



SUBMISSION ON MISUSE OF DRUGS ACT AMENDMENT BILL 2010

**This submission is from the
National Organisation for the Reform of Marijuana Laws
(NORML New Zealand Inc).**

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We would like to appear before the Committee to explain our views and answer any questions.

Kiaora,

1. NORML New Zealand was founded in 1979 as a non-profit incorporated society that campaigns for an end to marijuana prohibition. We support the right of all adults to use, possess and grow their own cannabis. We recognise that some commercial market for marijuana will always exist, and we therefore promote ways to best to control that market.

1.1. Our aims are to:

- Reform New Zealand's marijuana laws
- Provide neutral, unbiased information about cannabis and its effects
- Engage in political action appropriate to our aims
- Inform people of their rights
- Give advice and support to victims of prohibition

1.2. We believe drug policy and associated laws should:

- Have realistic goals;
- Be regularly evaluated, be shown to be effective or be changed;
- take account of the different patterns and types of harms caused by specific drugs;
- Separate arguments about the consequences of drug use from arguments about morals;
- Be developed in the light of the costs of control as well as the benefits;
- Ensure that the harms caused by the control regimes themselves do not outweigh the harms prevented by them;
- Provide the greatest level of harm reduction for drug users, their families and their communities;
- Minimise the number of drug users who experience problems from their drug use;
- Be evidence based, as well as having the support of the community.

2. NORML does not believe the Bill as proposed meets these criteria and opposes it on a number of counts, as it will:

- 2.1 Fail to provide the greatest level of harm reduction for drug users, their families and their communities;
- 2.2 Increase the number of drug users who experience problems from their drug use;
- 2.3 Fail to ensure that the harms caused by the control regimes themselves do not outweigh the harms prevented by them;
- 2.4 Not be evidence based, nor will it have the support of the effected community.

3. NORML makes the following recommendations:

- 3.1 That the Government reject further criminalisation of cannabis paraphernalia because:
 - 3.1.1 It fails to act in alignment with the National Drug Policy;
 - 3.1.2 The proposed ban on paraphernalia such as waterpipes is based on conclusions formed using questionable research data that has never been peer-reviewed or duplicated elsewhere;
 - 3.1.3 There is potential for the breaching of human rights in the passing and enforcement of part in the Bill;
 - 3.1.4 It may pre-empt developing government policy in this area;
 - 3.1.5 It is already inconsistent with that policy;
 - 3.1.6 It has resource implications in its effect;
 - 3.1.7 It is completely imbalanced approach due to its strong supply control component.
- 3.2 Instead of criminalising cannabis paraphernalia, the Government should regulate their controlled availability, with emphasis on harm reduction and controls consistent with the Smokefree Environments Act (e.g. display restrictions, advertising ban, etc).
- 3.3 That the Government reject the reclassification of Ephedrine and Pseudoephedrine because:
 - 3.3.1 It fails to act in alignment with the National Drug Policy;
 - 3.3.2 It may pre-empt developing government policy in this area;
 - 3.3.3 It is already inconsistent with that policy;
 - 3.3.4 It has resource implications in its effect;
 - 3.3.5 It is completely imbalanced approach due to its strong supply control component.
- 3.4 That the Government reject the presumption of supply element in the reclassification of Ephedrine and Pseudoephedrine portion of the Bill because:
 - 3.4.1 It contravenes the Bill of Rights.

- 3.4.2 A fundamental principle of our judicial-legal system is the presumption of innocence. This is protected by the Bill of Rights Act 1990.
- 3.4.3 Drug laws that presume guilt are contrary to this and should be rejected.

4. The Government needs to act in alignment with the National Drug Policy.

4.1 The overarching goal of the National Drug Policy 2007-2012 is:

- 4.1.1 *“To prevent and reduce the health, social and economic harms that are linked to tobacco, alcohol, illegal and other drug use.”* (p. 10)

4.2 Drug policy in New Zealand is based on the principle of harm minimisation. The aim of harm minimisation is to:

- 4.2.1 *“Improve social, economic and health outcomes for the individual, the community and the population at large.”* (p. 11)

4.3 To help achieve this, the following objectives have been identified:

- 4.3.1 *“To prevent or reduce the supply and use of illegal drugs and other harmful drug use,”*
- 4.3.2 *“To make families and communities safer by reducing the irresponsible ... use of drugs,”*
- 4.3.3 *“To reduce the cost of drug misuse to individuals, society and government.”* (all p. 10)

4.4 The National Drug Policy states:

- 4.4.1 *“The harm minimisation approach does recognise that where eliminating high-risk behaviours is not possible, it remains important to minimise the personal, social and economic costs associated with those behaviours.”* (p. 11)

4.5 One aspect of harm minimisation is ‘demand reduction’, the focus of which is on:

- 4.5.1 *“Initiatives that aim to delay or prevent uptake, encourage drug-free lifestyles or create awareness of the risks involved with drug use.”* (p. 11)

4.6 Another aspect is ‘problem limitation’, which:

- 4.6.1 *“Seeks to reduce harm from drug use that is already occurring.”* (p.11)

4.7 The National Drug Policy emphasizes the need for *health promotion*, which is defined as “the process of enabling people to increase control over and improve their health.”

4.8 The National Drug Policy refers to the need for health education strategies providing information about drugs and their effects to inform people’s choices about drug use.

- 4.8.1 That education about drugs and safer drug use is essential to better health outcomes has been known to the Government and the Ministry of Health for a long time.

4.8.2 In a letter dated 21 March 1995 from Helen Potaka, Analyst, Mental Health Section, Ministry of Health, to the secretary of the Commerce Select Committee (which was then considering a Private Members Bill that led to the Minister getting the power to issue a Notice to prohibit drug utensils, and had asked the MOH for a briefing) said:

4.8.3 *"Education as a means of primary intervention and prevention is more preferable means of reducing the health risks with illicit drug taking than criminalising those who have drug paraphernalia in their possession.*

"The proposed Private Members Bill on drug paraphernalia is being considered at a time when government police on drugs and alcohol is being revised and developed. It could be unwise to support a Bill which on consideration has a strong supply control component and may have resource implications in its effect, may pre-empt developing government policy in this area and may even be inconsistent with that policy." [underline added for emphasis]

4.8.4 NORML notes that the highlighted second paragraph mirrors the current situation in which the Government is once again attempting to ban and criminalise drug paraphernalia.

