REPORT ON PROCEEDINGS BEFORE

PORTFOLIO COMMITTEE NO. 1 – PREMIER AND FINANCE

IMPACT OF THE REGULATORY FRAMEWORK FOR CANNABIS IN NEW SOUTH WALES

CORRECTED

At Invercauld House, Goonellabah, on Tuesday 20 August 2024

The Committee met at 12:00.

PRESENT

The Hon. Jeremy Buckingham (Chair)

Ms Cate Faehrmann
The Hon. Stephen Lawrence
The Hon. Natasha Maclaren-Jones (Deputy Chair)
The Hon. Jacqui Munro
The Hon. Cameron Murphy

PRESENT VIA VIDEOCONFERENCE

The Hon. Dr Sarah Kaine

CORRECTED

The CHAIR: Welcome to the third hearing of the inquiry into the impact of the regulatory framework for cannabis in New South Wales. Thank you very much, everyone, for making it here safe and sound. Before we begin, I acknowledge the Widjabul people of the Bundjalung nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respects to any Aboriginal and Torres Strait Islander people joining us today. My name is Jeremy Buckingham, and I am the Chair of the Committee.

I ask everyone in the room to please turn their mobile phones to silent. Parliamentary privilege applies to witnesses in relation to the evidence they give today. However, it does not apply to what witnesses say outside of the hearing. I urge witnesses to be careful about making comments to the media or to others after completing their evidence. In addition, the Legislative Council has adopted rules to provide procedural fairness for inquiry participants. I encourage Committee members and witnesses to be mindful of these procedures.

Mr JOEL HARDY, Chief Executive Officer and Co-founder, Cymra Life Sciences, affirmed and examined

The CHAIR: Thank you, Mr Hardy, for joining us, for making the time to give evidence and for your submission. Do you have some introductory remarks you'd like to make before we turn to questions?

JOEL HARDY: Cymra Life Sciences was formed about six years ago. We were one of the first 10 applicants to put in a licence and receive a permit. We're based in the Northern Rivers in Rous, near Alstonville. We employ about 47 people. About 17 of those are full-time, and the rest are contractors, permanent part-time or casual. We cultivate cannabis under our permit with the Office of Drug Control. We manufacture cannabis for oils and other formats—vapes and things like that. We also sell products on the Special Access Scheme category B. We have also completed a phase two clinical trial dose-escalation study for chronic pain. Typically, from a medical stance, we're targeting chronic pain, although we do have products for other conditions as well. That about sums up the introduction.

The Hon. NATASHA MACLAREN-JONES: Thank you very much for coming today. Yesterday we had a day of hearings in Sydney. A couple of the witnesses raised issues around access to medicinal cannabis, particularly in regional areas. Some of it was being able to access a GP. I wanted to hear your views in relation to some of the challenges that people face in accessing medicinal cannabis and what could be done to alleviate that.

JOEL HARDY: It's a good question. I have done consumer—or patient—research. We surveyed about 3,400 patients. The top three issues included price. Price is not just the product price; it's also the cost of appointments. As you probably heard from other witnesses, every time you want to change your prescription, you have to go back to the doctor to get another prescription for a different product. There are lots of different formats and lots of different products. Cannabis, which is quite a unique drug, has different effects from different products, so that makes it quite costly to keep going back to the doctor. The second one was the patient not being able to choose, potentially, and therefore getting controlled about what they get. That was a challenge. The third was also that doctors are not educated. There has been a rise of telehealth, which has pros and cons. It has given people greater access but, at the same time, the local GPs that people are used to dealing with are not educated, so they can't get access through their normal healthcare system. That has been a challenge. I would say they're the biggest hurdles that I see or hear about and what we got from the data.

The Hon. NATASHA MACLAREN-JONES: The other one you just mentioned about the cost of the product, that brings in the issue of import versus domestic. Do you have any cost comparisons of what they are and an overview of how that impacts the supply here? What are the benefits of growing the local market here?

JOEL HARDY: That's a big question. Let me start by what is actually happening. Is that okay? So 70 per cent of the product that comes into this country is imported. For the first five years of the TGA Special Access Scheme category B, Australian producers had to produce products to a GMP standard, which is good manufacturing practice, which is a pharmaceutical standard across all products. Importers were allowed to bring in a lower standard. I find that disgraceful, really. It's unfortunate that you would completely favour imports over domestic production.

The Hon. NATASHA MACLAREN-JONES: Was that an unintended consequence or something that—

JOEL HARDY: You'd have to ask the TGA. There was no patient safety involved because they made a higher standard for someone and they had a lower standard here. I'm not sure why we had to adhere to that standard. That was a very frustrating time for Australian producers. They changed that last July, I think, but the flood has continued. Basically, if you want to get an import permit for a product, it's very easy. You fill in paperwork, you ask for it and you can ship it over. If I want to create a new space within my site, six months and about $50,000 is basically what I've got to go do. There is a big difference. And I've got to prove where it's going to go because they're worried about diversion or they're worried about if I can oversupply and things like that. There's a big difference between how easy it is to import.

The last point that I would make is that, of the top five countries that import to this country, the number one is Canada, but there are a few others—South Africa, Colombia, Portugal and a few others. We can't export to any of those countries. That's not free trade. They're playing games with their rules using the INCB and a few other rules, but we don't seem to be playing any of those games. I think that the Labor Party, from a Federal perspective, has talked about "made in Australia", but we have got this industry here in a country that grows things and makes pharmaceutical products. That's what we're good at. We're one of the agriculture capitals of the world, yet we're allowing a country that doesn't have an agricultural history to import products into our country and we're not allowed to export to them. That's really frustrating for a producer who is trying to put local jobs in regional areas and grow things in an industry that is ripe for Australian producers and Australian growers.

The Hon. NATASHA MACLAREN-JONES: What would you like to see from a State Government perspective that could change to make it easier for your industry?

JOEL HARDY: There are a few things. The way you allow prescriptions to be taken up by patients—basically, they should be able to choose what they want at the pharmacy instead of having to keep going back for appointments. That is done in Canada, Germany and Israel. They're the three ones that I know. That's how they use the medical system, instead of having to keep going back. It's kind of like an open prescription, if that makes sense. It's kind of like a generic prescription. That's one thing that I think would open it up a bit better. Number two is that within the UN convention, the INCB, there is a mechanism for understanding oversupply in the country and making sure that there's an ability for local production to occur, which is what happens in opiates. There should be a similar adjustment in Australia as well.

The Hon. JACQUI MUNRO: Thank you so much for coming today. I am curious about that oversupply management mechanism. Could you explain that a little deeper?

JOEL HARDY: It is quite detailed, so I'll do my best. Within the INCB convention, if you look at the rules they have, as a Federal government, you're meant to forecast your demand for the following year and then estimate what supply you need to fulfil that. They're worried about diversion or oversupply of drugs into the country. Think about opiates mainly. You don't want countries that produce a lot of opiates flooding the market with cheap product and, therefore, we have a drug problem. There is a mechanism in there for them to forecast demand, look at supply and see how much the Australian producers are producing, which is what we do with opiates in Tasmania, and then say, "We only need a certain amount of extra drugs coming in from other countries." That's the mechanism that Canada uses to stop us exporting into their country.

The Hon. JACQUI MUNRO: That's not happening here now?

JOEL HARDY: No. I think the forecasting is occurring, but I'm not sure how it has been done and how it has been analysed and whether we're looking at oversupply and all that sort of stuff. I'm very much speaking from an opinion perspective here, because I don't know the facts. The Office of Drug Control and probably the TGA underestimated the demand for medical cannabis. I think a lot of us knew that was going to happen because we looked at the illegal market and thought, "There's only going to be a large amount of conversion here." They underestimated it. It's probably got a little bit out of control compared to what the Government was expecting, because if you look at their predictions when they created specialised SAS category B, they were thinking this many tonnes and I think we're like 40 times that. We're at about 100 tonnes now, I'd say, in 2024. I think we were at 72 tonnes in 2023. You can look this up on the ODC website. Of that 72 tonnes, 70 per cent was imported.

The Hon. JACQUI MUNRO: How are you making estimations about what the market demand looks like?

JOEL HARDY: It's a very good question and the answer to that is it's very hard. I have to grow basically on hope and then try to sell it. The reality is that prices are coming down with more supply, which is fine, but over time that's going to hurt Australian producers. The thing that I find frustrating is that everyone assumes that importing into this country is cheaper but the reality is, just because we import cheap product doesn't mean that's the price the patient will pay, if that make sense. I don't want to bring up too much topical stuff, but if you look at Coles and Woolies, just because they get it for cheap doesn't mean they're selling it for cheap, if you know what I mean. That sort of happens in a medical sense as well; people are buying in cheap flower and still selling it for a very big margin. If we can get that supply up in Australia, it will be the same cost of goods and the COP prices will still remain the same. We just need to provide a bit more coverage for Australian producers and even it out a bit more.

The Hon. JACQUI MUNRO: Have you seen any trends in the way the market is evolving since you've been in operation?

JOEL HARDY: Having done the analysis, I do know that 77 per cent of patients want to buy Australian product. But there is a caveat to that, and that is that it needs to be similar price and quality, which is essentially the same as vegetables and fruits, and anything else, right? People want to buy Australian. They do. We're a very patriotic country and I love that about us, but I think the Government hasn't done a very good job of supporting Australian growers.

The Hon. JACQUI MUNRO: In terms of price, is there a big discrepancy between imported product and homegrown?

JOEL HARDY: The cost of production in a country like Columbia is a lot lower but, when you add in logistics and a few other things, it's not that material. If you let cultivators in Australia grow what they wanted to grow and keep up with demand, then the prices would come down because it's all about scale. We can still grow

agricultural products just as cheap as anyone else because we have technology, we have great conditions and we are great at agronomy. That's what will happen. We'll just get more efficient, which is what Australia does with higher wages, and that 100 per cent applies to cannabis as well.

The Hon. JACQUI MUNRO: Just finally, in terms of financing businesses like yours, is there a model that startups, for example, are using? Are you going straight into a profitable exercise? You obviously have a lot of capital expenditure early on. You can talk in general terms if you don't want to speak specifically.

JOEL HARDY: I'll give you an honest answer: It's brutal. That's probably been the hardest thing in the whole business that I've had to manage as CEO and a founder. I've had to raise money at every stage of this. It is exactly what you said. It's very capital intensive and cashflow is poor because it takes a while to grow it, like any other agricultural product, and to get the money back again. It's been brutal. I think that is also a huge barrier to entry for cultivators because they can't raise the money. In this environment right now where capital is tight, it's a terrible environment for cultivators to come in. You need someone with a huge amount of money, typically like a billionaire or a hundred-million-dollar person, to put in money to do the whole thing. That's hard to find, whereas I personally think the future is locally grown products. I think there should be growers in every region doing small scale—that's what people want. They want their fruit and veg, they want their products locally grown and there is no reason why people can't do that. I think that's the future. Whether that turns out to be the case in the future, I don't know, but that's what I hope is the future.

Ms CATE FAEHRMANN: Thanks for coming today. We'll keep going on that angle. What do you think the Government really needs to do in terms of support for the industry in this State? Specifically, in terms of subsidies or support, what are you getting at the moment?

JOEL HARDY: Are you talking about the New South Wales Government?

Ms CATE FAEHRMANN: Let's stick with New South Wales, but you can tell us Federal because that's probably, in some ways, more relevant as well.

JOEL HARDY: That's true. From a Federal perspective, I think they need to at least create a position where importers are subject to the same conditions we are, which is to prove where this is going, who you are, background checks and whether we need this supply or not. They don't have any of that right now; you can just bring in as much as you like, whereas I have to go through a whole process—submit forms, go back and forth with the Office of Drug Control and prove my supply. Then I have to roll out security and all this other stuff that is quite expensive. There should be more control about what we import here and where it's going and if we need it or not. That would be number one. Number two would be looking at this oversupply, whether we can produce it domestically and letting people in Australia grow to their permit levels. Those would be the biggest things.

Ms CATE FAEHRMANN: Can I just check, with the imports that you're talking about, how much of that is just people buying stuff online for themselves? Is that largely what you mean?

JOEL HARDY: No, I'm talking about legal imports. If we went to illegal, then that's like 10 times the size of what we're talking about today. I haven't mentioned police shutting down illegal operations, but I just don't think that's probably going to happen so I've kind of excluded that from the conversation. I don't know if this is going to be associated with your question, but I think what everyone needs to understand is that there are people out there consuming cannabis illegally just as much as legally, and it's always been happening. I think it's about somewhere between 14 per cent of the population that already does that on a six-monthly basis. Whether that's someone taking one gummy that their friend made them or a hash brownie, or something like that, versus someone smoking it medically. It's already happening. I think the social repercussions of giving people more access are not going to change in this State in particular, but also in the country, because it's already happening.

Ms CATE FAEHRMANN: I was hoping you'd be able to talk a little bit to the Committee about some of the recent research that you know about or that your company has potentially undertaken into the benefits of medicinal cannabis. Some of the witnesses yesterday—I don't know if "downplayed" is the word to use—did tend to indicate that there needed to be a lot more research before we can come to any conclusions about certain benefits of medicinal cannabis. I was wondering if you could talk about some of the exciting things that you're aware of lately in terms of its benefits.

JOEL HARDY: Yes. If you look at the three biggest conditions that are getting treated from the special access scheme, it's anxiety, sleep and chronic pain. We actually completed a phase two study. There were about 30 patients, which is statistically significant. That showed a 34 per cent mean reduction in pain and a 38 per cent median reduction in pain. It's very—sorry, I do not want to say it too distinctly. It's a pretty safe drug; it doesn't kill anyone, and you can't overdose. The Government has underestimated the medical sense of who is going to take it. What's happening is people are moving from the illegal market to get safer access because they don't want

to break the law. They want consistent supply. What I mean by that is, typically, they would have to go to a drug dealer and, whatever they got, they had to take it.

That's not a good medical program. You can't find a drug that fits with you—one minute it works, then the next day they're buying a different one and it doesn't work. That's not what medical is. That removes that inconsistency. The second thing is the price is coming down as well because I think now the medical market is nearly as cheap as the illegal market. They're the kind of benefits of the medical market. I think the product quality is also controlled so there are no pesticides or other things on the product. That's what improves the medical side of things. We can talk about the conditions and all the research that's being done from myself—there are other companies that are doing it as well, but that's a long-term process.

It's probably seven years away, maybe 10 years. For me, it's probably another $10 million to $20 million of investment to go through that process because the TGA is quite tight on getting these products registered. That's a long way off. I believe that the illegal market is pretty much part-medical as well. As much as everyone likes to think that people are doing it for fun, there's probably reasons why people are doing that, whether that's anxiety, generalised anxiety or other reasons. I think there's a lot of benefits of having a medical supply chain in particular, which means the control of the quality of the products is good. But I don't know if the medical system itself, working through doctors constantly, is the way forward for access. I just think that's difficult when we don't have all the evidence and not all doctors are going to convert.

Ms CATE FAEHRMANN: If you're saying not necessarily through doctors but still regulated in terms of the product, what does that look like? Are you saying potentially just through pharmacies?

JOEL HARDY: That's correct, yes. I'm saying through pharmacies. I think the other option you could have is to still have a prescription, but in Germany, Israel and Canada it lasts. It is a six-month prescription for a certain set of products. Once you have the ability to get THC oils, you can go and buy whatever you want at the shop whenever you want for the next six months, and then you've got to check-in with a doctor to see if everything is okay and your program is okay.

Ms CATE FAEHRMANN: That is medicinal cannabis. We'll go into cannabis for recreational purposes, as in a regulated supply that doesn't need to be proven to be medicinal in terms of a prescription. Do you have thoughts on that?

JOEL HARDY: I am open to that. I just don't know how the New South Wales Government would roll that out without creating a new body.

Ms CATE FAEHRMANN: Yes. I had a bill for a cannabis authority that would do that.

JOEL HARDY: You could do that. The challenge I see with recreational—not that I think it's a bad idea—is you're going to have to control the shops and the dispensaries that do that. The good thing about pharmacies, at least, is they're already controlled. They've already got licences; they can't lose those licences. There's a Pharmacy Guild, there's a board. There's an unlikelihood that they're going to break the rules.

Ms CATE FAEHRMANN: But through the pharmacy—like other products that you buy in pharmacies.

JOEL HARDY: That's right, a nutraceutical.

Ms CATE FAEHRMANN: Whether it's behind the counter or whatever, you don't need a script, but it's still regulated and carefully controlled.

JOEL HARDY: That's right, yes. I think it's some sort of model like that.

The CHAIR: Tell us a little bit about your products. A lot of people think that it's just cannabis, and it's buds, flowers or whatever, but it's much more sophisticated than that. Tell us about the range of products that you're producing that are emerging on the market. What are the emerging trends in medicinal cannabis products?

JOEL HARDY: From a medical sense, we have flowers which are inhaled through a vaporiser. We have oils which are typically taken under the tongue. They range from THC oil, which has the psychoactive part and is probably the more pain-related compound, and then cannabidiol, which is mainly for anxiety and some inflammation. We've got vapes, which is basically inhaling it through a vaporiser in an oil format, and gummies, which are ingested, as everyone would know. All of those different formats not only have different methods of administration but also onset times.

As an example, a gummy can take up to one hour to get into your bloodstream as it gets through the system and through the gut, but it will have a much more steady impact, whereas flower is a quick impact. Usually it's used for pain or when people have spasms or other things like that. Flower will wear off quickly, so the onset of action is fast, but it goes away quickly, whereas the other ones take longer. From what I've seen in the research,

the majority of people will want oils and gummies in the future, but flower is still a massive category. We can talk about whether that's the illegal market moving into legal, or whatever it is, but it's still a category that people are used to taking and that they like. I think it's going to be a category that will be around for ages.

The CHAIR: You've done some analysis of your market, and I'm not asking you to divulge anything that's commercial in confidence, but how is the market changing? Are there particular areas where there is a concentration of people using it, like the Northern Rivers, or a particular demographic? Are those demographics changing? Is there broad use across society? Could you comment on that?

JOEL HARDY: I think what is surprising to me is that there is broad use. What you see is people coming from taking opiates—who are now being restricted on opiates coming into cannabis. People taking benzodiazepines are now being restricted on benzodiazepines. People taking pregabalin, or anything that's been warned or controlled or blacklisted by the TGA with doctors, are moving into cannabis. In some cases, particularly with chronic pain, they don't have another option. There isn't any other choice, and they've got to go try something. As we've seen with COVID, people are taking a lot more interest in their health and in more natural products. I think cannabis is a great alternative to those drugs that are more what I would consider pharmaceutical with long-term side effects. You can't overdose on cannabis. That's what we're seeing in the market. Traditionally, those people coming from the true medical markets are taking those oils, gummies and different formats that are much more steady and that they can keep in their bloodstream to reduce their symptoms.

The CHAIR: New South Wales has a mass screening regime when it comes to roadside drug testing. We've had quite a significant amount of evidence that that's having a cooling effect on the numbers of people who are being prescribed cannabis, because doctors are warning them of it and the community is talking about it. Is that your experience? Is that cruelling your industry?

JOEL HARDY: Yes, absolutely. Taking the industry out of it, I think it's very unfair for a person who is being prescribed something from their doctor to now be punished, whether they're impaired or not. We did the same analysis on driving laws. I think it was 90 per cent of not only patients but also the general population who agree that it is unfair that people who have cannabis in their system that has been prescribed by a doctor should be getting an offence for doing that. I think it should be an impairment test. How we do that, I'm not sure. I feel that, as an industry member, I'm very supportive of improving the driving laws. I believe that you are probably going to hear from a lot of other people talking about those laws, so I'll leave that discussion to them.

The CHAIR: In terms of transitioning, we've seen a lot of countries transition from a medical cannabis framework into a recreational adult-use market. Are there any models that you think are good, and other models that you think we should avoid, if that is the choice of the Government?

JOEL HARDY: As I said before, I think Germany and Israel have been good models because they're still controlled from a quality perspective. GMP standards, which basically means pharmaceutical standard, is a great standard not only for pharmaceuticals but also food, nutraceuticals and things like that. Any supply chain that controls the quality is going to be good. The ones that I would say are bad—America would be a bad one. They have started using synthetic cannabis, which I think is pretty average. They've got around loopholes and traditional American sort of stuff. They're selling vapes that are made of synthetic cannabis in gas stations in Kentucky, you know what I mean? That's not safe. We want to avoid those loopholes. Australia is a pretty highly regulated country, so I don't think that'll happen. I do think we need to make sure that, as we roll it out, it is well regulated from a quality perspective and then making sure that the people dispensing it understand what they're doing.

The CHAIR: One of the reasons we are up here, Mr Hardy, is to have a look at your facility tomorrow. I thought it was important for Committee members to see—and I've been to your facility—how high-tech it is. All the medicinal cannabis facilities are in Australia. Walk us through GMP a bit more. It is easy to say, but what does it mean? It's a huge cost burden, but at the end of it, what are the better outcomes for regulators and customers?

JOEL HARDY: GMP is essentially a set of standards that you write to adhere to the TGA regulations. Ultimately, it is a culture of GMP within the whole facility. Whenever even I walk into the facility, I have to do certain things when I'm in that facility that mean that I don't affect the product in any way or touch anything, and that applies to every single employee. So we have to train every single employee who comes into our facility about what they can and can't do, what protective gear they need to wear, where they need to put things, the steps, the paperwork, all that sort of stuff, because we are a controlled drug, similar to opiates, unfortunately, and we have to record everything.

It's not only a way of controlling quality, it's also a way of producing very clean product—an unadulterated product. What frustrates me, I suppose, is that we allow products coming in from non-GMP countries that don't have to fulfil those regulations and we trust a little certificate that says it's fine and good to go. But if you know

anything about the TGA, its stamp of approval is much harder to get than some of the other countries in the world. It just makes it a lot bigger cost burden. I think probably 10 per cent of our expenses would be spent on just being GMP.

The Hon. STEPHEN LAWRENCE: Thanks, Mr Hardy, for your submission and your evidence. Do you have survey results that you'd be willing to share with us in relation to the percentage of medicinal cannabis consumers that are using medicinal cannabis only for a medical purpose?

JOEL HARDY: I do. I don't have those at hand. I can take that on notice and send them through to you.

The Hon. STEPHEN LAWRENCE: If you're happy for me to quote from your submission, I can.

JOEL HARDY: Yes. That's the number then.

The Hon. STEPHEN LAWRENCE: I think it's 24 per cent.

JOEL HARDY: That's it, 24 per cent.

The Hon. STEPHEN LAWRENCE: Does that suggest that, to some extent, the medicinal cannabis scheme is being used as a way for people to access cannabis for a recreational purpose?

JOEL HARDY: Yes. The actual numbers, if you go through them, there is both a "medical" and a "recreational" tick box they could tick when they use it for both. But the answer to that question is yes.

The Hon. STEPHEN LAWRENCE: I have been asking a few witnesses about this, and I am curious about your view on it. I'm concerned that there is an arbitrary nature to the regulation of cannabis in Australia in the sense that for certain people it's a criminal offence to possess it, whereas for other people, who might be advantaged enough or have the wherewithal to access a prescription, it's legal. I am concerned that perhaps that amounts to an arbitrary, unfair situation. What are your thoughts on that?

JOEL HARDY: It does, and that's why we have to provide easier access to people from low-income statuses or people who want to get access for medical conditions but can't afford the medication. The challenge is that everyone thinks it's down to the product cost, but actually the product cost is only a fraction of what the patient ends up paying, because they end up paying a pharmacy dispensing fee, there are distribution fees, there is all the GMP stuff. There are a lot of other costs that go through that whole supply chain that the patient ends up paying, essentially. So we have to find a way that if we were to go down an adult-use market that some of those costs get cut out along the way and the patient doesn't end up paying. I think that doctor appointments are a huge one, because they're typically around $100 to $150. That's what the cost of a GP is these days, from a private perspective.

But if the clinics are doing it for cheaper, then those costs are getting passed onto the distributor or someone else in the supply chain. It's important that we make sure that people have access, and I do agree with you that it is unfair. Even if you just take New South Wales—I actually think New South Wales is a good State to get caught with cannabis in your system because at least the judge has some form of discretion about whether you lose your licence or not, whereas I think in Victoria it is a guaranteed loss of licence. I can't imagine what it's like in the Northern Territory or some other places. So I think that is very unfair to people.

The Hon. STEPHEN LAWRENCE: Does your survey data shed any light on what particular groups in society are able to access the medicinal cannabis prescription scheme?

JOEL HARDY: I did it by demographic but I didn't do it by any other segmentation.

The Hon. STEPHEN LAWRENCE: So you can't, for instance, tell us whether it's the comparatively economically advantaged people who are accessing medicinal cannabis?

JOEL HARDY: I probably could do that, actually, because I did do a salary survey. I could come back to you on that one.

The Hon. STEPHEN LAWRENCE: If you wouldn't mind, yes; that'd be good. You gave evidence earlier of your concern about imports from other countries in circumstances where you can't export your product to those countries. Is that a product of Australia's free trade settings? If so, is there a special case for cannabis as opposed to other agricultural activity, or whatever, where you might have a similar situation?

JOEL HARDY: Yes. Unfortunately, drugs are not under the trade agreements; they're managed by the INCB. That's signing up to the UN convention on narcotic drugs, I think. That goes outside of the trade agreements. But, obviously, there are a bunch of technicalities in there that people can use to restrict imports into their country or block them. As an example, Canada is a recreational environment. They're growing recreational,

under recreational conditions, but selling into a medical market that we can't then sell into, as a recreational market. So it's all of the benefits and none of the negatives, from their side.

The Hon. STEPHEN LAWRENCE: Are there countries you can export to and they can export to us?

JOEL HARDY: Germany, the UK and there are probably a couple of others. But they traditionally tend to be the ones that probably can't grow much.

The Hon. STEPHEN LAWRENCE: Is that because of the climate?

JOEL HARDY: Yes, that's right. They just don't have a lot of growing space. The UK doesn't have enough space to be growing 100 tonnes of cannabis.

The Hon. STEPHEN LAWRENCE: In terms of the lower quality of the imports, are you suggesting the other regulatory framework that the Commonwealth applies as to whether to allow imports or not is not properly protecting Australians from a dangerous product? Or are you just saying that it's not the same quality?

JOEL HARDY: I'm saying the first one. Initially, for the first five years, it was a self-declaration; you'd fill in a form and say, "Yes, I declare that these products meet this standard." But who is auditing that, who is checking that, when you're bringing in 30 tonnes of something? It's not really getting regulated too well. But if I grow it here and go through the GMP, I've got 47 employees who are ticking boxes and checking stuff along the way. We know what it is that's getting sent to independent, third-party testing labs that are GMP. But if you're in Colombia and you can send it to a lab down the road, who is to know what results you're getting from that lab? Do you know what I mean?

The Hon. STEPHEN LAWRENCE: Yes.

JOEL HARDY: It's just the matter that TGA doesn't have enough resources to be checking 42 tonnes of cannabis coming into this country. We don't really know whether it is adhering to the standards, but they assume it is, whereas in Australia, we're pretty much guaranteed it is because we have to go through all the protocols in Australia and we're a regulated country.

