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Professor John McMillan AO
C/- Narcotic Drugs Act Review Secretariat
Health Products Regulation Group
Australian Government Department of Health
PO Box 100
Woden ACT 2606

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Via: ReviewNarcoticDrugsAct@health.gov.au

Dear Professor McMillan,

RE: Written Submission regarding the Review of the Narcotic Drugs Act 1967

Thank you for the opportunity to provide a written submission to this independent review of the medicinal cannabis regulatory scheme (amongst other things) under the Narcotic Drugs Act (NDA).

I wish to expressly endorse and incorporate by reference a submission by and titled: "United in Compassion - Review of the Narcotic Drugs Act 1967 – Submission to the Review" (hereafter the UIC Submission).

That UIC Submission should be seen and acknowledged by the Review for what it is: strong evidence of the 2016 NDA legal-medico-microeconomic reforms having manifestly failed to deliver a suitable framework for sustainable supply of safe medicinal cannabis products for therapeutic purposes.

I plan to expand upon that Submission and place it in a global policy context – that of course being that the World Health Organisation recently recommended to the UN Director General that Cannabis be materially reformed with regard to Scheduling and therefore broader access under the framework of the Single Convention on Narcotic Drugs 1961 (as amended) be undertaken as expeditiously as possible. With those amendments likely to occur in March of 2020, Australia should be aiming to now produce a better framework that aligns with our key ally's and trading partners so as to ensure a *sustainable supply of safe medicinal cannabis for ill Australian's as the current regime does not achieve this.*

Regards

[redacted]

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1) **Does the Narcotic Drugs Act 1967 establish a suitable framework for ensuring a sustainable supply of safe medicinal cannabis products for therapeutic purposes?**

Answer:

No - because on the 24th January 2019, Dr Tedros Adhanom Ghebreyesus (Director General , World Health Organisation) wrote to the Secretary General of the United Nations, his Excellency, Mr Antonio Guterres recommending that with reference to Article 3, paragraphs 1, 3, 5 and 6 of the Single Convention of Narcotic Drugs (1961) (as amended by the 1972 protocol, and Article 2, paragraphs 1, 4 and 6 of the Convention on Psychotropic Substances (1971)), that with respect to cannabis and cannabis-related substances:

1) Cannabis and cannabis resin – should be deleted from Schedule IV of the Single Convention on Narcotic Drugs (1961).
2) Dronabinol (delta-9-tetrahydrocannibinol)
    - To be added to Schedule 1 of the Single Convention on Narcotic Drugs (1961)
    - To be deleted from Schedule 2 on the Convention of Psychotropic Substances (1971), subject to the CNDs adoption of recommendation to add dronabinol and its stereoisomers delta-9-tetrahydrocannibinol to Schedule 1 of the Single Convention on Narcotic Drugs (1961)
3) Tetrahydrocannibinol (Isomers of delta-9-tetrahydrocannibinol)
    - To be added to Schedule 1 of the Single Convention on Narcotic Drugs subject to the CNDs adoption of the recommendation to add dronabinol and its stereoisomers to Schedule 1 of the Single Convention on Narcotic Drugs (1961)
    - To be deleted from Schedule 1 on the Convention of Psychotropic Substances (1971), subject to the CNDs adoption of recommendation to add Tetrahydrocannibinol and its stereoisomers delta-9-tetrahydrocannibinol to Schedule 1 of the Single Convention on Narcotic Drugs (1961)
4) Extracts and Tinctures
    - To be deleted from Schedule 1 of the Single Convention on Narcotic Drugs (1961)
5) Cannabidiol preparations
    - To give effect to the recommendation of the 40th meeting of the WHO Expert Committee on Drug Dependence that preparations considered to be pure cannabidiol (CBD) should not be scheduled with the International Drug Control Conventions by adding a footnote to the entry for cannabis and cannabis resin in Schedule 1 of the Single Convention on Narcotic Drugs (1961) to read: "Preparations containing predominantly cannabidiol and not more than 0,2% delta-9-tetrahydrocannibinol are not under international control".
6) Preparations produced either by chemical synthesis or as preparation of cannabis, that are compounded as pharmaceutical preparations with one or more other ingredients and in such a way that delta-9-tetrahydrocannibinol (Dronabinol) cannot be recovered by readily available means or in a yield which would constitute a risk to public health
    - To be added to Schedule III the Single Convention on Narcotic Drugs (1961)