4.9 The National Drug Policy claims to be evidence-informed, stating that:

4.9.1 "Effective drug policy is based on a careful analysis of the most up-to-date information available. Interventions will reflect practices that are informed by rigorous research, critical evaluation, professional expertise, and the needs and preferences of the community." (p. 12)

4.10 Furthermore, the National Drug Policy states that:

4.10.1 "The Government aims to reduce disadvantage and promote equality of opportunity in order to achieve a similar distribution of outcomes across different groups, and a more equitable distribution of overall outcomes within society. This means both:

- Achieving a minimum level of wellbeing for all people, and
- Ensuring a more equitable distribution of the determinants of wellbeing across society." (p. 13)

4.11 The amendments in this Bill pertaining to cannabis paraphernalia and Ephedrine/Pseudoephedrine reclassification are matters of supply control only.

4.11.1 However, the National Drug Policy talks about a balanced approach, and how best practice is to emphasize education and treatment.

4.12 The amendment in this Bill pertaining to cannabis paraphernalia has resource implications.

4.12.1 Can we afford it? Does Customs, which already has to deal with possible threats of terrorism and 'P' imports, need to deal with stores importing bongs and pipe parts?

4.13 The Government aims to reduce disadvantage and promote equality of opportunity in order to achieve a similar distribution of outcomes across different groups, and a more equitable distribution of overall outcomes within society. This means both:

- achieving a minimum level of wellbeing for all people, and
- ensuring a more equitable distribution of the determinants of wellbeing across society." (p. 13)

- 4.14 The proposed extension of control over implements and devices that are used for cannabis smoking contradicts all these principles and goals contained in the National Drug Policy.
- 4.15 This proposed amendment is not in line with the principle of harm minimisation, as:
- It fails to prevent and reduce the health, social and economic harms that are linked to tobacco, illegal and other drug use.
 - It fails to improve social, economic and health outcomes for the individual, the community and the population at large.
 - It increases harm to cannabis, tobacco and herbal tobacco smokers alike.
 - It fails to prevent or reduce the supply and use of illegal drugs and other harmful drug use.
 - It fails to provide a approach that balances education, demand reduction, and problem limitation.
 - It fails to make families and communities safer by reducing the irresponsible use of drugs.
 - It fails to reduce the cost of drug misuse to individuals, society and government.
 - It fails to create awareness of the risks involved with drug use.
 - It fails to reduce harm from drug use that is already occurring.
 - It fails to enable people to increase control over and improve their health.
 - It fails to be informed by best and latest evidence, as well as by best practice.
 - It fails to ensure a more equitable distribution of the determinants of wellbeing across society.
- 4.16 If the Government were truly interested in good public policy they would draft measures that are consistent with the National Drug Policy's goal of harm minimisation and that are workable and effective in reality.
- 4.16.1 That the Government hasn't done that shows that they do not care whether this measure actually works, but only that they are seen to be sending a strong message purporting to be 'tough on drugs'.
- 4.16.2 This 'tough on drugs' message is counter to recommendations made earlier in the year by the Law Commission in its current review of the Misuse of Drugs Act.
- 4.16.3 The Law Commission recommended that the Government end the criminalisation of drug users and social suppliers of illicit drugs.¹
- 4.17 It also runs counter to modern overseas' trends whereby countries like Portugal are rejecting the 'tough on drugs' approach and successfully introducing alternative policies to drug prohibition.
- 4.17.1 NORML suggests that this Government take note of the demonstrable success achieved by Portuguese authorities since decriminalising all drugs nine years ago; especially in the areas of youth drug use and consistent reductions in overall drug use rates.²

1 "Controlling and Regulating Drugs", NZ Law Commission, 2010; p. 18.

2 "Drug Decriminalisation in Portugal – Lessons for Creating fair and Successful Drug Policies", Glenn Greenwald, Cato Institute, 2009. Since decriminalization, lifetime prevalence rates in Portugal have decreased for various age groups. For those aged 13–15 years old, the rate decreased from 14.1 percent in 2001 to 10.6 percent in 2006. For those 16–18 years old, the lifetime prevalence rate, which increased from 14.1 percent in 1995 to 27.6 percent in 2001, the year of decriminalization, has decreased subsequent to decriminalization, to 21.6 percent in 2006. For the same groups, prevalence rates for psychoactive substances have also decreased subsequent to decriminalization. In fact, for those two critical groups of youth (13–15 years and 16–18 years), prevalence rates have declined for virtually every substance since decriminalization.