The Hon. STEPHEN LAWRENCE: Which countries are able to import cannabis legally into Australia?

JOEL HARDY: Anyone—Canada, Thailand, South Africa, Portugal, Colombia are the top five.

The Hon. STEPHEN LAWRENCE: What are the potential health risks in terms of the lower quality stuff coming in from countries like that?

JOEL HARDY: I would say the biggest one is pesticides. If that's in there, you're inhaling it. It's not very good for you.

The CHAIR: Mould can be an issue.

JOEL HARDY: Yes, mould and bacteria. That's unlikely because they are usually aerating the product out here and stuff. So just the testing, I would say. There is no requirement for testing to be in-country, so it could be different tests coming back.

The Hon. STEPHEN LAWRENCE: Are there lower quality issues in terms of the percentage of THC being variable?

JOEL HARDY: That's definitely an issue.

The Hon. STEPHEN LAWRENCE: Is this not being regulated by the same area of the Federal bureaucracy who regulate the importation of food and so forth? Is it a totally different area?

JOEL HARDY: Maybe I'm speaking an opinion here, but the thing about regulation is the only way you regulate something is if you enforce it. And so, if you've got 42 tonnes coming in from another country, what checks are being done on whether that's being declared? What checks are being done on whether it adheres to what the regulations are? If it's coming out of Australia, before it even hits the market it's being regulated because it's going through our processes that are all considered GMP in Australia. That's the only thing I would say, because I don't know that people are doing it. The majority of people probably aren't, but we don't really know. I feel like we're getting regulated heavily by the ODC, TGA, even NSW Health to some extent. But if you're importing, you get none of that.

The Hon. STEPHEN LAWRENCE: If you're a consumer and you consume imported cannabis, and there is some problem with the quality that you discern, who is the appropriate person for you to complain to?

JOEL HARDY: Typically, they complain to the pharmacist and then the pharmacist will complain to the product owner. That will go to the TGA if it's a serious adverse event or a product—

The Hon. STEPHEN LAWRENCE: So the TGA monitors that, if a complaint is made?

JOEL HARDY: Usually, product quality is managed by the TGA, yes. But I think the other thing is that there is probably not a huge amount of risk. Because cannabis is not opiates, it's not going to kill anyone, so they are probably less worried about it. But the challenge is we have to adhere to those standards. So there is no risk of us not doing it.

The Hon. STEPHEN LAWRENCE: In these countries you were talking about before where you are considered to be getting medicinal cannabis but you only have to go to the doctor once a year, is that regime still tied to a diagnosis? Is it still tied to the idea that cannabis is actually treating something?

JOEL HARDY: Yes. You still have to be treated for a condition.

The Hon. STEPHEN LAWRENCE: If we moved to a legalised model in Australia, would you be recommending that if you obtain cannabis, that it be tied, somehow, to still visiting a doctor regularly to see that you are not developing a disorder or something?

JOEL HARDY: I'm open to it. I think there is either the one that maybe Cate was suggesting, which was to go to the pharmacist directly and get what you like, or go to the doctor and they give you an open prescription to get something in the category or format that is going to help your condition for a period of time. But I am pretty adamant that the quality supply chain should remain—as in, we should control the quality of the products and make sure they're getting tested. I think that is something that happens in America that you don't want to have happen in Australia. The second one is, unless the New South Wales Government or the State governments want to roll out dispensing managing licences for people to dispense it, which would have been a whole new department and a whole bunch of people to regulate these licences, to regulate the places that sell it, then I think the pharmacies are the only other option, because they are already doing that. They know how to manage drugs, they know how to manage transactions and they know how to report on drugs, similar to nutraceuticals, or something else that is over the counter or behind the counter. They're already doing it.

Ms CATE FAEHRMANN: Can I jump in with that, just because one of the important things there, I think, is the fact that your local pharmacist often knows what else you are taking as well. I asked a question of the witness yesterday from the Royal Australian College of General Practitioners, just about how much, for example, pharmaceutical drugs such as opioids are being replaced by medicinal cannabis. They didn't have a response to that. But that is also important, I think, just so the pharmacist can be aware, if it's relevant, in terms of what the person is buying that for.

JOEL HARDY: Yes. It's very difficult for a doctor to know every single drug and every single product within even the cannabis space, let alone then having to deal with all the other concomitant drugs and opiates and whatever other addiction or whatever they are dealing with as well—and the condition itself. Sometimes it's the person or the pharmacist who is managing the drugs who is probably the best person to recommend the product. You'll find that even with normal drugs, right? They talk about the generic or the other drug, or this drug, and then they give you instructions on how to take it. Doctors are not always as educated on that. That's not because they can't be; it's because they have so many other things to deal with as well for the patient, the outcome of the patient. I think sharing the burden is a good idea, and the reality is that patients are already choosing for themselves, to some respect, with the doctor. So maybe we just let them choose it, rather than controlling it with the hands of a doctor every time.

The Hon. STEPHEN LAWRENCE: Lastly, I wanted to ask you about the driving issue. We've had some evidence earlier in the inquiry about people agreeing that there are two questions. One is working out at what level is someone impaired, in terms of they shouldn't be driving—so the 0.05 or 0.02, that sort of analogy. The other is, if there was such a way to determine impairment, how do people analyse their consumption with a view to staying under that limit? Obviously that's a time question as well, because there is the amount you have, and then there is the amount of time that might have an effect for.

JOEL HARDY: There is also the format. So if you take it through an inhaling device and flower then it will be stronger, but disappear faster. But if you take it as an oil, it lasts longer and then is in your bloodstream for longer.

The Hon. STEPHEN LAWRENCE: You say, and I don't think you'll mind me saying this as it's in your submission, that—you raise that issue about different rules for opiates as compared to cannabis. What I might say in response to that is just because it's legal for one dangerous thing, doesn't necessarily mean that it should be legal for the other if the other is also dangerous or more dangerous. I don't know. In light of that, I'm interested in what you say about those two questions. Is there a way to determine an impairment level? And if you can do that, are you going to allow people to drive after consumption at some point? Is there a way, a formula, something that

people can use—a home test or something like that—where people can then actually have a reasoned way to make the decision about when and if they drive.

JOEL HARDY: I haven't seen much data or technology that shows how to judge if people are impaired from cannabis or could potentially be impaired from cannabis. One of the things that people need to understand is that pharmacokinetics, basically the cannabis in the bloodstream, is very different for formats, but also for different people: if you've consumed something, if you're big, if you're small, if you've never used it before. There is a whole different variety. This 0.05 stuff probably took us a while to get to, from alcohol consumption, over 100 years, right? So I worry that, if we are trying to focus on this 0.05 kind of thing, we'll never get there. I think the challenge is we could try there, but then you'd have to make the limit quite high. But this is a prescription drug. It's been prescribed by a professional, and by a doctor. There are a lot of prescription drugs that you probably shouldn't be driving on at high doses. We do have to have some faith in patients. Now, will there be people that break the rules? Of course. But there are people who break the rules now, illegally, using illegal cannabis. They're doing it also for prescription drugs as well.

I'd love to see the statistics on whether you think this is going to change road safety, because I don't think it is. The thing is, it's already happening: There is four per cent of the population driving around on THC right now that are medically approved. There is another 12 per cent of the population driving around with illegal cannabis in their system. They are all potentially getting done. I don't have a silver bullet, I agree. I've probably not focused on it as a topic, as I was mainly focused on industry stuff, thinking you were going to ask me that stuff. But I do think if we are going to have an impairment test, it needs to be fair, because it's going to be hard to measure. But at the same time—and I don't want to say this and everyone laughs—but a cannabis driver is probably one of the safest drivers you're going to get, compared to alcohol or opiates.

The Hon. STEPHEN LAWRENCE: Is that because they drive slowly?

JOEL HARDY: Correct. It's true though. No-one wants any form of confrontation on cannabis. You ask the police if they're going to deal with a cannabis patient over an ice patient or a drunkard, or anyone. The violence is not occurring, and the bravado is not occurring.

The Hon. STEPHEN LAWRENCE: Except it is a central nervous system depressant, isn't it? It does slow down your ability to make judgements.

JOEL HARDY: That's right.

JOEL HARDY: But if they did the impairment test—I think it was Thomas Arkell who did it, it didn't show any difference. I think people will slow down. Honestly, they will slow down their driving; they're not going to drive at high speeds and try and do silly stuff. Now, whether they are impaired when they can deal with certain situations occurring, I don't know the answer to that question.

The Hon. STEPHEN LAWRENCE: I think the concern about it is that cannabis does turn up in the blood of people involved in fatalities. I don’t have the figures here, but it's definitely a factor.

JOEL HARDY: What else is in their bloodstream though, right?

The Hon. STEPHEN LAWRENCE: Yes, sure. If there is a combination of alcohol and cannabis, or cannabis and something else, then it might be difficult to unpick what actually was determinative. I think the concern is that if we are going to move to legalisation or easier access to medicinal cannabis or even decriminalisation—although I think that is probably a bit different, because that won't necessarily increase use—people are concerned that we'll see an increase in fatalities. I think that is the concern, isn't it?

JOEL HARDY: But, Stephen, it's already happening. This is the thing that you need to understand, it's—

The Hon. STEPHEN LAWRENCE: But it's about a fear of increase, isn't it? I think that is the concern.

JOEL HARDY: Of what, people taking cannabis?

The Hon. STEPHEN LAWRENCE: An increase in people driving after consuming cannabis. I think that is the concern being expressed.

JOEL HARDY: That is happening right now, because the medical system—

The Hon. STEPHEN LAWRENCE: No, I know. But I'm talking about an increase in it.

JOEL HARDY: It is increasing. The medical system is increasing about 30 per cent year on year. This is moving fast, like 4 per cent of the population is—

The Hon. STEPHEN LAWRENCE: Sorry, do you mean there is an increase in people driving after consuming cannabis and it's not being reflected in the stats? Is that what you are saying?

JOEL HARDY: I don't know what the stats are, but I can guarantee you that if more medical patients are taking THC, then there are more people on the road with THC in their system—me probably being one of them. It's happening. Then you are not even including the illegal use of people doing that. Those are the ones you are trying to stamp out initially. I suppose the point I would make is, I think putting it into an adult-use framework probably won't change the stats as much as you think. I think the worries that you're concerned about with people driving on the roads and being impaired are already probably happening. Those people are already driving on the roads, if they are going to drive impaired, and there are people not driving on the roads because they don't want to get busted, which makes it worse for their lives. You have got to weigh up the pros and the cons. I think the thing is you're probably never going to stamp out the bad actors—that's the reality. Even if we made adult use, are there going to be people who take too much cannabis? Yes. Are there people who take too much alcohol? Yes. Are there people who take too much of every other drug in this country? Yes.

The Hon. STEPHEN LAWRENCE: And you are not going to stamp out young people who might be—

JOEL HARDY: Making bad decisions.

The Hon. STEPHEN LAWRENCE: —mixing all sorts of things and making bad decisions, yes.

JOEL HARDY: Nothing is going to change.

The Hon. STEPHEN LAWRENCE: Do you have stats on there being an increase in the consumption of cannabis as a consequence of medicinal cannabis being available? Because I haven't heard that there has been an increase across the population.

JOEL HARDY: I don't have stats on that, no. But I would have thought that if someone was consuming illegally once a day, that would go to medically once a day. I do have stats on how many times a day people consume. It is higher than you would probably think. I don't believe that consumption will go up too much, but new people will enter the market because they are the people who have been on opioids and things like that. But anyone who is using it illegally is not a new entrant to the market, in my opinion.

The Hon. STEPHEN LAWRENCE: I would be curious about your thoughts on this. It may be that the people that are new entrants to the market through a prescription, for a whole range of reasons, are less likely to be involved in fatalities and accidents. Presumably they are getting advice from a doctor about consumption and driving, and also I suspect they probably tend to be older.

JOEL HARDY: That's right.

The Hon. STEPHEN LAWRENCE: And there are a whole range of different circumstances.

JOEL HARDY: More medical, I suppose, is what you would consider it. But, I mean, take my mother. She takes it for sleep, but she only takes it when she has to because she doesn't want to get caught driving the next day. That's not very good. If she wants to get a good night's sleep, she should be able to get a good night's sleep. Then she has to turn to a pharmaceutical drug that makes her drowsy in the morning, but then she can drive. Now she is drowsy driving. What is the difference? I think it is more that we are worried about the impairment phase, but it is really the people getting busted for the next-day stuff that is going to be the challenge and that is kind of the bit that sucks.

The Hon. STEPHEN LAWRENCE: The concern I was raising about increased fatalities was more in the context of legalisation rather than medical or even decrim.

JOEL HARDY: In Canada, they haven't seen any increase in fatalities from road accidents associated with cannabis. Because I think it is already happening.

The Hon. STEPHEN LAWRENCE: Interesting.

The CHAIR: Thank you, Mr Hardy. Unfortunately the time for questions and conversation has come to an end. We are having a break now and you may want to continue that conversation during the break. Thank you so much for taking the time to give evidence, for your submission and for the work that you are doing in this pioneering industry. We really appreciate it. The secretariat will be in contact regarding the survey results that you will divulge to the Committee. We will see you in the break, and we will see you tomorrow at Cymra Life Sciences.

(The witness withdrew.)

(Luncheon adjournment)

Dr JAMES MOYLAN, Law Reform Activist, affirmed and examined

The CHAIR: Good afternoon, everyone. We are reconvening the hearing into the impact of the regulatory framework for cannabis in New South Wales. Thank you for joining us, Dr Moylan. Would you like to make some short introductory remarks?

JAMES MOYLAN: I would. I am a cannabis law reform activist and have been for 40-plus years. Unfortunately, when it comes to cannabis law reform, I tend to talk in paragraphs rather than sentences. This is evidenced in the submission that I provided to the Committee. I do urge everyone to consider the submission. It is a product of over a year of research and a number of people collaborating in manufacturing it. To help you understand where I am coming from, a bit of my biography will be of assistance, as it is rather unusual. I was a primary alcoholic. I started drinking at age 11. By 13, I was daily drinking. At age 16, my family piled me and my belongings into a car and dropped me on a corner in the centre of Sydney and said, "Go away." I was totally out of control.

During the next decade and a half, I had periods of sobriety. First of all, I was trying to find a God, and that didn't work. But then I started substituting cannabis, using cannabis and leaning very heavily on it. While it wasn't perfect to be using a soporific as a crutch, it wasn't life threatening. To cut a very long story short, in the late 80s I walked out of a drunk tank in Adelaide on Whitmore Square and spent three months living on the street and in squats whilst just smoking cannabis. I haven't had a drink since. During this period, as I said, I had a number of periods of sobriety, in one of which I was working in Port Stephens and the police raided our house. I was busted with cultivation of cannabis—three seedlings, this big. I was verballed over it. They weren't my seedlings. I spent a weekend in jail, then fronted the magistrate in Newcastle. I was fined $2,100, which I had no hope of paying, so a month later I fronted the police station and spent 32 days in Silverwater, cutting out the fine for this dire infringement of social norms.

I got out of Silverwater and went straight across town to where Dr Kerr had opened the NORML office in Australia. I volunteered and worked for several years as just a young dogsbody in the then growing cannabis law reform activist movement. In 1984 NORML ratified Viv Carter to stand against Ron Mulock, who was then the health Minister in the New South Wales Parliament. I was the campaign manager for that outing. We plastered all of St Marys with 1,200 posters with a cannabis leaf on it saying, "Vote 1 democrats for the decriminalisation of cannabis". On the day that the campaign opened, the Penrith detectives raided the campaign office. I was hauled down to the Penrith police station, questioned for four hours, charged with possession of cannabis and hindering police. A policeman had walked up to me while I was working with a bowl and said, "What's this?" I blew in it and said, "What?"

Needless to say when I sobered up, I went north and had a wonderful life, had a white picket fence, drove sugar trains, mapped all the heritage goldfields in central and north Queensland. I'm not a victim. It's a story of unexpected redemption. I got my life back and I loved every minute of it. When you've been a vagrant alcoholic, you know what it is to sleep tight in a bed at night. You take all those small things normally for granted. When I'd finally brought up a beautiful young daughter and I had the permission of my family, I came back down to Southern Cross University, did a double degree in law and culture, helped Michael Balderstone found the original HEMP Party, ran around Australia. I've stood in three elections in Senate. I've stood in two States for the Senate at the one election. In 2016 I stood in Queensland. Then in a re-run I stood in Western Australia. I've been around the block.

But I've also experienced what the press in Australia is like. I showed up in Western Australia that time after 48 hours without sleep getting it together. I blew up a 14-metre inflatable joint in front of the Parliament and got together a little rally. The ABC interviewed me and gave me a series of gotcha questions. I couldn't tell them who my mother was at that stage, and they hit me with a series of gotcha questions, made me look like a complete dork and then broadcasted all across that the person who was heading the HEMP Party in Western Australia was a complete idiot who knew nothing and had no skills whatsoever, didn't even know who the Premier of Western Australia was. But this is the way that the press in Australia is always operating.

So there's a bit of background. Without cannabis I'd be dead. I leant on it so heavily. It was the only way I could get off the grog. I can't find God, but I could find cannabis. But the problem was I couldn't always find cannabis. I was young. I was poor. I was desperately sick. And I was told, "You can find God", because that was the only avenue given when I was sitting as a 16-year-old boy suffering the delirium tremens in the Bridge Centre in Sydney. I had a Salvation Army captain sit on the end of my bed and say, "The only way you will ever get sober is to find God." And there were no government services for that sort of thing. There are still very few. We've given over our whole alcohol treatment system to the God botherers. What about people like me who need cannabis and rationality and a bit of common sense?

It took me three years of not drinking every day—I mean, that total daydreaming about it during the day, dreaming about it at night, not going out, not walking past a pub, not socialising with anyone. I was desperately ill. And the only thing I had to hang on was a soporific that was illegal. When I had a chance to take activist actions within the compass of the law to address this, every time the police would come down in a heavy-handed fashion and make it I was somehow a criminal for engaging in cannabis law reform activism during the early days. It was horrific. At the first political campaign featuring cannabis decriminalisation in Australia, I got arrested when I was doing nothing more than engaging in political activity. I look at this issue from a personal perspective, which is very different to the majority in this room. I'm motivated by a pure interest in the public interest, especially of those people in a similar condition to me.

The CHAIR: Dr Moylan, I'll take that as your first paragraph in your introductory remarks. They were remarkable. I think it is important that we get to some questions on your substantial submission.

The Hon. NATASHA MACLAREN-JONES: Thank you very much for your very detailed submission and the research that has gone into that. I wanted you to elaborate a little more in relation to the tests around impairment. It is something that has come up throughout the submissions, and you referred to some work that has been done in the US. I wanted to understand that a little more as to how you can measure impairment, or if you can at all.

JAMES MOYLAN: The difficulty that frames testing driving and cannabis is that cannabis is fat soluble. I was driving sugar trains in North Queensland and I was tested for cannabis—of course, as you should be. But the problem was I had to give up cannabis 3½ months before those tests. I had failed a test after three months of abstinence. It demonstrates that using just trace—because I was not at all impaired. All of the administration there understood that really. Because they suffered the same difficulty every year with casual users of cannabis, who then are more than happy to abstain while they're handling heavy machinery. But then having to go back and get retested and retested and then they're clear—you do the whole thing.

In the US, which is far ahead of us just simply because they've encountered all of these similar problems and address them in different ways—in a lot of the US they already had impairment testing for alcohol rather than using clinical testing. You've seen it in a lot of the old shows, where you've got someone on the roadside doing this to their nose, and can they open and close, can they walk straight, turn on one leg and come back. This was adapted then for cannabis in a number of jurisdictions, especially in the Californian instance. There, it's a bit different because in California the law enforcement jurisdictions are broken into a whole host of different counties, and they all have slightly different approaches. But in general terms up until about—I can't remember exactly. It was 2011—the majority of the counties still had an impairment test and an impairment manual. Currently it's a bit different. There are some that completely outlaw it in a similar way to Australia and they tend to be rolling that back now, because the impairment testing is far more directed at addressing the actual relative harms that need to be addressed.

I would also point the Committee's eyes to Tasmania. Tasmania currently has a waiver, which in effect is a standing moratorium, on criminal application of the law in a situation where there is a prescription. I think our current prescription model in Australia is untenable. We can't have the Federal Government acting as the monopoly drug supplier, but that's another matter. In Tasmania they've got a workaround. I don't think people who are grossly impaired should be driving, full stop. People who are currently feeling the after-effects of amphetamines and a number of other drugs aren't picked up by the current tests. They're another hole in the current situation. But I am not an expert in the driving test. There are other people who are addressing this, and these are purely my personal opinions.

The Hon. JACQUI MUNRO: Thank you so much for your submission and for sharing your experience today. I'm curious about the cannabis buyers club concept. We've heard about a co-op model approach. Is that what this is?

JAMES MOYLAN: I'm actually pointing to a historical model which was pioneered in San Diego and San Francisco in 1994. The cannabis buyers club model was an association of people who would pay into the association to provide a dispensary. This is where the term dispensary comes from. The first dispensaries were private clubs. These private clubs then purchased cannabis on behalf of the people who were in—it was during the period when AIDS was massively flooding that area. A lot of that was to facilitate these AIDS patients gaining cannabis in a manner where they weren't exposed to legal peril. I spend a lot of my time making sure that people who use cannabis aren't exposed to legal peril. I like this model, and it's easily adaptable to the Australian situation. We have, in Australia, associations Acts in every jurisdiction. It would be quite easy to put together a model constitution for associations.

The Hon. JACQUI MUNRO: Is it that the group of people who have leadership roles in an association are then liable? How does the responsibility—

JAMES MOYLAN: Here we come to the need for a relative harms assessment. There is no medical, physical, injury or toxicity liabilities to be avoided. They're just not there. There are no personal injury liabilities to be avoided. The CBC model was to avoid legal liability, and it worked beautifully. That model was then adopted throughout California right at the beginning with the dispensary model, where you had to have a medicinal cannabis card to purchase from a dispensary. The dispensary was set up. They've still got an odd left-over and scaling of laws in California where growers can't sell directly to dispensaries. They've got to sell to a middleman. This has developed because of the need to protect against legal liability. In fact, the big crux, at the point where it became pseudo-legal in California, was the 1994 raids and Proposition 94, which immediately followed that. Proposition 94 then allowed for the legal purchase from a dispensary with a medicinal cannabis card.

I don't care how we legalise cannabis. If we've got to designate every use of cannabis in Australia as medicinal, then go for it. But I don't like being a hypocrite. I don't currently have a prescription for cannabis because I can't get one. I don't fall within the guidelines. I can't walk in and say, "I use cannabis recreationally because it relieves the stress and it's important to me." It doesn't work, and I don't lie. I'm an officer of the court. I am not allowed to lie. But, unfortunately, I'm forced under the current situation to either act illegally or be a functioning hypocrite. I'm sorry, I tend to fall into a bit of commentary every now and again like that. I am a bit irked by this matter.

The Hon. JACQUI MUNRO: I can tell. It's welcome evidence for the Committee.

Ms CATE FAEHRMANN: Dr Moylan, thank you for appearing today and for your extensive work in this area. First of all, it's obvious from the work you've done and from your opening statement that you're telling this Committee that the drug laws have been used for decades to harass and persecute people. Is that part of what you've been trying to make a point about?

JAMES MOYLAN: Most certainly. It has been going on for ever. In Australia, when I was young, if you were reasonably well-off and middle-class, you had a dealer somewhere. The dealer was exposed; you weren't, really. But I was in the long grass. I saw it from the other end. The coppers around Nimbin would use the drug laws to be thugs—to run in and ransack a house. It hasn't changed. I've got a friend who's of Aboriginal extraction who went to jail yesterday for a year for possession. This hasn't stopped. It has completely destroyed his life. These aren't theoretical matters.

I provided a brief in the papers that I provided, including advice that Australia is currently in breach of its civil rights obligations under article 9 of the International Covenant on Civil and Political Rights. In section 1 of the ICCPR, the second placitum states that no law of the land shall be arbitrary. This is using the legal term "arbitrary". It solely indicates that the application of law should apply equally to all of the citizenry in a jurisdiction, or it be formulated in a manner where its application is not based on individual discretion but rather legal arbitration. Currently, by happenstance, the Federal Government, for perfectly good reasons, has provided an overlay upon the criminal law of all of our States which provides a facility for one small class of Australian citizens to use cannabis legally. Do you think that the usual suspects—the people who are marginalised in society—are accessing this? No. This is a facility for middle-class Australia to access cannabis while a great many others cannot. They are demographically precluded.

Ms CATE FAEHRMANN: You mentioned at the beginning of that contribution an example of a local First Nations person who has just been jailed for possession for 12 months. Would you care to share other stories? How much is that happening? We're hearing about statistics. Yesterday we had a range of experts talking to us about what was happening, not least of whom was Professor Don Weatherburn from BOCSAR. That data essentially said that the ratio of cannabis cautioning has dropped dramatically in the last decade and more people are being charged by police or being sent to court. Is that your evidence here as well? What's happening locally? It would be very good for us to know a bit more about what's happening on the ground.

JAMES MOYLAN: I've been admitted to the bar but I don't practise the law because I'm constantly engaged in providing advice to people that would get me disbarred if I was practising. I'm advising people in workshops all around Australia on how to be activists and how to retain good legal health in the current insane legal environment. This work is informed by the personal tragedy of a lot of people. The gentleman who I mentioned who went to jail yesterday, over a bust that happened almost two years ago, before he went to jail was reporting daily—every day—for 18 months whilst this was being contested.

The Hon. STEPHEN LAWRENCE: Was he charged with supply or possession, or something else?

JAMES MOYLAN: He was charged with supply, on the basis that if you have more than a trafficable quantity in the New South Wales environment there is an assumption that you are supplying cannabis. In the same way, I suppose, that if you've got 18 vehicles in your garages, you're assumed to be a car dealership. Or if you've got 500 bottles of wine, you're assumed to be a seller of wine. This is ridiculous —absolutely ridiculous. Why do

we do this? Because this class of offence is carved out from all of the other forms of criminal offence in that we've totally obviated the need for a mens rea. There is no evil intent. We just define an action is illegal and put people in jail. It's not a criminal offence. It's a strict liability offence, which was invented in the twentieth century and should be done away with immediately. I covered this all in the submission, and I urge you to read it, please.

Further people: John Reeves, during the fires last year—John Reeves is one of the co-founders of the marijuana party. He went away to live a quiet retirement on a hill in the middle of nowhere in southern Tasmania. He was growing a bit of pot because he's sick. He's very sick. The fires happened, the police came onto his property and they were obliged to bust him. It pulled his life apart for no apparent reason. The people who were busting him were apologising. Why do we place our police in this situation? There are thugs who used to kneel on people's necks, and a whole heap of—the majority of police are placed in an invidious situation where they're imposing actions on people that they know are unjust whilst they're doing it, and apologising for it.

[*Interruption*]

The CHAIR: Order!

