

**Submission
No 111**

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

Organisation: Penington Institute

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PENINGTON
INSTITUTE

Inquiry into the impact of the regulatory framework for cannabis in New South Wales

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Drugs and the community

It is too easy to judge people who use drugs.

Legal or illegal, the misuse of any psychoactive substance impacts us all.

At Penington Institute, we think it's far more productive to prevent and tackle drug use in a safe, effective and practical way.

Risky behaviours are part of being human.

Our focus is on making individuals and families safer and healthier, helping communities, frontline services and governments reduce harm, respect human rights and improve the rule of law.

Founded by needle exchange workers and people with lived experience of drug use in 1995 as a peak body, The Association of Needle Exchanges (ANEX) grew into Penington Institute, named in honour of Emeritus Professor David Penington AC, who led Australia's early and world-leading approach to HIV/AIDS.

Like Professor Penington, we confront the most important issues and champion innovative evidence-based action to improve people's lives – no matter how challenging our perspective might appear.

A not-for-profit organisation, Penington Institute's research and analysis provides the evidence needed to help us all rethink drug use and create change for the better.

We focus on promoting effective strategies, frontline workforce education and public awareness activities. Our work has a positive impact on people, health and law enforcement systems, the economy and society.

An independent voice of reason on drug policy, we are a straight-talking ally for practical insights, information and evidence-based action for people in need.

About Penington Institute

Frank and fiercely independent, Penington Institute connects lived experience with research to improve the management of drugs through community engagement and knowledge sharing. Our mission is to support cost-effective approaches that maximise community health and safety in relation to drugs.

Summary

The current regulatory framework for cannabis in NSW amounts to an outdated model that drains public resources and produces unnecessary harms for people and communities throughout the state.

The criminalisation of cannabis fails to control supply, leaves the market in the hands of criminals, costs billions of dollars in enforcement, and hinders a public health-led approach to managing the health harms that can be associated with cannabis use.

The NSW government should implement a balanced model of cannabis regulation that facilitates access to regulated adult-use cannabis markets and minimises the health harms that can be caused by cannabis. This model should be informed by evidence from other jurisdictions that are increasingly recognising the counterproductive nature of criminalised cannabis and embracing alternative approaches.

Introduction

Penington Institute appreciates the opportunity to provide a submission to the Legislative Council Portfolio Committee No. 1's *Inquiry into the impact of the regulatory framework for cannabis in New South Wales*. This inquiry comes at a time when bold shifts on cannabis policy are accelerating in jurisdictions around the world, even as Australian cannabis reforms remain largely stifled. Until Australian debates move decisively from *if* cannabis laws need reform to *how* these laws should change, our costly, ineffective policy regime will continue to produce unnecessary harms for people and communities in NSW and across the country.

Our submission primarily focuses on Sections 1(c) through 1(g) of the Committee's Terms of Reference:

- (c) the historical, current and future financial cost of cannabis prohibition to the Government and the economy
- (d) the impact of the current regulatory framework for cannabis on young people, the health system, personal health, employment, road safety, crime and the criminal justice system
- (e) the impact of the regulatory framework for cannabis on Aboriginal, LGBTIQ+, regional, multicultural and lower socioeconomic communities
- (f) alternative approaches to the regulatory framework for cannabis in other jurisdictions
- (g) the provisions of the Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023

(1) The costs of prohibition: Terms of Reference 1(c), 1(d), and 1(e)

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(d) the impact of the current regulatory framework for cannabis on young people, the health system, personal health, employment, road safety, crime and the criminal justice system

(e) the impact of the regulatory framework for cannabis on Aboriginal, LGBTIQ+, regional, multicultural and lower socioeconomic communities

Financial costs of prohibition

The fiscal costs of cannabis prohibition in Australia are significant and include expenditures on enforcement of cannabis prohibition and revenue foregone from a regulated cannabis market:

- **Law enforcement expenditure** – Enforcement activities relating to cannabis have been estimated as totalling \$1.7 billion per annum nationally (2015-16 figures).¹ This represents a significant allocation of resources to a drug that has not, on its own, been responsible for a single unintentional overdose death in the last 13 years² – if ever – and has a harm profile much lower than that of alcohol and tobacco.³
- **Foregone revenue** – The Commonwealth’s Parliamentary Budget Office has estimated that a regulated model would improve the country’s fiscal balance by over \$28 billion in its first nine years of operation.⁴

The costs of harms from criminalised cannabis

Contact with the criminal justice system

In addition to law enforcement and justice administration costs, the current framework produces significant harm to individuals through contact with the criminal justice system. Each year, thousands of Australians are arrested for cannabis use who would otherwise not come to the attention of law enforcement, and face outcomes that are highly disproportionate to the low public safety risk associated with cannabis:

- Between 2010-11 and 2019-20, at least 702,866 people were arrested for cannabis-related offences, with over 90 percent involving personal possession or use rather than illegal drug trafficking.⁵
- While co-offence data in NSW are unavailable, police data from other parts of Australia indicate that policing of cannabis possession/use often targets people who are committing no other crime; in Victoria, for instance, 60 percent of cannabis possession or use offences in 2019 occurred with no other offending.⁶

Snapshot: court and diversion in NSW

NSW police recorded 82,432 incidents involving cannabis use or possession in the five years between 2018 and 2023. Although NSW has had a diversion scheme in place since 2000, over the 2018-2023 period, two-thirds (43,349) of alleged offenders were proceeded against in court, while diversion processes were applied for the other one-third (22,682) of offenders.⁷

The volume of arrests has broader economic and social costs: evidence consistently shows that exposure to the criminal justice system stemming from cannabis offences can lead to difficulties with employment, education, relationships, parenting and housing.⁸ A conviction can also have implications for people’s ability to travel freely, can exacerbate family violence and mental health or other health problems,⁹ and ultimately increases the risk of reoffending.¹⁰ All of these outcomes are associated with economic impacts such as reduced participation in the labour market and increased demand for health and social services.

Social and health impacts

A large majority of people who initiate cannabis use do not experience significant health harms or subsequently begin using riskier drugs.¹¹ However, cannabis consumption has been linked to several potential harms to mental and physical health. These include cannabis use disorder, in which people experience various negative outcomes resulting from cannabis use yet find themselves unable to reduce or cease consumption;¹² respiratory harms, especially for people who smoke cannabis plant matter;¹³ and problems related to cannabis use during pregnancy.¹⁴

Concerns about cannabis-related health harms are particularly salient for young people, who are most vulnerable to lasting harms from substance use in general.¹⁵

Snapshot: cannabis use in NSW and Australia

National Drug Strategy Household Survey (NDSHS) data reveal that 11.5 percent of the Australian population aged 14 and over reported consuming cannabis within the past year, with 40.6 percent reporting lifetime use.¹⁶ Prevalence in NSW is slightly below the national rate, with 11 percent of NSW respondents reporting past-year use and 38.6 percent reporting lifetime use.¹⁷

Among all Australian adolescents aged 14-19, 15 percent reported consuming cannabis within the past year; for NSW adolescents, the rate was 13.1 percent.¹⁸ Although the prevalence of cannabis use among Australian adolescents decreased between 2001 and 2023, the NDSHS registered increases since 2019 in moderate and risky use among those aged 14-17.¹⁹

Health harms from cannabis are more likely for people with certain underlying physical and social vulnerabilities – including genetic traits that predispose them to psychotic episodes or disorders – and for people who use cannabis more frequently or consume larger quantities of tetrahydrocannabinol (THC), the plant’s main psychoactive component.²⁰

It is important to minimise cannabis’s negative health impacts, including through effective education about its effects and potential harms. However, Australia’s current framework neither deters people from using cannabis nor facilitates harm minimisation.

Disproportionate impacts

The unnecessary involvement with the criminal justice system generated by the criminalised cannabis framework is of particular concern among minority groups who are already overrepresented in the criminal justice system, such as Aboriginal and Torres Strait Islander peoples and economically marginalised Australians, including those in regional areas.²¹

Evidence has consistently shown that these groups are disproportionately impacted by drug-related law enforcement and are more likely to be funnelled into the criminal justice system rather than being offered diversionary processes.²²

Snapshot: reduced access to diversion for Aboriginal and Torres Strait Islander people

In NSW, police are far less likely to divert Aboriginal and Torres Strait Islander people found in possession of a small amount of cannabis: during the period 2013 to 2017, 83 percent were proceeded against through the courts and only 11 percent received a caution, compared with 52 percent of non-Indigenous offenders facing court proceedings and 40 percent being issued a caution.²³

Snapshot: the impact of geography on cannabis policing

In NSW, rates of cannabis possession incidents are generally higher per-capita in rural and regional areas, and in lower socioeconomic areas. For example, in 2023, the number of incidents reported in the Parramatta area (223.8 incidents per 100,000 people) were more than double that of the neighbouring Inner West (93.8) area, and more than four times that of the neighbouring Ryde (52.2) and Baulkham Hills/Hawkesbury (49.7) areas.²⁴