- 4.18 In particular, we suggest the Government strongly consider the following taken from the Executive Summary on page 4 of the Cato Institute's 2009 report on Portuguese drug policy:
- 4.18.1 *"Drug possession for personal use and drug usage itself are still legally prohibited, but violations of those prohibitions are deemed to be exclusively administrative violations and are removed completely from the criminal realm."*
 - 4.18.2 *"Notably, decriminalization has become increasingly popular in Portugal since 2001. Except for some far-right politicians, very few domestic political factions are agitating for a repeal of the 2001 law ... there is no real debate about whether drugs should once again be criminalized."*
 - 4.18.3 *"The political consensus in favor of decriminalization is unsurprising in light of the relevant empirical data. Although post-decriminalization usage rates have remained roughly the same or even decreased slightly when compared with other EU states, drug-related pathologies—such as sexually transmitted diseases and deaths due to drug usage—have decreased dramatically."*
 - 4.18.4 *"The data show that, judged by virtually every metric, the Portuguese decriminalization framework has been a resounding success. Within this success lie self-evident lessons that should guide drug policy debates around the world."*
(all p. 4)
- 4.19 NORML also suggests that this Government take note of the following articles that have recently appeared in overseas newspapers:
- 4.20 Former Spanish Drug Commissioner calls for legalisation:
- 4.20.1 This month, writing an editorial piece in Spain's most important newspaper, El País, the country's former drug commissioner, Araceli Manjón-Cabeza, called for an end to drug prohibition.³
 - 4.20.2 His call for legalisation comes just a week after former Spanish Prime Minister Felipe González also called for drug legalisation.
 - 4.20.3 Manjón-Cabeza wrote: *"Prohibitionism, installed in the United States at the beginning of the 20th Century, and imposed by that country on the rest of the planet, has failed. There are multiple law enforcement and public health reasons that recommend legalization."*
- 4.21 British cannabis expert proposes re-thinking cannabis prohibition:
- 4.21.1 During the British Science Festival from 14 to 19 September 2010, Dr. Roger Pertwee, Professor of Neuropharmacology at the University of Aberdeen, suggested a change in cannabis policy.
 - 4.21.2 Professor Pertwee, who is an eminent expert on cannabis and cannabinoids for 40 years, is a former President of the International Cannabinoid Research Society and a former Chairman of the International Association for Cannabinoid Medicines.
 - 4.21.3 He suggested it was time to start discussing licensing the recreational use of cannabis.

³ El País, 22 September 2010. Also see: <http://www.cato-at-liberty.org/spains-former-drug-czarina-endorses-legalization/>

- 4.21.4 *"At the moment, cannabis is in the hands of criminals and I think it's kind of crazy. We're allowed to take alcohol. If it's properly handled, cannabis probably won't be more dangerous than that."*
- 4.21.5 Professor Pertwee says that a group should be set up with expert pharmacologists, lawyers and police, amongst others, to thrash out the issue. He wants the "social, ethical, legal and economic factors in addition to current medical and pharmacological" factors to be taken into account.
- 4.21.6 *"We need a better solution than we have now." "You need to avoid younger people taking it: perhaps have a minimum age of 21. You might have to have it licensed so that you can only take it if it's considered medically safe for you to do so. We have car licences, so why not cannabis licences?"⁴*

5. NORML supports regulation of controlled availability and is completely opposed to the extension of control over drug paraphernalia such as pipes, bongs, vapourisers, 'cones', gauzes, etc, as these are important harm reduction devices for the more than 400,000 New Zealanders who currently use cannabis regularly.

- 5.1 More than 1.4 million New Zealanders have used cannabis at some point in their lives. Like opiate users, tobacco smokers and alcoholics, cannabis users deserve safe access to harm reduction equipment and services too.
- 5.2 The most probable adverse physiological health effects of heavy cannabis use are increased risks of chronic bronchitis and impaired respiratory function in regular smokers; and respiratory cancers in very long-term daily smokers.⁵
- 5.3 Scientific studies have repeatedly shown that the main danger presented by cannabis use is potential pulmonary damage.
- 5.3.1 Like tobacco, marijuana smoke poses hazards to respiratory health such as increased risk of bronchitis, lung infection and throat and neck cancers. These hazards are caused by noxious vapours, solid particles and tars in the smoke produced by the combustion of plant material.
- 5.3.2 Tars are rich in carcinogenic compounds known as polycyclic aromatic hydrocarbons, which are a prime culprit in smoking-related cancers.
- 5.3.3 Smoke filtration device such as a waterpipes reduce, suppress or otherwise separate off noxious by-products in the smoke stream, thus reducing potential lung damage.
- 5.3.4 As well as tars, waterpipes also filter out other, non-solid smoke toxins occurring in the gas phase of the smoke. Noxious gases known to occur in marijuana smoke include hydrogen cyanide, which incapacitates the lung's defensive cilia; volatile phenols, which contribute to the harshness of the taste; aldehydes, which promote cancer; and carbon monoxide, a known risk factor in heart disease.
- 5.3.5 Other harms presented by smoking cannabis, tobacco, and other herbal smoking blends - and minimised by the use of filtration devices such as waterpipes - are the inhalation of hot air, gases, and solid particulates such as ash, unburnt plant matter, and burning embers.

4 "Cannabis should be licensed and sold in shops, expert says", The Guardian, 14 September 2010. Available at: <http://www.guardian.co.uk/science/2010/sep/14/cannabis-licence-legalisation-pertwee>

5 "Cannabis Policy: Moving Beyond Stalemate", Beckley Foundation, 2008; pp. 35-37.

- 5.3.6 Waterpipes also serve to cool the ambient temperature of the smoke itself, further minimising harms to the smoker.
- 5.4 NORML takes issue with claims made by this Bill's proponents that a ban on cannabis paraphernalia constitutes harm minimisation.
- 5.4.1 The move to ban paraphernalia like waterpipes and bongs has long been based on an assumption by the Ministry of Health that they are ineffective and that smokers consume more cannabis when using them.
- 5.4.2 This assumption has been made on the findings of a 1995 MAPS/California NORML study which found that waterpipes to be ineffective in transferring THC (the active ingredient in cannabis) to the lungs. ⁶
- 5.4.3 Their conclusion was based on the highly unusual finding that THC was more water soluble than tars, meaning less would make it to the smoker; hence they would have to consume more cannabis to get high.
- 5.4.4 There were a number of problems with the study:
- It was unpublished,
 - The conclusion was based on the highly unorthodox finding that THC was water-soluble,
 - Their finding that THC was water-soluble was unique to this study and has not being replicated elsewhere (other studies have not found THC to be water soluble),
 - The study was not peer-reviewed.
- 5.5 NORML disputes the credibility of this study and asks how the Government can base public health policy upon a single study that makes conclusions using contestable assumptions.
- 5.6 Smoke of any kind is likely to be damaging to health, while the combustion of plant matter creates tars that may be carcinogenic. Other harms presented by smoking are the inhalation of hot air and gases, and solid particulates such as ash and unburnt plant matter.
- 5.6.1 Cannabis smokers who use waterpipes and hookahs help reduce any harmful effects from smoking by cooling and filtering the smoke. Waterpipes and pipes with gauzes trap burning embers and solid particulates, reducing harm to the user.
- 5.6.2 Cannabis smokers who use pipes do so because it is far more economical than smoking joints. Pipe users tend to smoke less cannabis, not more.
- 5.6.3 Pipes with long stems or hoses, or curved bubble shapes, reduce harm by cooling the smoke as it travels a longer distance.
- 5.7 Cannabis vapourisers avoid smoke completely, thus providing the safest possible method of consumption via the lungs.

