

Portfolio Committee No. 1 - Premier and Finance
Legislative Council,
Parliament of New South Wales

27 August 2024

By email

To the Chair and Members of the Portfolio Committee No. 1 - Premier and Finance,

**INQUIRY INTO THE IMPACT OF THE REGULATORY FRAMEWORK FOR CANNABIS
IN NEW SOUTH WALES: RESPONSE TO QUESTIONS ON NOTICE**

I am writing to you **on behalf of the Australian Lawyers Alliance (ALA)**.

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

The ALA is grateful to have been invited to provide evidence to the Portfolio Committee No. 1 - Premier and Finance ('Portfolio Committee') as part of the Portfolio Committee's ongoing inquiry into the impact of the regulatory framework for cannabis in New South Wales.

Arising from my appearance before the Portfolio Committee on Thursday 1 August 2024, please find **enclosed** a response to both questions taken on notice.ⁱ

Thank you for your attention on this, and please do let me know if I can be of further assistance.

Yours sincerely,

Greg Barns SC
Australian Lawyers Alliance

ⁱ See: Public Hearing Transcript, *Inquiry into the impact of the regulatory framework for cannabis in New South Wales* (1 August 2024) pages 10 and 12 <www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=3043#tab-hearingsandtranscripts>.

Examples of international jurisdictions' approaches to the regulation of cannabis

	PORTUGAL	US	CANADA
REGULATION	<p>Portugal decriminalised personal possession of cannabis (and all drugs) in 2001.ⁱ</p> <p>Medical use was legalised in 2018 – see: <i>Law for Cannabis for Medical Use</i>, Law No. 33/2018 of 18 July.ⁱⁱ</p>	<p>Federal:</p> <p>Under the <i>Controlled Substance Act</i>, cannabis is deemed a Schedule I controlled substance. This classification effectively prohibits manufacturing, distribution and possession outside limited research activity.ⁱⁱⁱ</p> <p>However, in 2014 the <i>Rohrabacher–Farr</i> amendment passed the Congress. This amendment prohibits the Federal Justice Department from spending funds to interfere with the implementation of state medical cannabis laws.^{iv}</p> <p>State #1 – California:</p> <p>Both recreational and medicinal cannabis is legal in California. Medicinal cannabis is legal for residents aged 18 and over. Recreational cannabis is legal for residents aged 21 and over.^{vii}</p> <p>See: Compassionate Use Act of 1996; Control, Regulate and Tax Adult Use of Marijuana Act of 2016' (The Adult Use of Marijuana Act'); Medicinal and Adult Use Cannabis Regulation and Safety Act ('MAUCRSA')</p> <p>State #2 – Florida:</p> <p>Medicinal cannabis is legal in Florida for residents with a specific set of medical conditions. Otherwise, possession of cannabis is illegal;</p>	<p>Federal:</p> <p>In Canada, both recreational and medicinal cannabis is legal under Federal legislation, subject to specific restrictions and regulations.^v See: The Cannabis Act (S.C. 2018, c. 16)</p> <p>Provinces and territories are able to enact restrictions and regulations regarding the sale, distribution, and use of cannabis. Provinces and territories are also able to add their own safety measures, such as:</p> <ul style="list-style-type: none"> - increasing the minimum age for cannabis possession in their province or territory (but not lowering it); - lowering the personal possession limit in their jurisdiction; - creating additional rules for growing cannabis per residence; and - restricting where adults can consume cannabis.^{vi}

		<p>however, some municipalities have decriminalised the possession of up to 20 grams.^{viii}</p> <p>See: The Constitution of the State of Florida, Art. X, § 29; 2016 Florida Statutes, 381, §986, (2016); Compassionate Medical Cannabis Act of 2014</p> <p>State #3 – New Hampshire:</p> <p>In New Hampshire medicinal cannabis is legal in New Hampshire; however, recreational cannabis is illegal but decriminalised.^{ix}</p>	
<p>IMPLEMENTATION</p>	<p>Law enforcement for personal use:</p> <ul style="list-style-type: none"> - The possession of drugs in Portugal is still an administrative violation. The possession of cannabis can still be punished by fines or community service.^x - In order to determine the specific penalty, the case is referred to the Commissions for the Dissuasion of Drug Addiction. The Commissions for the Dissuasion of Drug Addiction are regional panels made up of legal professionals, health professionals and social workers.^{xi} <p>Regulations of the sale and quality control for medical use:</p> <ul style="list-style-type: none"> - There are laws regulating all activities in the chain – including cultivation, manufacture and distribution, prescription and 	<p>Federal:</p> <p>Under federal law, using or possessing cannabis on federal lands, such as national parks, is illegal – as is transporting cannabis across state lines.^{xvii}</p> <p>State #1 - California</p> <p>Regulations of the sale and use of cannabis:</p> <ul style="list-style-type: none"> - There are regulations in California aimed at ensuring that cannabis use is safe and controlled. - There are limitations in California on where one is legally able to ‘use’ cannabis. Some examples of restrictions are that one cannot smoke cannabis where it is illegal to smoke tobacco, one cannot smoke cannabis within 1,000 feet of a school, day care centre or youth centre while kids are present. - California residents (who are over 21) are only allowed to legally grow six cannabis plants at home. - The Department of Cannabis Control (DCC) licenses and regulates cannabis businesses, 	<p>Federal:</p> <p>There is a strict legal framework regulating the production, distribution, sale and possession of cannabis across Canada.^{xxiii} This includes strict requirements in place for producers who grow and manufacture cannabis.^{xxiv}</p> <p>The legislation imposes industry-wide rules and standards, including:^{xxv}</p> <ul style="list-style-type: none"> - Restrictions on the types of cannabis products available for sale. - Packaging and labelling requirements for products. - Standardised serving sizes and potency. - Prohibitions on the use of certain ingredients - Imposing good production practices. - Tracking requirements of cannabis from beginning to end to keep it out of the illegal market. - Restrictions on promotional activities for cannabis related material.