JAMES MOYLAN: I've got at least one fan.

The CHAIR: You might have more than that, but clapping is disorderly. You're well versed in the Thai experience—not the Thai stick but the Thai legalisation experience.

JAMES MOYLAN: Oh, both.

The CHAIR: Both? The latter, if you could—

JAMES MOYLAN: You see, I smoke cannabis for recreation, and I'm not afraid to tell everyone.

The CHAIR: That's fantastic. I appreciate that. Thailand is the first major economy in Asia to move to legalisation. You've experienced that. In three minutes or less, could you explain what has happened in Thailand—good, bad, indifferent? Go.

JAMES MOYLAN: Three minutes or less? You've got it. I've had a lot of experience in Thailand. I ran away to Thailand the first time well before cannabis was legal there. Everyone was using. It was freely available, but it was illegal. Only mugged tourists got done by generally bad coppers, who would then get some cash out of them and away they'd go. When I discovered that—considering my history; you know it. I've been told since the year dot that I'm being protected from harm. The reason I can't use cannabis is that if you suddenly provide laissez faire legalisation, then the whole walls will come tumbling in. There will be naked people in the streets, we'll all lose our religion and go insane.

Ms CATE FAEHRMANN: Sounds like Nimbin.

JAMES MOYLAN: Possibly. I don't live in Nimbin. I couldn't do that to myself.

Ms CATE FAEHRMANN: I meant the naked people in the streets.

JAMES MOYLAN: So when I heard what was happening in Thailand, which is a place I love and know really well, I was absolutely gobsmacked and interested. I thought here we have the perfect way to look and identify all of these harms that I'm being protected against, because they just went laissez faire. There are currently three laws in Thailand, basic regulations: You can't sell to someone who's under 21, you can't sell to someone who's breastfeeding, and you can't sell to someone who's pregnant. That's it. That's the sum total of the regulatory environment.

When I got over there, it was nine months into the experiment that they had done. At that stage, there were just over 4,000 retail outlets for cannabis in the kingdom—some 3,011 in Bangkok itself. I was interested as an academic in identifying harm. I've provided the questions that I asked of 32 people, who were everyone from owners of cafes to police to magistrates. I was unable to identify any harm. Contrary to the actual harm, I had a great time touring all of the establishments and becoming familiar with what a legal environment for cannabis looks like. In the submission that provided, I would like to provide to the Committee a detailed report regarding this inquiry. I spent a lot of money and time putting together this trip for just such a moment as this.

The CHAIR: We would welcome that.

JAMES MOYLAN: I could identify no harm. More to the point, most of the people I met didn't have two heads, three arms. They were perfectly normal people running these establishments. You'll see in the slides that I provided that, as with the Thai habit, they're incredibly commercial folk. Instantly, there was a retail outfit for every context. I toured from the top end. Big retail Kush House, I start with, which is a large firm with a CEO and millions of dollars pumped into it—beautiful, high, expensive pot—servicing the top end of town, and that's it.

They're all in suits and beautiful—just wonderful. Mid-range, you get—I showed them the next one. You get places like Happy Star and Gerald's, which are pretty sparse. They're servicing the office crowd on the outskirts. It's still fairly expensive. You go into town itself. There are these quick service places, like The Joint and the like, which are really aimed at the lunchtime crowd—come in, get that bud, go upstairs to the recreational lounge, have a quick toke, go back to the boring assembly line. That's directly hither.

In the industrial centres, I came across one place called Cannabangka, which was literally a store in a telephone box. He had at the back of the box a little square, fronting onto a telephone box. You'd hop in there, and there were price lists on each side. He'd serve you, and out you go. There was a line of people around the corner. You get to holiday places like Pattaya, where I met three Australian brothers, who currently have five dispensaries in Pattaya. They're adding to the local economy. They built a joint grow-up in the centre of the town. They have Buds R Us—I won't mention their names, because I haven't asked their permission. They are a terrific example of the sorts of people who should be doing it here in Australia, for us. This is a massive economic boom to Thailand. They understand it for what it is, and all this you hear about them rolling it back is, to put it in technical terms, bullshit.

The Hon. STEPHEN LAWRENCE: We've received a lot of evidence about the medicinal use of cannabis, particularly for pain relief, insomnia relief and anxiety. But I don't think we've received evidence about the reason for recreational use of cannabis. I suppose, it's within common knowledge—maybe—the effect of cannabis, to some extent. I thought it might be useful to have on record some evidence about that. In light of your evidence, I think you went so far as to say that it has saved your life. Could you tell us about some of the beneficial impacts of cannabis that aren't medicinal?

JAMES MOYLAN: First, I will preface this by saying that I'm not one of these people who thinks cannabis is the be-all and end-all of the world. Cannabis is mildly addictive. People do become, not physiologically—I've been through the delirium tremens with alcohol. I know what being addicted is about. You have a couple of nights of sleeplessness and you get over the cannabis, but it is mildly addictive. Cannabis, because it is a wonderful soporific, provides relaxation and stress relief. For people such as me, who can't take alcohol—it's just precluded—I use cannabis as a recreational vehicle. I still use it as a crutch—yes, granted—but it's a welcome crutch. I'm sure people around this table use alcohol as a crutch—a welcome crutch.

Human beings use recreational drugs. I'm sorry to inform you all of this, but it's been happening for quite a while. Human beings have been using cannabis recreationally for as long as civilisation has been in existence. The concept of outlawing cannabis is entirely a modern moral phenomenon, not in response to any identified harm. It is the very last of the morality crusades of the twentieth century which still lingers, and it is a stain upon our legislatures that they haven't addressed this. I will point out that the reason they haven't addressed this is not you guys. You guys are bullet shy because you're politicians. The reason it hasn't been addressed is because of the press in Australia—the ridiculous things I hear in the press, especially from News Corp but also Nine and Seven. I told you about my experience with the ABC.

The CHAIR: You did, Dr Moylan. Maybe I can bring you back to the question which was—

JAMES MOYLAN: The things that it's good for.

The CHAIR: Yes.

JAMES MOYLAN: It's good for recreation. I take it because it gets me stoned and I like being stoned. I don't believe that I have to justify that to anyone.

The Hon. STEPHEN LAWRENCE: We heard some evidence earlier in the inquiry from Nick Cowdery, KC, that he regarded the right to consume cannabis as a human right. I do not think he was suggesting that there is any express recognition in some international instrument of the right to consume cannabis, but he saw it as something that flowed from other rights, such as the right to privacy, the right to security of the home and a few other things, maybe.

JAMES MOYLAN: When Nick Cowdery was thinking, I was nodding my head because currently, in California, the Supreme Court of California has acknowledged just that: Cannabis use under certain circumstances is a human right, to the point that there was a case by a prisoner in the Californian penal system demanding the right to use medicinal cannabis, which was granted.

The Hon. STEPHEN LAWRENCE: We have also heard some evidence about maybe a staged progression towards decriminalisation—a relaxation of criminal sanctions, perhaps in a phased way. Are there particular aspects of the criminal regulation of cannabis that, if the Government was to go through some staged phase, you think should be the first things to be relaxed or changed—for example, the maximum penalty for possession, the structure of supply offences, the way convictions are dealt with or anything else?

JAMES MOYLAN: Indeed, in my submission I provide a list of immediately required actions.

The Hon. STEPHEN LAWRENCE: What page of your submission is that on?

JAMES MOYLAN: It's the final part. I don't have page numbers; I'm not that organised. It is my considered opinion that the current overlay of the Federal jurisdiction's medicinal cannabis laws upon the criminal jurisdiction in the States has produced a situation where, through happenstance—it wasn't deliberate, but currently the law in Australia is arbitrary. It is impermissibly arbitrary in accord with our—

The Hon. STEPHEN LAWRENCE: I saw that.

JAMES MOYLAN: The very first thing a legislature should be doing is striving to cohere with its international obligations. I would suggest a moratorium on all offences that mimic those that are legally prescribed under the Federal system—in other words, a moratorium on all criminal imposition of New South Wales citizens for use of cannabis in all instances and possession of an equivalent amount of cannabis to that which is allowable by prescription.

The Hon. STEPHEN LAWRENCE: When you say a moratorium, do you mean administrative non-enforcement of those laws?

JAMES MOYLAN: Yes, I do, in the same fashion as—that's the manner. There is no need for legislative change, because a moratorium must be matched with further action. It's an acknowledgement that the current schema of law is unjust or insufficient.

The Hon. STEPHEN LAWRENCE: Lastly, as part of such an interim phase, what would you think about the idea of a regional trial where you trialled non-enforcement of the criminal law with respect to cannabis, just to see how it goes? Is that something that you think would be a good thing, or do you think maybe it might be counterproductive?

JAMES MOYLAN: I think it's more an alibi for action than any action. I want to point out the history of the Gallup poll in America, because America is the comparable jurisdiction which has a very similar social—we're very similar in lots of ways. You go to America and it's so different and so the same, but they're decades ahead of us on this. In 1969, the very first time that Gallup polled in America, 12 per cent of Americans were in favour of legalisation. In 2013 that had gone up to 50 per cent. The next year, Colorado and Washington legalised pot. In the next 18 months it went up to 58 per cent. Right now 70 per cent of Americans agree that cannabis should be legalised. These are the people with the most experience of it. These are the people who have a day-to-day experience of legal cannabis in their country and 70 per cent of these people now agree, and it's growing every time it's polled. At the moment, 57 per cent of registered Republicans are in favour of legal cannabis. You can't get 70 per cent of Americans to agree on anything, but cannabis—when you look from overseas back to Australia, it's like looking at the friggin' Stone Age.

The Hon. CAMERON MURPHY: Thank you, Dr Moylan, for your lengthy submission and for coming along to give evidence today. I wanted to come back to an issue that you raised earlier where you described medicinal cannabis use as, really, the purview of the rich and the wealthy. They get access to a system while everybody else is locked out of it or faces the consequences of the criminal justice system. Can you expand on that a little bit and explain the reality of what somebody who is a recreational user like you or somebody that doesn't have access to medicinal cannabis faces?

JAMES MOYLAN: There are two groups of Australians who are pretty much excluded from legal access to cannabis. There are those such as me who won't lie to a doctor. That's a very small group, I gather, but there is a larger group of people who have no facility to access the prescription. They don't have a doctor. If you don't have a doctor, you're not going to be getting legal cannabis. There are lots of people who live on fairly impoverished but happy smallholdings all throughout the Lismore region, especially in the back end of Nimbin.

The Hon. CAMERON MURPHY: These are people that grow it themselves.

JAMES MOYLAN: Yes. These are people who are growing cannabis, consuming cannabis and harming no-one, who are exposed to legal peril because they are growing their own and consuming their own cannabis and not doing the same. I want to bring your attention to it. It is not highlighted enough. Currently, the Federal Government is a monopoly drug dealer. Why? This is just untenable. I don't want the Federal Government declaring who can smoke cannabis, where they can get it and what sort of cannabis it is. For Christ's sake, I do like my toke, and I don't think the Government has the same sensibilities in choosing cannabis as I do.

The Hon. CAMERON MURPHY: In your view, are those laws being implemented in a discriminatory way against particular people in the community?

JAMES MOYLAN: Yes.

The Hon. CAMERON MURPHY: Who are they?

JAMES MOYLAN: Aboriginals. I have noticed that there seems to be a tariff on being Aboriginal in this region. They don't get access to cautioning. If you're a poor hippy, you don't get access to cautioning. If you're off the grid and if you're a person that a police officer dislikes for any reason—the concept of providing police with discretion in this matter doesn't address the difficulties; it exacerbates them, because the system itself is at fault. How do you fix it? Simply: you provide a medicinal cannabis card or a recreational cannabis card for people to access cannabis from a private dispensary. I'm not in favour of laissez-faire legalisation. I just want to be able to buy cannabis from a local grower without the police getting involved.

The CHAIR: Thank you very much for your evidence today, Dr Moylan. We certainly appreciate the comprehensive submission you made, which the secretariat and the Committee will rely upon. Again, we thank you for your attendance today. You were going to provide to us an analysis of the Thai experience, and the secretariat will be in contact with you about that.

JAMES MOYLAN: I would like to, if possible, just guide the Committee through slides of all of the various—and also the results of the interviews that were done. They are enlightening because they look to the actual lived experience of people on the ground.

The CHAIR: Unfortunately, we don't have the time to do that now. But if you can provide that information to the secretariat, they will make sure that we get it, so if you could frame it in that way.

(The witness withdrew.)

Mr DAVID HEILPERN, Dean of Law, Southern Cross University, affirmed and examined

The CHAIR: Good afternoon, Mr David Heilpern. Do you have some introductory remarks to make before we proceed to questions?

DAVID HEILPERN: I want to note that I was a magistrate for 22 years. I am reasonably old. Accordingly, when I first started practising law, the following matters I appeared in: people charged with being homosexual, people charged with blasphemy, people charged with prostitution, people charged with vagrancy, people charged with abortion, and people who were charged with what was called SP bookmaking but basically was gambling on anything other than horses or dogs. Each of those matters now have either been legalised, decriminalised or regulated and the sky has not fallen in, yet ever since I started practising I have lamented that cannabis remains unlawful.

It is, as Dr Moylan just stated, the last of the victimless civil libertarian issues left. It is of enormous personal frustration to me and, I'm sure to all of those who are sitting in prison cells now, to all of the magistrates and to lawyers in the New South Wales criminal law system that is drowning in drug matters, that this has not changed. It has in so many other places. Yet, our obsession with the legalisation of cannabis remains, despite—as far back as the Wood royal commission up until the ice inquiry—every objective legal analysis coming to the same conclusion: this should join the ranks of each of those other crimes.

The other aspect of that is that all of these other crimes used to take up a huge amount of police and court time. When I did the list at Central court as a young lawyer, it was taken up with prostitution, with vagrancy and with offences relating to homosexuality. They were the bread and butter; that's what police were doing. We're now in a situation in New South Wales where there were more possession of cannabis matters dealt with by New South Wales police than there were breaches of apprehended domestic violence order matters dealt with in the courts. That is not public priority; that is policing priority. In effect, what Parliament has done by keeping cannabis illegal is empower the police to set their own priorities that put child sexual abuse, domestic violence secondary to these ongoing drug offences.

In my 22 years as a magistrate, I never issued one warrant for a domestic violence offence. I never issued one warrant for a child sex offence. It was all drugs. This is the policing priority that we have allowed to exist. To me, it is a great shame and a blight on our society that we have not moved from this position. Unlike most jurisdictions overseas, police have an unfettered discretion with what to do with their dollar budget. They get given X and they are told, "Spend it as you wish." In fact ministerial intervention in prioritising how that is spent is frowned upon and seen as interfering. As a result, the police get left to do what they want with their budget. There was a police board, of course, for a while. I'm sure many of us will remember those days. But there isn't one anymore. As a result, the unfettered discretion police have has been abused and Parliament needs to step in, because if they don't, this situation will continue.

One of the reasons I left the bench was because of the drug driving laws. There's an argument here, but we now have literally hundreds of thousands of people in New South Wales using medicinal cannabis legally. They cannot drive. If they crashed their car while they're using their medicine, some insurers will not cover them because they're committing a crime by having any level of cannabis in their system. The furphies that have been thrown up by this Government to not change the laws to meet the Tasmanian, the American, the northern European requirements are farcical. Most recently what was thrown at Drive Change, which I'm the lead of, was, "We can't tell where the cannabis comes from; it could be illicit. It could be illegally obtained." That is a hurdle that will never, ever be crossed. It's never crossed with alcohol; it's never crossed with pharmaceutical drugs. It could be cricketers getting diet pills from their mum rather than from the chemist. Who cares were it comes from? The issue is impairment.

The Tasmanian model, as I'm sure you're aware—Ms Faehrmann was on the upper House committee that dealt with this. Tasmania has a defence where the defendant bears the burden of proving on the balance of probabilities that they have a prescription, that they're using in accordance with the prescription and no other cannabis, and that they're not driving what is commonly termed as "driving under the influence". That defence has stood now in Tasmania for nine years. New South Wales has a growing road toll; Tasmania has a shrinking road toll. I am not saying for one minute that that's because of the defence. But I am saying what we're not seeing in Tasmania is an explosion of deaths as a result of them being a stand-out State.

We have more drug driving tests in Australia than the rest of the world combined. In New South Wales, if you exclude the rest of Australia for a moment, we have more tests than the rest of the world combined. We are absolutely obsessed with a scheme that is unproven—has no road safety measures proven and not one coronial report says that medicinal cannabis has been responsible for a single death in Australia. What we're doing is criminalising not just illegal cannabis users or recreational users—and I'll come back to that in a minute—we are

criminalising every single prescription holder in Australia who gets behind the wheel. In New South Wales, that's many hundreds of thousands, and I got sick to death of taking their licences from them. Why should we? Why should mothers who want to take their kids to sport but who have a prescription—let's keep this word in mind: prescription. This is what the doctor is saying you ought to do, and yet they're criminalised. They lose their licence.

Drug driving is one of the—there have been three recent developments that I would draw your attention to. The first of these is a decision of the Supreme Court, which says that there is no longer a defence of honest and reasonable mistake of fact. What that means is that, even if you honestly and reasonably believe there is no cannabis left in your system and you will not be over the limit, that is not a defence; if it's there, it's there—full stop. That wipes out a whole range of defences that used to be available to people. Secondly, the research from Swinburne shows as conclusively as you need that those who are using prescription medication—cannabis—and don't drive for a period of 12 hours are no greater danger on the road than anyone else.

The third development is the raw numbers. We are certainly up to one million prescriptions in Australia. How does that relate to numbers of people in New South Wales? The latest figure that I have is 421,000 individuals have, at some time, taken—it's not possible to say right now—prescription cannabis. You add the illicit people to that—those who can't afford it or who Dr Moylan was pointing out are otherwise excluded—and you're dealing with a substantial proportion of the actual adult population of New South Wales criminalised by virtue of drug driving laws. In my view, the maintenance of these laws means that, no matter what you do with cannabis decriminalisation, it is useless if you don't change the drug driving laws, because people can't use it. They can't actually go about using the drug of choice or the drug that their doctors prescribe, because they can't drive.

We all know that there are some adults who don't drive. We also know that some, very few, will be using CBD isolate, so they're not THC, but the vast majority of those people—we could have cannabis legal tomorrow and yet the criminalisation of drivers continues. How long does it stay in your system? Those of you who are aware of my finding in Carrall: 10 days—probably not so; the science has caught up now. Most people who are prescribed cannabis take it at four or five or six in the afternoon and then don't drive until the next morning—every day. That's what the doctors prescribe. They are all criminals. If they get caught once, they're likely to lose their licence because it will be automatically suspended. If they get caught twice, there's no choice for the courts. You can commit murder twice and have no penalty the second time, but you can't do that with drug driving. That's how crazy our laws are.

The Hon. NATASHA MACLAREN-JONES: I've got a question in relation to the Cannabis Cautioning Scheme. We've seen evidence that has shown that, over the years, the number of people who have been cautioned has gone down and prosecutions have gone up. Do you have a view as to what has been leading towards that change in trend?

DAVID HEILPERN: I'm in favour of any drug law reform that lessens the criminality, but models where police have maximum discretion are problematic. I say that because that has been shown not just in the drug context but in every context—that where you have police discretion, you have, eking into that, a whole range of factors, whether they be race, locale, the discretion of the local commander et cetera. You get an inconsistency. That's the whole reason we have courts and appeal systems and overall systems of precedent; they provide a safeguard whereas models that are based on police discretion don't. Having said that, the two best models that we have in Australia, the ACT and Queensland, are based on police discretion and I'd hate to see them turned back. I know there was a study by BOCSAR that was then slightly modified and discredited but, in my experience, wherever you have police discretion you have significant problems.

I can give you a really good example of that: Every year in the Hills here, there is MardiGrass. I was one of the people who helped found that, way before I was a magistrate. This year, last year and the year before, the town was completely surrounded by drug driving vans. It's a massive exercise. I said last year that if you were thinking of committing domestic violence, that's the weekend to do it because there'd be no police in any of the towns in this area. There's a classic example of police discretion. Why are they there? We all know, really, why they're there: They're there because they don't like MardiGrass, they don't like people using cannabis and, rather than going in and busting people, they're going to surround every single entrance to the town to stop drug driving. I hope that answers the question. I am suspicious of police discretion. I don't think it's the right model because it places into the hands of police, literally, the discretion to institutionally discriminate.

The Hon. JACQUI MUNRO: Thank you so much for coming along today and for your work over the years on lots of different areas of interest. I'm wondering if you have much experience with the drug courts in New South Wales and if you could share some of your insights from that?

DAVID HEILPERN: Yes. I have never sat on the Drug Court. It's at a district court level, not a local court level. If there's one thing that really should be changed, it is the level of it. Why it started at that jurisdiction is a historical accident. All local courts should have the same powers as the Drug Court, in my view—and, in

essence, they do. An incredibly innovative magistrate on the North Coast of New South Wales, Jeff Linden, started a similar program to the Drug Court in quite an informal way. I'm very much in favour of the Drug Court. I know that Stephen Lawrence has spent years lobbying for one in Dubbo. I sat as a magistrate in Dubbo. I appreciate that it has got a drug problem, but it's ironic that the first non-metropolitan drug court will be in Dubbo rather than the North Coast of New South Wales.

The Hon. STEPHEN LAWRENCE: Sorry about that.

DAVID HEILPERN: You won. Well done. It is really important and I think drug courts—the evaluations are really extraordinary. These drug courts change people's lives and improve them at a really pointy end of the addiction cycle. I know that cannabis is not excluded. I know judges of the Drug Court, and there are not that many cannabis cases there. What we're really talking about there is drugs with a much more physiological addiction basis. The only other thing I would say about that is I think all courts should have the same powers, like the local court—why not? Why are we drawing this distinction between illicit drugs and alcohol? We know about the relationship between alcohol and road deaths. We know about the relationship between alcohol and domestic violence. We know about the relationship between alcohol and ill health, so why we are suddenly drawing a distinction between illicit drugs and alcohol seems to me to be illogical, but I'm not downplaying the importance of the Drug Court.

The Hon. JACQUI MUNRO: Why is it that cases involving cannabis are less likely to go to a drug court?

DAVID HEILPERN: I don't know the answer to that, but I would suggest that it's because—the way the drug courts work, and I don't want to be mansplaining how it works, but people go there and they're offered the opportunity of rehabilitation to stop their criminality. The criminality associated with cannabis is not of the same level. We're not looking at the same sort of property crimes, the same sort of levels of violence and the like.

Ms CATE FAEHRMANN: Mr Heilpern, I want to touch on the tricky issue that everybody seems to grapple with at this State level: Yes, the roadside drug testing laws are unfair, but how on earth do we deal with the whole impairment issue? There is an exemption in the Act for morphine, but no-one asks, "How the hell do the police test for morphine and whether people are impaired or not?" It is ludicrous. You have been critical of how obsessed people are with that being the reason why we cannot change the drug laws. Would you care to explain?

DAVID HEILPERN: Sure. I think I can answer it this way. Imagine, hypothetically, that there is this new drug on the market, called cannabis, that has a whole range of impacts that are really positive for people. There are one million prescriptions in—what are we looking at?—probably, four years. It's a revolutionary drug. No-one would ever, ever ask the question, "Should people be able to drive with this drug being detectable in their system?" It never applied to any of the COVID medications. It doesn't apply to antidepressants. It doesn't apply to Viagra or to anti-anxiety medication or to barbiturates or, indeed, to morphine, or to any opioids. It doesn't apply to magic mushrooms. If it was a brand-new medicine, no-one would ever ask this question about impairment. It would fall into the same category as every other prescription drug, which is, we have an offence, it's called driving under the influence.

The police have proofs. That is, was the person driving? Were they under the influence—that is, was their driving negatively impacted by their drug use? We actually already have an offence for this, and nobody bar nobody—certainly no-one from the drug law reform movement—is talking about changing driving under the influence laws. No-one wants people driving from The Channon into Lismore and taking nine hours to do it. It's just not safe. That offence exists. No-one is asking, "How do we test for impairment for all these other prescription drugs?" We do. We have systems in place. If a person uses an opioid, for example—say, heroin—and they're driving, they can't be picked up with a detection test, and nor should they be, because they may have used heroin well outside the range of any impairment, but it would still be detectable.

Instead, if some is weaving all over the road, they're pulled over and if there is a suspicion they're using an illicit drug, they're arrested, they're taken to the hospital, they're given a blood test and they're dealt with in the normal way, as everyone is dealt with for every other prescription drug. So the short answer to the question is: Impairment is a furphy when it's only applied to cannabis. We have an offence of impairment. It should remain. It remains in Tasmania, it remains in New Zealand, it remains in all northern European countries, for all other prescription drugs. All I'm arguing, and all I think the drug law reform movement is arguing in Drive Change is, "Hey, let's just apply the same rules to cannabis as a medicine as we do to every single other medicine." It's an accident of fate that the test is so good it can distinguish between amphetamines that are prescribed and amphetamines that aren't. Imagine if this law applied to everyone who is on ADD medication. There would be an uproar, and quite rightly so. Does that answer your question?

Ms CATE FAEHRMANN: Yes. Thank you. In June 2022, during the one-day inquiry into my Road Transport Amendment (Medicinal Cannabis-Exemptions from Offences) Bill 2021, road safety experts from Transport for NSW gave evidence that between 2016 and 2020 there were 253 fatal crashes involving drivers and riders with the presence of THC. They said that represented 16 per cent of all fatal crashes and approximated closely to one fatality every week—because of THC.

DAVID HEILPERN: They backtracked so fast when you confronted them on that last word, "because" of the THC. As I said in my introductory remarks, there is absolutely no evidence that any of those deaths involved patients who are utilising prescription medicine. There is no evidence, in fact, that the drug that was located in their system caused the collision or was a part of their driving. They could have been people sitting in their car who got T-boned by a truck. This is an evidence-free zone. They were very careful with their rewording in that inquiry not to suggest there is a causative link. I would say this about that number. I am making some generalisations here, but the biggest group of people who are killed in motor vehicle accidents are aged 18 to 25. The rate of cannabis use in 18- to 25-year-olds over the past 12 months—and keep in mind they don't test for regularity in the Commonwealth surveys, but let's assume that it is at the figure they suggest—is about 16 per cent.

So what we've got is a representational number of people with cannabis in their system. But much more than that, we don't know what other drugs were in their system. I know that the Chair has been making this inquiry and trying to tease out what those numbers are—how many of them also had alcohol in their system et cetera. But here is what we do know: If you use medicinal cannabis as prescribed and you don't drive for four or five or six hours after you take your dose, you are no greater risk to the community than people who don't take THC medication. So however you want to frame the, "Oh, when they took blood from someone and they analysed it down to 0.2 nanograms in the blood, that 16 per cent had cannabis in their system," that is an absolutely meaningless figure. And if there really was a cause and effect, do you think that so many other countries in the world would have ditched the per se drug testing? Of course they wouldn't have. There would be an outcry. I hope that answers it.