⁶ "Effects of Water Filtration on Marijuana Smoke: A Literature Review", Nicholas Cozzi, MAPS Newsletter, Vol. IV #2, 1993, and Marijuana Water Pipe and Vaporizer Study, Multidisciplinary Association for Psychedelic Studies - Vol. 6 # 3; 1996. Available at: <http://www.maps.org/news-letters/v06n3/06359mj1.html>
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- 5.7.1 A 2001 study showed that that vapourisers eliminate or substantially reduce potentially harmful smoke toxins that are normally present in marijuana smoke. The vaporizer produced THC at a temperature of 185° C. (365° F.) while completely eliminating three measured toxins - benzene, a known carcinogen, plus toluene and naphthalene. Carbon monoxide and smoke tars were both qualitatively reduced by the vaporizer.⁷
- 5.7.2 Many, if not most, medical patients use vapourisers to consume cannabis.
- 5.8 Gauzes are explicitly prohibited from being inserted into pipes under the current Bill, being a "prohibited feature" that helps define a pipe as a cannabis utensil. Yet the reason for this has never been made clear.
 - 5.8.1 Gauzes, or fine screens typically made from stainless steel, are inserted into the bowls of pipes so that users do not inhale burning embers or fine particulates such as ash or plant material.
 - 5.8.2 Removing gauzes increases harm by making it more likely smokers will inhale harmful embers and particles.
- 5.9 Banning such items will not stop people from using cannabis, and will not stop smokers in general from using these types of devices.
- 5.10 What it will do is drive their use further underground and encourage people to make their own devices, many of which will be unsafe to use.
 - 5.10.1 Glassware is a far safer alternative for a pipe than the toxic plastics found in home-made soft-drink bottle bongs that cannabis smokers may be forced to use instead. Items made from glass can be easily cleaned and sterilised.
 - 5.10.2 In NZ, home-made pipes are commonly made from aluminum soft drink cans, which can be easily turned into a useable but highly toxic device which causes users to breathe in heated paint and aluminum oxide fumes.
- 5.11 We recommend that in the interest of minimising harm to cannabis and tobacco smokers, the Government and its agencies implement educational programmes to encourage the use of vapourisers, glass pipes, waterpipes and other such devices.
- 5.12 NORML takes issue with the Government's contention that the use of glass pipes, bongs, etc encourages people to breathe in deeper and take in more harmful smoke.
 - 5.12.1 The majority of people smoke cannabis responsibly. The vast majority of those who use harm reducing paraphernalia like glass pipes, hookah pipes, bongs with gauzes, vapourisers, etc do so to reduce the amount of cannabis they consume and the amount of harmful smoke and other gases they take into their lungs.
- 5.13 If there are no legal pipes, or other such smoking devices, then people will be more inclined to find other 'novel' ways of smoking, such as 'spliffs' (tobacco and cannabis mixed in large cigarettes), 'blunts' (cannabis rolled in tobacco leaves), spotting oil on cigarettes, etc.
 - 5.13.1 Tobacco is highly carcinogenic, and addictive, than cannabis. Tobacco use presents a far greater burden to public health than cannabis use.⁸

⁷ "Cannabis Vaporization: A Promising Strategy for Smoke Harm Reduction", D. Gieringer, *Journal of Cannabis Therapeutics* Vol. 1#3-4, pp. 153-70; 2001

⁸ The annual public health-related cost for cannabis has been calculated as \$20 per user – one fortieth that calculated for tobacco (over \$800), and one eighth that for alcohol (\$165).

- 5.14 NORML recommends that the Government provide to paraphernalia outlets evidence-based information on the harms presented by the use of cannabis and ways for users to minimise those harms.
- 5.14.1 That the Government is not doing this and is, in fact actively moving in the opposite direction, shows that the health of these people is being placed secondary to the priority of getting things ‘out of sight and out of mind’ and reducing the visibility of cannabis use.
- 5.15 The top priority of the National Drug Policy is to "enable New Zealander's to increase control over and improve their health by limiting the harms and hazards of drug use."
- 5.15.1 NORML would like to see any evidence the Government has that supports banning pipes and waterpipes as a method of protecting public health in general and of reducing the "harms and hazards" to the health of cannabis users in particular.

6. NORML is particularly concerned by the increased powers of discretion that will be given over to Police and Customs officers in deciding what does or doesn't constitute cannabis paraphernalia.

- 6.1 NORML is concerned that this bill will increase the powers of police and customs unduly in deciding what constitutes a part of a cannabis smoking utensil or not.
- 6.2 NORML does not believe that Police and Customs should be given such powers.
- 6.2.1 Over the years activists involved with NORML have heard many accounts of police abuse of their search powers and the protections guaranteed by the Bill of Rights.
- 6.2.2 For example, in Operation Lime we have heard how police entrapped shop staff in gardening stores but not staff in book stores over the same item.
- 6.3 Ever since cannabis utensils were prohibited in 1999, we have witnessed Customs operating outside the law and seizing, on a regular basis, anything they think may be used to consume cannabis. This has included many legitimate tobacco smoking pipes, as well as aromatherapy devices and air fresheners.
- 6.4 It doesn't matter what people think about cannabis or drug prohibition, or the motivation of certain stores. The important fact is that Police and Customs knowingly bend the rules to suit their own purposes.
- 6.5 NORML questions how Police and Customs can be trusted not to do more of the same with their greatly-expanded powers, should this Bill become law?

