

Health and Other Legislation Amendment Bill 2018

Personal Submission to the

Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee of the Queensland Parliament

by

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Introduction

Through the good offices of staff in the Deputy Premier's office and the Health Minister's office I have been invited to make a personal submission. This submission complements the submission I have written on behalf of the Queensland Council for Civil Liberties, for whom I have been for many years the Council's representative on drug law reform. In this submission I would like to make a few points about the unregulated medicinal cannabis market.

I believe it's very important to understand the history of cannabis law so as to establish a framework from which to view the multiple agendas and voices that contribute to this ongoing conversation.

Paradigm change

The concept of paradigm change may explain the extraordinary resistance to the legalisation of medicinal cannabis. Paradigm changes can take a long time to be generally accepted, with the quickest adopters the professional and amateur experts who are closest to the subject. The big paradigm change that everybody knows is the change from Newtonian physics to Einsteinian physics, which took two centuries (1687-1905). In the earth sciences the paradigm change from Uniformitarianism to Plate Tectonics took 54 years from 1912, when Wegener first formally proposed continental drift, to 1966 when a sea-spreading was proven. Similarly, the shift in understanding of climate change from natural processes to human-driven processes is another paradigm change.

I would like to propose that the change from the view that cannabis is a very dangerous drug to one where cannabis is a very safe medicine is another paradigm change. The full paradigm change—legalisation of all uses of cannabis—is some way off in Australia, possibly not even in sight, but has already been achieved in Canada and several US states.

Importance of Nixon

From the 1930s Drug Czar Harry Anslinger and his little department prosecuted cannabis use among Mexican groups as a way of building his drug control administration after the end of alcohol prohibition undermined the business case for his department. Despite the now

infamous movies like 'Reefer Madness' commissioned by him, cannabis use until the late 1960s was a minority practice that bypassed the vast majority of the American population.

Everything changed when Nixon inaugurated his War on Drugs and made cannabis legally equivalent to heroin. Nixon had had extraordinary success in developing the public's consciousness of heroin use from a non-issue in 1968 to a top rating in 1971. This was very bad news for cannabis, and has coloured perceptions of it ever since, particularly the slander that the heroin addiction model can be applied to cannabis.

Nixon's War on Drugs represents the second biggest escalation in the history of the demonisation of cannabis, the first being the 1930s decision by Anslinger to make cannabis the foundation of his Drug Czar empire.

In the following extract from a speech I made last year, I expand the argument that the demonisation of cannabis is a relic of cynical opportunists and an easily fooled public.

EXTRACT FROM SPEECH TO 14Feb17 CANNABIS RALLY BRISBANE

Legalisation case

In common sense terms the civil liberties case for legal cannabis is very simple.

1. Cannabis is a herbal substance that has been shown by **very strong anecdotal evidence** in Australia and over 100 **peer-reviewed scientific studies** overseas to be an effective medicine for several common medical conditions, and probably a superior medicine for treating intractable epilepsies.
2. Cannabis is not a sedative, it is not a stimulant, it is not a narcotic. It falls into a category of its own.
3. Unlike everyday over-the-counter medicines like aspirin and panadol, cannabis has **never killed anyone**. Mainstream pharmaceutical medicines often kill people **when used unwisely**.
4. Illegal cannabis use for both medical and non-medical purposes in Australia is **remarkably safe**. It is generally estimated that about 750, 000 Australian use it every week. That translates to about **150,000 weekly Queenslanders users**. If cannabis wasn't very safe we would expect to see our **hospital emergency wards** full of casualties: we don't.
4. Because only small amounts are needed, medicinal cannabis is even safer than cannabis used recreationally, probably by an order of magnitude. Smoking or vaporising cannabis for medicinal purposes is very safe.
5. It therefore follows that medicinal cannabis should be **legally available** to all those persons who could benefit from its medicinal properties. And because it is so safe anyone who supplies it to another person should also enjoy the protection of the law.

Yet access is **repeatedly, routinely** and **brutally denied**. Why?

Submission

My submission is that medicinal cannabis is so difficult to access because recreational cannabis has for decades been **classified** as a drug of equivalent power, addiction and danger to **heroin** (and cocaine). The reason why this classification was made and still stands is because politicians said so and still say so. There has never been any credible scientific evidence or medical evidence to support this classification. All the experts know it, and the experience of hundreds of thousands of users confirms it. Even the **2015 Byrne report** on organised crime in Queensland gives cannabis a **virtual free pass**. But the mythology continues and a whole generation of law enforcement and public health bureaucrats have grown up with the mythology and believe it represents the **conventional wisdom**.

A few key signposts along the way are the **1961 UN Single Convention on Narcotic Drugs**, which introduced for the first time a strong international prohibition on cannabis. The Single Convention was **ratified by Australia in 1967**, and from then on according to Fox & Matthews' account, Australia law makers "sought to conform closely to the international prohibitionist approach led by the US. International opinion entrenched the assumption that the way drug use was being controlled in this country was **effective and inevitable**. Strict prohibitions, severe penalties and the punishment of possession came to be seen as **unquestionable**."

