



CANNABIS POLICY PROJECT (AUSTRALIA) >

CCP Submission for Federal Senate Legalisation of Cannabis 2023 Inquiry
17/10/23

Introduction


Greens Bill Response appraisal and alternative options.

Summing up

Appendix 1

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20/10/23



Introduction

Everyone involved at the Greens and their adviser's should be congratulated on bringing the Bill forward, it's hope for cannabis users Australia wide. However it's unlikely to succeed or meet goals in its current form and needs to go back to the drawing board, have realistic real-time trials pilots or other developments in order to inform the legislative process and a relevant look at optional models.

This Bill is very deficient of the realities facing law reform and can't really be taken seriously as an alternative to prohibition. There's nowhere near enough detail, it's very presumptuous in many ways, and at it's core is not mapped directly to addressing the core harms of prohibition. In fact it would only increase the division that now exists by offering a very stringent mechanism that offers more questions than it asks and would simply have little effect on the bulk of illegal growing and sales. It's so short sighted as to be inherently dysfunctional and if implemented would simply see a marginal uptake with dubious supply lines that struggles to address or alleviate the combined harms of prohibition.

In simple terms the questions raised by the Bill in it's current form are..

The Government as the dope dealer?

(It looks like the structure is the CA licences growers, then receives the whole sale product from them then supplies it to the licenced retailers?

Am I wrong? What could go wrong hahahaha.. pretty much no one seems to think this is a good idea for many reasons but the pathway proposed would be very restrictive and unlikely to gain much support among current illegal suppliers. It's seems an attempt to appease the Gov by making it Government controlled but you would simply end up with the same situation as Canada with less than 50% uptake and a still growing illegal market.

As AU can manage a pharmaceutical system with Gov licences but independent companies producing, TGA approvals of Quality Assurance current pharmacies and distribution there's no reason at all why we can do the same for recreational cannabis. That is licencing under existing structures and a full scale open market for growing, sales , seedbanks and other associated industries.

The current Bill needs better mapping to core goals and realtime functionality.

It's vital that core goals are identified and met before any legislative approach is mapped to them.

The core goal is to eliminate the illegal system of Cannabis use, production and sales and replace it with a decriminalised legal licensed production system that encompassed all facets of Cannabis use in a wholistic manner that is open to full scale unified intergeation with legal or society.

The core harms engaged by prohibition are.

Economic Harms - extensive costs to police, courts jail's and health issues. Up to and over \$2.5B Extensive black market income generated somewhere between \$2.5B and \$10-12B depending on gesimate.

Social harms - Millions of people criminalised who are often breaking no other laws. Millions of cannabis users drawn into criminal associations of various kinds. Generations of paranoid cannabis users always looking over their shoulders. No legal option to very harmful drugs such as Alchohol Nicotine Prescription pills etc which are all proven killers. Cannabis is low toxicity and is not accurately represented on the poisons list.

Health Harms- A endless stream of low quality non quality assured ungraded unlabelled untested Cannabis is being consumed daily in AU. Much of it is grown using artificial lighting and other chemical additives such a as Plant Growth Regulators Hormones C02 enhancers

pesticides etc. Dependence on poor quality unbalanced cannabis without clear ideas of THC or CBD levels combined with poor consumption patterns and habits is probably the greatest health harm attributed to prohibition.

Legal harms- many hours of court time, legal costs, judiciary resource's personal costs on every levels is consumed by cannabis prohibition over several decades on every level whilst cannabis use has only grown. There was over 70,000 arrests seizures or cautions last year, over 1800 serious cultivation charges and several hundred jail sentences for criminalised plant production.

Increased serious crime- there have been several cannabis related murders in reason years generally when someone steals a dealers stock or money and they face retribution of a violent nature. Much of organised crime on AU has grown and profited from prohibition and this continues to grow on small medium and U industrial scales as police raids and arrests have little overall impact.

It is vital that a decision can be made to ' do something ' about Cannabis before any formal structure can be developed. This one is a bit like putting the cart before the horse in proposing a fixed structure without trial of development so I urge the Inquiry to do the right thing and agree to move forward with Cannabis legalisation and recommend that Government set up an ongoing working party to deal with the issue and fund independent project's to both educate and activate administration towards reducing and eliminating cannabis crime. In this case the law creates crime and many nations have found ways to decriminalise, legalise and regulate we just need the first step and that's relieving the restrictions at federal level to encourage the states to follow.

