TO THE LAW COMMISSION,
DRUGS REVIEW PROJECT COORDINATOR

SUBMISSION ON THE DRUGS REVIEW ISSUES PAPER (REVIEW OF THE MISUSE OF DRUGS ACT 1975)

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

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1. ABOUT NORML NZ INC.

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
- To provide neutral, unbiased information about cannabis and its effects
- To engage in political action appropriate to our aims
- To inform people of their rights
- To give advice and support to victims of prohibition

1.2 NORML believes drug policy 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 resulting from their drug use;
- Is evidence based, as well as having the support of the community.

We do not believe the current legislation meets any of these criteria.

2. SUMMARY OF RECOMMENDATIONS

1. NORML supports the Law Commission view that the legislation should be better aligned with a policy of harm minimisation.

2. Drug control laws should respect human diversity and fundamental human rights.

3. Personal use of drugs should not result in any criminal penalties (Q6).

4. All penalties for personal use should be reduced if not eliminated (Q7,8,9). State/Police involvement should be limited to facilitating treatment or drug education for people experiencing problems caused by over-use or addiction.

5. Separating the markets for low-risk and high-risk drugs should be state policy. Access to high-risk drugs should be controlled (e.g. treatment clinic or doctor's prescription). Access to low-risk drugs like cannabis should be regulated via an adults-only, taxable market similar to that in the Netherlands.

6. Drug policy should aim to solve New Zealand drug use problems. We have the world's highest teenage cannabis use rate. We should reject obsolete and failing international drug control conventions (Q1,2). They are a barrier to achieving effective solutions.

7. NORML supports controlled drugs, including alcohol and tobacco, being classified on two evidence-based scales: toxicity and addictiveness.

8. Harsh penalties for supplying cannabis are unnecessary. If penalties for supplying drugs continue, they should avoid imprisonment especially where "social supply" is indicated (such as; small quantities, supply to friends, not motivated by profit) (Q4)

9. NORML supports the medicinal use of cannabis for people suffering from illnesses where it might assist them (Q15). This should be under medical supervision with a system of licensed suppliers.

10. Health problems, including addiction, caused by tobacco, alcohol and other drugs should be funded adequately and treated consistently (Q19). Compulsory treatment should be reserved for exceptional cases.

11. If penalties for personal use remain then a cautioning system is preferred. Infringement notice systems can turn into revenue-gathering devices and be used to harass people (Q6). Drug laws already punish disproportionately the young, the poor and Maori; this tendency would increase under an infringement notice system.

3. DISCUSSION

3.1 ABOUT THIS REVIEW

We support the intent of this review – the 35-year-old Misuse of Drugs Act is hopelessly outdates and has failed in all its stated goals.

However this review was not wide enough, and was too constrained by the terms of reference.

To only consider legislative options that fit within our existing international drug control treaties is a serious mistake. This should be a review from first principles, rather than accepting the rationale behind the treaties that drug use is inherently bad and should be eliminated.

We are also concerned there was not a lot of publicity about inquiry. We noticed no advertising so NORML has worked to publicise this review. We printed and distributed information pamphlets, and organised public meetings and ran awareness stalls at events and in public places.

During this process we directly collected submissions from approximately 3000 interested people, which we have already sent to the Commission. It would be a mistake to assume all of these submissions are from cannabis consumers and/or NORML members. They were from all walks of life, and they all took the time to read and consider all the points on the form. Not everyone agreed with every point, and many also took the time to make personal comments to explain how they felt.

Although almost everyone has an opinion on this subject – and often strongly held – we encountered a lot of resistance to making submissions. Many people feared they would be outed as a criminal, or presumed to be a pot smoker simply for talking about it.

There is the need for a general amnesty. Police made a statement to this effect during the 2001-3 cannabis inquiry, but said nothing this time. If you want to hear from all people affected, you need to create an environment where they are safe and comfortable coming forward. *The only way to do this is to announce a general amnesty*.