Demonisation of supply

The next key signpost in the War on Cannabis began in Australia in 1970. With state laws enacted in NSW, South Australia, Queensland and Victoria in 1970-72, there began to be a real intensification of the dichotomy between traffickers and possessors.

One of the **biggest mistakes** in the 40 year-long cannabis law reform campaign is that activists allowed ourselves to be **placated** by the substantial easing of penalties for possession and use, while at the same time penalties for supply and selling were constantly **escalated**, indeed for large scale commercial supply penalties were escalated to astronomical levels. At the same time the language of demonizing dealers and producers became more and more extreme, trafficking replaced selling. The sex fiend marihuana user of the 1930s 'Reefer Madness' movies was replaced by the evil Mr Big businessman of the 1980s. And one of the most iniquitous features of this trend was the arbitrary designation of possession of a certain quantity of drugs as 'supply'.

But even while possession/use penalties were being gradually reduced, is it important to note that simple cannabis possession and use remained as criminal offences, and that user claims the cannabis was for medicinal purposes cut no ice with police and the justice system. It is a striking fact that at the same time the Queensland government made medicinal cannabis legal—at least in theory—it **increased** the maximum penalties for supply. As well, the number of Queensland police arrests for cannabis offences has kept on increasing, by 10% in the 2013-14 year and by 18% in the next year, 2014-15. In the most recent yearly stats 23,850 Queenslanders were arrested for cannabis offences, 87% of which were for small offences excluding production and supply. Assuming Qld police are following government policy, this is very disturbing.

Two other points are worth making here. 1. From the very beginning of a cannabis market in Australia, many people used cannabis for medical reasons. 2. Also from the very beginning

there have always been compassionate suppliers who provided cannabis for medicinal purposes free of charge. It is certain that large numbers of users of illegal cannabis are still using it for medical reasons.

QCCL Submissions

QCCL made three detailed submissions to the development of the **2015 Queensland legislation** on medicinal cannabis, two to the Health department and one to the parliamentary committee. I also appeared before the parliamentary committee. In every one of our submissions we pointed out as forcefully as we could that the legislation made **no credible provisions for the supply** of medicinal cannabis. We also pointed out that the Victorian parliament had ‘got’ the supply problem and had decided to set up their own medicinal cannabis industry as a result. One of the parliamentary committee members even told me to shut up about supply, they got sick of hearing me go on about it.

To rephrase my previous point. **Supply**—selling, farming, production, self-growing, compassion giving, trafficking—has become so demonised that everybody in the drug war law enforcement bureaucratic industrial complex walks around it on tiptoe.

So now we have this crazy situation. Supposedly legal medicinal cannabis in Queensland, and **no supply** apart from a tortuous, incredibly frustrating and time-consuming bureaucratic process that hails success in terms of a dribble of small cannabis medicines packages imported from Canada.

Nixon’s War on Drugs

Richard Nixon formally declared his **War on Drugs in June 1971**. But the groundwork was laid during his presidential campaign. Before he was elected president in November 1968, he had settled on his key messages:

- The anti-war people and the black civil rights movement were responsible for the burning ghettos and the street battles that were raging across the country. For **white people**—Nixon’s so-called silent majority—these two groups were lawless wreckers of their quiet lives.
- Protestors were **bad people** and needed to be severely punished, not coddled by welfare programs. Street policing was the key. This would get them off the streets and off the television screens.
- People used drugs because they were bad people.

It was Nixon’s **peculiar genius** in 1968 to realise that people would respond strongly to these messages even in places where there was **no race problem and no crime**. All because of **television**. He was probably the first politician to understand the visual power of television in every American home.

Nixon rolled all of his campaign themes into drugs. In September 1968 Nixon told a Republican rally that the standout problem was “**the problem of narcotics**.” Although he didn’t actually name it then, this was where his war on drugs began. It only remained for him to find a way to legally involve his new administration in policing street crime, up until then the prerogative of local police. Drugs were the key. All illegal drugs used in America at that time were imported. A staffer in Nixon’s White House came up with the idea of using the

federal government's exclusive powers over drug importation and interstate drug movements to create a whole new set of laws targeting domestic drug use. So began the War on Drugs.

John Ehrlichman

Heroin aside, the **extraordinary cognitive dissonance** between the mild psychoactive effects and minimal harms associated with recreational cannabis use, versus the **draconian penalties** attached to it by law enforcement has been a puzzle for more than 40 years. In an article published in the April 2016 issue of *Harpers' Magazine* Dan Baum finally provided an answer. In 1994 **John Ehrlichman**, a member of President Nixon's inner circle and a convicted Watergate co-conspirator, told him this:

“You want to know what this was really all about?” he asked with the bluntness of a man who, after public disgrace and a stretch in federal prison, had little left to protect. ‘The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the **antiwar left and black people**. You understand what I’m saying? We knew we couldn’t make it illegal to be either against the war or black, but by getting the public to associate the **hippies with marijuana and blacks with heroin**, and then **criminalizing both heavily**, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were **lying about the drugs**? Of course we did.”

