia)– Section 8

8. The following section is inserted in Division I of Part VI of the principal Act after section 45:

Expiation of simple cannabis offences

45a. (1) A prosecution for a simple cannabis offence shall not be commenced except by –
(*a*) a member of the police force;
or
(*b*) a person authorized in writing by the Attorney–General to commence the prosecution.

(2) Subject to this section, if a person (not being a child) is alleged to have committed a simple cannabis offence, then before a prosecution is commenced, an expiation notice must be given to the alleged offender stating that the offence may be expiated by payment to the Commissioner of Police of the prescribed expiation fee before the expiration of 60 days from the date of the notice.

(3) An expiation notice –
(*a*) must be in the prescribed form;
and
(*b*) may be given personally or by post addressed to the alleged offender's last known place of residence.

(4) Where the offence is expiated in accordance with the notice, the alleged offender shall not be prosecuted for that offence.

(5) The payment of an expiation fee shall not be regarded as an admission of guilt but any substance, equipment or object seized under this Act or any other Act in connection with the alleged offence that would have been liable to forfeiture in the event of a conviction shall, on payment of the expiation fee, be forfeited to the Crown.

(6) The expiation fee fixed in relation to an offence may vary according to the nature of the offence, the amount of cannabis or cannabis resin involved in the commission of the offence, or any other factor.

(7) Non–compliance with subsection (2) does not invalidate a prosecution.

(8) For the purposes of this section –
"child", in relation to a simple cannabis offence, means a person who was, on the date of the alleged commission of the offence, under the age of 18 years:
"simple cannabis offence" means –
(*a*) an offence arising out of the possession of cannabis or cannabis resin, not being an offence involving the possession of quantities of cannabis or cannabis resin in excess of limits fixed by regulation for the purposes of this paragraph;
(*b*) an offence arising out of the smoking or consumption of cannabis or cannabis resin except an offence alleged to have been committed in –
(*i*) a public place;
or
(*ii*) a place of a kind prescribed by regulation;
(*c*) an offence arising out of the possession of equipment for use in connection with –
(*i*) the smoking or consumption of cannabis or cannabis resin;
or
(*ii*) the preparation of cannabis or cannabis resin for smoking or consumption,

not being an offence involving the possession for such equipment for commercial purposes;

(*d*) an offence arising out of the cultivation of cannabis plants, not being an offence involving cultivation of the plants for commercial purposes.

Appendix D

Marijuana smoking in Australia 1977 – 1987

Some statistics

(These statistics are taken from Morgan Gallup Poll, Finding Number 1618, published in *The Bulletin*, 15 September 1987)

Frequency of marijuana smoking – 1977–87

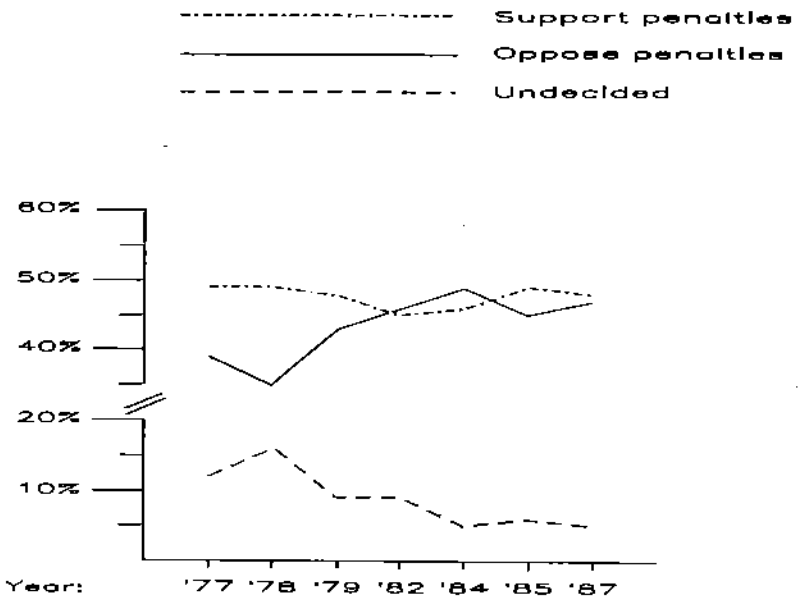
	1977–87							1987							
								Whether smoke		Analysis by sex and age					
	'77	'78	'79	'82	'84	'85	'87	Smoke	Don't smoke	M	F	14–24 yrs	25–34 yrs	35–49 yrs	50+ yrs
	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%
Smoked in last week	1	1	1	2	2	2	4	8	2	5	2	11	5	1	–
Smoked in last month	2	2	2	2	2	2	1	2	1	2	1	3	2	–	–
Smoked in last year	5	5	4	5	4	5	5	8	3	7	3	10	7	3	–
Smoked at other time	4	3	9	9	11	12	14	23	11	16	12	9	34	16	4
Total ever smoked	12	11	16	18	19	21	24	41	17	30	18	33	48	20	4