The ineffectiveness of criminalised cannabis

The most salient fact about the current criminalised cannabis framework is its ineffectiveness, as it:

- **Does not deter cannabis use:** despite the billions of dollars spent enforcing criminal sanctions, cannabis remains the most widely used illegal drug in Australia, with the rate of arrest approximately 1 of every 3,300 incidents of cannabis use.²⁵
- **Has little effect on availability or price:** despite cannabis now accounting for over half of all illicit drug seizures annually, prices have remained both low and stable since at least 2013/14.²⁶
- **Does not target resources to those most in need:** among offenders who are arrested for cannabis use/possession, only a small minority (10.8 per cent) are likely to be classified as having moderate to severe cannabis dependence,²⁷ yet offenders are commonly diverted into treatment. From 2013 to 2022, 39 per cent of all cannabis-specific drug treatment episodes resulted from a diversion program.²⁸ It is questionable whether requiring thousands of people who likely do not meet the diagnostic criteria for moderate or severe cannabis use disorder to receive drug treatment is socially beneficial or an efficient use of scarce health resources.
- **Financially supports criminals rather than the community:** In the absence of a regulated market, Australia's persistent, large-scale demand for cannabis generates billions of dollars²⁹ annually for illicit producers and distributors, with no taxes collected at any point of the supply chain, and no opportunity for the development of a legitimate cannabis industry that fosters employment and economic development in Australian communities.

(2) Alternative approaches: Terms of Reference 1(f) and 1(g)

(f) alternative approaches to the regulatory framework for cannabis in other jurisdictions

(g) the provisions of the Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023

An expanding number of Australia's democratic peers are catching on to the counterproductive consequences of cannabis prohibition. Cannabis for personal use is now legal in at least four countries and 24 US states. Observing the effects of variation in regulatory models can help guide policymaker choices to select a model most appropriate for Australian communities.³⁰

Jurisdictions opting for regulated adult-use markets have established various models, with differing objectives and outcomes.³¹ The fully commercialised models adopted in many US states benefit price-conscious consumers and may encourage rapid growth of legal cannabis industries, but they are the least conducive to prioritising public health.³² By contrast, the more restricted model implemented in Uruguay minimises the tension between profit-seeking and public health but has resulted in a more persistent illicit market.³³

Canada

The model of cannabis regulation established by Canada offers perhaps the most useful template for designing a comprehensive alternative to the current framework in Australia. Canada's regulated adult-use market took effect in October 2018 under a legal framework that specified key objectives, including protecting young people from health harms from cannabis, reducing the illicit market, diminishing the burden on the criminal justice system, and promoting public awareness of cannabis's health risks.³⁴ Like many US states, the Canadian model allots a primary role in supplying the market to private entities and (in most provinces) permits retail commercial dispensaries. Unlike many US states, the Canadian model severely curtails promotion of cannabis products, and many Canadian provinces have adopted additional features and controls, including the establishment of wholesale and/or retail government monopolies and limits on the range of permitted products.³⁵

While five years of evidence is insufficient for a generalisable understanding of regulated cannabis markets, evidence has mounted of the reform's success, including the following:

- Steady progress in reducing the illicit market: respondents to the government-sponsored Canadian Cannabis Survey (CCS) reporting they "always" obtain cannabis from a legal or licensed source increased from 37 percent in 2020 to 69 in 2023, while "only 3 percent of people reported using an illegal purchase source."³⁶
- According to an analysis by Deloitte Canada, from 2018 to 2021 the legal cannabis industry directly supported over 43,000 FTE jobs, and indirectly supported over 98,000 jobs while generating CAD\$15.1 billion in government revenue.³⁷
- Greater awareness of the dangers of cannabis-impaired driving: according to the CCS, "17 percent of people who had used cannabis in the past 12 months reported driving within 2 hours of smoking or vaping cannabis and/or within 4 hours of ingesting cannabis, a decrease from 27 percent in 2018."³⁸

Notably, a legislatively-mandated independent review³⁹ of the first five years of the Canadian regulated cannabis market found that significant progress has been made in fulfilling the reform's objectives. Along with confirmation of the shrinking illicit market, the review emphasised a 95 percent reduction in criminal charges for cannabis possession, thereby "minimizing the negative impact on some individuals from interactions with the criminal justice system."⁴⁰ It also highlighted the emergence of a legal industry that offers adults "a quality-controlled supply of a variety of cannabis products" and generally complies with strict packaging and promotional rules.⁴¹

The review also identified priority areas for additional changes that can inform NSW or other Australian jurisdictions considering comprehensive cannabis reforms, including potential restrictions on high-potency products and enhanced enforcement to counter remaining illicit market operations. It also called for greater attention to reducing youth use, which remains high by international standards – although not significantly higher than at the time the regulated market was established.

