

**Submission  
No 129**

**INQUIRY INTO IMPACT OF THE REGULATORY  
FRAMEWORK FOR CANNABIS IN NEW SOUTH WALES**

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Dear Committee Members

### **Impact of Regulatory Framework for Cannabis in NSW**

Thank you for the opportunity to comment on a regulatory framework for cannabis in NSW. It appears that regulating cannabis in Australia is inevitable and the sooner it happens, the more opportunities can be generated. In addition to economic opportunities, regulation will prevent the arrest and criminalisation of hundreds of thousands of Australians. And perhaps prevent many more innocent Australians from being searched who have no drugs. The State that legalises cannabis first will have immense advantages in starting a new billion-dollar industry that will potentially export globally.

Despite the urgency and inevitability of regulating cannabis it is also imperative that Parliament gets it right. Whilst there is no perfect model for drug regulation, there are some important principles that should guide the legislation.

These principles include, at a minimum:

- Justice reinvestment initiatives for communities harmed by the War on Drugs and mass incarceration (primarily in Australia's case, Indigenous communities);
- Exploiting opportunities globally as more jurisdictions open up regulated cannabis markets;
- Providing struggling rural communities with a new industry;
- Ensuring that citizens are not subjected to searches – especially strip searches and sniffer dogs – by Police unless absolutely necessary.

Please find attached my specific comments. The attached comments are intentionally brief. Please don't hesitate to contact me if you would like more information.

Yours faithfully

Dr Ben Mostyn  
Sydney Law School

## **Development of a Regulatory Framework**

### **Role of the Commonwealth Government**

Given that Commonwealth laws currently criminalise cannabis there may need to be reform to Commonwealth law. One possibility is to create a standalone national authority for cannabis regulation. Another alternative is to regulate generally through state level liquor boards which is what Canada has done. The constitutional issue if NSW regulates cannabis and the Commonwealth continues to criminalise cannabis is complicated given that the Commonwealth does not have a direct head of power to criminalise behaviour. It generally gets its powers to criminalise drugs from the UN Conventions. I have expertise in what the UN Conventions require in terms of criminalisation.

### **Home grown**

From a normative perspective, allowing adults to grow cannabis at home makes sense. However, from a political perspective, there are advantages to not allowing home grown cannabis.

The political advantage is that it creates a consistent message that regulated cannabis is safer than black market or unregulated cannabis. The primary purpose of the legislation is to create a regulated cannabis market and allowing home grown cannabis contradicts this purpose.

Further, Canada had unexpected problems in the early establishment of its regulated market. Many Canadians continued to buy black market/unregulated cannabis from friends who had plants and had been their supplier pre-regulation. This undermined the benefits of regulation, including tax revenue.

Once a regulated cannabis market is established and the majority of consumers have transferred from the black market to the white market, it could be possible to allow home grown products.

### **Impact of regulation on Aboriginal and regional communities**

It is integral that commercial growers and sellers provide priority for **justice reinvestment**. Indigenous communities, who have been most harmed by over criminalisation and mass incarceration, should be given priority to establish cannabis farms (perhaps for remote Indigenous communities). Similarly for selling cannabis, priority should be given to Indigenous people with criminal records and other people

with drug convictions. Perhaps non-Indigenous struggling rural communities should also be given priority for such licenses.

There is also the concept that licenses should be **'hard to get, easy to lose'**. This principle can still coexist with the justice reinvestment provisions but may require those people harmed by the War on Drugs and over criminalisation to be given special training in how to run a business.

Struggling rural communities could also be given licence priority for growing cannabis to provide economic stimulus to farming communities. A limit on plants – perhaps 1000 – would enable small farmers to benefit from a reliable cash crop and prevent big businesses from dominating cannabis farms.

### **Importing and Exporting**

If possible, it would be important to allow exporting of cannabis. A significant historical tragedy of Australia's delayed regulation of cannabis is the loss of opportunities to develop Protected Geographical Indication traditions.

Australia has a strong global reputation for a pristine environment. A huge opportunity exists for places such as Byron Bay, Blue Mountains, Bondi and others to develop a reputation for creating high quality cannabis products. Similarly, "fair trade" cannabis grown in Indigenous communities could export globally.

Conversely, allowing cannabis to be imported from well-established legal markets such as California and Canada would help the industry get started quickly. As the local industry progressed, there could be less dependence on foreign cannabis.

### **Offences**

It is important to strike a good balance in not escalating police or justice system involvement but ensuring the white market cannabis is not undermined by a black market and to ensure that children do not increase their cannabis consumption significantly.

Non-regulated cannabis could be regulated in a similar way to alcohol. People are allowed to make homebrew and share this with friends. If children are caught with alcohol, police normally exercise discretion and rarely punish. If a licensee is caught selling alcohol to someone under 18, they normally face harsh fines.

## **Consumption**

Similar to the above it is important that young people and homeless people are not punished for public consumption. One issue to be aware of is that in places like New York City, there are many complaints that you can smell cannabis everywhere. This is a small price to pay to end mass incarceration but it is a real and valid complaint. Most communities in Australia are not as densely populated as New York so it is unlikely there will be a constant waft of cannabis smoke.

There should possibly be restrictions on cannabis relating to strength. More importantly, regulation should be used to encourage people to use less strong cannabis. A primary benefit of regulation is that people can use exactly the type of cannabis they want.

Black market cannabis tends to be very strong for three reasons. The stronger the cannabis, the less that needs to be transported (at risk of detection). Criminalisation encourages hydroponic indoor growth. And there is a perception that the stronger the cannabis the better it is. These factors have encouraged the black market to grow high level THC sativa strains.

It will be revolutionary for cannabis users, and those who don't use cannabis due to negative experience with black market weed, to realise that regulated cannabis can be comparable to drinking a beer verse moonshine. Regulation will allow consumers to measure an exact dosage of CBD and THC and to choose Indica strains. This type of cannabis has been demonstrated to be relaxing and far less likely to cause paranoia or other side effects common to black market cannabis.