7. Pipe, waterpipes, vapourisers, etc have been an important part of the cannabis culture for many years now and are used by a great number of cannabis users to enhance their smoking experience.

- 7.1 Cannabis cultivation and breeding techniques have now reached the point where there are cannabis strains that are the cannabis culture's equivalent of ‘fine’ wines.

- 7.2 Pipes, waterpipes, hookahs and vapourisers serve a social function, in much a similar way as wine glasses, bottle openers and decanters. They are, in the vast majority of cases, used by responsible adults to appreciate the finer qualities of their chosen herb.
 - 7.2.1 Cannabis connoisseurs are able to appreciate the different flavours of high quality cannabis varieties by using glass pipes, glass stemmed waterpipes and vapourisers.
 - 7.2.2 Taking a connoisseur's approach to cannabis is a part of being in the cannabis culture, in much the same way wine tasting is important to wine lovers. Picture a group of people sitting round a table, having their glasses topped up with good red wine, having a relaxing drink before dinner. How is this different to a group of people sitting around a table passing a bong?
- 7.3 Use of these devices can make it much easier for users who measure, titrate, or regulate their use for any reason; i.e. medical patients; smokers practicing harm reduction through moderation of intake.
 - 7.3.1 It's far easier to take a small amount at one time by using a 'one-shot' glass pipe than it is with a joint.
- 7.4 Some people simply do not like the taste of burning cigarette paper when they smoke and so prefer using a pipe, bong, or vapouriser.
 - 7.4.1 Inhaling wood-based paper may come with more significant health risks.
- 7.5 Cannabis is used traditionally and spiritually and has been among certain cultural groups for at least many hundreds of years.
 - 7.5.1 Certain types of cannabis paraphernalia – such as the Nakhla or 'hookah' pipes from the Middle East, or the 'chillum' pipes used by the Indian Sadhus – also have traditional/spiritual significance.
 - 7.5.2 Nakhla ('hookah' pipes) are specifically banned in this Bill yet they are perhaps the most traditional tobacco pipes on the planet.

8. Pipes, bongs, vapourisers, etc are used by users of legal smoking mixtures as well as users of tobacco.

- 8.1 The types of devices that will become illegal by the passing of this Bill are used by consumers of legal drugs as well as illegal ones. This bill will cause users of tobacco and legal herbs to also suffer harm.
- 8.2 Commonly smoked herbal highs' are Damiana, Wild Lettuce, Lions' Tail, and Marihuana. These are all legal and there are no moves to see them banned that NORML is aware of.
- 8.3 As pipes, bongs and vapourisers are used by people for the consumption of legal drugs, the banning of such items makes for a human rights issue.

9. Shops which sell smoking equipment will lose a large part of their business and could be forced to close down, causing the loss of hundreds of jobs.

- 9.1 Banning the sale of these harm reducing smoking devices will risk the livelihoods of a large number of shops and their families. These people could not only lose their incomes but also their homes and their dreams of a successful business.

- 9.2 By our estimates there are several hundred small businesses all around New Zealand who sell smoking accessories such as pipes, vapourisers, gauzes, etc, in addition to legal smoking mixtures such as Damiana, Lion's Tail, etc. The stores which specialize in such products will suffer reduced profits or go out of business should this Bill pass.
- 9.2.1 Conservatively, that could cause the loss of up to at least 400 jobs around the country.
- 9.2.2 This Government said it would support job creation and work to minimise the effects of the recession; not directly cause the loss of hundreds of jobs.
- 9.2.3 Those affected by the proposed Bill are decent, hard working Kiwi small businesses owners who pay tax and employ people who need jobs.
- 9.3 These stores are an important point of contact with consumers of legal and illegal drugs. Instead of trying to close them down, it would be better to work with those stores to provide credible, accurate information to members of the general public.
- 9.3.1 We are unaware of any initiative funded by Government aimed at reducing harm among cannabis users and utilising the obvious distribution channel of these stores.
- 9.3.2 Information promoting safer and responsible use should be made available to any store.
- 9.4 To be most effective at reducing harm, this information should be in a language and style that is understood and accepted by cannabis users.⁹
- 9.5 Instead of tightening the prohibition on cannabis utensils, regulations could be passed that allow their sale subject to certain conditions.
- 9.6 Examples of sale conditions could include:
- Demonstration of a health benefit to using the utensil.
 - R18. No sales to minors.
 - A standard health warning, for example "Smoking is harmful". This could be in the form of a sticker affixed to the utensil itself, or a leaflet that is given to the customer during the sale.
 - Restrictions on the use or visibility of any emblem or logo that depicts the cannabis leaf.
 - Restrictions on the visibility of cannabis utensils from outside the store.
 - Restrictions on how cannabis utensils are displayed inside the store.
 - Special levies or excise taxes on the sale of cannabis utensils, which could be used to increase funding for drug education or treatment services.
- 9.7 Sale conditions such as these would best regulate and control the availability of cannabis utensils, and would most effectively minimize harm to cannabis users and the wider community.
- 9.7.1 To this end, NORML endorses the "Misuse of Drugs (Regulation of Cannabis Utensils) Notice 2011", which has been proposed by the National Association of Pipe Sellers.
- 9.8 Rather than intending to reduce harm, NORML suggests that this Bill may be in part politically motivated to actively force such stores out of business due to the nature of their support for drug law reform.

⁹ For examples, see NORML's Principles of Responsible Cannabis Use <http://www.norml.org.nz/page1.html> and NORML's Safer Cannabis Use tips <http://www.norml.org.nz/page52.html>

- 9.8.1 As a precedent, NORML has good reason to believe that some of the actions of police during Operation Lime raids have been politically motivated.
- 9.9 NORML recommends that it is better from a public health perspective that smoking paraphernalia be sold in retail outlets where quality (and purchaser's age) can be controlled, than to encourage the use of home-made devices, and that this proposed amendment to the Misuse of Drugs Act be abandoned.