Alternative

To use currently existing structures as best as possible. That will be easier for people in beaucracy to accept and help avoid the pitfalls of building ' new' beaucracy with inexperienced personnel. The ODC has been very difficult for licence holders if you ask them and it would be even worse with recreational Cannabis that government thinks ' should ' be tightly controlled.

This would include the current medical Cannabis licencing office, the ODC being renamed as Cannabis Licencing Bureau which is what it actually does and expanded to include recreational Cannabis licencing on all levels. Many of the current structures of alchohol management could be adopted in terms of maintaining and enforcing Cannabis licencing obligations.

Cannabis Agency ?

Starting a new office will be fraught with peril on many fronts and is not really necessary. Building new bureaucracy from the top down will limit the effectiveness from the ground up, make it more difficult to integrate illegal activity and could take many years to begin to actually replace the black market if at all. The government as the dope dealer? Seems laughable to

many and if AU can implement a working pharmaceutical grade medical cannabis industry via government licencing and integrated management with existing agencies such as the TGA and pharmacies then there's simply no reason to that we can't implement a recreational Cannabis system without excessive government control or profiteering. With the right strategy a successful recreational system can be implemented that goes a long way to eliminating the harms of prohibition and replacing the ongoing illegal system currently supported by government policy.

The current ODC Office of drug control could change it's name to the Cannabis Licencing Bureau and simply be expanded to included recreational licencing on all levels.

Strain registry?

It is entirely unnecessary as a seperate entity if a new Federal Cannabis Act is established. It would need to be tested and included in a full plan .

The Federal Plant Breeders Act provides for a regulatory structure that is more than sufficient. Moreover, due to the nature of our Commonwealth, should a state decide to regulate these matters on their own they can do so and the Cwth will not be able to over-rule them as these powers have not been referred. IF such a form of legislation is going to be effective then it needs to be sorted by the states and commonwealth in consultation and cannot work as a Federal decree. The proposition reeks of amateur lawyers who do not seem to understand the nature of the shared power relationship between the various jurisdictions.

http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/pbra1994222/

The proposal is lacking in details and who owns the genetics, new strain registry, old strains variants, copyright on custom strains etc is serious business with exponential income patterns that business and consumer's rely on and needs to be very open otherwise illegal strains will easily outnumber registered ones and home grows will ignore it in favour of open market strains. Both industrial Hemp and TGA approved Medical Cannabis have registered strains so it shouldn't be a problem.

Cannabis cafe and online sales

There's simply no reason to limit Cannabis consumption venues to ' cafe's ' or combine them with online sales. It's way to limited and easily exploited by illegal operations.

The alternative is to establish a Green Room licence similar to an alchohol licence that any venue can apply for and host Cannabis consumption.

On-line sales business doesn't need a street level supply and if available should probably be a seperate business model but with full scale off-street dispensarys it's probably debatable and unneeded to set up online sales in competition.

Maybe all dispensary could have an online component or online sales could be limited to encourage local purchase with online or SMS ordering but local pickup or delivery.

There's many permutations with various implications and this needs to be mapped to a solid criteria that is as robust as possible in terms of eliminating illegal cannabis. Too much competition will limit growth not enough options will still allow illegal sales to grow. In the beginning the new system needs to be quite open and the only way to really test out these models is in real-time with academic planning support and assessment.

Proposed Tax

The 25% TAX proposed with 10% GST 15% Gov excise would need to reviewed in real-time. There's a need to keep prices similar or lower than the black market in order to encourage legal sales and 25% tax will obviously increase that beyond production costs and dispensary income. Once again it needs to be trialled in realtime and 10% GST might be good to start.

Alternative structure..

A solutions based approach that establishes function based on need and builds to meet that need is much more likely to succeed than trying to fill in a top down bureaucracy in a restricted manner. The key word is realistic. And making sure it works before expanding. It will be impossible to set up and judge any model without functional trials and very difficult to convince Governments Police Health Dept and Judiciary to have confidence in legal cannabis without development al trials on all levels.

AU has robust Alchohol legislation in place and much of it can be adapted to suit Cannabis consumption and sales. There's no need to reinvent the wheel here and the same structures can be readily adapted.

https://en.wikipedia.org/wiki/Alcohol_laws_of_Australia

This model should be explored as it will be a lot easier and acceptable to government to use existing models rather than building new ones. The current ones simply need Cannabis added and a new dept made not a whole new corporate agency. It then becomes an alchohol and Cannabis Dept in terms of maintenance.

