

LEGALISATION OF MEDICINAL CANNABIS

Submission to the Joint Committee on the Legalisation of Medicinal Cannabis

27 April 2023

Contents

Who we are.....	3
Introduction	5
Addressing Legislative Inconsistency and Injustice	6
Human Rights Implications	7
The Path Towards Legalisation.....	9
Conclusion.....	11

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 in South Australia.
2. Currently, the South Australian *Controlled Substances Act 1984* regulates the prescribing and supply of medicines in South Australia and applies to medicinal cannabis products. A section 18A authority to prescribe a medicinal cannabis product that is a Schedule 8 controlled drug (drug of dependence) is required with the exception of patients over the age of 70 and Notified Palliative Care Patients.
3. Despite changes to legalise the use of medicinal cannabis across Australia, the ALA remains greatly concerned that current ‘drug driving’ laws in SA have not kept pace and are leading to injustice. Rather, section 47BA of the *Road Traffic Act 1961* means drivers are disqualified from driving for periods of between 6 months and 3 years for taking prescribed, medicinal cannabis, which has been legally accessible across Australia since 2016 and even when there is no evidence of impaired driving. Given that SA ‘drug driving’ laws were developed before medicinal cannabis became legally accessible, there is a clear need for laws to be amended to rectify this injustice for those who take medicinally-prescribed doses of cannabis.
4. The ALA believes the current laws are causing serious harm to people who can lose their license and sometimes their jobs and independence, for having any amount of medicinally prescribed cannabis in their system despite no evidence of impaired driving. Other people make a difficult decision to go without medicinal cannabis so they can drive, despite experiencing significant benefits from using the prescribed cannabis.
5. Further, the *Road Traffic Act 1961* is outdated and is fuelling a glaring injustice: Individuals in SA can legally access cannabis for medicinal purposes once prescribed by an Australian registered medical practitioner with appropriate qualifications and/or expertise for the medical condition requiring treatment²; however, those same individuals face criminal prosecution if they test positive to having that medicinal cannabis present in their system while driving. It is the mere presence of cannabis which triggers the relevant provisions of the Act. Thus, charges can be brought *even if there is no evidence* that their driving was impaired by the presence of medicinal cannabis in their system.

² Section 18A, *Controlled Substances Act 1984*.

6. The ALA believes that South Australia urgently needs to reform the laws that are unjustly discriminating against medicinal cannabis users and bring our laws in line with the increasing use of prescribed cannabis. While alcohol testing is based on epidemiological studies over many years which showed that there is a safe limit, drug driving laws are unfair because they are built on prejudice. The 'war on drugs' and traditional views of drugs and drug users has led to laws that reflect these stigmas.
7. The ALA contends that changing societal attitudes towards cannabis should be reflected in laws to show that governments are heeding empirical data and listening to community perspectives on the issue.
8. The ALA also notes that other countries already have systems in place that we can learn from and adopt. For example, in the US several states have laws that require police to conduct an impairment test on a driver, and others have legal limits that mean some tolerance for the presence of cannabis.

Addressing legislative inconsistency and injustice

9. The ALA contends that treating medicinally prescribed cannabis as an illicit substance ,is inherently stigmatising because it conveys a message that certain drugs are bad and, therefore, so too are the people who use them. In addition, 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
10. The ALA 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.

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).

11. Australia's current approach, with its emphasis on criminalisation, has shown little success in reducing illicit drug use. Australia's reported rates of illicit drug use per capita are among the highest in 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
12. The ALA has consistently advocated that the possession and use of illicit substances should be decriminalised at the very least, and preferably legalised. 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.
13. The criminal justice system carries the major burden of drug policy in Australia. Funding for health and social services is diverted into law enforcement, prosecution and incarceration. As a result, significantly more public resources are expended on criminal law enforcement as opposed to health or treatment.⁸

Human Rights Implications

14. In 2010, UN Special Rapporteur on human rights Anand Grover found that "criminalization of drug use and possession are implicated in violation of several human rights, including the right to health" and recommended that Member States undertake reforms.⁹ Recognising that the criminalisation of drug use is a barrier to essential health services, the World Health Organisation (WHO) called on countries to make legislative changes and adopt "policies and

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 Mostyn et al, above n 3, 265.

