

Pertinent legal advice: Australia is currently in breach of its civil rights obligations

The legal system pertaining to the use and possession of cannabis in Australia is currently impermissibly arbitrary because the action of many criminal laws currently hinge upon the ability of an individual to obtain and fill a prescription (which does not provide for a fair application of the law).

Australia is a signatory to the International Covenant on Civil and Political Rights [ICCPR]. Article 9, section 1, of ICCPR provides that: *No one shall be subjected to arbitrary arrest or detention.*

However, it is evident that the overlay of the federal system of cannabis distribution (via the Office of Drug Control and the Therapeutic Goods Administration) upon the existing body of state and territory criminal law serves to impermissibly disabuse the civil rights of Australian citizens.

Contrary to article 9, section 1, of the ICCPR, the introduction of the federal (medicinal) cannabis dispensary system as an overlay upon the existing and persisting criminal laws pertaining to cannabis serves to generate an impermissibly arbitrary application of the law across all Australian jurisdictions.

When the federal legislature acted to allow raw cannabis to be dispensed via prescription, their intent was entirely laudable. Nevertheless, the introduction of the federal scheme has served to occasion (by happenstance) a situation that now provides for two classes of cannabis user in Australia.

One class of user can purchase cannabis from a chemist and possess and use cannabis legally while a second class of user (who cannot fulfil these criteria) cannot legally use or possess cannabis.

This serves to render the many and varied applications of the law pertaining to the use and possession of cannabis in the current Australian context as being impermissibly 'arbitrary'.

{In this instance the term 'arbitrary' simply indicates that the application of a law does not apply equally to all of the citizenry in a jurisdiction (as described above) or it is formulated in a manner where its application is based on individual discretion (ie, the issue of a prescription) rather than 'the fair application of the law'.}

Tens of thousands of Australian citizens are currently authorised by the federal government to use and possess cannabis for personal medical purposes.

Simultaneously, the NSW government continues to charge and convict citizens for the use, possession and cultivation of cannabis for personal purposes.

Thus, in Australia, a large segment of the citizenry is currently subject to arrest and conviction in a manner that is *arbitrary*.

This is grossly inequitable and runs counter to the civil rights obligations freely entered into by Australia (under Article 9, section 1, of the *International Covenant on Civil and Political Rights*).

Therefore, until such a time as the state and federal governments of Australia can come together to remedy this ongoing infraction of the requirements imposed by the ICCPR, each jurisdiction where the impositions of the criminal law relating to cannabis has been rendered arbitrary by the actions of the federal legislature is obligated to immediately declare a moratorium on arrest for all implicated criminal infractions.