

COMMITTEE QUESTION ON NOTICE

Question asked by: The Chair

Directed to: Department of Justice and Community Safety

Asked on: 1 June 2021

Question:

How might the sale and regulation of cannabis in Victoria interact with federal legislation?

Reply:

In general terms, to the extent that there are any inconsistencies (or conflicts) between State and Commonwealth law, the Commonwealth law prevails and state law will be invalid to the extent of the inconsistency. This principle is enshrined in section 109 of the *Commonwealth of Australia Constitution Act* (the Constitution).

Any time new legislation is considered in Victoria, consideration is given to how it intersects and whether it is inconsistent with Commonwealth legislation, as well as relevant State legislation, including the Commonwealth Constitution and the *Victorian Charter for Human Rights and Responsibilities Act 2006*. Any legislation prepared to enable the sale and regulation of cannabis in Victoria would be subject to this same scrutiny of proposed legislation.

The nature of the interaction between federal legislation and any potential scheme for the sale and regulation of cannabis in Victoria will depend on the form and scope of the regulation being considered in Victoria.

Any such scheme would need to be considered alongside Commonwealth legislation, including:

- the *Criminal Code Act 1995* (Cwth) which prohibits the possession of controlled drugs, including cannabis, and
- the *Narcotic Drugs Act 1967* (Cwth) which regulates cannabis cultivation for medicinal and related scientific purpose.

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Department of Justice and Community Safety