Ms CATE FAEHRMANN: Other countries have ditched per se testing. Could you expand on that?

DAVID HEILPERN: Yes. The list of countries that don't have per se testing—that is, minimum requirements—is long and varied.

Ms CATE FAEHRMANN: What do they do instead? When you say they "ditched it"—

DAVID HEILPERN: They do the same with cannabis as they do with all other prescription drugs. For example, in New Zealand, even though they're now considering introducing per se testing—go figure!—but not as a road safety measure, as a drug measure, if the police have a reasonable suspicion that someone is driving under the influence, then they do exactly what we do with every other prescription drug. So, in my view, that safety number is probably the biggest furphy that we've seen in this debate, and it gets in the way of rationality. My response to that is do you have any evidence that any one of those 253 people was using medicinal cannabis? Answer: No. Do you have any evidence that the cannabis caused the accident? Answer: No. Do you have any evidence that cannabis was the sole drug in their system? Answer: No. Can you conclude, as a scientist, that that figure is anything other than scaremongering with a view to keeping the status quo? Answer: No.

The Hon. JACQUI MUNRO: Have you had any involvement with the MERIT program?

DAVID HEILPERN: Yes, that's what I was talking about, with Magistrate Linden. I was the magistrate here for 12 years. Before that, in Dubbo, I instigated MERIT for the courts that I sat in—Wellington court and the like. The MERIT program is a terrific program that is replete with some difficulty. It is very difficult to get people assessed, for example, when they're in custody and the like. When you look at the Drug Court funding per person versus the MERIT program per person, it's apples and trucks full of apples. If only the same funding were available to the MERIT program, then I think we would be seeing much less drug harm in our society.

The Hon. JACQUI MUNRO: So the challenges related to the MERIT program you see are primarily related to funding?

DAVID HEILPERN: Yes.

The CHAIR: Mr Heilpern, in your time as a magistrate, you dealt with a lot of people before the court who were on a charge of driving with cannabis in their system. As a magistrate, finding them guilty, stripping them of their licences, what were the real life impacts for those people of losing their licence? I'm sure they made submissions and their legal representatives made submissions, but what are some examples that you recall, and were those impacts significant?

DAVID HEILPERN: By way of context, almost all of my time on the bench was in country areas. In almost all country areas there is absolutely no public transport. In many places there are no Ubers, and in some

places there's no taxis. So what you end up with is people who, by losing their licence, it is catastrophic. I had people begging me to fine them tens of thousands of dollars rather than take their licence from them. It is absolutely catastrophic for people. I get it when people are a danger to the community. You get people with high-range drink driving and the like—and it's not just me saying this. The highest court in New South Wales, the Court of Appeal in New South Wales, in their drink driving guideline judgement makes it really clear the catastrophic impact of loss of licence for people, particularly in country areas. It's almost impossible to work in a country area without a driver licence. It's a criteria for almost every job. Whether it be an NDIS worker, or whether it be a police officer or whether it be a schoolteacher, you have to get to where you are working, and you can't do it.

Secondly, in the city where there is public transport and other options, particular family supports and the like, where there is family separation, it's hopefully reasonably easy for people to get to see their children, especially the non-custodial parents. Loss of licence, that is gone. What does that mean? If they lose their job, they lose their family. Isolation. This causes harm to society, and a much greater level of harm than the driving with a medicinal level of cannabis in their system. It is well and truly out of proportion. It causes great harm to people. Lose your job, can't pay your mortgage, lose your house, not having contact with family—what does that lead to? Drug abuse. It's a cycle.

The Hon. STEPHEN LAWRENCE: In Australia there is a Federal criminal law that criminalises the possession of cannabis. I was wondering if you could explain to us how does that work in practice. Is it predominantly the fact that State law governs the situation here and the Federal laws exists but isn't so much utilised? How does it work in terms of the Australian Federal Police? Do they actively investigate cannabis possession? I just want to get some evidence about the State and Federal relationship there.

DAVID HEILPERN: No, is the short answer to that. I've never seen Federal Police charge somebody or investigate somebody for possession simplicita. The only time you see Commonwealth possession charges is where it's combined with an importation-type offence. The Commonwealth has vacated the field. I think the tension in the ACT is more pertinent, where, of course, the ACT Government has made a decision that effectively decriminalises, almost legalises, cannabis. The Commonwealth could step in, and perhaps if there was a different persuasion of Commonwealth Government they would. Certainly that's the noises that are being made, a la euthanasia in the Northern Territory et cetera. But the Commonwealth Government is taking very much a back seat, a watching brief. They are not intervening in the ACT, and I never saw a Commonwealth investigation resulting in a possession charge in New South Wales.

The Hon. STEPHEN LAWRENCE: So you agree that the existence of the Federal law is not a reason for this Committee, for example, to say, "Oh well, there is no point looking at decrim, because we can't change Federal law"?

DAVID HEILPERN: There is a lot of history in this. There never used to be a possession charge in the Commonwealth. It would not interfere in any way with New South Wales doing whatever it wanted. The ACT is but one example. South Australia, they've had very liberal drug laws in terms of even cultivation for many years. The Commonwealth never once intervened, under any persuasion of government. So I'd call that a furphy.

The Hon. STEPHEN LAWRENCE: When the ACT was looking at it and started to implement their law reform around minor drug possession, there was some discussion publicly about whether the fact that a Territory law might be considered to authorise or justify possession would, in any event, be a defence under the Federal criminal code. Because in chapter 2, which governs principles of criminal responsibility, there is a provision that basically says you're not guilty if your conduct is authorised or justified by another law. Is that something you are on top of in terms of the constitutional complexity of that?

DAVID HEILPERN: I'm not, but I know that Patrick Keyzer is. He has written on this extensively—he is a constitutional law academic—particularly in relation to Senator David Shoebridge's bill to use plant variety rights to enable the Commonwealth to have jurisdiction over possession charges. So I defer to the much better constitutional lawyer.

The Hon. STEPHEN LAWRENCE: Just on the drug driving laws, a lot of your evidence was framed by reference to medicinal cannabis, and you were obviously pointing to this anomalous situation where morphine and like drugs aren't subject to that law. Would your view be the same if we had a fully legalised cannabis market where anyone presumably over the age of 18 would be able to access, smoke and possess cannabis? Would your view be the same? That is, it would be simply adequate to have recourse to the broad drive while under the influence law and that wouldn't need any further form of regulation?

DAVID HEILPERN: With alcohol, of course, we are able to approximate affectation with reference to .05, .08, et cetera. Technologically, if that's possible with THC, then that would be great. But I doubt we are ever

going to get there. Short answer is if cannabis was lawful, then I would see it as requiring the same regime. The best model would be requiring the same regime as every other prescription drug. In the absence of that, if that is a step too far, then the Tasmanian model is superior. Because as we know, what happens in Tasmania is, if you are driving with a prescription and you're not weaving all over the road and you show the police your prescription, they will exercise their discretion, generally, to wave you on and say, "Well, you've got a prescription."

That is what police discretion should look like. Now, if you do get charged, then the DPP or the prosecuting authorities apply the test of is there a reasonable prospect of a conviction here? Given that the person has now written to us, shown us the script, there is no indicia of driving under the influence, no. So the charges get withdrawn. So very few of these matters ever get to court. Just on the recreational/medicinal dichotomy, I was listening to Dr Moylan carefully, and he seems to draw a very clear distinction. Even his own words, to me, show that there's not. You know, if someone smokes a joint every night before they go to sleep because they sleep better and they don't have nightmares, is that medicinal or is that recreational? In the extremities we can see the distinction, but there is a big grey area in the middle. I suspect, truthfully, that a lot of medicinal cannabis users are using sometimes medicinally and sometimes recreationally. I suppose that's human nature.

The CHAIR: With alcohol, when a young person gets their licence at 16 or 17, they are not permitted to have any alcohol in their system at all until they are off their Ps. Effectively, we have a zero tolerance to any alcohol for young people until they are 20 or 21. They are the cohort, the 18- to 24-year-olds, who are most likely to be in fatal road accidents. What if we had a similar regime, if we had recreational cannabis or even medicinal cannabis, for people who were on their Ps or just blanket under the age of 21, and say no other polydrug use or alcohol in their system? Do you think that would be a reasonable approach?

DAVID HEILPERN: Better than nothing, but no. I don't favour that approach for this reason: Alcohol is water-soluble; THC is fat-soluble. Alcohol stays in your system for a short period of time. If a P-plater has a drink on a Friday night—a single drink—then they will be clear by Sunday morning. That's not the case with cannabis. What we are in fact doing is pushing people away from cannabis by these drug driving laws into alternatives. Let me give you an example. If a tradie in Lismore on Friday night wanted to get out of it, which is not unusual, they could drink, which would cost them—I don't know; I don't drink—over $100 at the bar, I'm imagining, to get drunk. They could smoke some cannabis, or they could take ice, which would be $15.

With ice, they will be fine to go to work on Monday morning. With alcohol, they will be fine to go to work on Monday morning, because it will be out of their system, as they are P-platers. But cannabis may not be out of their system from a single joint on Friday night. There is no social benefit in encouraging people to use the most dangerous illicit drugs that are also water-soluble. I have problems with saying, "Let's just blanket ban those people." There are many 17- and 18-year-olds who are taking medicinal cannabis for good reasons: anxiety, post-traumatic stress disorder or chronic pain. I know that there is growing use of THC for anorexia, for obvious reasons. Those people should not be prohibited from driving if they are no danger to the community, they are using in accordance with their prescription and they are not using any other drugs. My answer to your question is that I prefer the Tasmanian model.

The Hon. STEPHEN LAWRENCE: I want to ask some questions about the operation of the criminal justice system and cannabis. I did a case in 2013 in Broken Hill, where an Aboriginal young person had been convicted or found guilty of being in possession of cannabis. He appealed his conviction to the District Court and ultimately the search was held to have been unlawful, and the evidence was excluded and he was found not guilty. There was evidence in that case, which I recall, but is also reported in the ABC story that I am looking at. The evidence showed that he had been searched 26 times in the two years prior, or thereabouts, and never found to be in possession of illicit drugs on any of those 26 searches. Then, on the twenty-seventh search, he was found to be in possession of a very small quantity of cannabis. Does that scenario surprise you: a young Aboriginal person with an intellectual disability being searched that many times on suspicion of possession of drugs and not found to be in possession of them?

DAVID HEILPERN: It doesn't surprise me in the slightest. That typifies an approach. When I was sitting as a magistrate in central west New South Wales, it was amazing. Some towns, where they had an enlightened sergeant, these things did not happen. But there were other towns. As the unenlightened sergeant would move from town to town, suddenly you would have these explosions of these kinds of offences. There are two experiences that I think elucidate that. First was sitting in Nyngan—not Nimbin—where, because it was on the road from South Australia to New South Wales, there were a lot of cannabis issues being transported there. So they got a sniffer dog there, and petrol sniffing took off. Really, we want this instead of that? We all know the long-term medical harms of petrol sniffing, but I would much rather young people in a town like Nyngan be smoking cannabis than sniffing petrol.

The second example which elucidates the same thing was that I was in the middle of hearing a drug house case—it wasn't cannabis; it was ice—where the police had staked out a house for a year, and had cameras and microphones inside the house. In the middle of all of this, the main suspect pulled a gun on the woman of the house in front of her children over a meal issue and threatened to kill her. It was graphic, horrendous violence. The fear engendered in those children and that woman was palpable. The operation continued for another six months. In other words, they didn't stop the operation; they continued it on.

I was aghast. This is what happens with drug law, be it cannabis or ice or any other drug. The desire for conviction overrules what the rest of us would see as common sense. For example, searching someone 26 times. For example, protecting that woman and cancelling the drug operation. Or, for example, not having a drug detection dog in Nyngan so as to discourage petrol sniffing. Things get out of hand when you make something illegal that doesn't make sense. They are all living, breathing examples of it.

The Hon. STEPHEN LAWRENCE: You spoke earlier about the large number of cannabis-related matters in the courts. I am interested in your thoughts on how many of those matters are matters where the police did not necessarily particularly care about whether the person was in possession of drugs or not, in the sense of wanting to avoid some harm or being particularly motivated to enforce that criminal law, but rather the person has been caught up in a proactive policing operation where drug laws, like traffic laws, are being used as a pretext to monitor someone because of some other concern that the person might pose to police?

DAVID HEILPERN: The funny thing about being a magistrate is that you can only deal with what you get. It is just an impression that builds up over time, really. Of course, what you are saying is correct. The drug laws are used as a pretext—precisely that. For a whole range of perceived antisocial behaviours, be they protest actions like the North East Forest Alliance. We all know how the drug laws are utilised. I think that the best example, in this area, at least, remains the extraordinary over-policing of Aboriginal communities, and largely that is done under the pretext of drug law. You say "proactive", and I think that is a really key term that perhaps I could be so polite as to suggest for this Committee to look at. Domestic violence offences are not proactive; they are all reactive. In other words, when somebody complains. Drug policing is almost all proactive because no one is complaining; they just go out and police it. I would love to see that reversed. We really wouldn't be here if we were like, for example, England, where possession charges are so few. The police just don't care. They see themselves as reflecting community values. Again, there are police boards and all sorts of different factors.

The Hon. STEPHEN LAWRENCE: Lastly, something that I noticed when I worked at the Aboriginal Legal Service was a very marked situation in certain Aboriginal communities of a strong dislike of the police by a significant number of people. There was a very entrenched intergenerational view to that effect which, to my observation, led to a lot of criminal offending because you would have public order incidents involving the police—resists, hinders and so forth. To what extent do you think the enforcement of cannabis laws or drug possession laws is driving that phenomenon and helping to entrench this sustained hostility between segments of Aboriginal communities and the police?

DAVID HEILPERN: Absolutely. It is much easier to detect cannabis than it is domestic violence or sexual abuse—in any community, not just the Aboriginal community. It smells and it's obvious and you search someone and you find it. Drug laws are a real flashpoint, particularly between Aboriginal young people and the police. It's a flashpoint we could well do without, especially when you take into account comparative harms. There are whole subsets of people for whom the drug laws get in the way of proper policing. If I can just use another example, obviously a lot of criminal policing activity is centred on bikie gangs. The people involved in those cultures are—the drug laws is what it's all about, really. That is what funds that entire subculture, a subculture based on violence.

Do we need this? In fact, I think it's the last thing. I mentioned that list of homosexuality, blasphemy, prostitution, abortion, all of which was criminalised, and the last one we've got left for these gangs is drugs. What are they going to do when we actually get rid of that? I suppose there is standover merchanting or people smuggling. But, really, they're going to be left with nothing. If you're actually serious about tackling high-level violent crime, particularly in the drug area, then you just take away the incentive. Prostitutes used to be routinely beaten and slashed. We know the history of that and we know that that has stopped since it's legalised. We could have the same terrific outcomes.

The CHAIR: Thank you, Mr Heilpern. That was illuminating and educative. We very much appreciate you taking the time today to give evidence and the work you are doing with Drive Change and your service to the people of New South Wales. Thank you very much. We very much appreciate it.

(The witness withdrew.)

Dr KEITH GORDON EDWARD BOLTON, Founding Director, Water Operations Division Supervisor, Ecotechnology Australia Pty Ltd, affirmed and examined

The CHAIR: Good afternoon, Dr Bolton. Thank you so much for your submission and for taking the time to come and give evidence today. If you'd like to make some introductory remarks, that would be well received.

KEITH BOLTON: I think we all agree that all drugs, including cannabis, have great potential to cause harm. I think it's very evident, though, that the current legislative framework based on prohibition exacerbates the harm caused by drugs from pretty much every angle that you look at it. I've been involved one way or another in the cannabis industry, and involved in this community where cannabis use is fairly widespread and generally acceptable. In the mid-1990s I founded a business called Decision Earth, which imported a wide range of hemp products from some of the few remaining countries which had a viable hemp industry, which is mostly Hungary, China, Thailand and Nepal.

As a postdoctoral fellow at Southern Cross University, I pioneered mop crop technology, where fibre plants, including hemp, are irrigated with effluent from wastewater treatment plants as a means of effluent re-use. I was one of the first people in New South Wales to hold a licence to cultivate cannabis as a dispensation to the Drug Misuse and Trafficking Act. My involvement in the hemp industry gave me an understanding that cannabis prohibition laws effectively delegitimised and destroyed a once-thriving hemp industry in most countries in the world within a very short period of time. In fact, history suggests that this was one of the ulterior purposes behind cannabis prohibition rather than protecting people.

My work as a hemp researcher gave me a reputation as a cannabis expert and, as a result, I was engaged as a professional witness in 10 cannabis-related court cases. Through this work, I witnessed the immense and often lifelong negative impacts caused by legal proceedings on people, and their families and the community. In 2004 I founded a company called Ecotechnology Australia. We've now got 21 employees, five of whom are Aboriginal. Ecoteam has a reconciliation action plan, which has been ratified by Reconciliation Australia. We work extensively with Aboriginal communities. One of my roles in the company is supervisor of the water operations division and we manage drinking water and wastewater systems in Aboriginal communities and correctional centres across New South Wales, amongst other places.

Through my work, I have become part of the local Aboriginal community, even though I'm obviously not Aboriginal. I lived at Malabugilmah for six months when we were building a wetland-based wastewater treatment system and an effluent-irrigated football field. I've witnessed many cases where Aboriginal people are disproportionately impacted by cannabis prohibition laws. Aboriginal people are more likely to be apprehended for cannabis use or other drug use and are more likely to receive a criminal conviction than individuals in the broader community. I see that. I witness that every time I go to Aboriginal communities. Aboriginal people are 10 times more likely to end up in jail. From my two decades of experience working with Aboriginal communities, I can confirm they're not 10 times badder people than the broader community. Cannabis laws only serve to widen the gap. I know a lot of time and effort and money is invested in closing the gap. But stopping cannabis prohibition and prohibition of other drugs is probably going to be a lot more effective than a lot of other methods.

Through my work in correctional centres, I've witnessed the exorbitant costs required to operate prisons, partly because they're operated with such level of incompetence—criminal incompetence, in my opinion. I understand that around a third of the people in New South Wales prisons are there because of their dealings with cannabis or other drugs. As a taxpayer, I strongly object to our scarce resources being squandered on prohibition of cannabis and other drugs. I'm not here because I think cannabis prohibition is one of our most pressing issues. I think we've got a lot more pressing issues than that. The main reason I'm here is because I consider that we spend billions of dollars every year—us taxpayers—to cause immense harm to individuals and society. I think we need to stop doing that and use our very scarce resources towards things that are actually really fundamentally important, not punishing people for choosing to do something but not otherwise causing harm or trashing the environment.

The CHAIR: Thank you, Dr Bolton. Have you concluded?

KEITH BOLTON: I've got a bit more but it's all pretty much on the paper. I've just paraphrased pretty much.

The Hon. NATASHA MACLAREN-JONES: I have a couple of questions to understand a little better around hemp and hemp production here and overseas. Obviously there is hemp oil, which is more from a medicinal point of view, and there is also hemp that can be used with fibres with clothing or building and supplies. Are there any restrictions here in New South Wales in relation to the production of hemp either for oil or as a fibre?

KEITH BOLTON: No. I mean, that has only happened recently. I think it was 2010 or something. Anyone pretty much could get a licence through the department of agriculture and cultivate low-THC cannabis, but that was only relatively recent. People may be aware that the hemp industry used to be pretty much one of the biggest industries on the planet. Cannabis canvas—all the sailing ships used to rely on hemp production. It was a massive industry. Cannabis prohibition, effectively, destroyed in a very short period of time the hemp industry, and it has only been recently have people been allowed to use hemp for non-drug purposes.

The Hon. NATASHA MACLAREN-JONES: Has there been a significant growth in the industry in the last 10 years or more, or are there still barriers?

KEITH BOLTON: Compared to what it was before, which was zero, yes, there has been significant growth. I think Australia still doesn't have what you'd call a major hemp industry at the moment.

The Hon. NATASHA MACLAREN-JONES: Is there a reason for that?

KEITH BOLTON: I think it's a developing industry. I mean, it's developing rapidly. It's just that it has had not very long to re-establish itself, I think. You can go into supermarkets now and buy hemp food that has been grown in Australia, for example.

The Hon. NATASHA MACLAREN-JONES: Could you outline how it's regulated to ensure that the THC levels are there or not? How is that process managed?

KEITH BOLTON: Traditionally, most cannabis is actually not high-THC. It's low-THC because cannabis was predominantly cultivated for non-drug purposes for the fibre, for fuel or for food rather than for drug use. It's only the drug varieties which humans have bred over millennia to enhance their medicinal, therapeutic or recreational properties. But they're the same genus. Cannabis sativa is the same one that makes the fibre, the food and the pharmaceuticals.

The Hon. JACQUI MUNRO: Thanks so much for your submission and for appearing today. I want to ask about the correctional centres. You mentioned that you thought that they were mismanaged—is the polite way you express it.

KEITH BOLTON: Absolutely.

The Hon. JACQUI MUNRO: I was wondering if you could expand on that in relation to people who are criminalised under this drug system.

KEITH BOLTON: I think it's terribly ironic what's going on. As you're aware, I work in drinking water and wastewater. Glen Innes Correctional Centre—in 2021 I did a study of their undersized effluent pond. I found that it was not sufficiently sized to treat the wastewater to a level that we should discharge in the environment. Probably 10 years ago the pump that irrigated the effluent around died. It was never replaced. Consequently, I worked out yesterday about 25 million litres of effluent had discharged into a watercourse since I first reported that in 2021. You look at the Protection of the Environment Operations Act. It's a criminal offence to allow—to cause—a pollution event. That's why I said that prisons, from my experience, are run by criminally negligent people. I could list many examples with respect to drinking water and wastewater.

The Hon. JACQUI MUNRO: In terms of what you've seen over your lengthy involvement in various ways with this regulatory system, we've had an announcement that we've got a drug summit at the end of the year. I'm not sure if you're familiar with the ice inquiry recommendations that were made to government. I'm wondering if you have any thoughts on how you've seen the political context or inclination, even, to talk about these matters has changed over time when it's unclear how different the recommendations from the upcoming drug summit will be from the ice inquiry and how there will be a public response that's different, and whether you had any comments about that shifting Overton window, if you've seen that.

KEITH BOLTON: There are a few things running in your statement. I guess I'll say I consider prohibition of any drug—be it a drug like cannabis, which is generally regarded as relatively benign, or ice, which is generally regarded as a strong or bad drug. I still believe that prohibition of any drug makes the problems much worse on that drug. Overall, I would support legalisation of all drugs, not just holus-bolus. I think that a lot of wise people need to get in and work out the legislative framework to make that happens before that takes place. I think five or 10 years is a reasonable time to move to that way. Simply, there's nothing good about prohibition of drugs. There are no positive benefits. Us taxpayers spend billions of dollars a year to make a problem worse through prohibition. Sorry, I'm not sure it quite answered your question.

The Hon. JACQUI MUNRO: I guess I'm wondering how you've seen shifts in attitudes towards cannabis, and perhaps other drugs as well, change over the years and specifically, more recently, if you've seen changes in industry. I don't know if you think your dealings with Corrections have been impacted because you're

offering a product that is cannabis—like, it's not a pump, for example; it's a plant that could be criminal in some uses. Is the framework that people use to think about cannabis changing or impacting your business dealings?

KEITH BOLTON: No, it hasn't impacted my business dealings. In fact, my company doesn't really have anything to do with the hemp industry at the moment. It was about a decision to go into my profession or stay in the hemp industry. In terms of attitudes, I've definitely seen attitudes shift. I think when I moved here in 1978—I'm 54 now—there was still a lot of suspicion of people who used cannabis. There's still a fair bit of discrimination against people who choose to use it as their drug of choice. But in this region, it has now become fairly acceptable. People are unlikely to call the police in indignation if they suspect their neighbour is using cannabis like you might have seen a few decades ago. It's generally normalised here pretty much as much as alcohol in some communities around here.

I think that trend has been evident Australia-wide, generally. Let's face it: We've been fed a lot of falsehoods about prohibition and how bad cannabis is. If you've had the good fortune to watch—what's that famous anti-prohibition one? Anyway. Some young, respectable people smoke a joint and end up killing each other and raping each other and all sorts of antisocial behaviour—that's the nonsense that has been fed to people for a long time. It has created quite a stigma against cannabis. But I think a lot of people are seeing through that from their own experiences or seeing other people who are otherwise decent, respectful people who do use cannabis.

Ms CATE FAEHRMANN: Dr Bolton, is your evidence today that prohibition itself causes so much more harm than—we'll just take one drug, cannabis, because that's really the point of this inquiry—cannabis itself?

KEITH BOLTON: Absolutely, yes, I think without a shadow of a doubt.

Ms CATE FAEHRMANN: Would you like to weigh that up in terms of the harm of prohibition versus the harm of significantly less cannabis?

KEITH BOLTON: Yes, absolutely. I'm not naive; cannabis does come with harms, particularly to young people and people with mental health issues, but it is the minority of people. Most people who use cannabis have a beneficial effect from it and it doesn't cause them harm at all. But I've seen people who have become entwined in the legal system and have criminal convictions. That's impacted them for life. I've got employees who can't work in certain areas because when they were 20—and they're now 50—they had a cannabis conviction, so it's reduced their productivity. It causes immense harm to individuals who are apprehended by the police and brought before the courts. That causes great harm. I think that the archaeological record has indicated that us Homo sapiens have used drugs, including cannabis, since we have been a species—and possibly before. I think it is an absolute injustice to tell people that they can't use a drug that they choose to use if they are otherwise not causing harm to anyone or trashing the environment. I just don't see how anyone could come up with the concept of punishing someone who's not otherwise causing harm.

Ms CATE FAEHRMANN: Could I ask you to also talk about your view on a regulated model for cannabis? Obviously alcohol is a drug, tobacco is a drug and there are lots of pharmaceutical drugs. They're all regulated in various ways. You did mention before that cannabis can be harmful, particularly to young people and in certain mental health situations as well, like schizophrenia, for example. What's your view around how a regulated model could address that?

KEITH BOLTON: I think alcohol is a very good example of a regulated model. Alcohol is one of the most dangerous drugs that we use as a society. It's responsible for more deaths and more aggression and antisocial behaviour than pretty much any other drug. However, in its current framework it is highly regulated, quality assurance is very high, and there are strict laws where minors can't legally buy alcohol. I think that's a very good model, to be honest, that can be directly implemented onto cannabis.

Ms CATE FAEHRMANN: What is your experience with the roadside drug testing laws and cannabis users in regional areas? How much that has impacted on people and their lives?

KEITH BOLTON: In this region a lot of people have used cannabis, and consequently there are a lot of criminal convictions. That has sharply increased since the random roadside drug testing for cannabis has taken place. I can cite many examples where people who were not impaired—who had used cannabis, say, the previous day or two days—and who lost their licence and now have a record against their name. That's caused those people great harm. It makes them less productive. They can't drive to work. It makes people resentful. It encourages antisocial behaviour if people feel that they've been unfairly impacted. I absolutely support laws that prevent people from driving if they are impaired. There is absolutely no shadow of a doubt about that, because they are putting other people at risk of harm. Again, as I think our previous magistrate David Heilpern inferred before, it's not really judging people for being impaired.

