

Improving Access to Medicinal Cannabis Bill 2023

Submission to Senate Standing Committee on
Community Affairs

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input into the Joint Committee inquiry on legalisation of medicinal cannabis and proposals under the *Improving Access to Medicinal Cannabis Bill 2023*.
2. The ALA has consistently advocated that criminalisation of substance use also increases the level of stigma associated with drugs and further marginalises and excludes people who use illegal drugs.² The law has immense influence on social beliefs. It therefore should promote a fair and unbiased legal system, so that drug users do not become marginalised. Prohibiting certain drugs is inherently stigmatising because it conveys a message that certain drugs are bad and, therefore, so too are the people who use them.
3. Additionally, we note that specific drug-related law enforcement practices may disproportionately target certain groups.³ Stigma due to the criminalisation of drug use has been identified as a barrier to the person engaging in problematic drug use (or their family) seeking help, as someone is less likely to seek assistance if what they are doing is illegal.⁴
4. The ALA considers that an emphasis on a punitive criminalised approach to drug use in Australia has inhibited advances in research into the therapeutic and health benefits of cannabis use. The ALA also considers that a change in attitude could have huge health advantages and assist the many people who would benefit immediately from access to legal, less expensive and more readily available cannabis and other illicit drugs, subject to quality control.
5. The ALA, therefore welcomes the advent of the *Improving Access to Medicinal Cannabis Bill 2023* ('the Bill'), a small but significant step away from Australia's current approach which emphasises criminalisation. Such an approach has shown little success in reducing illicit drug use in general. Australia's reported rates of illicit drug use per capita are among the highest in

² James D Livingston, Teresa Milne, Mei Lan Fang and Erica Amari, 'The effectiveness of interventions for reducing stigma related to substance use disorders: A systematic review' (2011) 107 *Addiction* 39, 40, discussed in Special Commission of Inquiry into the Drug 'Ice', above n 4.

³ Special Commission of Inquiry into the Drug 'Ice', above n 4, 598.

⁴ SBS News, 'Australian teen swallowed pills, "to avoid detection", inquest hears' (2019), <<https://www.sbs.com.au/news/australian-teen-swallowed-pills-to-avoid-detection-inquest-hears>> (accessed 25 August 2020).

the world,⁵ indicating the social ambivalence regarding their criminal status.⁶ The prohibition of the use of cannabis is ignored by many Australians with research showing that in 2016, 35 per cent (or approximately 6.9 million people) had used cannabis in their lifetime and 10.4 per cent (or 2.1 million) had used cannabis in the previous 12 months.⁷

6. More recently, studies have shown that there has been a shift from illicit to legal use of cannabis and the reason for the latter being to remedy chronic pain⁸, a finding that is consistent with previous studies.⁹ Those using illicit products were more likely treating mental health or sleep conditions.¹⁰
7. Despite the large increase in patients receiving prescribed products in the last two years, only 24 percent of prescribed patients agreed that the current model for accessing medicinal cannabis was easy or straightforward. A barrier identified by most respondents was the cost of accessing medicinal cannabis, with an average cost of \$79 per week, highlighting the need to address cost of treatment for patients.¹¹
8. Overall, the ALA continues to support the decriminalisation of possession and use of illicit substances at the very least, and preferably legalisation. It is evident that decriminalising or legalising drugs does not increase use but instead allows harm minimisation policies to be put in place that produce better outcomes for users.
9. We continue to see the criminal justice system carrying the major burden of drug policy in Australia. Funding for health and social services is diverted into law enforcement,

⁵ United Nations Office on Drugs and Crime, *World Drug Report* (2012) discussed in Mostyn et al, above n 3, 262.

⁶ Mostyn et al, above n 3, 262.

⁷ Australian Institute of Health and Welfare, *Alcohol, tobacco and other drugs in Australia*, <<https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/drug-types/cannabis>>, viewed 5 March 2020.

⁸ Lintzeris, N., Mills, L., Abelev, S.V. et al. Medical cannabis use in Australia: consumer experiences from the online cannabis as medicine survey 2020 (CAMS-20). *Harm Reduct J* 19, 88 (2022).

⁹ MacPhail SL, Bedoya-Pérez MA, Cohen R, Kotsirilos V, McGregor IS and Cairns EA (2022) Medicinal Cannabis Prescribing in Australia: An Analysis of Trends Over the First Five Years. *Front. Pharmacol.*

¹⁰ Lintzeris, N., Mills, L., Abelev, S.V. et al. Medical cannabis use in Australia: consumer experiences from the online cannabis as medicine survey 2020 (CAMS-20). *Harm Reduct J* 19, 88 (2022).

