

Submission  
No 102

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

**Organisation:** NSW Council for Civil Liberties

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## **NSWCCL SUBMISSION**

### **PORTFOLIO COMMITTEE NO. 1 - PREMIER AND FINANCE**

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

17 May 2024

**NSWCCL**

## **Acknowledgment**

In the spirit of reconciliation, the NSW Council for Civil Liberties acknowledges the Traditional Custodians of Country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all First Nations peoples across Australia. We recognise that sovereignty was never ceded.

## **About NSW Council for Civil Liberties**

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts, attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

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The NSW Council for Civil Liberties (**NSWCCL**) welcomes the opportunity to make a submission to the Portfolio Committee No. 1 - Premier and Finance (**Committee**) in regard to the Impact of the regulatory framework for cannabis in New South Wales.

## 1. Introduction

- 1.1 Cannabis is criminalised in New South Wales (NSW) with use, possession, cultivation and supply being the key offences. Cannabis has long been the most widely used illicit drug in Australia. In 2022–2023, 11.5% of people in Australia had used cannabis in the previous 12 months, around 2.5 million people.<sup>1</sup> In comparison, the next most common illicit drugs (cocaine and ecstasy) were used by around 3% of Australians.<sup>2</sup>
- 1.2 Decriminalisation typically involves the removal of a criminal penalty for using or possessing small amounts of drugs. While all Australian states and territories have some form of decriminalisation in practice, only three (ACT, SA and the NT) have decriminalised these offences in their laws.
- 1.3 There is widespread public support for moving away from a law enforcement approach to drug use in Australia. The latest Australian national drug strategy household survey found that the Australian public's view of cannabis is growing more positive. In the latest survey, support for legalisation of cannabis has increased to 45%, and the proportion of people who believed that possession of cannabis should not be a criminal offence reached an all-time high of 80%.<sup>3</sup>
- 1.4 NSWCCL supports decriminalisation coupled with regulation of cannabis across Australia. There is consistent evidence that decriminalisation doesn't encourage drug use or increase drug taking in the community.<sup>4</sup> In fact, decriminalisation may have the opposite effect, as more people are able to access advice, support and treatment for any problematic health issue resulting from drug use.<sup>5</sup>
- 1.5 NSWCCL submits that regulation of cannabis would enable the government to maintain oversight of the cannabis market, preventing it from being dominated by large corporations and organised crime groups driven solely by profit and power. Through careful regulation, NSW could foster a diverse and competitive market that prioritises public health and social responsibility over corporate interests.

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<sup>1</sup>Australian Institute of Health and Welfare [AIHW] 2023, <https://www.aihw.gov.au/reports/illicit-use-of-drugs/cannabis-ndshs>

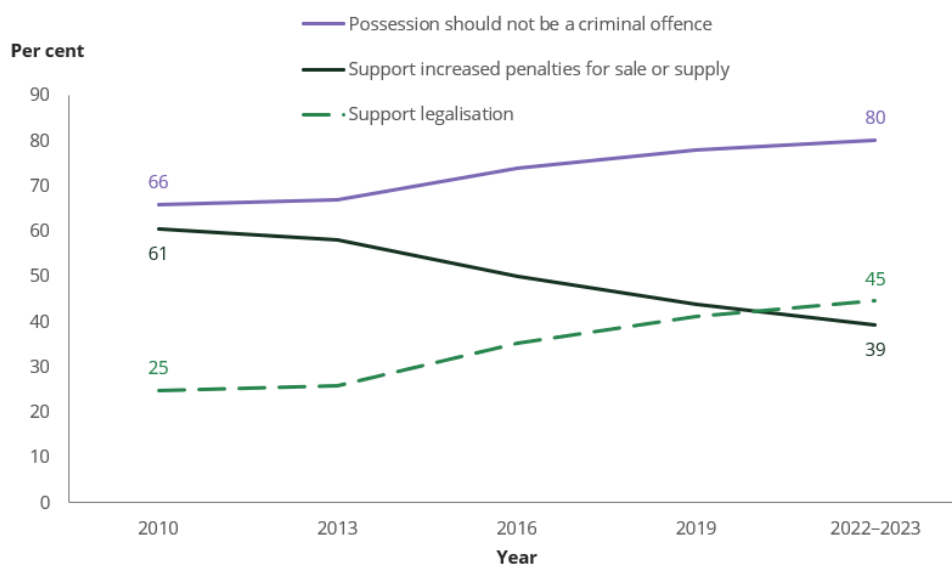
<sup>2</sup> *ibid*

<sup>3</sup> *Cannabis in the NDSHS*. Australian Institute of Health and Welfare, 2024, <https://www.aihw.gov.au/reports/illicit-use-of-drugs/cannabis-ndshs>

<sup>4</sup> Scheim AI, Maghsoudi N, Marshall Z, Churchill S, Ziegler C, Werb D. [Impact evaluations of drug decriminalisation and legal regulation on drug use, health and social harms: a systematic review](#). *BMJ Open* [Internet]. 2020; 10(9).

