

**Submission
No 138**

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

Organisation: NSW Nurses and Midwives' Association

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

MAY 2024



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Recommendations

1. Reorientation of the approach to illicit drug use, acknowledging that first and foremost drug use is a health and social problem, rather than a criminal justice issue.
2. Remove the criminal offences of use and possession for personal use of cannabis (decriminalise the use and possession of cannabis, for personal use).
3. Reform the regulatory framework for cannabis in NSW, to contribute toward 'closing the gap', so Aboriginal and Torres Strait Islander people (including young people) are not overrepresented in the criminal justice system.
4. Implement an evidence-based approach to cannabis use and driving (including for medicinal cannabis).
5. Provide a public health promotion and awareness campaign around cannabis use and driving, to increase awareness around not driving whilst impaired.

Foreword

The New South Wales Nurses and Midwives' Association (NSWNMA) is the registered union for all nurses and midwives in New South Wales. The membership of the NSWNMA comprises all those who perform nursing and midwifery work. This includes registered nurses, enrolled nurses and midwives at all levels including management and education, and assistants in nursing and midwifery (however titled).

The NSWNMA has approximately 78,000 members and is affiliated to Unions NSW and the Australian Council of Trade Unions (ACTU). Eligible members of the NSWNMA are also deemed to be members of the New South Wales Branch of the Australian Nursing and Midwifery Federation.

NSWNMA strives to be innovative in our advocacy to promote a world class, well-funded, integrated health system by being a professional advocate for the health system and our members. We are committed to improving standards of patient care and the quality of services of all health and aged care services whilst protecting and advancing the interests of nurses and midwives and their professions.

We welcome the opportunity to provide a submission to this Inquiry.

This response is authorised by the elected officers of the New South Wales Nurses and Midwives' Association

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Introduction

The New South Wales Nurses and Midwives' Association (NSWNMA) is supportive of public policy and legislative changes that are informed by the best available evidence. A harm minimisation approach recognises that alcohol and other drug use is a complex phenomenon, and that people should be supported to reduce harms to themselves and the wider community.¹ The NSWNMA has a long history of supporting harm minimisation measures, including the Medically Supervised Injecting Centre, Opioid Substitution Treatment (OST) programs, and Needle and Syringe Programs (NSP).²

Drug use is common in Australia. According to the 2022–2023 National Drug Strategy Household Survey, 47% of Australians have used an illicit drug in their lifetime; with cannabis being the most used illicit drug (41%).³ As the *National Drug Strategy* recognises, drug use occurs across a continuum, from occasional use to dependent use – not everyone who uses drugs will develop a problem associated with use.⁴

ADOPTING A HEALTH APPROACH TO PREVENT HARMFUL OUTCOMES

In 2019, the NSWNMA contributed to the *Special Commission of Inquiry into the Drug 'Ice'* (the Inquiry). This was a major Inquiry that heard from a range of experts within the Alcohol and other Drug (AOD) sector in NSW. Within our submission, we called for a reorientation of the approach to illicit drug use, acknowledging that the application of criminal law to control substance use is an approach that is failing. Drug use – and importantly drug dependency – must first and foremost be recognised as a health and social problem, rather than a criminal justice issue.

There is overwhelming evidence to support a health-based response to drug use.⁵ The criminalisation of drug use causes harms for individuals and the community, and contributes to the shame, stigma and marginalisation.⁶ This shame and stigma only serves to prevent people engaging with health services and other supportive agencies.⁷ Decriminalisation of low-level personal drug use is supported by key agencies internationally, including the Global Commission on Drug Policy and the United Nations.⁸ We believe a strong society is one that treats all people with dignity and respect – including people who use drugs. As with many other areas of health, drug use is a complex health and social issue that requires a

¹ Australian Institute of Health and Welfare. *Alcohol, tobacco and other drugs in Australia*. Accessed 13.05.2024. <https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/harm-minimisation>

² NSWNMA. (2022). *Position Statement on Harm Reduction*. <https://www.nswnma.asn.au/wp-content/uploads/2023/08/Position-Statement-on-Harm-Reduction.pdf>

³ Australian Institute of Health and Welfare. *National Drug Strategy Household Survey 2022-2023*. Accessed 13.05.2024. <https://www.aihw.gov.au/reports/illicit-use-of-drugs/national-drug-strategy-household-survey/contents/about>

⁴ Department of Health. (2017). *National Drug Strategy 2017-2026*. Commonwealth of Australia: Department of Health. <https://www.health.gov.au/resources/publications/national-drug-strategy-2017-2026>

⁵ The Lancet (2023). 'Drug decriminalisation: grounding policy in evidence', 402, (10416), 1914. [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(23\)02617-X/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(23)02617-X/fulltext)

⁶ NSW Government. (2020). *Special Commission of Inquiry into the Drug 'Ice' report*. <https://www.nsw.gov.au/the-cabinet-office/special-commissions-of-inquiry/drug-ice>

⁷ Alcohol and Drug Foundation. *Stigma and people who use drugs*. Accessed 14.05.2024. <https://adf.org.au/insights/stigma-people-who-use-drugs/>

⁸ United Nations Development Programme. (2024). *International Guidelines on Human Rights and Drug Policy 2020*. <https://www.undp.org/publications/international-guidelines-human-rights-and-drug-policy>

multifaceted health and welfare approach. As the Inquiry outlined: “an effective and appropriate response to personal drug use recognises it as primarily a health issue with complex social determinants rather than as a criminal justice issue. Such an approach is consistent with international drug policy and the National Drug Strategy”.

Recommendation: reorientation of the approach to illicit drug use, acknowledging that first and foremost drug use is a health and social problem, rather than a criminal justice issue.