The CHAIR: Dr Bolton, in your experience, and from your submission, you've been involved in MardiGrass and the hemp industry and cannabis in the Northern Rivers. Do you think that there's an economic opportunity that we are missing, especially in northern New South Wales, to create a multitude of cannabis industries here? We've got legal hemp, industrial hemp; we've got medicinal cannabis and, potentially down the track, recreational cannabis. Do you think there's an opportunity there? Do you think it would be accepted by the community?

KEITH BOLTON: I certainly think so, yes. This area is well known. It is hippie central of New South Wales. Cannabis use is fairly normalised. We've had the likes of Michael Balderstone in the hemp industry who have been strongly promoting the end of cannabis prohibition and the use of hemp for all of its virtues. Yes, absolutely, there's a wonderful opportunity in this area that could be very economically beneficial. Yes, I think that we are not realising the full benefits because of the current legal situation.

The Hon. STEPHEN LAWRENCE: Sir, are you aware of any country in the world that has never criminalised cannabis?

KEITH BOLTON: Most communist countries never took on prohibition of cannabis, but those countries typically grew it for fibre or food and recreational use was very low. Hungary is an example. I used to import hemp twine, hemp paper and hempseed oil from there. I guess they just never took on the vices of prohibition that were so much promoted by the United States, which ironically is now legalising cannabis for personal use.

The Hon. STEPHEN LAWRENCE: We've obviously heard a lot of evidence about countries that have decriminalised, and we've heard evidence around our cultural attitudes towards alcohol and how they can vary. I was just curious about whether there might be countries out there that might demonstrate that a long period of non-criminalisation actually hasn't led to increased use, for example?

KEITH BOLTON: In some of the North African Muslim countries I believe alcohol is actually illegal—for example, in Morocco—or it was last time I was there. I know that hashish was very commonly used and widespread. I don't know the legalities of it there, but if it was illegal it was essentially not enforced. Certainly those North African countries have traditionally used cannabis and don't like alcohol, and are probably better off for their choice, to be honest.

The Hon. STEPHEN LAWRENCE: We've heard a lot of evidence about the medicinal benefits of cannabis in relation to pain, insomnia and anxiety. We've also heard evidence about the beneficial impact of cannabis in terms of enjoyment, stress relief et cetera. Are there any other benefits that we haven't heard about—for example, artistic or cultural benefits? Are there notable examples from history of people doing great things because of cannabis, notable figures in history or cultural history who have said that it led them to do great things, or anything of that nature that we haven't heard about?

KEITH BOLTON: That's an interesting question, actually. I might google that after this. I can't cite any particular example, but I know that cannabis has often been touted as improving or enhancing one's creativity—artistic creativity or musical creativity.

The Hon. STEPHEN LAWRENCE: Or perceptions of it.

KEITH BOLTON: Or perceptions of it, exactly. It's a subjective concept, isn't it, what is artistic and what is not? I know of people who are daily cannabis users who function absolutely fine in whatever they choose to do, be it artistic or some other profession.

The Hon. STEPHEN LAWRENCE: You talk in your submission about cannabis use being in evidence early in time, I suppose, in human history. I wonder if you have any more specific or illustrative evidence about that?

KEITH BOLTON: Yes, there is certainly a fair bit of documented evidence. My understanding is that the earliest evidence of the cultivation of hemp was found in Japan from the Jōmon period, which I think was about 8,000 years ago. That was widespread cultivation. But, certainly, hemp fibres have been found in the archaeological record that are tens of thousands of years old. Cannabis and humans have had a very long, beneficial history until very recently.

The Hon. STEPHEN LAWRENCE: Are there examples internationally of cannabis being used in religious ceremonies or cultural ceremonies that you know of?

KEITH BOLTON: Yes, absolutely. India is a place that comes to mind, and Rastafarians, I believe, consider the herb to be their sacrament. Certainly, like a lot of other drugs, it has been used in association with religious or spiritual practices.

The Hon. STEPHEN LAWRENCE: What occurs in India in that respect?

KEITH BOLTON: I just know that there is a particular religion; I don't really know much about it. It is just one of those things you've heard about where people use it in a spiritual context. But I think it's quite common.

The CHAIR: I think they might have their own God, Shiva. Shiva is actually a colloquial term for it.

The Hon. STEPHEN LAWRENCE: For cannabis?

The CHAIR: For cannabis—shiva. "Get that shiva, shiva, shiva." It's a song.

The Hon. STEPHEN LAWRENCE: In terms of harm from cannabis, we have had some evidence that full legalisation might lead to an overall increase in cannabis use, but there is a bit of uncertainty about whether that would necessarily lead to an increase in harm. I am interested in your thoughts on, if a society like ours did have full legalisation, what sort of public health messaging or campaigns you think might be appropriate?

KEITH BOLTON: I think that's an excellent question and really should be thought about at this stage. I think, first of all, no drugs should be allowed to be advertised or promoted in a positive light. I think education should start in schools, and where people aren't taught that drugs are dangerous but about the risks associated with drug taking. If we do make cannabis legal, alongside alcohol, I think it would be beneficial if people used less alcohol and tended to migrate over to cannabis, if you certainly look at the risk of harm from using each one. Maybe an increase in cannabis use, as people substitute, may not be a bad thing. But from what I have heard, there might be a temporary increase in the use of a drug when it is legalised, but there are not major spikes. Typically, from my understanding, drug misuse or abuse reduces when drugs are legalised.

The Hon. STEPHEN LAWRENCE: I think you say in your submission that children shouldn't have access to it in a legalised market. Is that right?

KEITH BOLTON: The same as alcohol, yes.

The Hon. STEPHEN LAWRENCE: How would that work in practice? What would you recommend would be the mode of regulation? Are you suggesting that you wouldn't be able to sell to a child and that maybe the authorities could confiscate it from a child? You're not suggesting that there should be a criminal offence applicable to a child, are you?

KEITH BOLTON: Absolutely not, no. That would be absolutely inappropriate. Children can and will use drugs, whether it's in a legal or illegal context. But I would argue that it's easier for a minor to acquire drugs from the black market, which really doesn't operate with any ethics, than in a highly regulated but legal environment, where you do have—

The Hon. STEPHEN LAWRENCE: I think it's fair to say—and I'm curious about your view on this—that if you're looking across current Australian society, probably the group that has the readiest access to cannabis is children. Do you think that's right?

KEITH BOLTON: I'm not really sure. Unless you're growing it, it costs money, and children tend not to have lots of money. That's not my experience really, to be honest. I don't think children have more access as such, but there are fewer barriers to getting cannabis, again, because the black market has no scruples or principles.

The Hon. STEPHEN LAWRENCE: The reason I say that is I think it's a common part of youth recreation and youth socialising. It's a common thing that I think children of a certain age do, and like to do. That's certainly what I recall from my own childhood. It was fairly common to know people in your peer group who smoked cannabis pretty regularly. It was just something that one knew about.

KEITH BOLTON: Yes, I have four kids who—

Ms CATE FAEHRMANN: Or to smoke regularly yourself.

The CHAIR: Anything you need to tell us, Stephen?

Ms CATE FAEHRMANN: You didn't inhale?

The Hon. STEPHEN LAWRENCE: I'm not making any admissions; I'm just making the point that it's pretty common in the youth cohort. Would you agree with that? I don't know if you know of any research about that.

KEITH BOLTON: Yes, I would say so. I have children from teenagers to early adults, so I get insights into that. I think cannabis is a fairly common drug used by minors, by children.

The Hon. STEPHEN LAWRENCE: In a future legalised market, how would children get it? Would they just get it from other people who purchased it legally, or would they be getting it from a continuing black market?

KEITH BOLTON: Interesting question. I think, if it's legalised, the black market will be essentially extinguished. But you need money to buy it from the black market or from a legitimised market, so they still have to have money to access it. I'm not sure. I still think children or minors would have less access to cannabis in a legalised situation as opposed to the black market situation.

The Hon. STEPHEN LAWRENCE: Less access, do you think?

KEITH BOLTON: Yes, where age restrictions are stipulated. I will say, though, that I lived in Italy for a year. Children are often given a small glass of wine or a watered-down glass of wine, and they are allowed to drink it with the adults once they reach a certain point of maturity. One thing I did note was that I saw no examples of when you're 18 and you go out and get drunk and be raucous. It was not that kind of coming-of-age thing that you see with young people and alcohol in Australia because it's more normalised and accepted there. I think there is an argument for allowing children over a certain age, under the guidance of responsible adults or parents or something or other, to use small quantities, which I think will be less—but never in a way that would encourage them to do that.

The Hon. STEPHEN LAWRENCE: Has your research included anything on the extent to which the illicit trade in cannabis is fuelling organised crime and/or allowing organised crime to get involved in other areas using the proceeds from cannabis?

KEITH BOLTON: Every time you prohibit a drug it will create a black market. I argue it probably subsidises the black market, which is untaxed, has no quality assurance and has no age scruples. What was your question again?

The Hon. STEPHEN LAWRENCE: It was about the role of the cannabis market in fuelling other activities.

KEITH BOLTON: Certainly, the black market generates income. From my understanding, often that income is used for nefarious purposes. I don't have particular examples in mind. I am aware that small-scale cannabis growers in this area—it's actually part of what I would consider almost a legitimate economy, where people grow a certain amount and they might sell it or trade it for something or other. I don't really consider that to be a particularly nefarious part of the black market, because they are just trading a commodity. But when it gets to the large-scale bikie gangs or international crime syndicates and the like, that's where the real harm of prohibition and crime come in.

The Hon. STEPHEN LAWRENCE: I have heard a few times, through my involvement in legal cases as a criminal lawyer, a suggestion that people have been working on cannabis plantations in conditions of slavery or servitude. Is that something that you have heard is a particular manifestation of the black market?

KEITH BOLTON: Not in Australia.

The Hon. STEPHEN LAWRENCE: I have heard it in respect of people that are unlawful non-citizens—so here for various reasons in various ways—who have been working in conditions akin to servitude or slavery, helping to grow cannabis.

KEITH BOLTON: I've never witnessed that myself, so I guess I can't really comment on that.

The CHAIR: Thank you, Dr Bolton. We very much appreciate you taking the time to give evidence today. The submission you have made is very informative for the Committee. I do not think there were any questions taken on notice.

KEITH BOLTON: I appreciate the leadership of this Committee for dealing with this issue. As I said, I don't believe it's the most pressing issue that faces us today, but I think it's an issue that wastes a lot of our time and resources that need to be directed towards issues that are real, fundamental issues that we need to face on behalf of our great-grandchildren.

(The witness withdrew.)

(Short adjournment)

Mr PATRICK HOURIGAN, Assistant Principal Solicitor, Mid North Coast Legal Centre, affirmed and examined

The CHAIR: Thank you very much, Mr Hourigan, for your attendance today to give evidence and also for your submission on behalf of the Mid North Coast Legal Centre. Do you have any opening remarks to make?

PATRICK HOURIGAN: I do. Thank you for the opportunity to make a submission to the inquiry and the invitation to give evidence today. The scope of your inquiry is very broad. Our submission is focused on quite a narrow part of that inquiry particular to our practice area. Our submission is focused on the offence, which you have heard a lot about today already, of driving with illicit substances in your system. We are a not-for-profit community legal centre that provides free legal services to clients on the Mid North Coast of New South Wales between Taree and Coffs Harbour. A significant part of our matters are traffic matters. That includes attending Taree and Macksville courts on list days to represent clients who are charged with traffic offences and may not otherwise get legal assistance. We have assisted hundreds of clients with these kinds of offences over the past 13 years, so we hope to be able to provide a different perspective to some other people who made some very informed submissions on the areas to be canvassed by the inquiry.

We raise three issues. First, the offence is now considered one of absolute liability. It was one of strict liability, where a defendant could raise the defence that they had an honest and reasonable belief that they weren't committing the offence—a mistake of fact. That has now been found not to apply according to a recent Supreme Court case. Second, we're concerned about the restrictions on the discretion of a magistrate to decide not to record a conviction if someone receives a no-conviction within the past five years, if they've had two relevant traffic offences in that period. Finally—a point you have heard some significant evidence about—we also have concerns about the lack of an exemption around the medical use of cannabis in the legislation as it is now. We have three recommendations: the legislation be amended to declare that this offence is one of strict liability, as opposed to absolute liability; the restriction preventing no-convictions within five years be removed; and a medical exemption for cannabis be inserted in the legislation. I am happy to hear any questions.

The Hon. JACQUI MUNRO: Thank you so much for the submission, which is really helpful, and for coming to give evidence today. You gave a snapshot of the clients and some of the other problems or challenges that they might be facing, whether it is things like homelessness, financial disadvantage or family violence. I am wondering if you have been able to, in any way—I do not know if utilise is the right word. They have come in contact with the criminal justice system. Has there been an opportunity, through that, to then provide other assistance or to direct those people to services where they maybe did not have access to those services before or were not linked with providers?

PATRICK HOURIGAN: Yes, to a limited degree. Often when people are before the court it's not a good time to engage with other kinds of services. The main part of our practice is civil law, so we do areas such as debt, discrimination, fines and other everyday legal issues that people come across, and we have tried to integrate days on list days where people will come from a whole range of services, and we let everyone know that these are the people that then might need these services—that they are there. There is mixed success with those because, when people are in court, they just want to deal with their court matter. That is in the front of their mind, and it often isn't a good time to engage with those secondary things. Having said that, there are good interventions that can be introduced—the traffic offenders program or referrals to drug and alcohol. We are often telling our clients to speak to their general practitioner as the first point of contact. Yes, to a degree.

The Hon. JACQUI MUNRO: And are people taking up those options outside of court days when you're recommending, for example, to see a GP and perhaps get another referral?

PATRICK HOURIGAN: Again, yes and no. If the matter is finalised there on the day, we might not even know that. If the matter is adjourned for them to engage in some kind of intervention, then we would say that most of our clients will take that first step, and the first step hopefully should be the most difficult. But, again, when it comes back to the court, because they are relatively short adjournments, we don't know how well that sticks, in most cases.

The Hon. JACQUI MUNRO: Are those services that are attending on court days all local or are they coming from lots of different parts of New South Wales?

PATRICK HOURIGAN: In the past we have had days where there have been mostly local services, but we'd also get people coming from Revenue NSW to help people deal with fine debt, or Legal Aid solicitors from Work and Development Order teams come from offices across the State to help people engage with other supports. It's a mix and they are often organised by the Cooperative Legal Service Delivery networks within regional areas. A lot of effort goes into those and there are definitely some good outcomes that come from it.

The Hon. JACQUI MUNRO: I'm sorry if you addressed this and I have missed it, but are you seeing lots of repeat offenders coming to you?

PATRICK HOURIGAN: Absolutely, yes. I started doing the traffic program at Taree about eight years ago, and back than it was less common for this matter to be prosecuted. Since then, it has proliferated. There has been so much more of these offences coming before the court. We see the same faces and names on the court lists and at court. Unfortunately, there is repeat. Having said that, there are also a lot of people who are new. We are constantly seeing new people come before the court, and this might be their first interaction with the criminal justice system. Yes, absolutely, there are repeat offenders for these kinds of offences.

The Hon. JACQUI MUNRO: Are you seeing the demographic change at all? Are there any patterns that you have seen emerge over the eight years that you have been involved?

PATRICK HOURIGAN: I would say it is a wide range and it has always been a wide range. With these kinds of matters, that could be someone—I can't recall anyone 16. But it could be, in the Local Court, 16 to eighties that we are seeing there. It is probably more so men aged 20 to 40. Just off the top of my head, those are probably the ones we see the most of, but it certainly is not limited to that. We see a high rate of females. We see older people, younger people—the whole gamut.

The Hon. JACQUI MUNRO: Has that changed at all over time?

PATRICK HOURIGAN: I haven't checked the statistics on that, but not that I have noticed. It seems to be relatively consistent that we have seen a similar cohort of people come before the courts.

The Hon. NATASHA MACLAREN-JONES: How have things have changed, particularly in this area following the floods? Has there been an increase in client representation and also the need for additional supports? Where are you at with that?

PATRICK HOURIGAN: Just to be clear, our catchment ends to the north at Coffs Harbour. We are in the Northern Rivers Community Legal Centre catchment at the moment. But we have certainly been affected by floods, bushfires and hail in our catchment. The need from disasters for legal services generally has definitely increased. The stress that has been put on people has increased, and I think that has had a flow-on effect for civil and criminal and traffic matters. We have people in our organisation that specifically work in that area and are funded to do work with resilience and assisting people who have dealt with those issues, whether that is directly with legal issues such as insurance or perhaps the compounding of issues that have caused people to find themselves in trouble.

Ms CATE FAEHRMANN: Thanks for coming today. From your submission and the evidence in your appearance before this inquiry, the impact that these roadside drug laws have on people and on your business is quite clear. There is a lot of business—people in trouble coming through your legal firm requesting help in relation to roadside drug testing laws. Is that fair?

PATRICK HOURIGAN: Businesspeople?

Ms CATE FAEHRMANN: Sorry, no—people coming to you for help, not businesspeople.

PATRICK HOURIGAN: Absolutely, yes. A very high percentage of our traffic clients are charged with this offence. It probably wasn't an indicative day, but I was down at Taree assisting on a particularly busy day a few weeks ago. I had 11 matters, and nine of them were this offence. It's probably not a perfectly statistical analysis of our work, but a very high rate of our traffic matters are these kinds of offences.

Ms CATE FAEHRMANN: Is it frustrating for you? We just heard from a former magistrate, David Heilpern, who basically left the legal profession because he was so frustrated at having to take people's licences away because he had no other choice. What is your view of the laws in terms of what they do to people?

PATRICK HOURIGAN: The effects can be very devastating. The maximum penalty for a first offence here is a $2,200 fine and an automatic disqualification of six months, which can be reduced to three months. Most of our clients are in financial hardship, so any fine, even if it is put on a payment plan of $20 to $50 a week, places a significant burden on their budgets. But almost entirely our clients come concerned about the licence disqualification, despite the hardship the fine will put on them. It is variable the impact this will have on our clients. Some of our clients do live in a township with good social supports. They will be able to maintain work if they do lose their licence, but that is a rare case. Most of our clients will live outside a township, will lose or not have work, may be isolated, and have other challenges, whether they be medical or anything else.

We can see the effects of licence disqualifications and this offence to be very devastating on people. Imagine a client who is 20 minutes out of town, up a dirt road, who doesn't have a lot of social support—I honestly don't know what is going to happen to them when they lose their licence for three to 12 months. How are they

going to be supported? Are they going to be back before the court with a drive while disqualified? It is certainly difficult to constantly see these clients and not have a good answer when they raise concerns about the issue we keep talking about, which is a lack of impairment or connection between the drug taking and the driving.

Ms CATE FAEHRMANN: And then there is the second offence, if that happens. What is that? A $3,300 maximum penalty?

PATRICK HOURIGAN: For driving under the influence?

Ms CATE FAEHRMANN: Yes.

PATRICK HOURIGAN: That's right. It's the same as high-range drink driving for driving under the influence, section 112 of the Road Transport Act. If someone is charged with that, and appropriately so, there are very severe penalties, including terms of imprisonment and disqualification periods—with alcohol, interlock periods with an interlock device; if it's drugs, long disqualification periods. We certainly have no issue with that. As many people have said, it is entirely appropriate. Interestingly, the section 111 offence of driving with it in the system can be an issue with people getting prosecuted for that drive under the influence. We do see, from time to time, people come before the courts with fact sheets—police versions of events—which describe behaviour of our clients which would indicate they are affected by a drug, but they have only been charged with the section 111 offence.

Now, I am not sure why that is, but I understand there are difficulties with charging people for driving under the influence. Perhaps there is the incentive to be charged with this less serious offence for people who might properly be charged with more serious offences, because there is this section 111 offence—this driving under the influence offence. It leads to an unusual circumstance where for a vast majority of people, and it is the vast majority of people, who have no suggestion that the driving has been impacted by the taking of drugs, dealing with quite harsh—that is, overly harsh—penalties and interactions with the criminal justice systems, while people who really should be facing the brunt are dealt with perhaps more leniently. It is a difficult—

Ms CATE FAEHRMANN: Can you explain that? I am not a lawyer. Why is it dealt with more leniently? In terms of potential driving under the influence, for example—let's stick with cannabis. So the police officer sees that, for whatever reason, this person is driving very slowly, swerving all over the road. They are pulled over or are tested, and they look and sound very stoned, for example. Why would that be more leniently addressed under DUI laws if they chose to go down that path?

PATRICK HOURIGAN: Sorry, I might not have been clear. I am saying, in our experience, we're seeing circumstances where people in that situation are still being charged with driving in their system as opposed to being properly charged under drive under the influence.

The CHAIR: What section is drive under the influence? It is section 111, having it in your system.

PATRICK HOURIGAN: Yes.

The CHAIR: And the other section is?

PATRICK HOURIGAN: It is 112 for driving—

The CHAIR: It is 112, which is a far more serious offence.

PATRICK HOURIGAN: Same maximum penalties as high range drink driving.

The CHAIR: So your evidence is that people are being charged with a section 111 offence rather than section 112 because it's hard to prove that—

Ms CATE FAEHRMANN: It's harder for the police to prove in terms of DUI—got you!

PATRICK HOURIGAN: Yes. Thank you for that assistance, Chair.

The CHAIR: But everyone is being caught by the section 111 offence, even people who are on medicinal cannabis.

PATRICK HOURIGAN: Yes, absolutely.

Ms CATE FAEHRMANN: That's interesting then, because everybody says, "We can't get rid of section 111", for example, "because we can't test for impairment and we can't let all these people drive stoned." But your evidence today is that police are working out if people are driving under the influence of whatever it is. They do work it out. That's your evidence, that they can tell?

PATRICK HOURIGAN: Yes. My understanding of a prosecution for driving under the influence is it is a difficult prosecution to bring, but it is absolutely brought. It's not often brought but it can be brought and that

evidence for the prosecution would often be the police's observations and medical evidence. So they're taken to the hospital, the blood tests are done, a medical expert will give evidence, the police have to describe the behaviour and then it will be up to the magistrate to decide has it been proved beyond reasonable doubt that that person was under the influence when driving, and so on and so forth.

The Hon. JACQUI MUNRO: It's like the Alpine Responsibility Code. You can't ski if you're under the influence and you have an impairment rather than just that you've had any.

The CHAIR: Yes, it is. That's been my experience. That's really interesting. So police do have the capacity—what sort of evidence do they tender when they're making the case around section 112? Is there a field sobriety test? Is there a standard set of questions? What do they tender as well as—your evidence was there is a blood test as well.

PATRICK HOURIGAN: To be fair, I've never defended one of those. I've looked into it in the past but I don't have any fresh—I'm probably not in a position to give informed evidence on that.

The Hon. JACQUI MUNRO: I know that you have just said that you don't necessarily have the experience with this. But, for example, if a police officer is wearing a body cam, is that the kind of evidence that might be tendered as demonstrating impairment not just it's in your system?

PATRICK HOURIGAN: Absolutely.

The CHAIR: Could you take that on notice? It would really help if the legal centre could provide some examples—some of it might be confidential—of the evidence that is provided around section 112. With those blood tests, is there a test that identifies a level of cannabis in the blood?

PATRICK HOURIGAN: For the drive under the influence offences, we would generally refer those to Legal Aid. So Legal Aid represents people who are charged with a serious traffic offence where there is a prospect of jail. We don't have experience with those ones regularly because, if there is a prospect of jail, then we would usually refer to Legal Aid and they would take those on. I'm not aware of anyone in our service running one of those matters to a hearing. I know I've done a plea of guilty for a client charged with that, but I'm not aware of anyone in our service who has run those matters to hearing. We can have a look at the cases and how they're decided and see if there are any public decisions or appeals that might refer to the evidence, but internally we don't have any records that I'm aware of that would assist.

The CHAIR: But your evidence says they're much harder for the police to prosecute and so they're deferring to section 111.

PATRICK HOURIGAN: I wouldn't say "always". I would say anecdotally that has happened on multiple occasions, where we've experienced clients charged with driving in their system when, from reading the fact sheets, it would appear there is, on its face, a case for drive under the influence.

The CHAIR: In your previous evidence you said that it's common for people to be charged with this offence and that it's common for them to have a repeat offence.

PATRICK HOURIGAN: Yes.

The CHAIR: Is it common for them to then lose their licence and be before you again with a drive while disqualified offence?

PATRICK HOURIGAN: I wouldn't say it's common per se. I think most clients take it very seriously. When they lose a licence, we stress the seriousness of driving while disqualified, but it certainly happens.

The CHAIR: It certainly happens?

PATRICK HOURIGAN: Yes.

The CHAIR: In terms of your recommendation, which is about the discretion for someone who is found to have committed this offence twice in a five-year period, could you just talk to that please?

PATRICK HOURIGAN: Currently under section 203 of the Road Transport Act, there is a limitation, particularly around traffic offences, for a magistrate recording or not recording a conviction twice within a five-year period for relevant offences, including these drive with an illicit substance in your system offences. Our concern particularly is where a client has received a no conviction, usually under a bond, for the offence and they may come back before the court, say, three years later with a similar offence. There are some exceptional circumstances around this.

I should say first that the magistrate would be very reluctant in most circumstances to not record a conviction twice for the same client. Magistrates certainly often take the view that, "You had an opportunity once.

We will not give you a second opportunity." But in the second offence, if there is something particularly mitigating, particularly now that you don't have a defence of honest and reasonable mistake—it could be a drink spiking; it could be someone fleeing domestic violence who's been caught driving with a drug in their system. The magistrate just doesn't have the discretion not to record a conviction. They have to impose at least the minimum disqualification period for that offence.

The CHAIR: Do any of your clients come before the courts repeating their evidence that they are on a medicinal cannabis prescription and they need it for x, y, z, and basically go through the process twice?

PATRICK HOURIGAN: I stopped appearing in court regularly about three years ago and I think there has been a proliferation of people with actual prescriptions before the court. I could take that on notice and perhaps take it to the solicitors who appear more regularly in the court. Certainly I know in our case study that was a client who had a prescription for cannabis. That person had been taking cannabis before they had a prescription. They'd had, I think, four offences within a 10-year period and the magistrate was sympathetic to the fact that they did have that prescription and a chronic medical condition. Ultimately, they had other considerations to take into account, set by Parliament, and the automatic disqualification for a second offence is 12 months. So that person was ultimately disqualified from driving for 12 months, despite there being no indication that their driving was impaired and having a prescription to take cannabis and taking it in accordance with that prescription.

The Hon. CAMERON MURPHY: I want to go back to this issue of road safety and the undercharging. What you're saying, in effect, is that, if anything, there is a road safety issue at the moment because the police are effectively undercharging people that they perhaps could prosecute for that higher offence.

PATRICK HOURIGAN: I wouldn't state it that highly. I think we have some anecdotal evidence where that has happened from time to time and that may be an issue, but I don't know enough to say if it's a systemic issue. But it is a factor, I think.