<sup>5</sup> Benfer I, Zahnow R, Barratt MJ, Maier L, Winstock A, Ferris J. [The impact of drug policy liberalisation on willingness to seek help for problem drug use: A comparison of 20 countries](#). *International Journal of Drug Policy* [Internet]. 2018; 56:[162-75 pp.].

Figure 1: Support for cannabis-related policies and statements, people in Australia aged 14 and over, 2010 to 2022–2023



Source: NDSHS 2022–2023, Tables 11.15, 11.23, and 11.27.

## 2. Socio-economic impacts

- 2.1 Decriminalisation undermines the illegal cannabis market by removing the criminal penalties associated with possession and consumption. This diminishes the profitability of underground operations and reduces the incentive for people to engage in illegal activities. With a regulated market offering safe and legal alternatives, consumers are more likely to opt for legal channels, shrinking the illicit market and reducing a significant source of revenue for organised crime.
- 2.2 The dominant 'prohibition' model of legislation in this field has failed in its goal of preventing widespread cannabis use, and consequent or coexisting vulnerabilities, especially amongst young people. Criminal sanctions have not proved to be an effective deterrent. The current legal framework is ineffective in curbing the supply and availability of cannabis which has become more readily available, at a higher potency and lower prices. Police resources are being wasted and diverted from other more important policing activities which minimise harm rather than target cannabis users, many of whom cause no harm to society at all. The community experiences little benefit from the attempt to reduce the prevalence of a substance that remains so widely available, despite its illegality. An anomalous situation exists whereby cannabis, an arguably less dangerous drug, is illegal and more dangerous drugs (tobacco and alcohol) are legal.
- 2.3 Criminalisation, which targets all levels of cannabis use, is not the best way to prevent problematic use by a minority of users. The NSWCCCL submits that the criminalisation of cannabis causes greater harm to already vulnerable groups in society than cannabis use itself. For example, the Australian national drug strategy household survey found that:
  - gay, lesbian and bisexual people were 2.6 times as likely to have used cannabis in the previous 12 months as heterosexual people.
  - trans and gender diverse people were 2.4 times as likely as cisgender people to have used cannabis in the previous 12 months.

- First Nations people were 1.2 times as likely to have used cannabis in the previous 12 months as non-Indigenous people.<sup>6</sup>

### 3. Impact on Vulnerable groups

#### *First Nations people*

- 3.1 The issue of the over-policing and over-incarceration of First Nations peoples in Australia is well documented. Questions on notice to the NSW parliament show that, between 2020 and 2022, there were 54,174 people caught by police, with cannabis. Of those, 19,232 were Aboriginal people. While First Nations people accounted for more than 35% of all interactions over the three years, only approximately 3% of the NSW population is Aboriginal.<sup>7</sup>
- 3.2 Over the five-year period between 2013 and 2017, 82.6% of all Aboriginal people found in NSW with a non-indictable quantity of cannabis were pursued through the courts, compared with only 52.3% for the non-Aboriginal population; and over the same five-year period, only 11.4% of Aboriginal people caught with small amounts of cannabis were issued cautions compared to 40.0% of non-Aboriginal offenders.<sup>8</sup> This clear bias starkly illustrates how the current criminalisation of cannabis disadvantages Aboriginal people in NSW.

#### *LGBTIQA and Young People*

- 3.3 Likewise, the over-policing of the queer community in NSW is well documented. There has been concern for some time that the scale of police operations at NSW LGBTIQ+ events is disproportionate to the size and potential risks associated with these events.
- 3.4 This disproportionate level of policing has given rise to perceptions that police target LGBTIQ+ community events in a biased and deliberate way, when there is little evidence to suggest that this level of policing is necessary or required in the interests of the safety of the community overall.<sup>9</sup>
- 3.5 Under NSW law, police can undertake either general or strip-searches if they suspect someone has illicit drugs in their possession. Sniffer dogs are used by police to sense drugs and screen for suspicious behaviour. The use of drug detection dogs has been of serious concern for some time. The 2006 NSW Ombudsman's Review of the Police Powers (Drug Detection Dogs) Act 2001 found that drug detection dogs were costly, harmful to public health and ineffective in achieving their stated aim of reducing drug supply. It found that drug detection dogs make a large number of false indications, and when accurate, most often find minor quantities of drugs (usually cannabis).<sup>10</sup>
- 3.6 One of the 109 recommendations from the 2020 Special Commission of Inquiry into the drug ice and amphetamine-type stimulants was to cease the use of drug detection dogs at music festivals.<sup>11</sup> In 2023, across 663 deployments and 4006 searches, drugs were

<sup>6</sup> *ibid*

<sup>7</sup> The Guardian (29.11. 2023) NSW drug law overhaul would allow six marijuana plants for personal use <https://www.theguardian.com/australia-news/2023/nov/29/nsw-drug-law-overhaul-would-allow-six-marijuana-plants-for-personal-use>