Each state has it's variants and elements such as it being illegal under 18 , several types of licence being available on different levels and production allowed on a personal, small bizness and industrial scale can all be lifted from current alchohol legislation.

A staged process will be needed to begin the process of legal conversion based on need step by step..

1- Moratorium on personal use and personal grow laws for specific amounts. This is a cessation of active laws for personal use and personal cultivation for personal use on private property.

2- Personal grow licence for limited amounts enabling current small-time local growers to operate legally. To be sold to local dispensaries under QA guidelines. This could have a few volume levels and specific products.

3- Small business licence for Cannabis grow operation and localised dispensaries ..up to 100 plants

4- Dispensary licence.. selling buying growing up to 1000 plants

5- Industrial production licence..large cannabis factory..10000 plants at a time 100 tonne limit..

These stages are balanced to eliminate specific factions of currently illegal Cannabis activity. Personal growing, small local cultivation and sales and large scale production for the commercial market. If these balances are not met well then currently illegal activities will continue.

1- Moratorium on personal use and personal grow laws for specific amounts. The amount is arbitrary if it's personal use..but 1kg for a years supply would realistic. Personal carrying maybe 50g No selling.

What would this do?

Immediate relief for over 2-3 million Australian Citizens.

Immediate relief for police with a significant reduction in time spent in personal Cannabis issues, this would amount to thousands of hrs and many millions in costs.

Immediate reduction in court time and costs across AU.

Creates a new situation where the need to manage cannabis use arises and new strategies are need to control the situation in a balanced way allowing both personal freedoms and enough rules and regulations to ensure safe and secure consumption practices.

2- Personal grow licence for limited amounts enabling current small-time local growers to operate legally.

What would this do?

It would give a specific structure to both allow personal grow rights and enough regulation to control quality illegal sales and security.

The PG licence would probably be low cost \$50-100, require a signed responsible use agreement that outlines no selling secure storage an agreed plant limit (set by need and based on kilo volume not amount of plants) safe use ventilation vaporiser etc.

If the terms of the RUA are breached then the person's licence can be suspended or cancelled. This would be enough pressure on them to stick to the agreement and if not monetary penalties could be applied. There are no criminal offences anymore for personal use if growing and it is intended these issues will be maintained by the new Cannabis inspectors from the CLB which will in turn be funded in part by licence fees.

The personal grow licence will also protect the rights of people to use and grow the same as a car licence allows you to drive. Your grow rights cannot be easily removed provided you stick to the rules agreed to.

3- Small business licence for Cannabis grow operation and localised dispensaries ..up to 100 plants

What would this do?

This will directly replace the many thousands of small growers who produce less than 100 plants often 5-10 and make under 100k per year.

It will allow individuals to get a licence for up to 100 plants.. with appropriate kilo allowances and earn a reasonable income.

It would allow a solid supply of cannabis at the local level for local dispensaries. It would provide a serious boost to small scale employment opportunities in most local areas from suburbs to small towns.

4- Dispensary licence.. selling buying growing up to 1000 plants and various cannabis based products seeds seedlings

What would this do?

Offer localised sales in a geographically restricted area, suburb, town, Council etc . Consumers would register as customers as needed. The dispensary would buy from local growers and suppliers and generate a community around quality assured Cannabis use.

Have limited numbers meaning a popular area would have several dispensaries to meet needs.

It is intended there would be many thousands of these businesses across AU generating jobs and successfully replacing illegal sales on the small to medium scale.

5- Industrial production licence large cannabis factory..10000 plants at a time 100 tonne limit..

Basically to meet volume and provide a wholesale pathway for Green Room sales. These would be the same of similar to current Cannabis factories supplying the medical industry.

They do not supply directly to the public.

Infiltration by large international corporate Cannabis companies would be banned and only AU based independent companies would be licenced and several already established have shown interest in supplying the recreational market.

The combination of small local boutique cannabis business with selected industrial production should ensure quality supply on all levels, keep prices low enough to encourage legal use and maximise employment opportunities.

These stages are balanced to eliminate specific factions of currently illegal Cannabis activity. Personal growing, small local cultivation and sales and large scale production for the commercial market. If these balances are not met well then currently illegal activities will continue.

Green Room licence.

A green room licence can be applied to any place licenced to consume Cannabis. This can include Cafe's Pubs Social Clubs Public venues Private functions Health facilities or anywhere else people may need to consume. There will be a quality assurance guarantee, appropriate ventilation, budtenders, legal sales, vaporisers and other services as needed.

This would work in a similar way to current alcohol licencing and bevas open as possible.