3.2 COMMENTS ON PROPOSALS CONTAINED IN THE ISSUES PAPER

3.2.1 Legislation should be better aligned with a policy of harm minimisation.

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. But 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[1] shows how significant a role it plays in the causation of violence (see 3.2.8).

[1] Effect of Drug Law Enforcement on Drug-Related Violence: Evidence from a Scientific Review, http://www.icsdp.org/docs/ICSDP-1%20-%20FINAL.pdf

As for price, prohibition drives up the street value of drugs astronomically, creating lucrative markets and allowing New Zealand gangs to become stronger, more organised and able to expand into both the production and distribution of far more harmful drugs like 'P'.

Announcements by the government that the current approach is "balanced" between three equally important areas of supply control, demand reduction and problem limitation are simply propaganda. Supply is completely uncontrolled, all the evidence shows demand has nothing to do with the law, and problem limitation services are drastically underfunded.

The current law pays only lip-service to the concept of harm minimization. The recent re-write of the National Drug Policy to make the definition of harm minimization fit the current law – rather than the other way around - is just one example.

The Misuse of Drugs Act maximizes harm in a number of ways:

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

- 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.

- 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.

- 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 meth to new customers. The 2001-2 Health Select Committee cannabis inquiry noted:

  > *"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"* [2]

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

- 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.

- 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

[2] New Zealand Parliamentary Health Select Committee, 2003: "Inquiry into the public health strategies related to cannabis use and the most appropriate legal status", available at http://tinyurl.com/277l4jk

diverted away from serious crimes (assaults, burglaries, etc) because it is spent on criminalising drug users or 'social suppliers' of drugs.

Drug prohibition has been a complete failure. The US drug czar recently admitted to Associated Press that after 40 years, us$1 trillion, the Drug War has failed to meet any of its goals:

> *In the grand scheme, it has not been successful. Forty years later, the concern about drugs and drug problems is, if anything, magnified, intensified.*[3]

3.2.2 Drug control laws should respect human diversity and fundamental human rights.

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. Drug use should never be discriminated against as being bad, wrong, immoral, any more than driving a car or skiing should be; all these activities have inherent risks.

Not everyone likes using alcohol. Adults have the right to choose a drug that suits them best to relax and socialise with.

Our current law also fails to recognize the spiritual use of drugs. Just as Catholics drink wine at communion, Rastafarians hold ganja to be a sacrament. Coptics, Sufis, Hindus, Zoroastrians, and some sects of Christianity all use cannabis for their worship. Followers of other faiths may use other substances, such as mescaline, peyote, salvia or mushrooms.

In August 2009, Argentina decriminalized use and personal possession of all drugs when the Supreme Court ruled it unconstitutional on human rights grounds to arrest a person for drug use or personal possession.[4] In September, Colombia's Supreme Court issued a similar ruling.[5]

3.2.3 Personal use of drugs should not result in any criminal penalties. All penalties for personal use should be reduced if not eliminated (Q6,7,8,9).

A commonly held perception is that any illegal drug use is inherently bad or morally wrong; something the current law reinforces. We need to distinguish between drug use itself and criminal behaviour that takes place in connection with drug use (i.e. drunk driving; robbing a store to get money for 'P', etc).

Nobody should be punished or criminalised or forced into rehabilitation simply for their own drug use.

- There should be no penalties whatsoever for the use or possession of any drugs.

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[3] Associated Press, 13 May 2010: After 40 years, $1 trillion, US War on Drugs has failed to meet any of its goals, available at http://www.foxnews.com/world/2010/05/13/ap-impact-years-trillion-war-drugs-failed-meet-goals

[4] http://www.guardian.co.uk/world/2009/aug/31/mexico-argentina-decriminalise-drugs

[5] http://www.globalpost.com/dispatch/mexico/091018/drug-decriminalization-marijuana

- If a drug user has a problem that affects only themselves, they should be offered treatment.