	<p>dispensation, import, export and wholesale trade.^{xii}</p> <ul style="list-style-type: none"> - In order to cultivate cannabis in Portugal, companies must be licensed by Infarmed, which is the national authority of medicines and health products.^{xiii} Companies must meet a set of legal requirements, specifically to ensure quality and safety. That includes disclosing any criminal records among those who will be involved in cultivating cannabis.^{xiv} - Security measures must be implemented throughout the production chain, including a video surveillance system, intrusion detection system, and a security guard on premises 24/7.^{xv} - The prescription for medicinal cannabis is a special medical prescription which must be made in accordance with a special form approved by the Minister for Health.^{xvi} 	<p>regulating all steps along the production line including growing, manufacturing, transportation, labelling and sale. These regulations are in accordance with MAUCRSA and can be viewed here.</p> <ul style="list-style-type: none"> - All cannabis retailers must have a license from the DCC which provides rules and obligations on the part of the retailer. eg. they must ensure all products are tested; they can't sell to minors. - There are some more specific rules for cities and counties within the state which may slightly alter some of these laws. For example, in some cities/counties there is a requirement to grow cannabis indoors.^{xviii} <p>State #2 - Florida</p> <p><u>Regulations for Medicinal Cannabis:</u></p> <ul style="list-style-type: none"> - The Department of Health, Office of Medical Marijuana Use, writes and implements the Department of Health's rules for medicinal cannabis. - There is a list of qualifying health conditions that enable a person access to medicinal cannabis. In order to obtain and access medicinal cannabis there are a number of steps to take: <ol style="list-style-type: none"> 1. A diagnosis from a qualified physician. 2. Registration to the <i>Medical Marijuana Use Registry</i>. 	<p>There are certain prohibitions in place aimed at preventing people under the age of 18 years obtaining cannabis, including:</p> <ul style="list-style-type: none"> - Banning products that are appealing to youth. - Banning packaging or labelling cannabis in a way that makes it appealing to youth^{xxvi} <p><u>Examples of varying province and territory regulations:</u></p> <p>Many provinces and territories (including British Columbia, Manitoba and New Brunswick) have adopted 19 years of age as the minimum legal age to possess cannabis.</p>
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<p>EVALUATION</p>	<p>Portugal’s broader drug decriminalisation policy has seen a substantial drop in overdoses, HIV infection and drug-related crime since 2001.^{xxvii}</p> <p>Access to medical cannabis, however, still remains very restricted for Portuguese patients, despite the legalisation of medical cannabis.^{xxviii} One reason for this is that the costs of medical cannabis are not reimbursed by health insurance.^{xxix}</p>	<p>Evaluation of California’s cannabis laws: Even though there is a legal cannabis market in California, illegal cannabis is abundant, which undercuts the legal market. Unrestricted by the “maze of bureaucracy” facing the legal market, illegal cannabis can be sold at more competitive prices.^{xxx}</p> <p><i>The Mercury News</i> reported this year that officers found 41,218 illegal plants and over 2,900 pounds of processed cannabis worth nearly \$39 million on San Leandro Street in Oakland, as well as \$10 million worth of plants discovered on Kevin Court, also in Oakland.^{xxxi} See here for a further recent example.</p>	<p>Federal: In March 2024, the <i>Legislative Review of the Cannabis Act: Final Report of the Expert Panel</i> was published, analysing the first three years of the new cannabis scheme.^{xxxv}</p> <p>While the review found that there are still many barriers and access issues for patients who need access to cannabis for medicinal purposes,^{xxxvi} the review also found that:</p> <ul style="list-style-type: none"> - with the legalisation of cannabis, adults have largely moved their purchasing to the legal market;^{xxxvii} and - criminal convictions for possession of cannabis had dropped by 95%.^{xxxviii}

Local governments have almost total control over cannabis regulations, allowing politicians to restrict licenses and charge high licensing fees as a revenue source.^{xxxii}

Evaluation of Florida’s cannabis laws:

There are numerous cost barriers that limit the access of Florida residents from accessing needed medicinal marijuana.