The Hon. CAMERON MURPHY: But that's one of the dangers, isn't it, of having an offence that is quite easy to prove through a saliva test rather than having to go through the exercise of gathering that other evidence? Is that right?

PATRICK HOURIGAN: I don't want to go behind why police have laid that particular charge in particular matters that I've acted in, but you could see that reasoning being persuasive, yes.

The Hon. CAMERON MURPHY: And then that leaves you in this position where, in effect, you've got quite a tough response for people who may have it in their system but aren't impaired when they're driving versus those people who may have been impaired but aren't being charged with that offence?

PATRICK HOURIGAN: Yes. Our real focus of our submission is on the impact to people who are under the influence. I make it a comment about people undercharging as anecdotal, and it's certainly something that we're aware of, but our real view of the issue is the disproportionate criminalisation disqualification periods of people who get charged with the offence despite there being no nexus between the drug taking and driving behaviour.

The Hon. STEPHEN LAWRENCE: Thanks, Mr Hourigan, for your evidence. You recommend in your submission that there be a legislative amendment so that the section 111 offence is changed into what it was always understood to be until the recent decision—that is, a strict liability offence. I was wondering if you could just explain to us what the difference is between strict and absolute liability offences?

PATRICK HOURIGAN: Sure. I'm not a criminal lawyer—our field is traffic, so you may know better than I do—but broadly, for most criminal offences, there's going to be an intention element. For example, if it's an assault then the prosecution has to prove that there was an intention or recklessness as to whether you intended to cause fear to a person. That intention or recklessness element is a very important part of that prosecution. For a lot of the traffic law, there's no intention element. Just the fact that you didn't know you were speeding isn't a defence.

The Hon. STEPHEN LAWRENCE: And that's a strict liability offence?

PATRICK HOURIGAN: That's a strict liability offence, exactly. Then those non-intention offences, we divide those up into two. There's the strict liability and absolute liability. The strict liability has this defence where you can argue that you had an honest and reasonable—so the "honest" is the subjective test about what the person believed; the "reasonable" is does a magistrate believe that's reasonable?—belief that the fact your situation was such that you were not committing an offence.

The Hon. STEPHEN LAWRENCE: If you believe that there's a state of affairs at play that if that was actually the case, you wouldn't be committing an offence, then you've got the honest and reasonable mistake of fact defence, right?

PATRICK HOURIGAN: Exactly, yes.

The Hon. STEPHEN LAWRENCE: Are you able to give us any examples from the drive illicit context of what sort of scenarios might have given rise, before this recent case, to an honest and reasonable mistake of fact defence in the context of the section 111 offence?

PATRICK HOURIGAN: Magistrate Heilpern this morning referred to one of his cases, of Carrall, which he published. It's been some time since I've read it, but my understanding of that, broadly, was the person was tested for the offence and it came back positive; the police officer told that person, "It will be out of your system within a week and you'll be okay to drive." The evidence that was accepted at that hearing—and not challenged, as I understand, by the police—was that the defendant there, I can't remember if it was male or female, had not smoked within that seven days. Then, sometime after that, they were pulled over again. That time, he or she argued that they had an honest and reasonable belief the drug was not in their system because they acted on the advice of that police officer, who had told them, "It'll be out of your system within seven days."

The CHAIR: No, they tested positive the second time as well.

PATRICK HOURIGAN: Yes, sorry.

The CHAIR: The second time, they were positive again.

PATRICK HOURIGAN: Yes.

The Hon. STEPHEN LAWRENCE: So they believed what the police officer told them and, therefore, the magistrate was able to find that they had a belief in a state of affairs that, if it were true, they wouldn't have committed the offence.

PATRICK HOURIGAN: Exactly, yes.

The Hon. STEPHEN LAWRENCE: I seem to recall that in the past there used to be information on the relevant Department of Transport website that gave advice about drive illicit to the effect that normally cannabis would be out of their system by 12 hours, but that that was taken down at some point. Are you aware of that?

PATRICK HOURIGAN: No, I'm not. I've heard about certain government organisations taking down information, but I'm not sure what that was and I don't think anyone does that at this stage.

The Hon. STEPHEN LAWRENCE: In terms of the drive under the influence offence, you were talking about problems of proof—it's harder to prove et cetera; you might need evidence of observation of a person or something of that nature. The other respect in which I suppose it's different to the drive illicit offence is that you need to prove that the person was under the influence of the substance. Are you aware of any case law around the meaning of that, in terms of how affected you need to be in order to commit that offence?

PATRICK HOURIGAN: Off the top of my head, no. I haven't looked at this for quite a while. It's not an offence we see very often before the courts as well. You could count on two hands over five years how many of those matters I saw before Taree, as opposed to the "drive with illicit in their system" offences or drink driving matters, where there were hundreds. It is rarely charged, so off the top of my head, no.

The CHAIR: So when you're charged with drink driving, you're not charged with that offence, 112? It's a separate offence?

PATRICK HOURIGAN: It is 110, yes.

The CHAIR: It is 110. Okay, interesting.

The Hon. STEPHEN LAWRENCE: Are you aware of the broad proposition that it's not the case that any influence is sufficient to prove that you're guilty of that offence? It's got to be influence to a degree that interferes with your driving capacity, basically.

PATRICK HOURIGAN: Off the top of my head, I'm not sure.

The Hon. STEPHEN LAWRENCE: That's fine.

PATRICK HOURIGAN: I can take it on notice and do a little bit of looking into it.

The Hon. STEPHEN LAWRENCE: Sure.

CORRECTED

Ms CATE FAEHRMANN: Your submission makes the point about medical exemption for people driving with morphine in their blood or urine. That exemption would come about in what situation? Roadside tests aren't testing for morphine. Would it come about in the situation of an accident, when people's blood was getting tested?

PATRICK HOURIGAN: Again, I can't recall ever having a "drive with a drug in your system" for morphine offence come before the court. We certainly see a lot of cannabis—mostly cannabis—some methamphetamine, methylamphetamine and very occasionally cocaine. I don't recall ever seeing a morphine offence. It may have come up, but it's very rare so I haven't had to consider that. I'm not sure, sorry.

Ms CATE FAEHRMANN: It's just the hypocrisy, in some ways, of the law in terms of the way it stands. It doesn't seem as though morphine really is an issue—in many situations, anyway—with causing accidents or being found in someone's blood. "Oh, it's because they had morphine present." What about opioids? Is it the same thing, in your experience? Are there tests from a crash, for example, or somebody driving under the influence zonked out of their eyeballs on benzos? Does that occur?

PATRICK HOURIGAN: Not a lot in our practice. If there's been an accident where someone is driving under the influence, especially where there's been an injury—

Ms CATE FAEHRMANN: Because is that a crime, though, if they do have a heap of benzos in their system and it's tested? Is that a crime?

PATRICK HOURIGAN: Driving under the influence, the section 112 offence, includes prescription medication. Again, I'm not 100 per cent familiar with that section, but it can certainly include prescription medications so I'm pretty sure the answer would be yes.

Ms CATE FAEHRMANN: Okay. That's all I wanted to tease apart.

The CHAIR: Thank you. That's all the questions. You've survived. We very much appreciate the submission and you taking the time to travel up today to give evidence. Safe travels home. I think there were a couple of questions taken on notice. Thank you very much, Mr Hourigan.

Ms CATE FAEHRMANN: Sorry, one final question. It's fair to say, then, that for the majority of the clients that you're representing, police aren't pulling them over because they're swerving all over the road?

PATRICK HOURIGAN: No. The vast majority are random tests, yes.

Ms CATE FAEHRMANN: And there's no demonstrative sign of being under the influence at all?

PATRICK HOURIGAN: Yes. The vast majority by a significant degree, yes.

The CHAIR: Thank you very much. A few questions were taken on notice. The secretariat will be in contact with you soon enough.

(The witness withdrew.)

Mr MICHAEL BALDERSTONE, Individual with lived experience, sworn and examined

The CHAIR: Mr Balderstone, do you have some introductory remarks to make?

MICHAEL BALDERSTONE: I am president of Legalise Cannabis, the Federal party, and the Nimbin Hemp Embassy. I've got too much to say, so I sent you another little paragraph. Just a couple of things. I wanted to bring some cannabis, legal cannabis, in case there was—is there anyone who's never seen cannabis? But it was more my point to show you the strength of the smell. Because someone brought up that issue before, that the current laws really encourage people to use other drugs. It's been a big thing for me. Cannabis stinks. You've got to smoke it. It's bulky. Whereas I could pass this around and you'd all get the smell. Do we need to do that? You can probably smell it from here.

The CHAIR: I can smell it.

MICHAEL BALDERSTONE: Yes. You've got the nose for it, though. Any other illegal drugs are in tiny little powders or pills; you don't get caught with them. So in fact, the laws, the way they are, encourage people to use other drugs a lot, I reckon. Good reason to separate cannabis from the other illegal drugs. Because it is totally different. It is an unprocessed, dried plant. All the rest are processed, even the opium poppy. But the other thing I really wanted to talk about was Aboriginal people. I've had a long time in Nimbin, and it's a bit of a refugee camp from the drug war, Nimbin. Lots of people have ended up there. They get accepted. They've got different drug habits. I've just watched Aboriginal people go in and out of jail forever. I can't get over the figures, that 35 per cent of the people in jail are Aboriginal in Australia. They are less than 3 per cent of the population. It's just so embarrassing that, for me.

I just think it would make a huge difference to those jail figures if we change the cannabis laws. It keeps them off the grog. They love yarndi. Aboriginal people don't own a house; they all pay rent. They spend all their money on buying yarndi, and they share it with their mates. They don't care about dealing, they don't take it seriously, they are in and out of jail. They can't get cautioning, like we've heard. It's a big thing for them. I could extend that to white people, because the people in and out of jail who are getting busted all the time are the traumatised people, the people who are trying to self-medicate. It doesn't matter what they're using.

So we've ended up with this recidivism rate of 75 per cent, people in jail. They are just going round and round; no-one is helping them get out of jail. It's been pretty tragic to watch it in Nimbin, watch the same people go in and out of jail. They are not doing anything violent. They are not committing any real crimes, and I reckon the cops know who the real criminals are. And they know that sick people using cannabis are not. That's the other thing I wanted to mention, the police. I've known lots of police in my nearly 40 years in Nimbin. Lots of good people join the cops, and I reckon they are very disillusioned about what they have to do nowadays. That's why people aren't joining the police. You've probably seen that the numbers are down 20 per cent across Australia. I think if we can change our attitude to drug use and stop the police having to do this job they don't enjoy all over the place, it would make a big difference to policing. Bring back respect to the Police Force and all sorts of people will join them again, I reckon. You just ask me questions. I've got too much to say.

The CHAIR: I can smell that weed now.

MICHAEL BALDERSTONE: Is it good? Should we leave it open? Let everyone relax a bit?

The CHAIR: Was that tabled evidence?

MICHAEL BALDERSTONE: I can. I did leave you some books each. A book *Chasing the Scream* I think is a fantastic read, and another small book which people have written in about how cannabis has helped their medical condition.

The Hon. JACQUI MUNRO: Thank you so much for coming along and giving your submissions. They are helpful. You said you've got a lot of—I think you used the term—"refugees" from the drug wars. I'm wondering how the people in that community that you would refer to as refugees, why Nimbin was so attractive to them as a place.

MICHAEL BALDERSTONE: You know, Nimbin sort of started with a hippy festival. I think cannabis has always been a part of that culture really—spiritual, medicinal, inspirational. There is a lot of understanding amongst people who use illegal drugs. They are sympathetic to the others. We are like all the Greek refugees will go and hang together, or whatever. It's a bit similar to that. People hang together who understand each other, who are sympathetic with each other. Also the common ground with cannabis and the other illegal drugs is the marketplace, the black market. When I first went to Nimbin it was heroin addicts selling cannabis all the time. They were the ones who'd take the risk and go to jail. That's when I noticed Aboriginal kids didn't care about going to jail. It was almost a rite of passage.

The Hon. JACQUI MUNRO: People go there with a sort of predisposition, let's say? You don't end up in Nimbin accidentally, I guess?

MICHAEL BALDERSTONE: No. I think it's a bit of a spiritual home, and I think they know they'll get cannabis there. They know someone will probably give them a joint. They get sympathy. They get understanding. It's very tolerant. I think we understand.

The Hon. JACQUI MUNRO: Do people live there for quite a long time, or is a quite a transient population?

MICHAEL BALDERSTONE: Both. Lots of people stay there. Quite a few homeless people, I think I said before. Because cannabis, at $300 an ounce—people using cannabis for some condition will use an ounce in a week. They'd prefer to spend it on pot than pay their rent, often. It's more important. So people end up homeless. People end up sharing. It's a tight community.

The Hon. JACQUI MUNRO: We were speaking earlier about people sort of switching through addictions, for want of a better phrase. They might end up using cannabis as a kind of final drug of choice. Is that something you found that people will grow out of, or is it long-term usage? I guess you say both, but are there common instances of people deciding not to use cannabis after using it for some time?

MICHAEL BALDERSTONE: Yes. Definitely. It is a gateway drug, but it's a gateway out of other drugs, I've found. In the Hemp Embassy we've got—Nimbin has a lot of alcoholics who don't drink; they smoke weed. We have a lot of epileptics. I didn't realise, because they don't have seizures, because they are smoking weed. That's probably what drew people in, that we're all criminals, really. You go to people who aren't going to judge you and not going to dob you in and not going to steal your plants. So there is that sympathy happening also. But, yes, I think a lot of people will use cannabis to get out of their heroin habit, or their meth habit, or their alcohol habit, and they might go 10 or 20 years and work it out and slowly stop. There is a lot of old hippies in Nimbin who don't smoke anymore. I'm not one of them.

The Hon. JACQUI MUNRO: Noted. Okay. Thank you very much.

Ms CATE FAEHRMANN: Thanks for coming, Mr Balderstone. I was hoping that you could give us a bit of your knowledge around the medicinal benefits in terms of cannabis. It sounds like a very basic question, but we have had some evidence that seems to suggest that there could be doubts about some of the claims. There was a NSW Health witness to the inquiry into the roadside drug testing bill of mine two years ago. The two witnesses that NSW Health provided from the LHDs essentially talked down the evidence around the clinical use of any of the cannabinoids.

They said that there was no evidence to support the clinical use and there was not much evidence to suggest that it really treats anything else other than a rare form of paediatric seizure and resistant multiple sclerosis. They were also essentially talking down the claims around treating pain, particularly non-cancer pain, saying they don't stack up or there's not enough evidence to suggest that that's the case. From your experience and knowledge of all of this, could you tell us what you believe and also some of the latest research? I know you've pulled together that publication that links to a lot of the latest research and evidence around the benefits, medicinally, in terms of pain as well as anxiety, because that was also questioned.

MICHAEL BALDERSTONE: That little booklet I left everyone is people's stories of how cannabis has helped them. I think for them to accept it gives pain relief, you've got to go through the double placebo blind trial, which has never happened with cannabis because it's illegal. There's heaps of research in America now showing how it gives great pain relief. Honestly, I've had years looking at this. It's about money. There's so much money to be made from pain relief. It's the best business on the planet. Cannabis never killed anyone in 10,000 years. You can't die, it seems. It's so good across the board. There's a lot of vested interest keeping cannabis illegal. It's just a game, I think. I've had to swallow that.

All the medicines 100 years ago had the opium poppy and cannabis in them. They're the two good pain relievers. So they made them both illegal. Now the pharmaceutical industry grows half of the legal opium in Tassie and we buy it back in pills. They can't quite put cannabis in a pill or they would have, I reckon. There's no doubt for me that its key is being anti-inflammatory. Most pain is inflammation. But I wrote this to you, I think—it's also anti-inflammatory for mental health, if that makes sense. It just relaxes people. I don't like the word recreational. It's really relaxing. If people smoke a joint in the evening, it's to relax. For me, that's more medical, except we don't want to call it medical. It's important you know that medical and recreational cannabis are exactly the same. It's the same plant; it's the same everything. It's a game the powers that be are playing, I think. There's no question it's fantastic pain relief.

Ms CATE FAEHRMANN: What's the impact of the roadside drug testing laws on the Northern Rivers community ?

MICHAEL BALDERSTONE: It has been terrible. It has been good to listen to David Heilpern talk about it. It has just been terrible. I got busted driving a few years ago. I wasn't actually driving. I was in my parked car in Nimbin and the guy tests me and I'm positive. I don't know if you know what happens. You come up positive. They arrest you. They took me to the police station in Lismore for a second test, a bigger saliva test. Then they send that for a third test to a lab and basically everyone comes up. I think anyone over 10 nanograms—10 parts to the billion—comes up and gets charged.

Ms CATE FAEHRMANN: We talked about this in the lunchbreak. Distinguish between THC and CBD, because that actually hasn't been on the record for this inquiry yet.

MICHAEL BALDERSTONE: CBD has to have a little bit of THC in it to work, and that's the whole plant. It's the same as wholefood. You have that little bit of THC but that's enough to get you busted driving, and there's no psychoactive element in it.

Ms CATE FAEHRMANN: And the vast majority of medicinal cannabis will have THC in it.

MICHAEL BALDERSTONE: Yes, absolutely. It was interesting for me, because I pleaded not guilty—

The Hon. JACQUI MUNRO: Just to clarify, it's a non-psychoactive amount.

MICHAEL BALDERSTONE: Yes, less than 1 per cent. In CBD, it's about half a per cent of THC, usually. But somehow that's needed because, if you isolate the CBD, it doesn't seem to have the same effect. Just quickly, I got busted. I had smoked a joint a couple of hours before. They drive me to Lismore and they do this test. It's a few hours. You're allowed 10 nanograms. I pleaded not guilty thinking I would take them on. You get your result back. I had 1,200 nanograms. The cops thought I didn't look impaired, but I'm used to using it. So there's a catch with this. A first-time user might have two tokes on a joint and they're not going to be a good driver, whereas for me who is used to it, I'm probably safer with my medication, like epileptics or people with Parkinson's. Cannabis is fantastic for Parkinson's. They need it to drive safely, like epileptics. So there's a thing here to work out. It has to be about impairment, and I think we've got a sobriety test already on the books.

Ms CATE FAEHRMANN: We've had some evidence around the situation with supply and the quantities, and the reverse onus of proof, if you like, in our drug laws, meaning that if someone's got a deemed quantity they will be charged with supply. What are your thoughts about those drug laws? I want to get to what you think the ideal regulatory model should be. But first, that's putting a lot of people under a really severe fine and jail sentence as a result of having maybe a couple of weeks worth of weed.

MICHAEL BALDERSTONE: If I pass a joint, that's supply. There are quite a few laws that police can use in different ways. That's why I don't like that they have discretion on all the cautioning, always. For all those Aboriginal kids, poor people and people who have been busted, the police have no choice. They can't give you a caution, which is an important thing to change, I think. What was your question?

Ms CATE FAEHRMANN: The law around the supply.

MICHAEL BALDERSTONE: The supply thing. Honestly, I think we should encourage people to experiment with cannabis instead of alcohol if they want to relax in the evening. I think Aboriginal people should be helped to grow and use cannabis. They are severely traumatised people, really.

Ms CATE FAEHRMANN: Alcohol is technically a poison.

MICHAEL BALDERSTONE: And they turn to grog so quickly, and it doesn't work for them. There are little changes that would make a big difference. On the supply thing, people keep talking about Tassie. In Canberra, you're allowed to carry 50 grams. You're allowed to grow a few plants. There has been no trouble with driving. The police say no increase of any dramas. They're not testing people. So we've got examples on our doorstep. Supply is this touchy thing. You're allowed to have your own bit, but if I give a bit to my partner, I'm in big trouble. Get over it. You've got to just loosen up a bit.

Ms CATE FAEHRMANN: Yes, get over it.

MICHAEL BALDERSTONE: Common sense. I feel for the cops because they don't have room to move in lots of cases. They're forced to do stuff. Technically, they can't give me a caution, which is crazy stuff.

The CHAIR: Michael, you've been in Nimbin for 40 years. You've been there. You witnessed so many people come through that community. A lot of them go to Nimbin looking for cannabis. It's world famous for cannabis. Are there more people coming through now or is it the same sort of numbers of people, and what type of people are looking for cannabis? Is it across demographics? Is it multicultural? Who has come—

MICHAEL BALDERSTONE: More and more older people. Definitely a lot of older people. It's fantastic for sleep and people who can't sleep. It should be in aged-care homes. I honestly think a lot of older people have heard about it or a family member uses it. They hear that little Joey used to get seizures and now he doesn't anymore. They all google it and look it up and change their minds. It's good for a lot of people, just simply for sleep, for relaxation, for less stress and less worry. The cannabis market in Nimbin—one day we're going to really appreciate that Nimbin has been supplying medicine for people for years. It's pretty much organic. It's pretty much homegrown. There are quite a lot of complaints about the legal cannabis coming out of Canada. None of it is grown outdoors in the sun. None of it is organic. It's all irradiated. I don't even know what that means. The seeds certainly won't grow. They have got a huge oversupply in Canada, and we're getting it just really cheap. In Nimbin, all sorts of people are buying it, and I think it's happening as much as ever.

The CHAIR: One of the arguments that's put against prohibition is that—one of our most senior police described it as a rocket fuel for organised crime. In Nimbin, who's growing the cannabis? How is it being distributed? Are you aware of organised crime operating large cannabis-growing operations?

MICHAEL BALDERSTONE: Nimbin is famous for its organic outdoor pot a bit, whereas I think in the city it's probably hard to buy outdoor pot. People who are buying, it's all hydro. You've seen those busts on television, with 10 giant, huge plastic houses. Someone asked about slave trade before. They looked like Vietnamese gangs or something to me, and people come in on a visa and look after it and probably don't get paid anything, I would agree. It's quite a different product, in many ways. I think people come to Nimbin seeking good outdoor pot.

A lot of the legal pot has very high THC. Hippies were too clever and bred this high-THC pot and bred that CBD bit out of it, which is not so healthy, I think. Now that pendulum is swinging back. We've realised that it's better off to have a bit of CBD in it. It's a more balanced product. It's a whole journey but under prohibition, when it's all illegal, it's difficult to be open about it properly and do research. No research can happen properly because it's illegal. But I think there are thousands of little Aussie growers who grow their own cannabis and sell a bit as well. In my best dreaming, we could legalise all of them and get them paying tax, because they have the knowledge and skill.

The CHAIR: That's actually a significant area of economic development, is it not? The actual phenotypes, the types of cannabis, are incredibly valuable globally. We don't quite appreciate the fact that for 40 years in the subtropical climate people have been breeding up a particular strain that is valuable. People are seeking it out, are they not?

MICHAEL BALDERSTONE: Yes. Joel from Cymra was talking. He had lots of trouble growing his legal cannabis here because it went mouldy, so he had to find different strains. It's the same with different elements. Some cannabis will send you to sleep, and some will wake you up. People have got to work out what works for them and what's best for them. All that's difficult under prohibition, whereas in America or Canada now, you find out your strain that suits you, and you buy that. You can buy cuttings of it and go and grow it at home for yourself. That would be the dream. That would be the best. I can't tell you enough how many people spent all their money on their weekly medicine. It's tragic. They just spend their whole cheque. It comes, and it's gone.

The CHAIR: You've been involved in the campaign to legalise cannabis for two lifetimes—like, for a long time. Do you get a sense that things are changing now—that there is more popular support, less pushback and less moral panic about it now?

MICHAEL BALDERSTONE: Totally, yes. I think the doctors legalising cannabis changed everyone. It's not "dumb hippies" saying it's a good medicine now; it's doctors saying it. That changed everyone's view, I reckon, and America legalising cannabis has changed things a lot. The stigma is going. We're not being judged like we used to be judged—do you think? I hope. It has definitely changed and is changing. It's interesting, the figures in America, where 75 per cent of people are now saying, "Yes, legalise it", because they've seen it for themselves. We've been hoodwinked, and Nimbin has been a scapegoat town. When people got out of jail in Grafton 30 years ago, if they didn't have somewhere to go, they gave you a bus ticket to Nimbin—"Go and hang there." And then everyone can stand up in Parliament and say, "You want to legalise cannabis? It'll all look like Nimbin."

The CHAIR: Finally, it would be remiss of me not to ask this very specific question. What's the biggest cannabis plant you've ever seen in your life?

MICHAEL BALDERSTONE: Much higher than this ceiling.

The CHAIR: Really?

MICHAEL BALDERSTONE: Yes.

The CHAIR: Ten pounds?

MICHAEL BALDERSTONE: You can grow huge plants, but most people nowadays will grow cuttings because you know what you're getting and they're just little bushes.

The CHAIR: Nice! Tidy.

The Hon. STEPHEN LAWRENCE: Thanks, Mr Balderstone, for your evidence. Firstly, could you tell us about the difference between the medicinal cannabis market product and the illegal black market product, in terms of price and quality? How do those two things compare?

MICHAEL BALDERSTONE: This is about $150 worth, and the cannabis on the street is even more expensive now, although some legal cannabis will range from, say, $150 for an ounce to $400 for an ounce. On the street, it's probably about $300. It's all irradiated, which people don't particularly like. Like I was saying, it's all grown indoors and nothing is organic, whereas we are used to pot that's grown outdoors. It's a bit bushier; it's not such high THC. It's easier and probably a much healthier product, in many ways, I think.

The Hon. STEPHEN LAWRENCE: In terms of quality, would you say that the medicinal cannabis, on average, is stronger than the black market cannabis, on average?

MICHAEL BALDERSTONE: Yes, I do think—not a lot but marginally, on average, yes.

The Hon. STEPHEN LAWRENCE: So stronger and a little bit cheaper, did you say?

MICHAEL BALDERSTONE: Yes.

The Hon. CAMERON MURPHY: That weight that you were referring to, what weight is that? That's the $150.

MICHAEL BALDERSTONE: That's 14 grams—about $10 a gram.

The CHAIR: Half an ounce.

The Hon. STEPHEN LAWRENCE: I'm interested in the potentially unfair and arbitrary operation of the criminal law. We've heard lots of evidence already about a very high percentage of police searches seemingly for minor drug possession. I'm interested in your thoughts about Nimbin and the way that the police police Nimbin. Do you think Nimbin is policed in respect of cannabis like anywhere else in the State is, or do you think it has got a bit of a special regime?

MICHAEL BALDERSTONE: Yes, I reckon—it's a good question. We had lots of police raids—not for 10 years, but we used to get lots of police raids. It would make no difference to the supply of cannabis. All the traumatised people who were dealing were going to the pub. It turned into a nightmare for the cops that day because people will use anything they can get their hands on if they're desperate enough, just to change how they feel and to change their state of mind. Currently we've only got a couple of police in Nimbin. We're meant to have six, and I think that's across New South Wales, in some places.

We've got a terrific sergeant. He has been there a while. He has got to know who is who. He'll leave people alone. But also having legal cannabis has given the police the chance to leave people alone, which has been great. We have MardiGrass, this annual protest gathering, that police have backed right off because they've realised that they're not going to search people and then they bring out their legal cannabis. It's embarrassing for them. It has actually given police a chance to back off and leave us alone and not look like they're corrupt, if you like. Yes, they use common sense in Nimbin lots, and they need to.