- The only role for the criminal law is if a drug user harms other people.

A commonly held misconception is that penalties reduce demand. Supporters of the current law say use would inevitably increase if we made even small changes. However all the available evidence shows that is not the case.

The attached white paper "Real World Ramifications of Cannabis Legalization and Decriminalization"[6] documents the actual effects of cannabis law reform around the world. Examples include:

- Portugal decriminalised the possession of drugs in 2001. Last April, the Cato Institute published a report attesting to positive results since implementing decriminalisation; amongst other things: a 25% decline in drug use among 13-15 year olds and a 22% decline in drug use among 16-18 year olds. Furthermore, there was an overall decline in the use of every drug except cannabis, which increased at significantly lower rates than European countries which had not decriminalized.[7]

- Teenage cannabis use declined in the UK when cannabis was downgraded to Class C, and also in California when medicinal cannabis was made widely available.

A 2008 report for the World Health Organisation found:

> *"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 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."*[8]

3.2.4 If penalties for personal use remain then a cautioning system is preferred.

Infringement notice systems can turn into revenue-gathering devices and be used to harass people. This has been well-documented in South Australia. Drug laws already punish disproportionately the young, the poor and Maori; this tendency would increase under an infringement notice system.

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[6] NORML, 2010. Real World Ramifications of Cannabis Legalization and Decriminalization, available at http://norml.org/pdf_files/NORML_Real_World_Ramifications_Legalization.pdf

[7] Greenwald, Glenn, 2009. Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies, available at http://www.cato.org/pub_display.php?pub_id=10080. For more about Portugal, see "Lessons from Portugal", Norml News, Winter 2009. This issue has recently been referred to the censors but the article is available online at http://www.norml.org.nz/article690.html

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

3.2.5 Separating the markets for low-risk and high-risk drugs should be state policy.

Access to high-risk drugs should be controlled (e.g. treatment clinic or doctor's prescription). Access to low-risk drugs like cannabis should be regulated via an adults-only, taxable market similar to that in the Netherlands.

New Zealand should take the best bits from the Dutch approach and avoid what has not worked.

Coffeeshops have successfully separated cannabis smokers from suppliers of hard drugs, and by enforcing a legal age limit of 18 years to buy cannabis, access by minors is made more difficult: according to WHO, only 7% of Dutch teens under 16 have tried marijuana, compared with 27% here.[9]

Coffeeshops aren't allowed to advertise cannabis outside their premises. If they create disturbance, generate litter or graffiti their operating license will be revoked. Not arresting drug users has made access to education and treatment much easier and Dutch users are far more likely to seek treatment than New Zealand users.

However a major flaw in Dutch policy is that they only regulated the retail sale of cannabis, not cultivation or supply, so coffeeshops break the law by purchasing from organised crime. Because cannabis isn't fully regulated, no excise tax is ever collected on sales. The main reason they cite for not legally regulating the supply of cannabis is the international drug control treaties.

3.2.6 We should reject obsolete and failing international drug control conventions.

They are a barrier to achieving effective solutions. NORML is concerned by the Commission's reluctance to look at possibilities outside the convention standards. The Single Convention and other drug control treaties should be rejected. New Zealand should give notice it intends to withdraw from all clauses that proscribe the criminalization of drug users.

Even within the treaties, there is significant room for maneuver. Other countries (Holland, Portugal, Spain, etc) have managed to significantly alter the approaches they have taken towards drugs covered by international conventions by shifting legislative policy away from being a police issue to being a health issue.

It's time for NZ to lead the world in drug policy; in the same way that we were the first country to give women the vote and to declare ourselves nuclear-free.

[9] Degenhardt et al. 2008.

3.2.7 Controlled drugs, including alcohol and tobacco, should be classified on two evidence-based scales: toxicity and addictiveness.