Other alternative details.

Only over 18 consumption.

No consumption in public.

Only private places or licenced green rooms.

All these facets need to be trialed before they could be trusted and assessed.

The stigma and misinformation

One of the key points the ALP and current state premier's don't want to legalise is the perception cannabis is harmful, causes mental health issues, leads to harder drugs use, will increase use etc.

There's plenty of good science proving cannabis doesn't cause psychosis and can be safely used. It needs good CBD levels antipsychotic and clear labelling.

There's huge issues with black market cannabis regarding quality control and unbalanced cannabis with too low CBD levels, pesticide, PGRs etc that can only be addressed by quality assured legal access.

Addressing the stigma towards weed, dope ganja etc can only be progressed with a honest approach. Many other nations have achieved this on various levels and in AU we need the right strategies to gain broader support. The issues need a well developed plan of law reform that works in real-time.

Summing up

The CPP recommends the Bill in it's current form be suspended and go back to the drawing board for further development. A federal working group with funding for assessment projects and active trials might be helpful.

A shorter Bill should be implemented simply proposing a moratorium on arrest and seizures of cannabis for personal use AU wide with states having the option of joining in. It would be similar to the current ACT status and set the ball Rolling for further developments a basic decriminalisation based on the fact the plant has low toxicity.

A lot more serious work is needed on possible models and how it would all work in real time before being put to the senate so people can really understand how it would work or not.

The real block is getting any cannabis Bill supported by government police Judiciary Health Dept etc on sound business grounds. Eliminating a long standing black market will not be easy and any proposal will need to have the number's to go anywhere solid.

There is a huge amount of work to be done to get this Bill supported other wise in its current form will just die and this needs to be taken seriously by proponents.

I hope everyone involved can take my comments as a positive in planning terms and realise millions of Australian cannabis consumers are relying on our collective politicians to work this one through, telling people you are going legalise Cannabis is a little premature at this stage.

There's several options in terms of legal structure with which to administer recreational Cannabis an example is

Option 1 - remove current federal restrictions and allow the states to regulate it as they see fit.

Option 2 Federally controlled central agency, the States follow suit. Local government permits on retail sales similar to proposed Bill but relies on the States to follow.

Option 3 similar admin structure to the present for Alcohol as it's well established allowing self grow, small biz and industrial production. Licencing at all levels etc.

These need to be examined, developed and trialled in order to establish what the best way forward will be. Realtime trials can be funded with academic support.

So thanks to David Shoobridge and everyone involved in putting this Bill forward and for the opportunity to comment and propose alternatives.

John Reeves CPP

20/10/23

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Appendix 1

From Jim Moylan on legal harms etc

[REDACTED]

The Greens federal Bill assessment

The biggest problems with the proposal by the Greens is

- a) it won't work, as
 - b) it advertises some pretty woeful legal advice.
- The proposal has the whole idea of the referral of powers arse-backwards????

The Federal Government COULD regulate all of the aspects of cannabis regulation (as indicated in their literature) but only if the various states have already referred their powers regarding the criminal law and policing to the commonwealth.

But they haven't.

Their constitutional advice is correct to observe that:

- "1. Section 51(xviii) enables the Commonwealth to regulate plant variety rights (Grain Pool of WA v Commonwealth (2000) 202 CLR 479 at 495-7, 503, 531 per Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ; 530-533 per Kirby J). Legalise Cannabis | Senator David Shoobridge
2. The Commonwealth could regulate cannabis strains as plant varieties and cause them to be listed in a schedule in respect of which the Commonwealth has exclusive regulatory control.

3. The Commonwealth can declare an intention to “cover the field” when it regulates intellectual property (or any other topic) as (Wenn v Attorney-General (Vic) (1948) 77 CLR 84 at 110, 119, 122).

4. The Commonwealth could pass valid legislation requiring all cannabis varieties to be regulated by a Commonwealth agency. Setting up an agency to do so would be characterised as an administrative activity that is necessary or convenient for the exercise of the legislative power (and could therefore be supported under s 51(xxxix) or impliedly, as to which, see D’Emden v Pedder (1904) 1 CLR 91 at 109-110.”

But the next paragraph is drastically flawed. It is simply wrong.

It proposes that:

"In short, the Commonwealth can regulate the cultivation, licencing and sale of cannabis and this includes all the ancillary machinery provisions needed to create a legal national market for cannabis. Once this occurs, all state and territory laws contrary to the legal use of cannabis under the Commonwealth laws (being the current State criminal sanctions) would cease to have effect."