- There is no insurance coverage for medical marijuana, and private insurers cite reasons for non-coverage (including lack of FDA approval and the federal classification of marijuana as a Schedule 1 drug).
- A patient first needs a medical consultation which costs around USD\$250 or more to be certified as a medical marijuana patient.
- There is an initial USD \$75 application fee for the identification card, which is only valid for one year.
- Patients must be recertified every seven months, which requires another visit to the patient’s physician.^{xxxiii}
- A review article focused on barriers to medical marijuana access reported that medical marijuana use in Florida is more common among individuals who are employed, earn high incomes, and have health insurance.^{xxxiv}

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- ⁱ George Murkin, 'Drug decriminalisation in Portugal: setting the record straight', *Transform: Getting Drugs Under Control* (Internet Article, June 2014), <<https://www.unodc.org/documents/ungass2016/Contributions/Civil/Transform-Drug-Policy-Foundation/Drug-decriminalisation-in-Portugal.pdf>>; Susana Ferreira, 'Portugal's radical drug policy is working. Why hasn't the world copied it?', *The Guardian* (online, 5 December 2017) <<https://www.theguardian.com/news/2017/dec/05/portugals-radical-drugs-policy-is-working-why-hasnt-the-world-copied-it>>.
- ⁱⁱ 'Legal Frame Cannabis For Medical Use', (May 2021), *Newsletter Ciencias Da Vida E Saude*, <[https://www.srslegal.pt/xms/files/Arquivo/2022-06-16/Newsletter Legal frame cannabis for medical use .pdf](https://www.srslegal.pt/xms/files/Arquivo/2022-06-16/Newsletter%20Legal%20frame%20cannabis%20for%20medical%20use%20.pdf)>.
- ⁱⁱⁱ Crowley et al, 'Regulatory Framework for Cannabis: A Position Paper From the American College of Physicians' (2024) 177(8), *Annals of Internal Medicine* <<https://doi.org/10.7326/M24-0638>>.
- ^{iv} German Lopez, 'The House just voted to protect medical marijuana patients from federal interference', *Vox* (online, 30 May 2014) <<https://www.vox.com/2014/5/30/5763654/the-house-just-voted-to-protect-medical-marijuana-patients-from>>.
- ^v 'Cannabis Legalization and Regulation', *Government of Canada* (Web page, 7 July 2021) <<https://www.justice.gc.ca/eng/cj-jp/cannabis/>>.
- ^{vi} Ibid.
- ^{vii} 'What's Legal', *Department of Cannabis Control California*, (Web page, 2024), <[https://cannabis.ca.gov/consumers/whats-legal/#:~:text=Cannabis%20is%20legal%20in%20California,21%20or%20older%20\(adult%20use\)](https://cannabis.ca.gov/consumers/whats-legal/#:~:text=Cannabis%20is%20legal%20in%20California,21%20or%20older%20(adult%20use))>.
- ^{viii} 'Florida', *Marijuana Policy Project*, (Web page, 9 July 2024), <<https://www.mpp.org/states/florida/#:~:text=Possession%20of%20school%20amounts%20is,a%20maximum%20fine%20of%20%241%2C000>>; C.A Bridges, 'Is weed legal in Florida? Yes and no. Here are the laws', *The Daytona Beach News-Journal*, (online, 2 July 2024) <<https://www.news-journalonline.com/story/news/2024/07/02/florida-marijuana-laws-legal-illegal-medical-weed/74277256007/>>.
- ^{ix} 'New Hampshire Marijuana Laws', *New Hampshire Cannabis Information* (Web page) <<https://newhampshirecannabis.org/laws>>.
- ^x George Murkin, 'Drug decriminalisation in Portugal: setting the record straight', *Transform: Getting Drugs Under Control* (Internet Article, June 2014) <<https://www.unodc.org/documents/ungass2016/Contributions/Civil/Transform-Drug-Policy-Foundation/Drug-decriminalisation-in-Portugal.pdf>>.
- ^{xi} Ibid.
- ^{xii} 'Legal Frame Cannabis For Medical Use', (May 2021), *Newsletter Ciencias Da Vida E Saude* <[https://www.srslegal.pt/xms/files/Arquivo/2022-06-16/Newsletter Legal frame cannabis for medical use .pdf](https://www.srslegal.pt/xms/files/Arquivo/2022-06-16/Newsletter%20Legal%20frame%20cannabis%20for%20medical%20use%20.pdf)>.
- ^{xiii} Ibid.
- ^{xiv} Ibid.
- ^{xv} 'Medical Use - Cannabis Law and Legalization in Portugal', *CMS Law Tax Future* (Web Page, 18 June 2024) <<https://cms.law/en/int/expert-guides/cms-expert-guide-to-a-legal-roadmap-to-cannabis/portugal>>.
- ^{xvi} Ibid.
- ^{xvii} 'What's Legal', *Department of Cannabis Control California* (Web page, 2024) <[https://cannabis.ca.gov/consumers/whats-legal/#:~:text=Cannabis%20is%20legal%20in%20California,21%20or%20older%20\(adult%20use\)](https://cannabis.ca.gov/consumers/whats-legal/#:~:text=Cannabis%20is%20legal%20in%20California,21%20or%20older%20(adult%20use))>; 'Federal Laws and Penalties', *NORML* (Web page) <<https://norml.org/laws/federal-penalties-2/#:~:text=Marijuana%20possession%20remains%20a%20federal,other%20and%20under%20federal%20control>>.
- ^{xviii} Ibid.
- ^{xix} 'Steps to Treatment', *OMMU* (Web page) <<https://knowthefactsmmj.com/patients/>>.
- ^{xx} 'Florida', *Marijuana Policy Project* (Web page, 9 July 2024) <<https://www.mpp.org/states/florida/#:~:text=Possession%20of%20school%20amounts%20is,a%20maximum%20fine%20of%20%241%2C000>>.