While the adoption of these recommendations by the UN Commission on Narcotic Drugs was expected for March 2019, the Commission decided to postpone *sine die* the vote on the WHO Expert Committee's final recommendations. It is now likely that the Commission only takes action on the WHO recommendations in March 2020 during its 63rd session. **This should not hold us up though here in Australia...!**

The practical effect and impact of this/these inevitable re-scheduling(s) (the most significant since 1961) should be to give Australia significant pause and cause <u>immediately</u> to consider the wholesale removal of cannabis (and its derivatives) as described above at (1) to (5) from the Narcotic Drugs Act 1967 altogether as it no longer provides a suitable framework for ensuring a sustainable supply of safe medicinal cannabis products for therapeutic purposes. It was never intended to be a licensing statute and the interaction of Cth and State laws in this space simply results in inequity, inefficiency in government and medical cannabis stakeholders left in a 'state of limbo.'

Such comments must be seen in a global context of the Convention's future place in International Law and by implication Australian domestic law *(if at all in a Cannabis context) given:*

- ***Canada*** *– a key Australian trading partner, ally and fellow Commonwealth jurisdiction and economy legalising Cannabis subject to provincial and/or other domestic territorial restrictions, for adults who are 18 years of age or older. They are now legally able to:*
    - *possess up to 30 grams of legal cannabis, dried or equivalent in non-dried form in public*
    - *share up to 30 grams of legal cannabis with other adults*
    - *buy dried or fresh cannabis and cannabis oil from a provincially-licensed retailer*
    - *in provinces and territories without a regulated retail framework, individuals are able to purchase cannabis online from federally-licensed producers*
    - *grow, from licensed seed or seedlings, up to 4 cannabis plants per residence for personal use*
    - *make cannabis products, such as food and drinks, at home as long as organic solvents are not used to create concentrated products*
    - *Cannabis edible products and concentrates will be legal for sale approximately one year after their Cannabis Act came into force on October 17th, 2018.*
- ***United States of America*** *- another key Australian trading partner and ally: a significant degree of latitude regarding the International Narcotics Control Board's enforcement mechanisms has been shown to the USA. This Review should be far more cognisant of this in determining a new recommended more open, expansionary framework in Australia.*
    - *For example, the United States of America is considered in 'good standing' regarding the treaties/Conventions above despite the fact that more than 40 of the country's States now permit at least legal medicinal marijuana and it is fully legal in 9 US States. This so-called 'good standing' is because marijuana remains illegal at the national government level.*
- These two countries (and 16 others around the world) have between a 5 year and 16 year medical cannabis policy head-start over Australia in providing better frameworks for access to this plant medically whether inside our outside the Convention. This is causing Australia's health, legal and economic systems to suffer and fall behind unnecessarily.
- ***More broadly though, by implication, these two ally's/key trading partners (along with many other countries) will face a short to medium term prospect to either (a) remain in the treaties but openly violate them, (b) exit the treaties (and then rejoin with reservation) or (c) attempt to reform the treaties - ostensibly by organising a group of like-minded countries to remove cannabis from the list of banned substances.***
    - ***Australia should be positioning (c) to support our ally's and key trading partners in any policy framework reform settings with sensible alignment as this is in the interests of (i) safe reliable supply chains (ii) international trade, finance and administrative law flow on impacts (e.g. matters including as varied as taxation and intellectual property law etc) all of which will (iii) help to ensure safe, more affordable, medicinal cannabis supply to sick Australians.***

In summary (Q 1):
The cannabis plant has up to 144 different cannabinoids (beyond the two mainstream well known ones in THC and CBD) and potentially millions of strains each with varying cannabinoid ratio compositions ultimately that can be used to treat multiple different parts of the human endo-cannabinoid system for numerous medical ailments that afflict our people. *The World Health Organisation Expert Committee reviews outcome referred to above backs this statement and thus should inform a revised policy and legislative framework for Australia the background of which should and can be stated as:*

- *Cannabis is legitimate in medicine – arguably a new official WHO position that should be followed by and expanded upon by Australia sooner rather than later.*
- *Globally renowned experts consider herbal Cannabis less dangerous than Schedule I substances.*
- *Countries such as Australia should be encouraged to provide access to a variety of formulations.*
- *Countries such as Australia should have a broad choice and flexibility of policies on preparations.*

The UIC submission makes clear the 2016 reforms to Act are not and will not deliver such a framework.