The present classifications are based on a presumption that the harmfulness of a substance can be measured and the substance classified as A, B or C on that basis. Harmfulness is not a scientific term, and the system leads to anomalies such as cannabis plant material being considered less harmful than extracts.

We support the Law Commission's view expressed in the issues paper that the same drug should not have two classifications merely because one form of the drug is more concentrated.

"Harmfulness" is open to subjective interpretations, such as consideration of the "harm to society" or moral judgments about what citizens should or should not do.

Harms should be measured in terms of scientific standards. The two principal components of harmfulness are the substances toxicity and its addictiveness, and the official classification system (EACD) should produce objective measures of these two components.

The only role for politicians should be to set the framework for drug classification, acting on the recommendations of this review. After that, actual classification should be the function of the Expert Advisory Committee on Drugs or similar body.

If the EACD is retained its membership should be reformed. Officials of enforcement departments should attend and advise but should be members of the committee. Membership should include experts in toxicology, pharmacology, addiction, harm reduction, treatment, education, human rights, and a genuine representative of the drug using community.

3.2.8 Harsh penalties for supplying cannabis are unnecessary.

Advocates of continued prohibition often talk about "sending messages" to youth, and claim any reform of our drug laws would "send the wrong message". We should not base our criminal justice policy on how it may be misconstrued by the immature. Instead we should implement laws that are fair, just and effective, and educate people – including the young – so they understand them.

If penalties for supplying drugs continue, they should avoid imprisonment especially where "social supply" is indicated (such as; small quantities, supply to friends, not motivated by profit).

Criminal penalties for those caught participating in the cannabis market often impose a heavy burden on those apprehended and their family. Furthermore, the law is applied discriminatorily: young people and Maori being most vulnerable to arrest.

Our experience with marijuana law enforcement is that police often operate based on stereotypes. People who fit the description tend to be searched and prosecuted, while middle-class pakeha seldom come to their attention. Maori, Pacific Islanders and young males wear the brunt of convictions, irrespective of their rates of use.

In 2001, Maori made up 14.5 percent of the population, but received 43 percent of convictions of cannabis use and 55 percent of convictions for cannabis dealing.[10]

Cultivation of cannabis, even for personal use, regularly leads to jail time. A criminal conviction for cannabis can create barriers to employment and lead to loss of other privileges: rejection of an overseas work visa application for example.

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

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.[11]

This year, an international review by the Canada-based International Centre for Science in Drug Policy (ICSDP) 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. [12]

The ICSDP 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.

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.

3.2.9 The presumption of supply contravenes the Bill of Rights and should be repealed

A fundamental principle of our judicial-legal system is the presumption of innocence. This is protected by the Bill of Rights Act 1990. Drug laws that presume guilt are contrary to this and should be rejected. The Supreme Court said as much (R v Hansen), and has called upon parliament to re-examine the presumptions of supply contained in the Misuse of Drugs Act.

The Commission should consider why there is a presumption of supply at all. Police should be made to work for their convictions and should always provide actual evidence of supply.

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[10] New Zealand Parliamentary Health Select Committee, 2003: "Inquiry into the public health strategies related to cannabis use and the most appropriate legal status", available at http://tinyurl.com/277l4jk

[11] Degenhardt et al. 2008.

[12] Effect of Drug Law Enforcement on Drug-Related Violence: Evidence from a Scientific Review, http://www.icsdp.org/docs/ICSDP-1%20-%20FINAL.pdf

3.2.10 Medicinal use of cannabis should be allowed.

We support the views expressed in the issues paper for medicinal cannabis to be made legally available for people suffering from illnesses where it might assist them (Q15). This should be under medical supervision with a system of licensed suppliers.

The current exemption process is onerous and difficult for patients to navigate.