Legalisation of marijuana smoking – 1977–87

	1977–87							1987							
								Whether smoke		Analysis by sex and age					
	'77	'78	'79	'82	'84	'85	'87	Smoke	Don't smoke	M	F	14–24 yrs	25–34 yrs	35–49 yrs	50+ yrs
	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%
In favour	24	24	23	27	31	28	25	34	21	28	22	30	38	21	13
Against	66	67	67	62	63	66	69	59	72	64	73	61	53	74	80
Undecided	10	9	10	11	6	6	6	7	7	8	5	9	9	5	7
	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

Simple possession – Criminal penalties

1977–87



Appendix E

2nd Interim Report – A Feasibility Study on the Controlled Availability of Opioids Recommendations

Recommendation 1

That the Government approve a feasibility study of the logistics of conducting a trial to provide opioids, including heroin, in a controlled manner.

Recommendation 2

That the feasibility study recommended in Recommendation 1 be funded, in the current fiscal year, to an amount of $60,000.

Recommendation 3

That the appropriate Minister inform the relevant Federal, State and Territory Ministers, through the National Campaign Against Drug Abuse, of the feasibility study and seek national co–operation through the Ministerial Council on Drugs Strategy.

Recommendation 4

That the National Centre for Epidemiology and Population Health conduct the feasibility study recommended in Recommendation 1 on the Government's behalf.

Recommendation 5

That the Government establish a feasibility study monitoring group, consisting of no more than three members of the ACT Government Service, the functions of which shall be:

(a) to represent the Government in discussions with all other interested parties;
(b) to be the sole Government agency dealing with the major researchers; and
(c) to co–ordinate and present the Government's responses to issues as they are raised by the major researchers.

DISSENTING REPORT – Robyn Nolan, MLA

1.1 While I accept that the time was appropriate for the re–examination of the approach to problems associated with Marijuana I am unable to endorse all the recommendations of the Committee's Report.

1.2 The ACT's current policy of harm minimisation is one I support and I am of the opinion reviews must be ongoing to assess the success of such a strategy.

1.3 In the re–examination of the approach to problems associated with Marijuana it must be emphasises that illegal drug profiteers must always receive the full force of the law.

1.4 My comments in this Dissenting Report relate to the personal use only of Marijuana.

1.5 The Committee's Report addresses problems available with services in the ACT to assist people with drug related problems and I support the recommendations which relate to establishing drug assistance and treatment services specifically for women and young people.

1.6 The Committee's Report details the current laws within each of the Australian States and while Marijuana is a prohibited substance in each of the states, a position I endorse, I am unconvinced that cannabis consumption should be treated as a criminal offence.

1.7 The Committee's Report, I believe, should have endorsed the South Australian approach, one which cannot be described as decriminalisation however, on that does remove some of the criminal stigma. In South Australia a cannabis infringement notice system for possession, cultivation or use of small amounts by adults came into effect in April 1987.

1.8 The Committee's Report details on pages 33 and 34 the South Australian legislation and I refer to that section for the appropriate detail.

1.9 On page 38 of the Committee's Report it states that minor cannabis offences have continued to rise under the infringement notice system. I remain unconvinced however, that this in any way reflects the infringement notice system.

1.10 Much more emphasis must be placed of drug education especially for young people. Drug education programs relating to both licit and illicit drugs must receive greater emphasis at both primary and secondary schools.

1.11 I do not support legalising nor decriminalising Marijuana for personal use however, I believe the removal of criminal sanctions would be the appropriate course for the ACT.

Robyn Nolan, MLA

14 October 1991

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