The United States

By comparison, the diversity of approaches in the 24 US states where cannabis is legal defy simple summary, but nearly all states have opted for highly commercialised markets, with no direct government participation in the supply chain and fewer restrictions on promotions and packaging. These more liberal models have led to some documented health harms, such as increased cases of acute intoxication among youths, largely driven by consumption of edibles that are challenging to dose and easy to confuse with candy.⁴² At the same time, even in this laissez faire environment, the evidence suggests no or little rise in the prevalence of youth consumption,⁴³ and no increase in cannabis-induced schizophrenia or psychosis following legalisation.⁴⁴ Such evidence bolsters confidence that health fears frequently cited by sceptics of cannabis reform do not mechanically follow from the establishment of regulated cannabis markets.

The Australian Capital Territory

Finally, within Australia, the Australian Capital Territory (ACT) has undertaken the farthest-reaching reforms, though they remain limited by international standards. Since January 2020, adults in the ACT have been allowed to grow up to two cannabis plants (four per household) and possess up to 50 grams of dried cannabis.

Preliminary evidence suggests that cannabis decriminalisation in the ACT has not led to an increase in cannabis use, with NDSHS data indicating that rates of past 12-month use have remained relatively stable since 2007.⁴⁵ Similarly, rates of cannabis-related hospitalisation appear to be unchanged,⁴⁶ ACT Police report they have not experienced an increase in cannabis-related driving offences,⁴⁷ and the number of arrests for cannabis offences in the ACT declined from 188 in 2018-19⁴⁸ to 74 in 2020-21.⁴⁹

However, the recency of the reforms mean that the illicit market persists and ACT residents who use cannabis continually navigate unclear boundaries between legal and illegal activity.

Snapshot: persistence of the illicit market in decriminalised settings

Statistics from the ACT show that in 2022-23, of the approximately 40,000 people aged 14+ who used cannabis in the past 12 months, only 12.8 percent (fewer than 5,000 people) grew their own cannabis,⁵⁰ indicating that the illicit market clearly persists. In addition, a survey of 340 Canberrans engaging in home cultivation revealed that 66 percent reported breaking the law in order to access the plant material needed to commence lawful home cultivation, while 12 percent reported using prohibited hydroponic equipment, thereby exposing themselves to legal sanctions.⁵¹

The Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023

Penington Institute believes that Australia's approach to managing the harms that drug use poses to people and communities is overdue for a fundamental rethink. While the provisions provided for in this bill would be preferable to the status quo, the decriminalisation of cannabis for limited personal cultivation, possession and use is insufficient. A regulated adult-use cannabis market would protect community health and safety, undercut the thriving illicit market, save billions in law enforcement, and reduce the burden on the criminal legal system.

A regulated adult-use cannabis market

A regulated adult-use cannabis market offers many potential benefits that surpass the mere removal of criminal sanctions for limited personal cultivation, possession and use. Regulated supply provides certainty and transparency in the composition and quality of cannabis. It keeps people away from contact with criminals who operate in the illicit market and erodes violent criminal networks by reducing the market for illicit goods.

Regulation enables safeguards to delay and prevent cannabis use by young people, and to monitor use by adults. It frees up police time and resources, allowing them to focus on other, more serious offending. It offers the potential for job-creating new businesses, including in regional areas hungry for economic diversification. And by providing opportunities for taxation schemes, legalisation can generate revenue that can be directed into prevention, treatment, and other programs that minimise harms to people and communities.

Decriminalisation and personal cultivation-based regulatory schemes do not realise the full economic and social benefits of a scheme for regulated use: conservative estimates on the size of the illicit market suggest that shifting the market from illicit to regulated suppliers would strip hundreds of millions of dollars in revenue from criminal enterprises – while also minimising buyers' exposure to

the array of other illicit substances and interpersonal violence and other crime that are characteristic of unregulated drug markets.

The specifications of a comprehensive Australian cannabis model are beyond the scope of this submission, but any effective cannabis regime should include the following elements:

- Regulated production by licensed cultivators and producers operating exclusively within Australia for the benefit of Australian workers and farmers.
- Robust testing standards to ensure quality-controlled products, complemented by stringent labelling requirements to provide purchasers with transparent information about product characteristics.
- A closely monitored licensing framework for retail purchases dispensed by responsible, trained vendors.
- Strict enforcement of laws barring sales to minors, drug-impaired driving, and distribution outside the regulated framework.
- A ban on advertising and promotion of all cannabis products, with severe penalties for violations.
- Allocation of revenue resulting from the regulated cannabis market to key priorities, including drug use education, prevention, and treatment services; under-resourced areas of the criminal justice system, including domestic violence and treatment for drug and alcohol use disorders; and enforcement against cannabis operations occurring outside the regulated framework.