<https://harpers.org/archive/2016/04/legalize-it-all/>

This point is very important. The draconian penalties attached to cannabis by Nixon had absolutely nothing to do with concern for the health of the user, and nothing to do with the indirect effects widespread recreational cannabis use might have in the community. Instead, the **clear intention** was to **harm the health of cannabis users** to the maximum extent.

Later events illustrate how the war would be waged.

In 1971 a **big peace demonstration** was scheduled for May 3 in Washington DC (federal District of Columbia). Nixon hated these demonstrations and sought some way to stop it. A cute new city law designed to test a national law for the coming War on Drugs included a **preventive detention** provision. Nixon ordered **federal narcotics agents** to arrest and hold **8,000 people** on marijuana charges the day before the march, only releasing them after the demonstration was over.

Surveys showed Nixon's drug campaign was enormously effective. An opinion survey in May 1971 revealed **23 percent** of Americans now believed drugs were the country's number one problem, up from 3 percent in 1969. And although in 1972 heroin addicts constituted about **one-quarter of one percent** of the population, surveys confirmed they loomed **large and terrifying** in the public mind.

In March 1972 Nixon's own **National Commission on Marijuana and Drug Abuse** delivered its report **recommending legalising** possession and sales of small amounts of marijuana. Publicly, Nixon said only he read the report and it did not change his mind. Privately he was furious that a commission ordered by him had sided with his sworn enemies, the counterculture. It was one of those rare occasions where a government appointed

commission came up with the wrong answer. But what is most extraordinary is that **none of the big newsweeklies** like *Time* and *Newsweek* ran it. The press let Nixon **bury the story**.

Civil liberties

Many if not all of the erosions of civil liberties over the last five decades were modelled in Nixon's War on Drugs and the subsequent Reagan War on Drugs. This happened well before the modern sex offender and anti-terrorism laws. The War on Drugs introduced mandatory sentencing; reverse onus of proof; warrantless invasion of homes based on reasonable suspicion; proceeds of crime laws allowing confiscation without conviction; phone tapping laws; cash transaction laws; and 'civilisation' of crime generally by replacing the criminal standard with the civil standard of proof.

If you're wondering how it was possible for Centrelink to put the onus of proof on welfare recipients to prove they don't have a debt problem, look no further than Nixon's War on Drugs.

Why won't they let go of cannabis?

The War on Drugs has always relied on the popularity of cannabis, because injecting drug use (heroin, cocaine, speed) has always been too small a problem to justify the billions of dollars spent by the industrial-law-enforcement-judicial industry in the decades since Nixon was forced out of office.

END EXTRACT

Queensland Police prosecutions

Over the last four decades minor cannabis possession and use has been partially decriminalised in Australia, although police prosecutions are up. But state laws enacted in 1971-1972 introduced an ideological schism between possession and supply that demonized supply, resulting in ever increasing penalties for supply at the same time as there was a gradual relaxation of penalties for possession and use. The demonization has been so effective that black market compassionate and grow-your-own suppliers are now treated as if they are master criminals.

The Queensland government has legalised medicinal cannabis, at least nominally, at the same time as police arrests for minor cannabis offences continue to climb. The following extract from a second petition by MCAGQ and MCUAA highlights this issue (Appendix B):

“Queensland consistently leads the nation with the highest number of cannabis arrests in the country—30.7 percent. The Illicit Data Report for 2016-17 reported there were 23,836 cannabis arrests in Queensland. Over 90 percent of all cannabis arrests are consumers—patients, carers and other cannabis consumers, NOT the drug—traffickers who were the objective target of the Drugs Misuse Act 1986.”

In Portugal a halfway house decriminalisation model, applied to all psychoactive drugs in the illicit pharmacopeia, has seen big falls in police prosecutions, although failing to address the supply issue for cannabis, the most popular substance there by far.

The October *The Monthly* magazine has a wonderful essay by Dr Karen Hitchcock about drug law reform. I recommend it to all members of the Queensland parliament:

Drugs: on medication, legalisation and pleasure

By Karen Hitchcock

The Monthly Essays October 2018

<https://www.themonthly.com.au/issue/2018/october/1538316000/karen-hitchcock/drugs-medication-legalisation-and-pleasure>

John Ransley
8 January 2019

Note on personal qualifications

1. QCCL representative on drug law reform. Two submissions to Queensland parliamentary enquiries on cannabis—1993 and 2010—a submission to the Senate committee inquiry on medicinal cannabis—2014—and two submissions concerning the current Queensland medicinal cannabis legislation—March and April 2016. Plus appearances before parliamentary committees.
2. When my partner was dying from cancer smoked cannabis was the only medicine that effectively treated her chemotherapy and radiotherapy-related nausea.