There is a lot to be learned from California and other US states that allow safe access to medicinal cannabis. Our recommendations are:

- Patients suffering any condition should be allowed access to medicinal cannabis, upon written recommendation by a doctor.
- It needs to be recognised cannabis is not a new pharmaceutical but a traditional herbal remedy. Regulations should be appropriate for that level of risk.
- Patients should have ID cards issued either by a District Health Board or contracted NGO. The ID cards should confirm they are legally entitled to use cannabis medicinally.
- Patients should be allowed to grow their own or nominate someone to grow for them.
- Patients should also be able to access a variety of medicinal cannabis products including mouth sprays, tinctures, foods, lip balms, whole plant extracts, hash oil, etc, from government-licensed suppliers.
- There should be no official limits on legal amounts, etc. Doctors should decide patients' dosage/supply on a case by case basis.
- If it is to be bought, medicinal cannabis needs to be affordable. Consideration should be given to subsidising cannabis medicines.

3.2.11 Health problems, including addiction, caused by tobacco, alcohol and other drugs should be funded adequately and treated consistently.

Compulsory treatment should be reserved for exceptional cases. Voluntary treatment should easily available.

Treatment and education are far more effective in reducing harms and demand than law enforcement – and do not carry the well-known and unwanted side effects of prohibition.

Funding for effective treatment and education programs should be greatly increased. This can be easily paid for through:

- Savings in law enforcement (police, courts, prisons, etc)
- An excise tax placed on all legally available drugs (alcohol, tobacco, cannabis, etc)

Abstinence programs are not effective for everyone. Maintenance therapy is already provided for nicotine and opiate addicts. Consideration should be given to extending this to those who are addicted to other drugs such as methamphetamine.

3.2.12 Harm-reducing pipes and bongs should be allowed.

Not only that, but their use should be actively encouraged amongst cannabis smokers.

Waterpipes cool and filter smoke, and reduce ash and solid particulates. Vaporisers let users avoid the harms of smoking completely, by heating herbs to a temperature less than combustion. Despite such benefits, an Auckland importer (The Hempstore) has recently had their entire shipment of aromatherapy vaporisers seized by Customs, who are alleging they are hash pipes.

Consideration should be given to funding the development and provision of proven harm reduction technology, just as needle exchange programs and nicotine replacement therapies are currently subsidised. Funding for such programs could be greatly increased by placing an excise tax on all legally available drugs (alcohol, tobacco, cannabis, etc).

3.2.13 Hemp should be removed from the legislation

It is frustrating that hemp is administered by MedSafe rather than MAF. It is ridiculous that hemp foods are prohibited for human consumption on the grounds of being too healthy (so may encourage impressionable youth to start smoking pot!).

Hemp should not even be covered by drug legislation. Farmers should not be required to get a permit to grow a crop. Manufacturers should not be required to wade through red tape to make or sell a product.

Our recommendation is to amend the statutory definition of cannabis to include only varieties that test over 0.3% THC, the internationally accepted definition of non-psychoactive hemp.

3.3 APPENDICES

For a comprehensive discussion of our position and why we hold it, please see our submission made to the 2001-2003 Health Select Committee cannabis inquiry (attached). Although this report was written in 2001, the points it makes are still valid today and entirely relevant to the Law Commission's current deliberations.

This should be considered to be part of our submission to the Law Commission's current review, together with this document and the attached appendices:

- Economics of Cannabis Legalization, by Dale Gieringer, Ph.D. California NORML
- Real World Ramifications of Cannabis Legalization and Decriminalization, NORML USA.
- Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies, by Glenn Greenwald, 2009.

- Effect of Drug Law Enforcement on Drug-Related Violence: Evidence from a Scientific Review, ICSDP, 2010.

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

We would very much like to appear before the Law Commission to explain our views, answer any questions, or provide advice if you need it.

We can also arrange to bring to you medical marijuana patients, home growers unjustly charged with supply, weekend tokers who have lost their jobs due to drug testing, parents who have lost their kids due to allegations of cannabis use, and other victims of the current law. Meeting and talking with such people may provide insights into the effects of the current law.

Yours sincerely,

Phil Saxby
on behalf of the Board of Directors,
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