^{xxi} Ibid.

^{xxii} 'New Hampshire Marijuana Laws,' *New Hampshire Cannabis Information* (Web page) <<https://newhampshirecannabis.org/laws>>.

^{xxiii} 'Cannabis Legalization and Regulation,' *Government of Canada* (Web page, 7 July 2021) <<https://www.justice.gc.ca/eng/cj-jp/cannabis/>>.

^{xxiv} Ibid.

^{xxv} Ibid.

^{xxvi} 'What's Legal,' *Department of Cannabis Control California* (Web page, 2024) <[https://cannabis.ca.gov/consumers/whats-legal/#:~:text=Cannabis%20is%20legal%20in%20California,21%20or%20older%20\(adult%20use\)](https://cannabis.ca.gov/consumers/whats-legal/#:~:text=Cannabis%20is%20legal%20in%20California,21%20or%20older%20(adult%20use))>.

^{xxvii} Susana Ferreira, 'Portugal's radical drug policy is working. Why hasn't the world copied it?', *The Guardian* (online, 5 December 2017) <<https://www.theguardian.com/news/2017/dec/05/portugals-radical-drugs-policy-is-working-why-hasnt-the-world-copied-it>>.

^{xxviii} Aylin Elci, 'Portugal grows tonnes of medical cannabis for export but it remains out of reach for local patients,' *Euro News* (online, 21, April 2024) <<https://www.euronews.com/health/2024/04/21/portugal-grows-tonnes-of-legal-medical-cannabis-for-patients-the-black-market-is-the-only->>.

^{xxix} Ibid.

^{xxx} Lester Black, 'California's pot economy is crashing. What comes next?', *SFGATE* (online, 11 June 2024) <<https://www.sfgate.com/cannabis/article/california-cannabis-economy-crash-19492956.php>>.

^{xxxi} Lisa M Krieger, 'Big Weed: Consolidation is changing the face of California cannabis,' *The Mercury News* (online, 19 August 2024) <<https://www.mercurynews.com/2024/05/21/big-weed-consolidation-is-changing-the-face-of-california-cannabis/>>.

^{xxxii} Lester Black, 'California's pot economy is crashing. What comes next?', *SFGATE* (online, 11 June 2024) <<https://www.sfgate.com/cannabis/article/california-cannabis-economy-crash-19492956.php>>.

^{xxxiii} Howell et al, 'Medical Marijuana Policy Reform Reaches Florida: A Scoping Review', (2019) *National Library of Medicine* <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6936729/>>.

^{xxxiv} Ibid.

^{xxxv} 'Legislative Review of the *Cannabis Act*: Final Report of the Expert Panel', *Government of Canada* (Web page, 24 March 2024) <<https://www.canada.ca/en/health-canada/services/publications/drugs-medication/legislative-review-cannabis-act-final-report-expert-panel.html>>.

^{xxxvi} Ibid.

^{xxxvii} John Last, 'Where Canada's Weed Legalization Went Wrong', *Foreign Policy Report* (online, 27 May 2024) <<https://foreignpolicy.com/2024/05/27/canada-legalization-cannabis-marijuana-trudeau-economics-public-health/#:~:text=Canada's%20law%20initially%20created%20two,and%20regulatory%20fees%20are%20high>>.

^{xxxviii} Ibid.