<sup>8</sup> Teperski A, Rahman S, *Why are Aboriginal adults less likely to receive a cannabis caution?* Crime and Justice Bulletin, Number 258, (2023) NSW Bureau of Crime Statistics and Research

<sup>9</sup> Policing at NSW Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ) Events and Venues (2013) ACON

<sup>10</sup> Review of the Police Powers (Drug Detection Dogs) Act 2001 (2006) NSW Ombudsman <http://www.ombo.nsw.gov.au/>

<sup>11</sup> <https://www.nsw.gov.au/the-cabinet-office/special-commissions-of-inquiry/drug-ice>

identified just under 29 per cent of the time. Putting people through a sometimes terrifying encounter with a police dog and subsequent humiliating strip search creates understandable trauma and fear amongst young people and the queer community.

### *Criminalised people*

- 3.7 A criminal conviction is a harsh punishment for people who simply use cannabis and rarely pose harm to society. Entry of a conviction or even a bond without conviction goes on a police record with possible drastic long-lasting consequences for personal relationships, future employment, engagement in voluntary service and visas to enter other countries. A conviction carries the stigma of criminality, leaving quite large numbers of people with a criminal record who might never otherwise have trouble with the law.
- 3.8 A criminal conviction against a person's name typically has negative implications for their current and future education, employment, accommodation, or travel. This greatly affects socially disadvantaged people because their opportunities are further reduced, increasing their likelihood of recidivism. Most instances of cannabis use are occasional, experimental and pose little harm to users or others. The enduring harm to a person's reputation and identity caused by a criminal conviction is disproportionate to the supposed harm caused by cannabis use, possession, cultivation for personal use and small-scale social supply.

## **4. Alternative approaches**

- 4.1 Conversely, redirecting the resources and funding currently used for victimless crime related to cannabis use in NSW could be put into programs of rehabilitation and treatment centres for seriously affected drug users. Regulation would allow for greater control of supply away from minors, through identity/age checks.
- 4.2 The NSW government's zero-tolerance approach to people in NSW who are found with illicit drugs flies in the face of all the evidence and recommendations from the Special Commission of Inquiry into the drug ice and other amphetamine-type stimulants (ICE Inquiry) and is out of step with other States and Territories.
- 4.3 NSW has previously led the way in treatment and harm minimisation responses and could do so again if the government fully implemented the recommendations of the Special Commission's final report within a comprehensive alcohol and other drugs strategy.
- 4.4 The ICE Inquiry Report delivered a series of compelling recommendations. NSWCCCL advocates for the implementation of the ICE Inquiry Report's evidence-based recommendations in regard to its relevance to cannabis use, which included:
  - greater coordination of alcohol and other drug policy
  - decriminalisation
  - a clear focus on priority populations, especially:
    - Aboriginal people who experience disproportionate impacts from ATS
    - rural and regional people
    - people in contact with the criminal justice system.
  - the removal of prison as a sentencing option for drug use or possession in quantities consistent with personal use.
  - expansion of the Magistrates Early Referral into Treatment (MERIT) program, along with programs to assist Indigenous offenders like Circle Sentencing and the Youth Koori Court, is vital to realising the ambitions of the Inquiry.
  - an end to discriminatory, inequitable and out of date presence-based drug driving practices targeting medical cannabis patients. NSWCCCL agrees that those patients in Australia who are legally prescribed medicinal cannabis should be

exempted from prosecution for driving with THC in their system, unless there is clear evidence of impairment.

- an end to the punitive approach to policing at music festivals and other venues, including an end to the use of drug detection dogs and the practice of strip searches.

### *2024 NSW Drug Summit*

- 4.5 Finally, Labor's 1999 Drug Summit remains a significant and defining moment for drug law reform in Australia and the world. The promised 2024 Drug Summit gives NSW a chance once again to lead the conversation about drug use and harm minimisation.
- 4.6 The Drug Summit is an opportunity to recast the problematic use of drugs as a matter of public health policy with whole of government implications. This shift is an important step in de-stigmatisation, removing barriers for individuals in acute distress or with long-term dependencies to seek help without fear of criminal penalties. It will also provide an opportunity to streamline resources and build on the understanding developed in treating the problematic use and addiction of alcohol and prescription medication.
- 4.7 A Drug Summit with a whole of government approach must also be an opportunity to examine the structural reasons driving drug misuse and dependency. The intersections of social, economic, housing and education policy are known contributors to drug misuse and dependency, and it is unfair and illogical to expect the police and justice system to shoulder the burden alone.
- 4.8 Further, the Summit creates the space to talk about recreational drug use and steps towards decriminalisation. The Summit is a chance to involve the community in the policy making process. Such involvement is crucial for changing the demonisation of drug use and users and addressing the over policing of minority populations -- when in reality, we know recreational use traverse postcodes. The success of reform depends on changing the way we talk about drugs, and those who use them.

We hope this submission will be useful to the committee.

Yours sincerely,

**Timothy Roberts**  
**Secretary**  
**NSW Council for Civil Liberties**

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