10. NORML believes drug legislation and associated laws should respect human diversity and fundamental human rights.

- 10.1 Possession or use of drugs should not result in any penalties; there should be no criminalisation of devices used for consumption of drugs.
- 10.2 Individuals have a basic right to alter their consciousness, either by using drugs, meditating, fasting, finding religion, watching television, long-distance running, or any other means available.
- 10.3 Drug use should not be discriminated against as being bad, wrong, or immoral, any more than driving a car or skiing should be; all these activities have inherent risks.
- 10.4 State/Police involvement should be limited to facilitating treatment or drug education for people experiencing problems caused by over-use or addiction. There should be no other role for the State/Police in this area.

11. Harm minimisation policies have been applied inconsistently towards users of different drugs. Cannabis users also deserve safe access to harm reduction equipment.

- 11.1 Users of certain types of illegal drugs are guaranteed by law to have safe, legal access to harm reduction services; whereas users of drugs like cannabis are being denied the right to practice harm reduction by using safe devices like pipes, bongs, and vapourisers.
- 11.2 In NZ, intravenous drug users are given safe, anonymous legal access to clean needles as part of the Needle Exchange service. Why are smokers denied the right to use harm reducing devices like pipes, bongs and vapourisers to consume their smoking mixtures?
- 11.3 Banning harm reducing smoking devices is the cannabis culture's equivalent to ending the Needle Exchange service. This Bill will send a clear message of hypocrisy: the Government is prepared to offer help to intravenous users of narcotics but not to smokers of cannabis.
- 11.4 NORML finds it bizarre that in NZ the penalty for possession of a cannabis utensil is greater than the penalty for possession of cannabis alone.
 - 11.4.1 This should be changed; even if the other parts of this bill are passed. The penalty for using or possessing drug paraphernalia should never be more than for the drug itself.
 - 11.4.2 For most people it seems the offence is recorded as "Possession of a needle/syringe". This started happening several years ago - we suspect so it looks even worse to a prospective employer, as most people these days do not care if someone was caught using a cannabis pipe.

- 11.5 NORML questions the stated reasons for the proposed ban on cannabis paraphernalia.
- 11.6 One reason given is to reduce the visibility and availability of drug paraphernalia. NORML has reason to question this.
- 11.6.1 Under the Official Information Act, NORML has obtained a copy of a letter from Roger Sowry, who as Associate Minister of Health, pushed for the original ban on pipes and bongs in the 1990s. In a letter to Vesta Boswell from PRYDE dated 6 July 6, 1998, he says:
- 11.6.2 "You have specifically asked that I issue a Gazette notice under section 22(1 A) of the Misuse of Drugs Act 1975 to prohibit the import and supply of such paraphernalia. Because of concerns raised by members of the community such as yourself, I intent to direct officials to prepare such a notice."
- "I should add that issuing a Gazette notice will not, in itself, shut down the operation of so-called "headshops". What it will do is send a clear signal to importers and suppliers (by making it an offence to import or supply specified classed of pipes or utensils), and it should also prevent the open display of such prohibited items of paraphernalia."
- 11.6.3 This and other documents released to NORML under the OIA show the Government only ever expected the Gazette notice to effect the visibility and display of such items. However, Customs in particular have operated way outside the law and regularly seized legitimate tobacco or legal herb related items.
- 11.7 Another reason given is the ban on paraphernalia is a form of harm reduction as pipes and bongs encourage more use.
- 11.7.1 One stated reason for this is an assumption that pipes and bongs cool the smoke to such an extent that smokers will consume more, due to not coughing etc.
- 11.7.2 This is an assumption not borne out by reality.
- 11.7.3 The truth is that smokers choose to use pipes and bongs so they can use less, not more. Their overriding motivation in choosing an implement is the widespread belief that pipes and bongs allow consumers to use less than compared to rolling a joint/s.
- 11.7.4 Feedback received by NORML over the years is that this is indeed the case.

12. Reclassification of Ephedrine and Pseudoephedrine is only likely to cause more problems with 'P'.

- 12.1 NORML predicts that any move which restricts the availability of medicines containing ephedrine and pseudoephedrine are only likely to increase the involvement of overseas organised crime rings – particularly from China – in the local 'P' black market.
- 12.1.1 NORML fears that this amendment may well increase the involvement of Chinese organised crime groups in New Zealand, particularly in the importation and supply of precursor materials for methamphetamine manufacture.
- 12.1.2 NZ Customs have already begun witnessing greater amounts medicines containing ephedrine and pseudoephedrine being smuggled into the country from China.
- 12.2 Making it tougher to obtain ephedrine and pseudoephedrine may also have the unintended side-effect of forcing local 'cooks' to explore other methods for

methamphetamine synthesis, which could be more harmful than the commonly used P2P method.

- 12.2.1 These methods will certainly be less known to enforcement and clean up agencies, who will find it increasingly difficult to detect labs as they won't know what to look for.
 - 12.2.2 'Cooks' will also use vastly more complicated recipes that require many stages, which can be done at different locations. However current site remediation technique is to test for only methamphetamine (only because it is illegal), not the more harmful precursors or intermediate chemicals. They can detect the house where the final cook was done, but they will miss any place that had any other stage done inside it.
- 12.3 NORML is greatly concerned by recent evidence which suggests that drug dealers are turning to other drugs, as 'P' becomes more difficult to make and sell.
- 12.3.1 We note, for example, a report in the Press how Christchurch police, health professionals and drug counsellors have noticed a rise in the past year in the number of young people using a new form of homebake heroin in liquid form sold in dots on sheets of tinfoil.¹⁰
 - 12.3.2 The Press quotes authorities as saying they believe increased seizures of 'P' and precursor materials are forcing drug dealers to turn to other drugs as 'P' becomes more difficult to make and sell.
- 12.4 NORML questions the validity of claims made by the Government's that this Bill will reduce the supply of 'P' in New Zealand in the short and long term.
- 12.4.1 The predominant part of this bill is about the control of ephedrine and pseudoephedrine from pharmacies.
 - 12.4.2 Only a small amount of the drug used in the manufacture of 'P' in New Zealand is sourced from pharmacies.
 - 12.4.3 This legislation, which controls access to the drug through pharmacies, deals with only a small percentage of the source of the drug.
 - 12.4.4 Most supplies of ephedrine and pseudoephedrine destined for 'P' manufacture are imported from China. We know that the recent free-trade agreement with China has provided for looser importation rules.
 - 12.4.5 Where is the enforcement of these supplies? It appears to NORML that the Government does not want to jeopardize economic opportunities by dealing with issues around free-trade agreements over imports of 'P' precursor materials.
- 12.5 NORML believes – and has told the Government before – that the best way to reduce demand for 'P' is to legalise, regulate, tax and control the cannabis market for adults only.