¹¹ Ibid.

prosecution and incarceration. As a result, significantly more public resources are expended on criminal law enforcement as opposed to health or treatment.¹²

Access to medicinal cannabis

10. Since 2016, medicinal cannabis has been made accessible to patients in Australia through a highly regulated scheme. While this is a step in the right direction, the number of people who have been able to access medicinal cannabis is low compared to many other countries. The current regulatory model makes it difficult for many people to access the system, and a new and fit-for-purpose framework is needed. As a result of the challenges in the scheme, patients often must resort to self-medication by using illicitly obtained cannabis.
11. Families are desperate to provide the best possible medical treatment and to provide the best possible medical treatment and pain relief for their loved ones. The cost, the regulatory burdens and the outdated approaches of some medical practitioners means that these families are often forced to source illegal, black market cannabis, which puts them at risk of serious criminal charges. Black market cannabis is considerably cheaper than lawfully manufactured medicinal cannabis, which continues to deter patients from accessing medicinal cannabis lawfully. This will continue if the issue of cost is not addressed.
12. In 2020, the Senate Community Affairs References Committee reported that it had received evidence of inequitable access to medicinal cannabis across jurisdictions, with patients in rural and remote communities finding it difficult to access medicinal cannabis if their local health professional is unwilling to consider prescribing it, or does not have sufficient knowledge of it. In situations described as 'postcode lottery', the Committee received reports of patients unable to meet the costs of travelling into cities to access health services, or having to relocate to other regions in order to access medicinal cannabis.
13. To help address this issue the ALA supports medicinal cannabis prescribing rights be extended to nurse practitioners, particularly in rural and remote communities.
14. The Committee also received reports from patients who chose not to access medicinal cannabis legally due to the significant cost and complexity of the legal access system. These

¹² Mostyn et al, above n 3, 265.

patients preferred to self-medicate with illicit cannabis. The Committee heard that the estimated number of people in Australia self-medicating with cannabis is around 100,000. This was in spite of the fact that the people who are choosing to access illicit cannabis for self-medication could be subject to criminal charges for possession or cultivation of a controlled substance.

15. The current barriers to patient access to medicinal cannabis in Australia have had a detrimental impact on the mental and physical wellbeing of patients and their families. In this respect, the ALA notes the opening line of the United Nations Convention on Narcotics Drugs (1961) which sets out the basic intent of the Convention:

“The Parties...recognize that the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering and that adequate provision must be made to ensure their availability...”

16. While previous governments have created an excessive ‘control’ framework to the detriment of availability, the ALA welcomes the *Improving Access to Medicinal Cannabis Bill 2023* as an attempt to increase availability whilst mitigating the risk of diversion and adulteration of cannabis.

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17. The ALA supports the proposal to move medicinal cannabis to Schedule 4 of the *Standard for the Uniform Scheduling of Medicines and Poisons* (‘Poisons Standard’) which will allow medicinal cannabis to be treated as a therapeutic drug by moving it from Schedule 8 as a ‘controlled drug’. The proposal also has the potential to significantly reduce the cost of medicinal cannabis by opening the pathway for listing medicinal cannabis products on the Pharmaceutical Benefits Scheme which the ALA supports.
18. The ALA supports the proposal to allow medical practitioners and veterinarians to prescribe medicinal cannabis if it is deemed to be in the best interests of their patient.
19. The ALA recognises the unjustness of the current situation in which this medicine is inaccessible, largely due to cost. This is an ongoing, grave concern for the ALA and for those

seeking to relieve serious health conditions, such as epilepsy in children and adults; to treat the symptoms of multiple sclerosis, chronic pain and chemotherapy, particularly chemotherapy-induced nausea; and, of course, to ease the various symptoms and experiences of those during palliative care.

20. The ALA notes that despite recommendations by the Community Affairs References Committee that if current arrangements were not sufficiently improved in the next 12 months, the government should consider establishing an independent regulator for medical cannabis, people are still relying on a black market to access medical cannabis simply because they cannot afford it. The ALA supports the government providing a pathway for medicinal cannabis to be supplied under the Pharmaceutical Benefits Scheme.
21. The ALA considers that current requirements under of accessing medicinal cannabis as an unapproved drug through the Special Access Scheme, Authorised Prescriber Scheme or Personal Importation Scheme is creating additional institutional and administrative barriers for people who critically need this medicine and who are also grappling with unaffordability of this medication.

Conclusion

22. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into the *Improving Access to Medicinal Cannabis Bill 2023*.
23. The ALA is available to provide further assistance to the Committee on the issues raised in this submission.

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Australian Lawyers Alliance