Conclusion

The Inquiry into the impact of the regulatory framework for cannabis in New South Wales is an opportunity for the Committee to recognise the failure of the criminalised cannabis model and the existence of sensible, viable alternatives. Penington Institute endorses the development of a legislative and regulatory framework for the implementation of a legal, regulated adult-use cannabis regime that prioritises public health and safety for both individuals and the broader community, and we hope that the current Inquiry will accelerate the necessary transition to a more effective cannabis policy.

¹ This figure includes \$1.1 billion spent on imprisonment; \$475 million spent on police; \$62 million spent on courts; \$52 million spent on legal aid and prosecution; \$25 million spent on community corrections. See Whetton, S. et. al. (2020). [Quantifying the social costs of cannabis use to Australia in 2015/16](#). National Drug Research Institute, Curtin University.

² Penington Institute (2023). [Australia's Annual Overdose Report 2023](#).

³ Bonomo, Y. et al. (2019). [The Australian drug harms ranking study](#). *Journal of Psychopharmacology*, 33(7): 759-768.

⁴ Parliamentary Budget Office. (2023). [Policy Costing: Legalise Cannabis Nationally](#). While there are questions regarding the methodology underlying this estimate, the projection of a significant, sustainable increase in government tax revenue following the establishment of a regulated market accords with the experiences of other jurisdictions, especially Canada (see Section 2).

⁵ Australian Criminal Intelligence Commission. (2021). [Illicit Drug Data Report 2019-20](#).

⁶ Victoria Police. (2020). [Submission to the inquiry into the use of cannabis in Victoria](#). The submission states that 'In 2019, 40 per cent of cannabis use or possession offences co-occurred with another offence,' (p.9) implying the remaining 60 percent occurred alone.

⁷ NSW Bureau of Crime Statistics. [Use/possess drug offences](#). Accessed: 10/5/24.

⁸ See, for example, Lenton, S., Bennett, M. and Heale, P. (1999). [The social impact of a minor cannabis offence under strict prohibition – The case of Western Australia](#). *National Centre for Research into the Prevention of Drug Abuse*; Lenton, S., Grigg, J., Scott, J., Barratt, M. and Eleftheriadis, D. (2015). [The social supply of cannabis among young people in Australia](#). *Trends and Issues in Crime and Criminal Justice*, 503: 1-6.

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- ¹¹ Fergusson, DM. Boden, JM. Horwood, LJ. (2006). [Cannabis use and other illicit drug use: testing the cannabis gateway hypothesis](#). *Addiction*. 101(4): 556-569.
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- ¹⁷ Ibid., Tables 9b.36 and 9b.37
- ¹⁸ Ibid., Tables 5.50 and 9b.36
- ¹⁹ Ibid., Table 5.59
- ²⁰ Zellers, SM. et. al. (2023). [Recreational cannabis legalization has had limited effects on a wide range of adult psychiatric and psychosocial outcomes](#). *Psychological Medicine*. 53(14): 1-10.
- ²¹ Csete, J. et. al. (2016). [Public health and international drug policy](#). *Lancet*. 387(10026):1427-1480.
- ²² Simmons, A. [‘Over-policing to blame’ for Indigenous prison rates](#). *ABC News*, 25 June 2009.
- ²³ Data compiled for *The Guardian Australia* news by the Bureau of Crime Statistics and Research. Available at: <https://www.theguardian.com/australia-news/2020/jun/10/nsw-police-pursue-80-of-indigenous-people-caught-with-cannabis-through-courts>.
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- ²⁶ Australian Institute of Health and Welfare. (2024). [Trends in cannabis availability, use, and treatment in Australia, 2013–14 to 2021–22](#).
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- ³⁹ Government of Canada. (2024). [Legislative Review of the Cannabis Act: Final Report of the Expert Panel](#).
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- ⁴⁹ Australian Criminal Intelligence Commission. (2023). [Illicit Drug Data Report 2020-21](#), p 54.
- ⁵⁰ Australian Institute of Health and Welfare. (2024). [National Drug Strategy Household Survey 2022–2023: State and Territory summaries of alcohol, tobacco, e-cigarette and other drug use](#). Accessed 10/5/24. This estimate “has a Relative Standard Error between 25 percent and 50 percent and should be interpreted with caution”.
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