¹⁰ "Dealers Get Young People Hooked on New Drug", The Press, April 29, 2010. Available at: <http://www.stuff.co.nz/national/crime/3635514/Dealers-get-young-people-hooked-on-new-drug>

13. NORML opposes the presumption of supply for Ephedrine and Pseudoephedrine.

13.1 The proposed presumption of supply contravenes the Bill of Rights.

13.1.1 A fundamental principle of our judicial-legal system is the presumption of innocence. This is protected by the Bill of Rights Act 1990.

13.1.2 Drug laws that presume guilt are contrary to this and should be rejected.

13.1.3 The Supreme Court said as much earlier this year (*R v Hansen*), and called upon parliament to re-examine the presumptions of supply contained in the Misuse of Drugs Act.

13.2 The Committee should consider why there is a presumption of supply at all.

13.2.1 Police should be made to work for their convictions and provide sufficient evidence of supply. If there is no evidence of supply, a supply charge should not be laid.

13.3 The presumption of supply provisions contained in this Bill and in the Act contravene the Bill of Rights Act and should be repealed.

13.3.1 To cite a hypothetical example: an average New Zealander buys medication containing pseudoephedrine or ephedrine in it; under this Bill, by law there will be a presumption from the Government that they are buying that in order to manufacture and supply 'P'.

13.3.2 Parliament should not support any law on drugs that is inconsistent with the Bill of Rights Act.

13.4 NORML's experience with marijuana law enforcement is that police often operate using stereotypes. People who fit the description tend to be searched and prosecuted, while middle-class pakeha seldom come to their attention.

13.4.1 NORML suspects the same pattern will emerge with law enforcement of ephedrine and pseudoephedrine.

13.4.2 Maori, Pacific Islanders and young males will wear the brunt of convictions, irrespective of their rates of use.

14. The current law pays only lip-service to the concept of harm minimization. The Misuse of Drugs Act – and associated Police & Customs search powers - maximises harm in a number of ways:

14.1 The creation of an uncontrolled, lucrative and often violent black market, that reaches into every pocket of New Zealand society.

14.2 Minors can access cannabis and other drugs as easily as pizza; tinny shops are in most suburbs and towns and sell to anyone, at any time.

14.3 Drugs sold through the black market are sometimes of dubious quality, purity or safety; occasionally black market drugs are laced with toxins (chemicals, sprays, etc). Every summer the police deliberately poison marijuana supplies with Round-Up, some of which still makes it to the market.

14.4 The black market gives casual soft drug users (i.e. cannabis smokers) the chance of being introduced to more dangerous drugs like 'P'. Tinny shops mostly cater to

teenagers or casual users and have been used by gangs to introduce 'P' to new customers. The 2001-2 Health Select Committee cannabis inquiry noted:

14.4.1 *“The current prohibition regime is not effective in limiting cannabis use. Prohibition results in high conviction rates for a relatively minor offence, which inhibits people’s education, travel and employment opportunities. Prohibition makes targeting education, prevention, harm minimisation and treatment measures difficult because users fear prosecution. It also facilitates the black market, and potentially exposes cannabis users to harder drugs”*¹¹

14.5 Due to our high rate of arrest and the threat of imprisonment, those with drug use problems are reluctant to seek help.

14.6 Public resources diverted away from effective treatment and education, to fund law enforcement. Treatment facilities for people wanting help are often not available or are under-resourced.

14.7 New Zealand has the world’s highest rate of arrest for marijuana offences. Our police arrest more people per head of population than even the United States. Police time is diverted away from serious crimes (assaults, burglaries, etc) because it is spent on criminalising drug users or 'social suppliers' of drugs.

15. The current approach of a strictly-enforced prohibition rests on the assumption that law-enforcement efforts to reduce the availability of drugs - by increasing prices and decreasing supplies - also have the effect of reducing drug harms.

15.1 This is a myth: not only has prohibition been found to be ineffective with regard to both demand and supply, a recent study by the International Centre for Science in Drug Policy (ICS DP) shows how significant a role it plays in the causation of violence.¹²

15.2 Evidence now suggests that police crackdowns aimed at stopping trade in illegal drugs actually have the opposite effect to that intended.

15.3 The ICS DP review of 20 years research into drug enforcement found that the imprisonment of dealers and criminal bosses actually leads to greater drug-related violence as vacuums in the black market are rapidly filled by competitors eager to fight each other for the newly-vacated territory.

15.3.1 This meta-analysis of 15 separate reports on the relationship between violence and drug enforcement found that 87 per cent of studies reported that police seizures and arrests led directly to increased violence.¹³

15.3.2 The evidence suggests that any disruption of drug markets through drug-law enforcement has the perverse effect of creating more financial opportunities for organised crime groups.¹⁴

¹¹ “Inquiry into the Public Health Strategies Related to Cannabis Use and the Most Appropriate Legal Status”, NZ Health Select Committee, 2003; p. 57. Available at <http://tinyurl.com/27714jk>

¹² “Effect of Law Enforcement on Drug-Related Violence: Evidence from a Scientific Review”, International Center for Science in Drug Policy, 2010.