⁹ Anand Grover, 2010, Report submitted by Anand Grover, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN General Assembly.

protective laws in accordance with international human rights standards,” including the decriminalization of drug use.¹⁰

15. Since 2001, decriminalisation of drug use and personal possession in Portugal has reduced the burden on the criminal justice system while contributing to social and health benefits, including a substantial reduction in the rate of drug-related death.¹¹
16. To return to the context of driving laws, the ALA believes that people who have been prescribed a medicine by a registered medical practitioner, and can drive safely, should be allowed to drive. We believe there is no reason to single out medicinal cannabis (and the element of tetrahydrocannabinol) as somehow different when every other prescribed medication is exempt from criminalisation. Further, we encourage the government to consider the available empirical evidence which suggests that medicinal users of cannabis (those with regular exposure to the drug) can become accustomed to its effects to such a degree that no impairment is shown.
17. For example, one key study reported that participants who heavily use cannabis (ie cannabis use on a daily or near-daily basis) showed no driving impairment with synthetic THC, while those who use cannabis occasionally showed the expected impairment, particularly at the higher 20 mg dose;¹² indicating that driving impairment is likely to be greatest in the early stages of THC treatment.
18. Therefore, the ALA strongly encourages the South Australian government to consider legislation that would allow patients using medical cannabis to legally drive with THC in their systems as long as they are not impaired. In this respect, we reference other successful

¹⁰ World Health Organisation, 2014, Consolidated Guidelines on HIV prevention, diagnosis, treatment and care for key populations, World Health Organisation.

¹¹ Hughes, Caitlin, et al., 2010, 'What can we learn from the Portuguese decriminalisation of drugs?', *British Journal of Criminology*

¹² Bosker WM, Kuypers KP, Theunissen EL, et al. Medicinal Δ^9 -tetrahydrocannabinol (dronabinol) impairs on-the-road driving performance of occasional and heavy cannabis users but is not detected in standard field sobriety tests. *Addiction* 2012;107(10):1837–44. doi: 10.1111/j.1360-0443.2012.03928.x.

approaches in jurisdictions and abroad in order to create a just and equitable framework for regulating cannabis amongst those who medically rely on the drug in order to live.¹³

19. The ALA contends that this would bring cannabis and driving laws insofar as they apply to patients into line with current laws for other drugs known to impair driving, such as opioids and benzodiazepines. These changes would not extend to the large number of patients self-medicating with illicit cannabis products.

The Path Towards Legalisation

20. There are many countries who have legalised cannabis for recreational and medicinal purposes. Countries leading the way on legal cannabis include Canada, Uruguay, South Africa, Jamaica, Malta and some states in the United States. Generally speaking, in these countries it is legal to buy and use recreational cannabis. For example, in South Africa, cannabis is only legal for private, at-home use. Then in Jamaica, cannabis is legal for private use and for religious purposes. Rastafarian practitioners embrace cannabis (or “ganja”), and use the “holy herb” in religious rituals as a means to gain wisdom. In some U.S. states such as New York, and places like Colombia and Costa Rica, smoking cannabis is not criminalised, but it is illegal to sell it.

Portugal

21. Among those that have legalised cannabis are the Switzerland, Spain, Portugal, Canada, Mexico, Uruguay and South Africa. There are many regions that have adopted some form of decriminalisation for recreational use of cannabis. The specifics of decriminalisation differ by location. For example, cannabis use is illegal in the Netherlands but a legislative loophole has made it decriminalised for personal use, with recreational consumption of the drug “tolerated”.

¹³ Lintzeris N, Mills L, Suraev A, et al. Medical cannabis use in the Australian community following introduction of legal access: The 2018–2019 online cross-sectional cannabis as medicine survey (CAMS-18). *Harm Reduct J* 2020;17(1):37.