The Hon. STEPHEN LAWRENCE: In terms of the cultivation of cannabis around Nimbin, or in Nimbin, is that policed differently than it might be elsewhere in the State?

MICHAEL BALDERSTONE: Yes, we get police raids every year, helicopter raids. They love picking on hippie communes. No-one can grow a big crop on a hippie commune. It's the whole culture, I think. It's tragic for us, watching them burn piles of cannabis—totally good medicine.

The Hon. STEPHEN LAWRENCE: In terms of cultivation, certainly drug law is being enforced around Nimbin?

MICHAEL BALDERSTONE: Yes, totally. The police have no choice in that. If they happen to go to your place for domestic violence and see a couple of cannabis plants, they've got to charge you.

The Hon. STEPHEN LAWRENCE: Yes, they do. You said something earlier about Vietnamese people, potentially unlawful non-citizens, may be being involved in cultivation. Is that something that you've got any research knowledge of?

MICHAEL BALDERSTONE: I haven't had any direct—nothing that I've seen direct, but I have followed the court cases. I have seen the big busts. There are often illegal people who have overstayed their visas being camped at the place. The people who are doing it never get busted; they are the people who get busted.

Ms CATE FAEHRMANN: I want to get your thoughts about police discretion. We've heard evidence again yesterday from Professor Don Weatherburn about the reduction in police using cannabis caution and prosecuting instead. Similarly, there's the recent initiative of the Government, the EDDI, or Early Drug Diversion Initiative, which is for all drugs. The police can choose to issue a $400 fine, but data from my office for the first three months indicates that the vast majority of police aren't doing that. They've been given discretion. If we do see anything from this Government to decriminalise drugs—and let's just stick with cannabis, to fully decriminalise cannabis—how important is it for you that police discretion isn't retained in any changes to the law?

MICHAEL BALDERSTONE: Yes, I think it's super important. It's interesting that cautioning numbers have gone down so much—probably they can't do it. If people continue to get busted, then they can't give you a caution. I think twice, you're allowed to—

Ms CATE FAEHRMANN: Which indicates they're targeting the same kind of networks.

MICHAEL BALDERSTONE: Yes, and also I feel for the cops because they've been sent in to fight this impossible to win war. Are they going to start backing off, admitting they're wrong and they've been screwing people's lives for 30 years? Because that's what they have been doing. I mean, I know police who've left the force now who just feel shit about what they did to people, because you can totally ruin people's lives.

Ms CATE FAEHRMANN: Do you have examples—obviously not naming people, but you've had either currently serving or former police expressing to you their frustration with the drug laws?

MICHAEL BALDERSTONE: Yes, totally, and they've left the police.

Ms CATE FAEHRMANN: What do they say?

MICHAEL BALDERSTONE: One policeman in particular, who was a Nimbin sergeant, couldn't stand what he was doing to heroin addicts—good people who have got an addiction just for their pain relief. They're not hurting anyone, but we see a heroin addict as like scum, the lowest of the low, which is—they're just traumatised, sick people. The sooner we can start treating drug use as a health issue, with heart and with compassion, it will change police lives. Because they're mostly good people who join to do good things, and they don't have enough choice in what they can do, which is exactly what you're talking about here. They should be able to fully caution people, but a lot of cops have had the training of "Drugs are bad, mate. They're all bad." And they talk about drugs all in the same basket. Cannabis is nothing like other drugs.

Ms CATE FAEHRMANN: What's your ideal regulatory framework for here in New South Wales?

MICHAEL BALDERSTONE: I would, honestly, end the drug war. I would legalise drugs. I would regulate them, and quality control is critical. The people using powders and pills, no-one's getting it pure, I don't think. It's all mixed up; it's shit—there's too much money in it. Take the money out of it—that's the thing to do. The turnover—what is it, $10 billion a year for cannabis in Australia, probably. People could be growing it properly. People could go through quality control. People could pay tax. We did some numbers. I reckon there's 100,000 jobs just waiting to happen if we legalised and regulated cannabis. I would let small licences for people to grow rather than huge cannabis, like big tobacco—they'll be going for it.

Ms CATE FAEHRMANN: My final question is how important is information and education? No doubt the Hemp Embassy and your role in Nimbin is a big part in some ways. You're able to talk about how to smoke, what it's good for, what not to do. How important is that? At the moment it's all peer education and information—but that's another benefit, I believe, of a regulated market.

MICHAEL BALDERSTONE: It's a huge thing. I remember talking to Della Bosca about trying to stop kids smoking tobacco. Kids are introduced, in Australia, to smoking weed with tobacco. It's just stupid. In New Zealand, Canada and America, they don't smoke with tobacco. But we got this habit—I think from smoking hash. Hash came out where you've got to smoke it with someone and people started on tobacco. I've seen lots of young teenage kids start smoking bongs with tobacco. They wake up in the morning and they want a cigarette. The cannabis isn't the addictive thing; it's the nicotine. So education is huge—huge to find the strain that works for you and wait until you're older. There's the forbidden fruit syndrome, which kids think it's great—"Yeah, let's

go down the back shed and do something illegal." They get off on it. I would make organic apples illegal—let's get everyone into them! But it's a real thing, the forbidden fruit thing.

The CHAIR: Thank you very much, Mr Balderstone. We really appreciate you bringing along your weed, bringing along yourself, turning up today to give evidence and your submission and the work you've done over a long time in this area, which we know you're very passionate about. I don't think there were any questions taken on notice. If there are, the secretariat will be in contact with you soon enough.

(The witness withdrew.)

Mr MARC SELAN, Individual with lived experience, affirmed and examined

The CHAIR: Good afternoon, Mr Selan. Thank you very much for taking the time to make your submission to the inquiry and for appearing. Would you like to make an opening statement or some introductory remarks to guide the Committee?

MARC SELAN: I am a medical cannabis user. I've used cannabis since I was a young man. At about the age of 37 I was diagnosed with ulcerative colitis. Luckily I was able to put my symptoms in remission. Accidentally I found cannabis help me do that. About three years later I was caught by the police self-cultivating for my own medication. I went to court and was not convicted. I escaped conviction, escaped fine. I ended up selling my house and my business and moving to Spain with my family, where, soon after arriving, I started working in a cannabis association and running a cannabis association, which I did for eight years. I had to learn a new language. The cannabis club that we ran was called Organic Oz. We cultivated organic cannabis for our members. We serviced around about 800 to 1,000 members annually. We self-cultivated for our members in indoor and outdoor facilities and greenhouses. We produced flower-infused products.

It was a social cannabis club so we had social events. It was a very great—a really good model that I think we in Australia could benefit from as a social model. It was non-profit. It was not regulated in Spain but still flourished and ran very effectively. Lots of cannabis clubs existed in the area where I lived in Catalonia. They were not regulated by the government but all existed and produced very good quality cannabis. No GMP certification, no medical—nothing like that and very safe. I moved back to Australia about two years ago. Being a medical cannabis user, I came back because I was able to obtain medication. But I'm still persecuted for my use as a medical cannabis user with the current driving laws, which you can see in my submission is about my current job—my job where I drive. I'm still criminalised as a medical user for driving under the influence of cannabis. There are a lot of issues still that we need to address.

The Hon. JACQUI MUNRO: Thanks for coming, Mr Selan. I'm curious about the cannabis association and the types of people—you said 800 to 1,000 people. What kind of cohort was represented in that membership?

MARC SELAN: We only ever accepted people over the age of 21. For a period of time, we accepted 18-year-olds. But we would get young people, we would get people in their mid-seventies coming in. We had an old people's home around the corner. Our cannabis club was in Gràcia near Sagrada Família, so there was a dense population of all different age groups. We had people from the old people's home present with their friends once they realised that they were getting big benefits from cannabis. They had exposure to it. They had access to it where they weren't being criminalised, so they could experience it. We had a really very broad section of the community, all the way from 25 up to 75 that I saw over my eight years.

The Hon. JACQUI MUNRO: What was the decision around changing from 18 to 21-year-olds?

MARC SELAN: Because it was a harm minimisation model and I wanted to provide a safe place for some of the young kids, I allowed 18-year-olds to enter for a period of time, but we found that I suppose the environment that was Spain, the younger kids brought a lot more problems. They're probably just not too mature yet and didn't see the benefit of what we were trying to provide and would probably take advantage of the environment. Maybe the Australian culture would see it a lot differently. There were a lot of cannabis clubs there. It wasn't such a novelty. We moved to the 21-year-old limit and found that was far easier to manage in terms of the behaviour of people and the maturity of our members respecting each other.

The Hon. JACQUI MUNRO: What kind of behaviour was that?

MARC SELAN: Leaving a big mess, bringing lots of food in. In Spain you can self-cultivate in clubs. You have your home. Some of the kids would come in and try sell cannabis to other members, so you had little issues that they would try and play little games. So we just cut it out and put it back to 21, and everyone was much more respectful of the statutes of the association. Whenever you sign up at an association, you read the rules and the statutes and what the cannabis association stands for and what it supports, and you sign on as a private member to that club and the club takes on your consumption amount and cultivates on your behalf. That's the association we have with our members; we cultivate on their behalf.

The Hon. JACQUI MUNRO: In terms of policing that set of regulations, was it the responsibility of all members to look out for other members? How did that policing and regulation work?

MARC SELAN: A private club works on the premise that every member brings in somebody else as reference so we have someone to refer to if they're not behaving and we ask them about it. There is also a procedure that if anyone is misbehaving, we write to them. But it didn't really occur too often in my eight years. There was

never any physical violence. There was only two times I had to ask members not to come back because of inappropriate verbal behaviour in the club. Everyone was pretty respectful.

The Hon. JACQUI MUNRO: You said that there wasn't really any regulation in general.

MARC SELAN: There was. There was a directive from the Catalan Government at one particular time, before they voted for independence, which they gave to us in paperwork, so there was a broad outline of a framework they wanted us to follow.

The Hon. JACQUI MUNRO: Is that like a constitution for these associations for example?

MARC SELAN: No. It was more that the Spanish Federal Government had asked the areas with autonomy, like Basque Country and Catalonia, to regulate the cannabis sector, and so they moved towards doing that. It broke down a bit when they voted for independence, but we did get a list of regulations that they wanted us to start moving towards in terms of cultivation protocols, in terms of transport protocols, in terms of standard operating procedures and taxation.

The Hon. JACQUI MUNRO: Were those easy to adhere to?

MARC SELAN: They would've been. A lot of us were way below the threshold for cultivation. The maximum threshold for Catalonia which the government advised was 150 kilos per club. That was like making all your products, which was quite feasible.

The Hon. JACQUI MUNRO: Just to clarify the type of medicinal cannabis that you're using, I presume that it doesn't have a psychoactive effect?

MARC SELAN: The cannabis that I use to regulate my immune function so that I stay healthy is always high-THC cannabis. THC regulates immune function very well. I always use THC. When we talk about impairment and the level of use that I use, I don't feel the level of impairment that most people would get from using high-THC cannabis because of the degree at which I use it, and my brain is very used to that activity. As a medicinal user, it's very hard to quantify impairment, but it's nothing like—

The Hon. JACQUI MUNRO: So then the exposure over time, prolonged exposure to a reasonably high degree, has given your system some immunity from—

MARC SELAN: It's not immunity. It's, I suppose, like if somebody drinks alcohol a lot all the time and then they have one beer, it's not going to do much. When you have it over a period of time, you do—

The Hon. JACQUI MUNRO: It's tolerance.

MARC SELAN: You have a very high tolerance and impairment isn't there unless you really take it in a very high dose when you take it regularly.

The CHAIR: It's an interesting area we haven't heard much about—the social clubs—that sort of area between a homegrown model and a more commercial model. You said it wasn't well regulated or that there was a little bit of regulation. How did they come to set a consumption amount? How did they allocate? Did everyone get a licence? Is there just an assumed entitlement to every adult and you can just turn up to the social club and say, "I'm an adult, I become a member of the association and therefore I'm entitled to then confer my right to you to grow X amount"?

MARC SELAN: The cannabis club is an extension of the private home. In the constitution in Spain, you can use any drug in the privacy of your own home without fear of police entry. You can't get a judicial warrant to enter someone's home for drug use in Spain. A cannabis club is an extension of that private right to self-cultivate because a club is private and it's only for the people who are locals. The police and law enforcement in Spain on all different levels, they like that model. They tolerate it and they advise people to go to clubs to consume cannabis and not on the street.

The CHAIR: Was the cultivation and production all done onsite in the same place?

MARC SELAN: If you're cultivating just for your club and it's going specifically just to your club, then the police don't have a problem with that. It's only when it starts to go across borders in Europe that the police start having a problem with the cultivation, and they do monitor you without your knowledge and they know where the cannabis is going to and what the clubs are doing. We got entered on various occasions by the police just to check that there were no minors, that we didn't have a large amount of cannabis onsite and there were no tourists.

The CHAIR: Were you allowed to sell alcohol as well?

MARC SELAN: You are. We did at one point because the Spanish aren't so hardcore about their alcohol consumption, but we did stock it. Cannabis clubs, if we were to have the model in Australia, I would say don't serve alcohol because we're such an alcohol-heavy culture. It depends on the environment and the culture. In Spain, they didn't seem so hooked on alcohol; they had a great control of it. But I didn't serve it towards the end.

The CHAIR: What about taxation? You referred to that. You're still charging your cannabis club members a fee.

MARC SELAN: Yes.

The CHAIR: So they still had to come in and buy that right that they had conferred to you. You still charged them a fee.

MARC SELAN: They would make a donation. Everyone who joins pays a nominal fee every year of €20. That goes towards the rent and utilities for the clubhouse. The donation part of it comes—you're not physically paying for cannabis. You walk into the cannabis club and it is separate from the smoking room or the clubroom. You're becoming a member and you're enrolling and you're paying your membership fee. Then, if you want to take cannabis—say you take five grams per month and you only come in once a week to take one gram, you're going to make a donation of, say, €10. For that donation you will go in and take €10 worth of cannabis. If you want to come and donate €50, you will go through to the smoking room and you'll take your €50 worth of cannabis. That covers cultivation costs.

The CHAIR: And there's a tax on that?

MARC SELAN: We didn't get taxed, no. They were looking at taxing us in the proposed framework for cannabis clubs in Catalonia, but it didn't move forward. The proposed framework was to come and get an agricultural engineer to inspect the cultivation site on the approximate cultivation quantity for the year and then work out a rough taxation guide to what you would be paying per your cultivation facility's production capacity.

The CHAIR: Under those laws, were you able to take your cannabis away from the social club?

MARC SELAN: Yes.

The CHAIR: Could you come in, get your half ounce, have some there and take the rest home?

MARC SELAN: Yes.

The CHAIR: Are you allowed to possess it in public?

MARC SELAN: You could. The thing was the Spanish people knew that police weren't really going to hang around a barrio or a local cannabis club and hassle the members, but they could if they chose to. If you were not playing by the rules, they could start pressuring your members and searching them. Members knew, when they left the club, to carry cannabis in their pants, and they wouldn't be able to be searched there. But it wasn't really an issue. People commonly took it home with them if they lived in the area. The service we gave was that we did keep cannabis for members at the club, which reduces consumption. You know where you're going to get it every day so you don't have to buy a big bag of it and sit at home by yourself and consume, consume and consume. You have friends and social activities and we would keep the cannabis for the members.

The CHAIR: What about the neighbours? If your next-door neighbour starts a social club and there are 65 people having a spliff, it's going to be pretty fumy!

MARC SELAN: That's why the inception of cannabis clubs really was in Barcelona, because it's a medium- to high-rise structured city where everyone is living on top of each other in apartments. The cannabis associations were well ventilated. We have extraction systems that go through carbon filters and air filters, and the chimney has to be 10 metres away from anyone's front door. You have to make sure there is no smell and no noise and you can't annoy your neighbours, which we managed to do successfully. The club still runs successfully now that I'm not there, and there are plenty of neighbours. Yes, it's very easy to keep your neighbours happy. You just don't put the music up so loud and you make sure you have an extraction system. Obviously in Australia we don't allow smoking indoors, but if we have vaporising indoors and an outdoor smoking area, there are all sorts of possibilities. But keeping neighbours happy is not hard.

Ms CATE FAEHRMANN: Did you say you had to get a licence?

MARC SELAN: It was an association. In Spain you can have an association for books, you can have an association for exercise, and you can have a cannabis association.

Ms CATE FAEHRMANN: When you talked about filtration and the chimney that needed to be 10 metres away, they were still regulations. So "Because you have a cannabis social club association, here are the regulations around this."

MARC SELAN: It was an industrial regulation, like any restaurant or any place serving the public would have to have, especially considering we have smoke inside.

Ms CATE FAEHRMANN: Were Australia's drug laws and its reputation mentioned, or was it common thinking in places like Spain? You have probably talked to travellers. For a Western democracy, we probably have some of the worst, don't you think? Let's stick to New South Wales.

MARC SELAN: Australia is 100 per cent dragging its knuckles so far behind the rest of the world. When I came back from Spain, I was so disappointed at how far we have regressed on so many different levels. The fact that we have this so-called rainbow umbrella of smoke and mirrors called "medical cannabis" that we all think is so safe and has all of these GMP standards. It is really just smoke and mirrors. I have seen and spoken to growers who work in Canada and I've seen medical facilities in Australia that just use irradiation as a way of getting their mouldy product to market. We didn't have those safeguards in the cannabis facility production. We had to keep our environment on point so that things like mould didn't occur. There is this really false narrative that if it's not medical, it's not safe. That's rubbish. People who focus and concentrate on producing good product don't have to have GMP medical certifications to do so.

The CHAIR: What's the most popular strain in Spain?

MARC SELAN: Because it's a cannabis free market, they look at America's cannabis market and they want the latest genetics. It's a bit of what's hot and what's popular.

The CHAIR: Kushes?

MARC SELAN: Yes, you have gelatos, sherbert crosses and all these funny names now. But they cross back to a lot of American genetics that are very sweet. Americans have a very sweet pallet—doughnuts and sweets—so a lot of their genetics—

The CHAIR: Pineapple express.

Ms CATE FAEHRMANN: You said in your submission that you are a patrolman for the NRMA, so you need to drive a lot.

MARC SELAN: Correct.

Ms CATE FAEHRMANN: You also said in your submission that that can be very stressful in terms of some of the emergency situations you're called out for, and cannabis helps you to deal with that. How are you getting around the roadside drug testing laws? Are you just taking a chance?

MARC SELAN: I just live my life and take my chance. I live as I normally do and hope that common sense prevails. I hope we stop dragging our knuckles by persecuting a specific part of the community that is smart enough to use cannabis as a medication instead of using pharmaceuticals. I hope we snap out of it really quickly. That is why I'm here. I'm here to enlighten and let you members of Parliament know that it's crazy the way we have allowed medical cannabis to exist and yet we still allow police to have the power to criminalise us. It's just a waste of time.

Ms CATE FAEHRMANN: What's the difference, in your experience and from what you've seen, between groups of people under the influence of alcohol, for example, compared to your social clubs?

MARC SELAN: We never had violent fights and we never had a punch-on. I never had to break up a fight, ever. The worst thing in my cannabis club was having to ask people to go home and go to sleep because they had been out partying on something else and they came to the club after. It was really minimal.

The CHAIR: Did anyone ever get sick from cannabis—white-out or green-out?

MARC SELAN: When you have a large proportion of people coming in, someone will take it and have an adverse effect in some way. At one time somebody I think ate an edible—they weren't spoken to, they were a new member, they hadn't used cannabis before and they didn't have a good time. If the right guidance isn't there, people can slip up and have a bad experience. It's not fatal, but the feedback was negative.

The Hon. STEPHEN LAWRENCE: Mr Selan, thanks for your evidence. You mention in your submission that you were arrested in relation to cannabis. I wonder if you could tell us about that experience and how it affected you. I assume it was a negative experience.

CORRECTED

MARC SELAN: I became a cannabis refugee. I had to leave the country and sell my house and sell my business. Yes, it affected me negatively. It was a big life change for me. It put a big dint in my life. I had to make a big sacrifice and a big decision. It was pretty hardcore.

The Hon. STEPHEN LAWRENCE: Can you reflect on how it affected you and your sense of self, that you were a criminal because of your need for this product?

MARC SELAN: It was pretty hard. I had just lost 10 kilos of body weight from my illness. I think I'd recovered from that, but I was still struggling to maintain my health, and I knew that cannabis was the only avenue to do it. Then I had a house full of special operations police and I wasn't very happy about it. I remember being pretty pissed that I was being criminalised for just trying to stay healthy, and I still am. I'm driving around and I'm still a crook, so it hasn't changed very much. It has just gotten a bit more glitzy and glamorous. We've got medical—we can go to our doctor now, who's our dealer, but we still get persecuted the same for it, really.

The CHAIR: Thank you very much, Mr Selan. That was a unique and very insightful deposition. We really appreciate you taking the time to come along today, the lived experience you have shared, and your submission. We wish you all the best with what comes next.

(The witness withdrew.)

Mr MATT NOFFS, Chief Executive Officer, Ted Noffs Foundation, affirmed and examined

Mr KIERAN PALMER, Director of Clinical Services, Ted Noffs Foundation, affirmed and examined

The CHAIR: Good afternoon, gentlemen. Thank you very much for taking the time to come along and give evidence to this inquiry. We very much appreciate it. Do either or both of you want to make some introductory remarks?

MATT NOFFS: The Ted Noffs Foundation is close to 60 years old now, started by my grandparents, Ted and Margaret Noffs, who co-founded the Wayside Chapel; co-founded Lifeline with Alan Walker; organised the Freedom Ride with Charlie Perkins; co-founded Aboriginal Affairs Foundation, which became the Department of Aboriginal Affairs; unfortunately, Life Education Centre, which we won't get into; the Wayside Foundation; the first drug crisis centre; and the Ted Noffs Foundation, which was the country's first treatment centre for young people with drug and alcohol problems and the country's largest to date. My personal involvement with law reform started around 10 years ago when I stepped into the CEO role at our organisation, and I know many of you here today through my work there.

Today we are talking about a specific substance, cannabis. I think that cannabis, in many ways, has been the substance that's led not only Australia but also the rest of the world in considering our drug laws. I like the title of this inquiry, because it uses two words that I think fit an appropriate framework for considering how we deal with drugs, which are the words regulation and framework. When it comes to dealing with the effects, good or bad, around a substance or any behaviour that could become problematically addictive, I think we do need to be thinking around how we reduce the harms associated with that but also increase the safety.

When we're thinking about cannabis and we're thinking about that, obviously, I think New South Wales is primed and is in an excellent position to lead the country—perhaps not the world, but it is certainly in a position for the rest of the world to look at and to consider how we might do this. Other jurisdictions have dealt with this matter in different ways—obviously, ACT by outright legalising it. I think that, essentially here, we have an opportunity to make New South Wales the safest State when it comes to the use, problematic or not, of cannabis and, through this mechanism, other substances to follow. I don't want to get too much into the nitty-gritty here, but I would say that I really welcome this inquiry. I thank everyone for bringing it together and for hearing not only experts like us but also people with lived experience as well.

The Hon. NATASHA MACLAREN-JONES: Thank you very much for coming. I have a couple of questions. One is in regard to your submission where you have referred to research that has found that non-Indigenous people in New South Wales are four times more likely to be offered diversion for cannabis than Indigenous people. I was wondering whether or not you have a breakdown by region, by LGA or by age in that research?

MATT NOFFS: No. When we first started it was actually the Perrottet Government which we were helping to look at this idea around depenalisation and, just before that occurred, journalists were asking around this idea: would cautioning make a difference, and certainly fines. That's when we started talking about the idea that if someone was going to be fined they should be means-tested because, obviously, someone who was caught in Vaucluse with cocaine might be able to afford a fine whereas someone in Western Sydney, First Nations or not, if they're a disadvantaged young person, 21 and unemployed, should that fine be the same? Really, you don't have to look in too much detail around the discrimination that—I'll talk in our experience—young people face, First Nations or not, when it comes to drug laws. That research is not ours. It's just research that we know exists.

I would say, generally, that one of the issues—and correct me if I'm wrong—that is shared by both the Labor Government but also the LNP today is that those policies were actually brought in by the Perrottet Government and in many ways enacted and bolstered by the Minns Government. There hasn't been a strong uptake and the issue comes down to the policing of that, the idea being that of police discretion. Therefore, there are questions around whether we need to be doing more to, I would say, assist police at all levels and at all tiers of policing. Our chair for the Ted Noffs Foundation was New South Wales Superintendent Frank Hansen, who was in charge of Cabramatta during the heroin years and helped roll out needle syringe programs. Also, our latest board member, Mick Palma, was a former Federal Police Commissioner in the Northern Territory and a police commissioner before that. Both of them would argue with me that police discretion is vital. I would say, "Hold on a second. This is where this issue of discrimination occurs, is it not?" Either way, police need to have discretion.

I'm not answering your question. In some ways I'm being political and I'm answering the question I would prefer to have been asked but, I think, when we get to the heart of it, there is deep frustration there. I don't think we can just blame police. I don't think we can call police racist. I think a lot more needs to be done in terms of

educating police when it comes to working with disadvantaged young people and First Nations young people when it comes to their drug problems. I am sorry I didn't answer your question.

The Hon. NATASHA MACLAREN-JONES: I want to move on to your view on when someone is given a caution and then either referred on to or encouraged to look at diversionary practice or treatment. We will obviously seek information from the police on their view, but to what extent do you think there are adequate services available, or a lack thereof, that could actually impact on a decision being made whether to prosecute or to put out a caution?

MATT NOFFS: I will let Kieran speak to this because he is really the expert in residential treatment here. We run residential treatment for young people with drug and alcohol problems, but also non-residential treatment as well. The residential treatment really is used in that youth justice space where a magistrate has an opportunity to say to a young person, "Your choice: You can go to detention or you can go to, say, a Ted Noffs Foundation program." Ten times out of 10—I have never heard of an example where a young person says, "I'll go to detention, thanks." They'll always come to that. That system is referred to as coercion. One of the things we have done for a long time is say to governments, "You don't want a mandatory treatment system because you won't get the results." In a coercive system, a young person is given that choice.

It's not the best framing in the terminology, but essentially a young person feels, well, if they have the choice to come to a service like ours, everyone is more likely to get a better result. We work a lot with the courts around helping them understand that they have that choice as well. Really, the answer to your question here is that we need to be doing more to not only inform police that that option exists when a young person is caught up—and really the issue is that they are not just brought before a magistrate for a drug problem. That isn't useful. That is a waste of taxpayers' money.

But if they are brought before a magistrate because they have assaulted someone, and they are also using methamphetamine, then absolutely the court is the right place for that young person. We deal with both the drug problem and the violence. Sometimes those things go hand in hand. But our argument is that the drug problem, moving forward, should be treated as a health issue and that the issue around the violence and that behaviour should be treated quite separately—with us, in the same place, but from the court's point of view as a separate matter.