¹³ *Ibid*, pp. 5-6

¹⁴ *Ibid*, p. 5

15.4 Any assertion made by the government that the current approach is balanced between three equally important areas of supply control, demand reduction and problem limitation is simply propaganda.

15.4.1 Supply is completely uncontrolled, all the evidence shows demand has nothing to do with the law, and problem limitation services are drastically under-funded.

16. Drug prohibition has been a complete failure and this Bill will only make it worse.

16.1 As the 2003 Health Select Committee noted:

16.1.1 *The 21-year CHDS found that the administration of current cannabis laws is inefficient ... It is also discriminatory against males, Māori, and former offenders, and is ineffective in deterring users from cannabis use. Ninety-five percent of the cohort arrested or convicted for cannabis use continued with or increased their use of cannabis.*¹⁵

16.2 The US drug czar recently admitted to Associated Press that after four decades and one trillion U.S. dollars, the Drug War has failed to meet any of its goals. He said:

16.2.1 *"In the grand scheme, it has not been successful. Forty years later, the concern about drugs and drug problems is, if anything, magnified, intensified."*¹⁶

16.3 NORML believes that New Zealand should take the best bits from overseas experience with drug liberalisation; in particular the Dutch approach to cannabis.

16.3.1 Their coffeeshops have successfully separated cannabis smokers from suppliers of hard drugs.

16.3.2 By enforcing a legal age limit of 18 years to buy cannabis, access by minors is made more difficult: only 7% of Dutch teens under 16 have tried marijuana, compared with 27% here.¹⁷

16.4 New Zealand should also look at other countries around the world which successfully implemented policies which have stopped criminalising drugs and drug users with clearly measurable social benefits.

17. A World Health Organization study established that countries with get-tough policies, notably the U.S. and New Zealand, now lead the rest of the world in rates of cannabis use.

17.1 The 2008 report by found:

17.1.1 *"Globally, drug use is not distributed evenly, and is simply not related to drug policy ... The U.S. ... stands out with higher levels of use of alcohol, cocaine, and cannabis, despite punitive illegal drug policies. ... The Netherlands, with a less criminally punitive approach to cannabis use than the U.S., has experienced lower*

¹⁵ "Inquiry into the Public Health Strategies Related to Cannabis Use and the Most Appropriate Legal Status", NZ Health Select Committee, 2003; p. 32. Available at <http://tinyurl.com/27714jk>

¹⁶ "After 40 years, \$1 trillion, US War on Drugs Has Failed to Meet any of its Goals", Associated Press; 13 May 2010. Available at <http://www.foxnews.com/world/2010/05/13/ap-impact-years-trillion-war-drugs-failed-meet-goals>

¹⁷ "Toward a global view of alcohol, tobacco, cannabis, and cocaine use: findings from the WHO world mental health surveys", Degenhardt et al, 2008. PLOS Medicine 5: 1053-1067.

*levels of use, particularly among younger adults. Clearly, by itself, a punitive policy towards possession and use accounts for limited variation in national rates of illegal drug use.*¹⁸

18. In conclusion, Parliament should reject this ill-timed and counterproductive amendment to the Misuse of Drugs Act.

18.1 We contend that the parts of this Bill pertaining to cannabis utensils and the reclassification of ephedrine and pseudoephedrine should be scrapped and that complete rethink be undertaken of all drug control laws.

18.2 We note that the general global trend at present is cessation of prohibitionist policies in favour of treating drug use as a health issue, not a matter for police and justice.

18.3 We urge the Government to heed the recommendation of the 1998 Health Select Committee, which said:

18.3.1 *“We recommend that, based on the evidence received, the Government review the appropriateness of existing policy on cannabis and its use and reconsider the legal status of cannabis.”*¹⁹

18.4 We urge the Government to heed the recommendation of the 2003 Health Select Committee, which said:

18.4.1 *“We recommend to the Government that the EACD give high priority to its reconsideration of the classification of cannabis.”*²⁰

18.5 We urge the Government to heed the NZ Law Commission, which is currently reviewing the Misuse of Drugs Act and which recommended that drug users no longer be criminalised and that drug education and drug treatment services become greatly improved.²¹

19. Appendices

19.1 These should be considered to be part of our submission together with this document.

19.1.1 NORML’s 1999 Submission on Proposal to Prohibit Cannabis Paraphernalia

19.1.2 “Toward a global view of alcohol, tobacco, cannabis, and cocaine use: findings from the WHO world mental health surveys”, Degenhardt et al. PLOS Medicine 5: 1053-1067; 2008

19.1.3 “Effect of Law Enforcement on Drug-Related Violence: Evidence from a Scientific Review”, International Center for Science in Drug Policy, 2010.

19.1.4 “Cannabis, Tobacco and Alcohol Use in Canada: Comparing the Risks of Harm and Costs to Society”, Thomas, et al, Visions: BC’s Mental Health and Addictions Journal, 2009, Vol5, # 4

19.1.5 "Cannabis Vaporization: A Promising Strategy for Smoke Harm Reduction", D. Gieringer, Journal of Cannabis Therapeutics Vol. 1#3-4, 2001

¹⁸ *Ibid*

¹⁹ “Inquiry into the Mental Health Effects of Cannabis”, NZ Health Select Committee, 1998; p. 40.

²⁰ “Inquiry into the Public Health Strategies Related to Cannabis Use and the Most Appropriate Legal Status”, NZ Health Select Committee, 2003; p. 49. Available at <http://tinyurl.com/277l4jk>

²¹ “Controlling and Regulating Drugs”, NZ Law Commission, 2010; pp. 12-17, pp. 24-27.

19.1.6 “Cannabis Policy: Moving Beyond Stalemate”, Beckley Foundation, 2008.

19.1.7 “Drug Decriminalisation in Portugal – Lessons for Creating fair and Successful Drug Policies”, Glenn Greenwald, Cato Institute, 2009.

20. Appearance if oral hearing held

20.1 We wish to appear before the Committee to explain our views, answer any questions, and/or provide additional information.

For more information, or to discuss anything contained in our submission, please contact us.

Yours sincerely,

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