22. In 2021, the Portuguese Government decriminalised the public and private use, acquisition, and possession of all drugs, as long as they do not exceed the amount required for an average individual's use for 10 days.¹⁴ The changes formed part of a public health-based strategy which aimed to focus police resources on those people who profit from the drug trade, while enabling a separate public health approach to drug users.¹⁵
23. Under its laws, “non-addicted consumers may be sentenced to payment of a fine, or alternatively, to a non-pecuniary penalty” or in place of a fine “the commission may issue a warning” and “non-pecuniary penalties shall be applied to addicted consumers”.
24. Non-pecuniary penalties are outlined in Article 17 and include “[b]anning from the exercise of a profession or occupation ,namely those subject to licensing requirements, when such exercise jeopardises the well-being of the consumer or third parties; Banning from certain places; Prohibiting the consumer from accompanying, housing or receiving certain persons; Forbidding the consumer to travel abroad without permission; Presenting himself periodically at a place to be indicated by the commission; Disenfranchisement, removing the right to be granted or to renew a fire arms license for defence, hunting, precision shooting or recreation; Seizure of objects belonging to the consumer which represent a risk to him or her or to the community or which encourage the committing of a crime or other offence; Privation from the right to manage the subsidy or benefit attributed on a personal basis by public bodies or services, which shall be managed by the organization managing the proceedings or monitoring the treatment process, when agreed to by the consumer”.¹⁶
25. Whether such penalty is applied is decided by district-level panel made up of legal, health, and social work professionals, known as ‘Commissions for the Dissuasion of Drug Addiction’.
26. Above all, the model is noted as being a “resounding success”; while in 1999 nearly 1% (100 000 people) of the total population in Portugal were addicted to heroin, by 2018, the Health

¹⁴ General-Directorate for Intervention on Addictive Behaviours and Dependencies, ‘Portuguese legal framework applicable to the consumption of narcotics and psychotropic substances’ (29 November 2000) Accessed at <https://www.sicad.pt/BK/Dissuasao/Documents/Decriminalisation_Legislation.pdf>.

¹⁵ Caitlin Hughes¹ and Alex Stevens, ‘The Effects of Decriminilisation of Drug-use in Portugal’, The Beckley Foundation Drug Policy Programme (December 2007). Accessed at <https://www.beckleyfoundation.org/wp-content/uploads/2016/04/paper_14.pdf>.

¹⁶ General-Directorate for Intervention on Addictive Behaviours and Dependencies, ‘Portuguese legal framework applicable to the consumption of narcotics and psychotropic substances’ (29 November 2000) Accessed at <https://www.sicad.pt/BK/Dissuasao/Documents/Decriminalisation_Legislation.pdf>.

Ministry estimates that about 25,000 people in Portugal are users of heroin, and drug mortality rate is the lowest in Western Europe.¹⁷ Interestingly, the proportion of prisoners sentences for drugs has fallen from 40% to 15.7% (2019) below the European average.¹⁸

27. The ALA strongly urges the South Australian government to consider the data presented by decriminalising frameworks and the benefits from both a moral and economic standpoint. As illustrated above, there is a clear need to review unjust drug driving laws in SA which are inconsistent with laws that legalise the use of medicinal cannabis. More broadly, the greater task of conceptualising personal drug use as a public health matter (and not a criminal justice one) has the potential to transform the criminal justice system, resources that go into prosecuting drug crime and traditional systems that keep the drug-addicted in a cyclic relationship to those systems.
28. The ALA contends that societal attitudes towards cannabis use are changing and there is a clear need for laws to keep pace with this.

Conclusion

29. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into the Joint Committee inquiry into legalisation of medicinal cannabis in South Australia.
30. The ALA is available to provide further assistance on the issues raised in this submission.



Faithfully,

South Australian President

Australian Lawyers Alliance (ALA)

¹⁷ Beckley Foundation: Lessons from Portugal: The Case for Drug Policy Reform (2018). Accessed at <<https://www.beckleyfoundation.org/2018/04/23/lessons-from-portugal-the-case-for-drug-policy-reform/>>.

¹⁸ Transform Drug Policy Foundation: Drug Decriminalisation in Portugal: Setting the Record Straight (2021) <<https://transformdrugs.org/blog/drug-decriminalisation-in-portugal-setting-the-record-straight>>.