The solution in my personal opinion is the removal of Cth oversight of cannabis from this Act with the current licensing framework carved out and transitioned to something more akin/aligned with the Regulator of Medicinal Cannabis Bill – which was passed by the Australian Senate in October 2014 and/or pure state based regulatory regimes.

The conclusion therefore to Q 1 is "no" – the Narcotic Drugs Act 1967 does not establish a suitable framework for ensuring a sustainable supply of safe medicinal cannabis products for therapeutic purposes.

2) **Does the Narcotic Drugs Act 1967 establish a suitable framework for ensuring the availability of cannabis products for research purposes?**

[redacted] Answer:

No.

A crimino-legal Act is not the framework for research. An agrarian-medico-pharma research framework is required such as that deployed in Israel.

Quite simply – the Commonwealth and the States needs to adopt / incorporate the Israeli research models into broader system reforms (via models linked/supported by Medicare and Private Health Insurers to bring down the cost, encourage research and to fight the black market). Then we can have collaborative research like what has/is being done at/by:

- Dr Dedi Meiri Principal Investigator, Technion Israel Institute of Technology, Laboratory of Cancer Biology and Cannabinoid Research.
- Raphael Mechoulam from Hebrew University.

3) **Does the Narcotic Drugs Act 1967 establish a suitable framework for preventing the diversion of controlled narcotics to illegal uses?**

[redacted] Answer:

No.

I would broadly refer you to the UIC submission in this regard.

In general I am not in a well placed position to accurately comment on the diversion framework of legal medical cannabis to illegal markets. To the extent it works for Cannabis it should be transitioned out into the alternate 2014 legislation mentioned above .

What is clear is that the Convention and the Narcotic Drugs Act 1967 have failed to deter illegal cannabis use since inception and the 2016 medical licensing environment reforms have not changed that: patients by behaviour continue to exhibit demand from illegal markets in preference to legal medicinal markets due to pricing, supply and a generally restrictive access regime at various points of the current framework. A multi-billion dollar illegal market continues to exist with no taxation, no quality control standards nor health monitoring/transparency of what is being taken and what for.

4) **Has the Commonwealth (and in particular the Office of Drug Control) implemented an efficient and effective regulatory scheme for medicinal cannabis? Is an appropriate and proportionate regulatory burden placed on those applying for or holding licences and permits? As to medicinal cannabis licences, is there duplication in the processes and information required in applying for a licence and a permit?**

[redacted] Answer:

I would broadly refer you to the UIC submission in this regard. Anecdotally 200+ license applications outstanding... I mean really...

5) **Has an appropriate compliance and enforcement regime been implemented, both in the Narcotic Drugs Act 1967 and administratively? Are risks being appropriately managed? Is there excessive risk aversion?**

[redacted] Answers:

I would broadly refer you to the UIC submission in this regard.

I would add as answers to each question:

- No.
- Yes. Although by all accounts over zealously.
- Yes. Australians are smarter than you give them credit for. Stop the nanny state mentality .

6) **Does the Act interact suitably with other Commonwealth, State and Territory laws relating to the regulation of cannabis products and narcotic drugs? Are the intersection points clear? Is there evidence of duplication?**

Interaction suitable? No. Intersection points clear? Somewhat. Duplication and inconsistency? Yes.

Australian adults should be free to make their own choices as long as they do not harm others. Limiting people's liberty is only justifiable to prevent harm to other people. The drug's prohibition at international , national and state level has failed to deter its use and caused more harm than it has prevented. Treating cannabis use as a criminal rather than a health issue has resulted in drug users gaining criminal records, not seeking help with drug-related problems when they need it, and being exposed to the black market and other, more harmful, drugs. Its limbo treatment across the Cth and the States creates deadweight loss in the economy and an administrative and criminal law burden on the court system unnecessarily. Dual regulation is causing economic loss often in the poorest socio-economic communities that use cannabis illegally.

More fundamentally: Sick Australians with a legal right at federal law for safe access to medicinal cannabis essentially have to give up their rights under State law to use a license to drive/control motor vehicles and machinery as there is no current valid test to measure "impairment". State road side testing regimes can result in criminal charges and/or loss of license *by simply detecting the existence of restricted substances in saliva on a per se basis*. There is no measure of impairment. Forcing someone to give up a driving license (which the vast majority of Australians use to travel to and from work via driving their car) effectively engages the right to freely choose and accept work under Article 6(1) of the International Convention on Economic, Social and Cultural Rights. On that basis, the Narcotic Drugs Act interactions with various State regimes governing restrictions on driving where cannabis is detected in saliva are assessed to be incompatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.