No.

Whoever wrote this is very very wrong.

The Federal Government has no power to organize the criminal law in the various states excepting in ways that have already been determined.

The various states have not referred their powers regarding criminal activities and policing to the commonwealth in a manner that has been recognized (by the courts or the legislatures) as asserting a surrendering of these powers (with the commonwealth thus asserting a legal framework that is appreciated to be one that ‘covers the field’).

Thus, the Federal Government could assert that cannabis is a legal substance in law - but it would be struck down by the HC pretty quickly as the various states have not referred these powers.

Yes, the federal government CAN assist in providing a common and uniform legislative framework regarding cannabis in the ways suggested BUT only after the states (one or more) have passed legislation in their own jurisdiction which specifically refers these powers (regarding the criminality of cannabis and/or the policing of cannabis matters) in their jurisdiction.

As long as the sovereign states in Australia deem that activities relating to cannabis are illegal (in part or in toto), then they have every right to deal with these matters as they see fit.

Full stop. Next question.

My assessment: a legally naïve proposition that cannot work in the form proposed.

Dr JiMM

Part ii. A bit more detail follows for those who are interested in the nuts and bolts of ConLaw. Regarding the need for a valid Head of Power

In Australia a valid federal enactment must be in accord with one of the various ‘powers’ that have been sundered by the states to the commonwealth. These are referred to as the various ‘Heads of Power’ that are commonly recognized in Australian Constitutional Law.

If you are an incipient lawyer, you are introduced to the Corporations Power (s 51(xx)), and the Trade and Commerce Power (s 51(ii)) - or the Grants and Appropriations, Banking and Insurance, External Affairs, Aliens and Naturalisation, Defence, or Race HOP - and the body of High Court judgements that have served to describe and define the ambit of these various Heads of Power.

The HC has declared that a commonwealth enactment must have a 'real connection' with a valid head of power. So, an enactment must be able to be characterised as being authorised under one or more heads of power, in a manner that is not 'too remote, or indirect' (ie, 'insubstantial', 'tenuous' or 'distant'). See Attorney-General (Commonwealth) v Colonial Sugar Refining Co.

Characterisation of a law

So, the very first step the HC will take in assessing if a law is 'within powers' will be to characterise the enactment.

The real problem with the proposal by the Greens is not that there are not a series of perfectly valid heads of power that might enable the commonwealth to regulate cannabis in the manner suggested, but rather that the legal proposal is unlikely to be 'characterised' as being a law with respect to regulating aspects of a legal cannabis marketplace (as no such a legal cannabis marketplace currently exists).

Rather, I would strongly suggest that the High Court will consider that the enactment is a law that pertains to the legalisation of cannabis. Therefore, it is a proposal that is not supported. Yes, the High Court has observed that when an enactment is liable to be characterised as being a law with respect to a variety of different matters, and only one of these comes under a valid head of power, then this will be sufficient to validate the entire enactment (as per *Fairfax v Commissioner of Taxation*) even if the power is exercised for a motive or objective unrelated to the head of power. [I believe that this is the observation that seems to be powering the proposal advanced by the Greens.]

However, their proposal will not be assessed in accord with the doctrine of multiple characterisations simply because this is an instance where the bill is attempting to 'read itself into power'.

Which is to say, it will fail because the proposed enactment does not have any 'real connection' with the regulation of a legal cannabis marketplace because, without the bill, there is no legal cannabis marketplace.

Yes, the proposed form of the legal cannabis marketplace can be characterised in a variety of ways in accord with a number of heads of power, but these are ancillary (not multiple) characterisations as they are dependent on an initial (primary) exercise of power that is beyond powers.

Therefore, the proposition that the Greens advance - being that this proposal can be characterised as an enactment that pertains to regulating a legal marketplace in cannabis - will be rejected as an incorrect characterisation. The enactment will rather (quite rightfully) be deemed as one that pertains to altering the criminal law (ie, instigating a legal cannabis marketplace in states where cannabis is currently illegal).

As the commonwealth has no power to authorise the instigation of a legal marketplace in cannabis in the first place, then the HC will never have to move on to consider if the Greens proposal is one that is capable of attracting multiple characterisations (ie, capable of being

additionally validated by reference to a range of other pertinent heads of power) as it will fall at the very first hurdle.

Upon characterisation by the HC the proposal will be deemed to have a primary effect that is 'beyond powers' (ie, not authorised by a head of power), so the enactment would be struck out.

[REDACTED]