KIERAN PALMER: In answer to your question, no, there is not enough treatment. There is never enough treatment. Particularly, the further out you move from the city centres into regional and remote areas, access to treatment, we know, is really difficult. It's a wicked problem in itself because in a criminalised society, as illicit substances by and large are, there is that stigma that goes along with it. With certain substances and with certain populations, it can take people a long time to come forward about having a drug problem. A single mother, for example—the stigma that goes along with that in terms of family and community but also the anxiety about what that means. "Am I going to have my kids taken off me?"—if I am a First Nations mother, for example, and that's all I've known for generations now.

It can take people up to 10 to 15 years to come forward about that if that's embedded in a system where "Okay, even when I finally do come forward, I don't know where to go because there is nothing." That becomes really difficult. Our strategy here would be a small piece in answering that issue. If we bring it back to young people, who really we are kind of here to advocate for the voices of, we know that young people are—not all, but a lot of young people are—going to experiment with different substances, like cannabis. For us, in our experience, it's the number one illicit substance that our young people come into contact with. We know that a lot of adults out there at some point in their life have tried cannabis. The vast majority have not wound up with a criminal conviction for it, but some do. In our experience, it does tend to be in those more marginalised communities.

As it currently stands, we have a system whereby a young person needs to navigate a gauntlet of drug dealers to get that cannabis. If that system can be shifted to something like a young person navigating a gauntlet of a GP or a pharmacist, it becomes a health intervention. There is no drug dealer out there that is going to be able to pick in a young person who might be predisposed to psychosis, for example, or who might have an underlying mental health issue—but a GP might and a pharmacist might. So, bring that as a health intervention. But then also using the taxation of that to fund programs—to put more programs regionally, rurally, in order to then catch those people who aren't just going to experiment and who are going to go on and develop significant problems.

MATT NOFFS: I would just say one more thing to that. In Queensland, we have got street universities there where the police do find a young person, say, using a substance. It's not totally unique to Queensland, but young people are inhaling Rexona and Dove. Thankfully, we haven't seen a huge uptake of that in New South Wales. If a police officer finds a young person doing that, they will take them to us at a street university. There are opportunities to work with police. I think this is where a lot of work should be: both with the police and also with courts.

Perhaps Frank and Mick are right that police discretion is vital. But coming back to this issue of discrimination, I don't think it happens at a police level out of intolerance; I think it happens because we enact these laws and we don't do enough to bolster the resources there for them. I think it starts with the commissioner but then also all the way down to the cops at the street level, to help them understand that there are opportunities there. And wouldn't it be great, in regional areas, if a cop found a young person smoking cannabis and, instead of charging them, could bring them straight into a street university, for example?

KIERAN PALMER: A local street university.

MATT NOFFS: A local street university, where they could see a counsellor straightaway. Maybe that's a bit better.

The Hon. NATASHA MACLAREN-JONES: What age group do you work with?

MATT NOFFS: It's always getting younger.

KIERAN PALMER: At the moment, 10 to 25.

The Hon. NATASHA MACLAREN-JONES: Currently, are you working with any regional or remote communities where you might be doing some of that health policing work as a team, where you identify a family or young person—

MATT NOFFS: Not enough in New South Wales, but more in Queensland. We are about to in Newcastle.

KIERAN PALMER: Our latest has been our experience in Townsville—not considering Townsville remote but more of a regional centre, not far off from the city.

MATT NOFFS: We think more needs to be done in regional New South Wales where you see spikes around youth crime and so on. I think that those two things are really linked. I don't want to go too far away from cannabis, but those issues I'd be more concerned around are methamphetamine use—and problematic use—and youth crime. Those two things are very much linked. We want to be doing more there. The Government has funded us to start a residential service in Newcastle, and there are opportunities there to do more non-residential and outreach work from there. But more must be done.

The Hon. NATASHA MACLAREN-JONES: In your submission, you said that if cannabis is decriminalised it could affect the availability. Why would that be the case? Why would it drive it down?

MATT NOFFS: Some of you already know this, but I don't like the term decriminalisation. Why did we have it in the submission? Because it is being used a lot at the moment. I think a better word for us to be using in this framework here is either diversion or regulation. In a diversionary framework, we are dealing with what we just talked about, where it is still illegal to some degree but there might be a cautioning scheme with it. But I actually think, fundamentally, that the best framework that we could have for cannabis would be, as Kieran just hinted at, a regulated framework, where currently we have—in New South Wales, thanks to the Baird Government, we have been ahead with medicinal cannabis.

I think a simple shift for doctors—or pharmacists, for that matter, could be the people that, certainly in this instance, 18-plus adults go to to get access to use cannabis recreationally as well. Instead of the question being, "I've come here because I've got a sore knee," or "I'm feeling depressed"—or whatever it is—and then the doctor asks some questions and then prescribes cannabis, a person goes, "I want to use it recreationally." The doctor says, "Well, what's your family history of psychosis?"—all of those things—and, "If you have any issues, come straight back here." As Kieran said, that gauntlet, which is still a gauntlet to some degree, is a far better one for everyone than a dealer in a car park. To some degree that's pragmatic.

If I'm honest, I think decriminalisation is—I honestly think that the current state of affairs is de facto decriminalisation. I just think that where we need to help is police. In Queensland they followed the New South Wales Perrottet Government's scheme but they just took away police discretion altogether. I'm not suggesting that that is the way forward here, but I think that we should be doing more with helping the police to that end. Then we would have proper full diversion. I think we could be doing more, as Kieran and I have suggested, to be helping magistrates as well with having greater access to services like ours to divert young people away from the justice system.

The Hon. JACQUI MUNRO: I was wondering about the effectiveness of the programs that young people go through and what does make an effective program.

KIERAN PALMER: We can absolutely speak to that. The first thing that we don't say is, "Our programs work for everyone and they get kids off drugs." We're very, very clear about that. The programs that we run are designed to support positive life-changing outcomes for young people. As Matt has explained, we run a suite of

different programs, from residential rehabilitation programs—which we would consider for the real pointy end young people, the young people who are already engaged in the criminal justice system, disengaged with the education system, in and out of homelessness and that sort of thing—all the way through to our non-residential engagement services for counselling and case management and that sort of thing.

Our programs have been found, despite the fact that they're, on the surface, drug and alcohol programs, significant reductions. So our residential programs—for example, we've partnered with the University of New South Wales and had a number of peer-reviewed papers published. Some of the most encouraging findings are significant reductions in drug and alcohol use, improvements in overall quality of life, improvements in mental health, 40 per cent reductions in suicidal ideation and post-treatment suicidal attempts. Encouragingly, what we found as well is that—which is something that we anecdotally always knew—completion is not necessarily the marker of success. We've had a look at what happens if you come into the program and don't necessarily stay for the whole 90 days. What we've actually found is even a shorter duration of stay of up to 30 days—significant reductions in criminal activity, in particular nonviolent offences, so theft and break and enters and that sort of thing. But a stay of 60 days showed significant reductions in violent crimes.

We know we're working with a population that is massively over-represented in their own past trauma. Three-quarters of the teenage girls that we have in our programs have had at least one incidence of sexual abuse. Two-thirds of the boys have grown up in houses of domestic and family violence. And this is just what is getting reported to us as well. We can assume that that's quite under-reported as well. But we would also be quite naive in thinking that we're not also working with a population who is potentially going to go and perpetrate some of this stuff later on in their life. Certainly not a "if you are abused, then you will abuse"—but we know that the populations are over-represented in those areas too.

So it's really encouraging for us to be able to see that, if we can reduce violent offences by bringing young people into our programs, without being able to crystal ball it, potentially we're also looking at affecting the next generation and so for these young men perhaps not to go and perpetrate these violent acts against their own partners or their own kids as well. Coupling with what we're coming back to to talk about today, if that can be plugged into a system whereby those young people also aren't further criminalised for the drugs that they use—we often say we're in the business of treating trauma, not necessarily addiction. We're just not working with people who have been drinking or using drugs for 30 or 40 years. They're quite at the early stages.

But we also know that a life of abuse and violence leaves someone with so much more than just a head full of bad memories. It fundamentally changes how people interact with the world, how they solve problems, their impulsivity, and that's where drugs come in. If somebody with those impairments that far behind the eight ball doesn't actually wind up with further criminal charges to put them further back behind the eight ball and, not only that, it replaces that with earlier health interventions, then we see that as a bit of a no-brainer. There are more young people that can be funnelled into programs like ours so that they are exposed to outcomes such as reduced criminality, improved mental health—and less clogging up of the courts with these sorts of issues. Then, like Matt said, the courts can deal with violence and assault and murder.

The Hon. JACQUI MUNRO: Is there something that you can point to in your programs that is different to other programs that makes it more successful?

MATT NOFFS: I think one of the things is—what Kieran is saying is that it's actually really hard to find peer-reviewed evidence at an international level in our field. Those studies—and there's more than one; there are at least six.

KIERAN PALMER: There are multiple. There are over 10.

MATT NOFFS: Yes, there's a lot. You can go to our website, under "research and trends", and find it. The summary of it would be just that those internationally peer-reviewed studies show around a 60 per cent reduction in overall crime, 36 per cent reductions in violent crime—which is just unheard of, because that data is linked. It's all linked data. The young people are anonymous but the university went and looked over where those young people are—

KIERAN PALMER: In 15 years.

MATT NOFFS: Yes, 15 years—where they are afterwards. Looked at hospital data—significant reductions in hospitalisation, significant reductions in problematic drug use, significant reductions in suicidal ideation, again around that 60 per cent. I don't have the percentage but also one of the things that we weren't expecting was significant improvements in quality of life. Normally a government, whether they say explicitly or not, "We're here to make good mortgage-paying citizens"—and that's the best way to do it, which is how you improve quality of life. It is also a way that for any of us—all of us are going to use substances, whether it's

Nurofen, coffee, sugar, wine, whatever it is, licit or illicit. Your quality of life should really be the great indicator there.

Another way of saying what Kieran was saying is our job is not necessarily to stop drug use but to always make it secondary, which it is for most of us. Our primary addiction—most of us around the table here—is work. It's the thing we turn up to. I don't understand how all of you do it. I really don't. The hours look excruciating. I appreciate it. I really do. But you have to be addicted to it to be able to do it. Really, our job is to make the drugs secondary in their life and the primary thing is to find something like you have, which is a desire to be alive for another reason.

Ms CATE FAEHRMANN: I want to cut to the chase. In terms of the de-penalisation, the drug diversion scheme, the EDDI, cannabis cautioning—it's kind of like successive governments in this State have just avoided actually saying, "Let's just remove criminal penalties for drug use." Back in 1999 that came out of the first drug summit, of course, the Cannabis Cautioning Scheme. You mentioned Dominic Perrottet's scheme, and then we've got the EDDI, which Chris Minns has just put in, but it remains that drug use is still seen as the problem. People are still stigmatised. Shouldn't we just, out of the drug summit—I think some strong recommendations, potentially from organisations such as yours, firstly, to remove the criminal penalties and not try and do this "decrim lite" because the police discretion is the problem—one of them.

MATT NOFFS: Yes, I think it's one of the problems. I am a pragmatist, so I—do you want to say something?

Ms CATE FAEHRMANN: Yes, that's what I'm trying to challenge. I'm trying to get to a point—because we've got a drug summit coming up. This is the time, I think, to hear from stakeholders about ideally what we need to do in the legal—

MATT NOFFS: I don't think decrim is ideal.

Ms CATE FAEHRMANN: Tell me what you think is ideal.

MATT NOFFS: Regulated.

Ms CATE FAEHRMANN: Yes, good.

MATT NOFFS: Yes, regulated. Kieran and I were just saying this beforehand. He would have it through pharmacies; I'd have it through doctors. Currently a lot of people now in New South Wales are going to doctors, they're getting it prescribed and it's coming through the post. I think that's an excellent way.

Ms CATE FAEHRMANN: So you don't think people should be able to just grow six plants at home and do the social clubs, like the previous witness was talking about, for cannabis?

MATT NOFFS: I don't have a lot of time for the—I honestly think that's something that you guys should work out. My feeling is that I don't think decriminalisation is the answer. I think that regulating through doctors and pharmacies is the way. I think that someone should be able to go to their doctor and say, "I'm not going to make up an excuse about a sore knee. I want to use it recreationally," and that doctor says, "I need to ask you a series of questions." This would be my way of doing it—as Kieran said, he might do it through a pharmacy—that the doctor asks a series of questions. Pill testing works in the same way. We say that if a young person's going to use a substance, I would rather a doctor in a tent asking one of my children what their medical history is, a person standing in front of them who can ask those questions there and do that. If, after testing this and the doctor's saying, "I wouldn't do it if I were you" and all the rest of this, the young person's going to go and do it, there is a doctor in a tent if things go wrong. It should be exactly the same thing for cannabis, that the doctor is there if things go wrong.

Ms CATE FAEHRMANN: So you don't think there's a level of harm—so in terms of drug regulation, various experts talk about the different models of drug regulation. There is something according to the level of harm and the regulation is different according to the potential harm of the drug. We've had many witnesses state—and, indeed, the evidence is in—that people can't overdose, for example, on cannabis. I also support a regulated model, but I also just wanted to tease out that people are growing plants for medicinal use a little bit more. The evidence does suggest—for example, you said the ACT. No harm is coming from the ACT—

MATT NOFFS: I have a problem with the ACT model, only in that I am anally retentive and I'm a bit of a control freak and I love a good law. My only problem with the ACT—and I've raised it with them—is that if we can both smoke a joint in the privacy of our own homes and the rest of it, but we're not allowed to share it and we don't know how we got the thing in the first place, there's a black hole there. That leaves a space open for people not to take the law seriously. I think New South Wales can lead by example here by having a law that makes sense to people.

My argument against the idea of, outright, an idealistic, utopian state and what you're saying is that sometimes snail-paced changes allow us to make mistakes and to fix those things. At the moment we've come up against police discretion and we're saying we need to deal with that. Everyone is saying we need to deal with that; all sides of government are saying we need to deal with this because we've come up against this issue. It's not as easy as just saying, "No more discretion." I think that you are at some stage going to say, "We need six plants, we need to do this, we need to do that." But I think that the first thing is to involve doctors. This is where an argument towards an incremental change is important.

One of the challenges here is actually—and I don't want to get stuck into it, but I think one of the first issues we have to deal with is that if you jump to plants straightaway, you are still going to be in a similar place as the ACT, and I think that needs to be managed. I think a better place, where we are at the moment, is with doctors and Australia Post. Can I just also say that jumping to a commercial model could be just as problematic as all-out prohibition. The way that I see this is that if you looked at it like a spectrum, you've got outright prohibition, which creates a black market; you have outright commercialisation like they have in Colorado, which I think is just as problematic and you can have just as many problems; and then decriminalisation, I think, is just still mucking around on the edges. I think the middle way is that the doctors are the ones who prescribe it and it gets posted out.

Once you have that, you have a whole lot of people saying, "Hold on a second! I can just grow it myself." Deal with that then. But I honestly think that the first, best thing to deal with next is to help doctors to become, basically, the regulators of it. They're not going to like it at first. They're going to say, "Hold on, that shouldn't be our job"—but they did that with medicinal cannabis. As I said, Baird, Perrottet, Minns and all of these things, and your help as a part of it—I'm just saying that the governments themselves, those successive things have really—it can totally sound frustrating, from your point of view. But honestly, when people look around in the last 10 years they can't believe—

Ms CATE FAEHRMANN: It's not just my point of view, Matt—

MATT NOFFS: It's not just your point of view, but—

Ms CATE FAEHRMANN: —that people are frustrated. My last question is on a different topic, but I do want to make sure we cover it because it's really important. Thank you for raising drug dogs in your submission. Could you please put on the record your views on the use of drug dogs in terms of drug harm, in terms of young people you come across and whether you think they're unnecessarily targeted? Are drug dogs effective?

MATT NOFFS: Before I do, I want to come back—you're frustrated by how slow things are. I'm not paid to change laws, Cate. It's not part of my job as CEO of the Ted Noffs Foundation to do it. I'm not paid to do it. It's risky, politically. Pill testing, law reform—being here today is risky, so can I have a little bit of respect here? It's frustrating for me to see that. We see kids dying. I'm telling you, I'm way more frustrated than you. But I'm not going to get it done by snapping my fingers and saying, "Legalise it!" How would you get it done, if you're just going to say, "Let's move straight to a utopian model"?

Ms CATE FAEHRMANN: You're not asking me questions. It's not about me or a utopian model. Drug dogs—do you want to answer that?

MATT NOFFS: No.

Ms CATE FAEHRMANN: Okay.

The CHAIR: Okay—

MATT NOFFS: Lastly, going back to this point, which is a really good one: We might get frustrated by these things. We might want to save as many lives straightaway as possible. The best way to do that is by New South Wales thinking about this pragmatically and by saying, "You've got to have these things in bite-sized chunks." The next thing we need to look at is police. We need to help police with police discretion. The next thing we need to look at is drug driving. That technology is woeful, and I think we need to be doing more and looking at the Tasmanian model. The next thing we need to be doing is helping doctors prescribe this. Once we've done that, then you can look at things like plants. But I think you do have to look at this as a step-by-step issue. That's my sense of why it can be frustrating, but it's also—sometimes the best way to learn is through mistakes.

The CHAIR: Thanks very much, Matt. We really appreciate that. We had some evidence yesterday that I think you could provide some insights into. No-one we've heard any evidence from is saying that young people using cannabis is a good idea, but, in particular, we heard that one of the greatest risks was to young people using cannabis on a daily basis, particularly those under 15 years of age. Do you see much of that? People 15 years and younger using cannabis every day?

KIERAN PALMER: We do, but we are in a very, very narrow space. Population numbers would suggest there is not a lot. But a lot in and around where our programs are get funnelled through to us.

The CHAIR: Do you see that? Do you see children who've used cannabis on a daily basis displaying psychological effects, psychosis, a predisposition to schizophrenia and these types of things?

KIERAN PALMER: It's so hard to tease these things apart, because we never just deal with the drug use in isolation. If we get a young person come to us who is 13 or 14 and who is smoking cannabis daily, typically they didn't wake up one morning and say, "My life's great, my parents are really supportive and I'm doing great at school. Maybe I'll go out and get a bong today and start smoking pot every day." There's typically so much behind that as well, so it's tough to tease out where the behaviours come from. It's a difficult age as well, with impulsivity and that sort of thing. But we know we are working within a sphere of young people who have been through horrendous traumas in their life. That in itself shifts the way the brain develops.

The CHAIR: I assume they are probably using other drugs as well?

KIERAN PALMER: At that age, that young, typically it is drugs like cannabis and that sort of thing. I mean, the stats would suggest that overall drug use does tend to increase as people get older—the one exception being inhaling. That tends to spike at around 15 and then drop off. But it's so difficult to tease these things out. To speak to some of the anxiety of "If we move into this sort of model, won't it give greater access for 15-year-olds to be able to access pot?", what we would argue is they have no problem doing it now. In a completely unregulated black market, I haven't come up against one 15-year-old who comes into contact with our programs who has said that they've ever found it hard to get pot. They all know someone, they can all get it, and dealers never ID check. Having a regulatory system like this, again, would create a scenario where you take the black market and the drug dealers out of it, and you replace it with a health system. For every 15-year-old we see in our programs, there is probably 100 that we need to see that we don't. This, effectively, would funnel more of those young people towards programs like ours.

The CHAIR: Mr Noffs, you said something interesting at the beginning of your contribution, which was that cannabis has led us into this situation. I might be paraphrasing, but essentially the sense I got from your evidence was that cannabis has led us into it, and cannabis can lead us out. Cannabis has led us into the war on drugs; cannabis can lead us out by moving to a regulated market. Is that your evidence? You believe that we could, in a sense, separate cannabis out from some of the other potentially more dangerous illicit drugs, deal with that first, as a model, to then deal with some of those other drugs?

MATT NOFFS: I think it just has, globally. It's being dealt with differently at the moment. We are seeing it, as I said, commercialised in places like the US. The most interesting thing about cannabis is just how differently countries manage it. It could be argued the same for alcohol, but far less so. One of the most interesting ways that Canada deals with the regulation of alcohol and now cannabis as well is through government, which I think makes a lot of sense as well. I can't see that happening here, but I would advocate that is better than a black market. That is why I think getting this right in New South Wales is so important, because it does allow you to look at other substances. Now, it's dicey to kind of think of these things as more or less dangerous, because alcohol is obviously incredibly dangerous for many of us for all sorts of reasons—not just those who drink it, but when someone jumps into a car after they do that.

The issue here is that cannabis has taken—going through the medicinal model in New South Wales has come a long way. I would argue that would be the way to keep going. That is our central argument. Our central argument here today is we would be advocating for doctors to still be a significant part of the regulation of cannabis, and that would allow the Government to consider how they might deal with other drugs. Overall, drugs should always be a health issue. No-one should be criminalised for their drug use. But, quite often, the issue is that someone has committed another crime. The young people that we see commonly are found to have done something else, assaulted someone and so on. Therefore, we are dealing with both of those issues at once. But a court should absolutely separate those things out. I come back, unfortunately, to repeat myself that we should be doing more for police to deal with that separation as well.

The Hon. STEPHEN LAWRENCE: Thanks, gentlemen, for your evidence. Firstly, for you, Mr Noffs. When you said before that you weren't necessarily in favour of decriminalisation, did you mean mere decriminalisation in the sense that you would support the decriminalisation of cannabis if there was also a regulatory scheme to govern it?

MATT NOFFS: No, I just think we have decriminalised it. I think the issue is not with decriminalisation or not, it's just that we haven't helped the police with the enforcement of the current cautioning scheme. Cate used the word "decrim lite" is what we've currently got. And it is. I'm saying—

The Hon. STEPHEN LAWRENCE: It seems to be "decrim lite" for certain people and not for others.

MATT NOFFS: Yes.

The Hon. STEPHEN LAWRENCE: Because we've got plenty of evidence that there are a multitude of young people in various areas being subjected to searches for cannabis, there are people being sentenced to jail for possession of cannabis. So I do take issue with the suggestion that we already have it. I don't think we do, but I'm asking you a question about your view about the policy. Is your organisation's view on the policy question that you support decriminalisation, in the sense of the removal of criminal sanctions, if it is replaced by a regulated market?

MATT NOFFS: Going back to Cate's point, I think we are skirting around the edges. First of all, can I just say that the general public does not know what we are talking about when we say decriminalisation. They think we are talking about legalisation. I honestly think this is an academic argument. I think we waste time when we talk about decriminalisation, depenalisation, decrim lite, all of those things. I think what we are actually saying is that this should be treated as a health issue. I think the public understands that.

The Hon. STEPHEN LAWRENCE: What is your view of the continued existence of criminal offences? For example, in New South Wales you commit an offence that carries a maximum penalty of two years if you possess a small quantity of cannabis. In the future, if there was a regulated market for cannabis, for example, with particular measures for children et cetera, do you support the removal of that criminal sanction?

MATT NOFFS: Yes. I'm just saying you are tinkering around the edges. Focusing on trying to get your Government to decriminalise cannabis tomorrow is a waste of time. I would beg you to just focus on the doctors and getting them to move to regulating the use of it. You will have far less issues politically with that. I take issue with young people—I mean, it's my whole job. You could take issue with it; I've got the same problem with you as Cate. Don't lecture me on how it is for young people out there. Don't do it. For 60 years we've been dealing with kids dying with this all the time. I'm telling you my personal thing is not that I'm against decriminalisation. I'm saying you are wasting your time politically. You will not convince Minns to do that. If you want the best outcomes for young people, which I believe that you and Cate do, focus on the doctors. Just don't argue about decrim. You confuse the public.

The Hon. STEPHEN LAWRENCE: There is a range of issues before this Committee and obviously engagement with the public is important, but I think parliamentarians turning their minds to the policy issues is important too.

MATT NOFFS: I totally agree.

The Hon. STEPHEN LAWRENCE: I don't think that we should preclude consideration of things in a committee because you might have formed a view about what the Premier's ultimate view is on something, because there are tangible policy issues here and they do include issues of legalisation, decriminalise, medicinal—

MATT NOFFS: But you brought me here for my opinion and my opinion is you're wasting your time with decriminalisation for the reason that it is a public issue. Because it's a public issue, it's the Premier—whether the Premier is Minns or Perrottet or Berejiklian. My point is that of course you understand the difference between depenalisation, decriminalisation, legalisation and regulation, but I've spent over a decade arguing the difference in the public forum on that and it is a waste of everyone's time.

The Hon. STEPHEN LAWRENCE: In what sense?

MATT NOFFS: Who is going to sit there and listen to me for 45 minutes—you are, and I really appreciate that. But who is going to listen to me talk for 45 minutes to an ABC reporter on the difference between those things. I do it regularly and I've done it a million and one times. You can go and look it up. The last one was with Hamish Macdonald on RN and he asked that. It doesn't make a difference. People are just not interested. They do care that it's a health issue. We do know from polling that most Australians want to see a change in this and they do see it as a health issue. I think that's what we should be focusing on.

The Hon. STEPHEN LAWRENCE: I think I understand what you mean in terms of how to communicate a political message in the sense that the community understands what one means when one says it should be treated as a health issue. But I'm struggling to understand your next step in the sense that we shouldn't be thinking about decriminalisation and things like that in terms of—I'm just struggling to understand how we, in your view, would get to the outcome that's talked about in your submission in terms of the harmful effects of criminalisation. How would we get there other than through a staged process of decriminalisation and then legalisation?

MATT NOFFS: The current mechanism is that if someone is found with cannabis or methamphetamine at the moment, the police have the option to fine them. What we're arguing here, and what we've been arguing from the beginning, is that that's not happening enough. We're saying—going back to this idea of discrimination that you take issue with and so do I—that it's not happening enough and in really bad ways. If we dealt with the

police issue and helped the police to enforce that in a way that they were cautioning people more, then you would have, in that sense, the decriminalisation that you are after. I suspect—and correct me if I'm wrong—that you'd probably prefer that someone wasn't fined at all.

The Hon. STEPHEN LAWRENCE: I should say I haven't expressed, in my questions to you, an opinion about any of this. You seem to be assuming that I'm coming from a certain direction on it.

MATT NOFFS: I am. I'm not saying you are, but if you were trying to get to a place where there was—you said you took issue with how many people were getting caught up in the system. If you wanted that to be happening less, you would just get doctors involved. So at the first point where someone decided that they were going to use any substance, if it was cannabis, they came in to a doctor and said, "I want a prescription for cannabis." That was sent there in the post and if the police found that on them, they would pull out their prescription and the police would say, "Okay, fair enough."

The CHAIR: Mr Noffs, thank you very much for your answers. We really appreciate both of you taking the time to come all this way to give your points of view to the Committee. It is very much appreciated. The time for questions has concluded. We have had quite a long day. Thank you very much for your submission. That's very well received. And thank you very much for the work you do in the community. That is very critical work and we appreciate that. Again, thank you for your time and all your efforts.

(The witnesses withdrew.)

The Committee adjourned at 18:30.