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Senator the Hon Ian Macdonald
Chair, Senate Standing Committee on Legal and Constitutional
Affairs Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senator,

Regulator of Medicinal Cannabis Bill 2014

The Law Institute of Victoria (LIV) welcomes the opportunity to contribute to the Senate Legal and Constitutional Affairs Legislation Committee Inquiry into the Regulator of Medicinal Cannabis Bill 2014 (the Bill).

The LIV is Victoria's peak body for lawyers and those who work with them in the legal sector, representing over 19,000 members. The LIV advocates on behalf of the legal profession and the wider community; leads the debate on law reform and policy; lobbies and engages with government; and provides informed and expert commentary.

General Comments

The LIV acknowledges that the Bill provides an opportunity to expand the discussion on the regulation of medicinal cannabis. The LIV notes the complexities in establishing a regulatory arrangement at a Commonwealth level separate to the *Therapeutic Goods Act (Cth)* for cannabis to be supplied for medicinal purposes.

In Victoria, cannabis is regulated under two Acts: the *Drugs, Poisons and Controlled Substances Act 1981 (Vic)* and the *Therapeutic Goods (Victoria) Act 2010 (Vic)*. This legislation contributes to the Commonwealth regulation of therapeutic goods and medicines. The Commonwealth has primary control of the regulatory system, with a division of responsibility between the Commonwealth and the states broadly broken down as:

- Commonwealth regulates the 'quality, safety and efficacy of medicines'; and
- States and territories regulate 'the sale, supply, possession, handling and use of medicines'.¹

The *Therapeutic Goods (Victoria) Act 2010 (Vic)* applies the Commonwealth's therapeutic goods framework to everyone in Victoria. It provides a uniform scheme for the regulation of therapeutic goods and effectively provides that the Commonwealth Therapeutic Goods Act applies to every natural or legal person in Victoria to whom it would not otherwise apply.

The cultivation, processing, supply and possession of cannabis is prohibited under both Commonwealth and Victorian law (as well as further Commonwealth restrictions on importation and Commonwealth obligations under international laws).

Whilst the Bill proposes a regulatory scheme separate to the Commonwealth Therapeutic Goods Act, it is unclear how the Bill will work with State legislation concurrently.

¹ John S. Low, Laetitia Hattingh and Kim Forrester, *Australian Pharmacy and Practice* (Elsevier, 2013) 232.

In order for the Bill's proposed scheme to be achievable within the current therapeutic goods framework, medicinal cannabis would need to be specifically excluded from the Therapeutic Goods Act (Cth). This, however, would not address restrictions under the *Narcotic Drugs Act 1967* (Cth) and compliance with International Conventions and other State criminal laws.

The Bill provides for states to 'opt in' to a parallel system; however, it is unclear to what degree states would be required to reform existing legislation to incorporate the parallel system. The Bill also proposes a system which allows individual natural persons (i.e. patients) to grow and supply their own medicinal cannabis which will further give rise to monitoring and enforcement issues between parallel systems.

The Victorian Law Reform Commission (VLRC) is currently conducting a detailed inquiry into options for legislative change to allow people to be treated with medicinal cannabis. The inquiry will focus on the interconnecting Commonwealth and Victorian laws that need to be considered when developing options for legalising cannabis for medicinal purpose. The issues paper was released on the 12 March with the Commission to provide their report no later than 31 August 2015.

Conclusion

The LIV supports the public debate regarding the regulation of cannabis and looks forward to engaging with the VLRC review and report on options for regulatory change.

The LIV's position is that the VLRC should be supported to complete its inquiry and report by 31 August 2015 and that consideration of this Bill should be informed by the VLRC's report on the complex legislative regime which currently regulates medicinal cannabis.

Please contact Michelle Whyte, Lawyer for the LIV Administrative Law and Human Rights Section on

Yours sincerely,

Katie Miller

President

Law Institute of Victoria