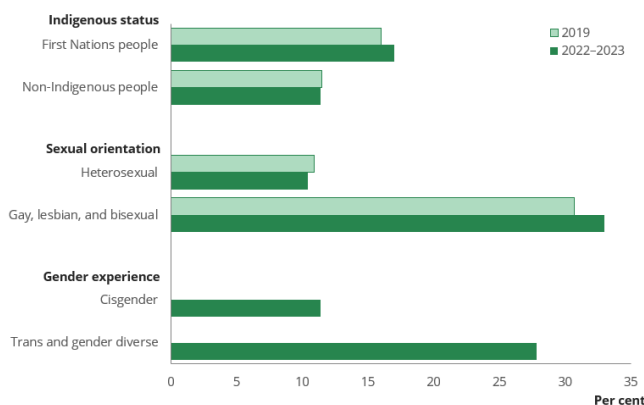
CANNABIS USE

The 2022-2023 National Drug Strategy Household Survey⁹ shows cannabis is the most widely used illicit drug:

- 11.5% of people having used it in the previous 12 months (stable since 2019)
- 23% of people aged 20-29 had used cannabis in the previous 12 months
- Cannabis was the third most common drug of concern people received treatment for (17% of episodes, down from 19% in 2021-22)

Importantly, cannabis use is not evenly distributed across our community. As the Figure 4 of the National Drug Strategy Household survey below highlights, selected characteristics such sexual orientation and gender experience can significantly influence a person’s likelihood to use cannabis.¹⁰ 15.2% of Aboriginal and Torres Strait Islander people had used cannabis in the last 12 months, which is about 1.2 times higher than non-Indigenous people.¹¹

Figure 4: Use of cannabis in the previous 12 months by selected characteristics, people in Australia aged 14 and over, 2019 and 2022-2023



Note: Rates for First Nations people should not be directly compared to rates for non-Indigenous people due to differences in the age structures between the two populations. Age standardised results can be found in the supplementary data tables.

Source: NDSHS 2022-2023, Table 5.56.

⁹ Australian Institute of Health and Welfare. *Alcohol, tobacco & other drugs in Australia*. Accessed 13.05.2024.

¹⁰ Australian Institute of Health and Welfare. *Who is more likely to have used cannabis?* Accessed 13.05.2024.

¹¹ Australian Institute of Health and Welfare. *Aboriginal and Torres Strait Islander (First Nations) people*. Accessed 14.05.2024.

¹¹ Australian Institute of Health and Welfare. *Aboriginal and Torres Strait Islander (First Nations) people*. Accessed 14.05.2024. <https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/priority-populations#illicit-drugs>

Data from the 2022-2023 National Drug Strategy Household Survey shows that decriminalisation in the ACT (similar to what is being proposed for NSW) shows that since these changes, cannabis use has remained stable. In 2022–2023, the use of cannabis in the ACT was lower than the rest of Australia, and people were much less likely to obtain cannabis from their friends; there was no increase in the proportion of people sourcing cannabis from a dealer.¹²

NSW DRUG POLICY CONTEXT

A key element of NSW's current drug policy is the criminalisation of the use and possession of drugs for personal consumption. However, in 2000, NSW effectively decriminalised cannabis through the Cannabis Cautioning Scheme, that provides police with the discretion to caution (rather than charge) adults detected for minor cannabis offences. Despite this, Aboriginal and Torres Strait Islander people encounter the justice system for cannabis 'offences', at an alarming rate.

The NSW Bureau of Crime Statistics and Research (BOCSAR) Bulletin *'Why are Aboriginal adults less likely to receive cannabis cautions?'* examines the differences and disparities in rates of cannabis cautioning between Aboriginal and non-Aboriginal adults in NSW. The bulletin highlights a significant disparity in cautioning rates between Aboriginal and non-Aboriginal 'offenders' charged with cannabis use/possession in NSW – 11.7% of Aboriginal people were issued with cautions compared with 43.9% of non-Aboriginal 'offenders'.¹³ Many Aboriginal 'offenders' are not eligible for a cannabis caution, due to the eligibility criteria of the scheme. For example, the report highlights that Aboriginal people may be more likely to have certain types of prior criminal convictions, or be less likely to admit to the offence because of legal advice or distrust in the police. However, alarmingly, even amongst 'offenders' that were eligible, there was still a large disparity in cautioning rates between Aboriginal and non-Aboriginal people – only 39% of eligible Aboriginal 'offenders' were given a caution compared with 73.9% of non-Aboriginal 'offenders'.¹⁴ The BOCSAR report discusses possible reasons for the variances, including highlighting that *"prior criminal history not only renders the majority of Aboriginal offenders ineligible to be cautioned but is also the main factor considered by police when exercising their discretion to caution eligible offenders"* (p18).¹⁵

Considering we know that Aboriginal and Torres Strait Islander people comprise 3.4% of our population¹⁶ - and there is relatively low disparity in cannabis use between Aboriginal and non-Aboriginal people (cannabis use is about 1.2 times higher amongst Aboriginal than non-Aboriginal people¹⁷) – it is alarming to note the rate of interaction between police and Aboriginal people in the BOCSAR report. Of the 38,813 events considered, 8171 were interactions with Aboriginal people. This means 21% of interactions

¹² Australian Institute of Health and Welfare. *Did decriminalisation in the ACT impact cannabis use?* Accessed 14.05.2024. <https://www.aihw.gov.au/reports/illicit-use-of-drugs/cannabis-ndshs#Decriminalisation>

¹³ NSW Bureau of Crime Statistics and Research. (2023). *Why are Aboriginal adults less likely to receive cannabis cautions?* <https://www.bocsar.nsw.gov.au/Publications/CJB/CJB258-Report-Cannabis-cautioning-2023.pdf>

¹⁴ Ibid

¹⁵ Ibid (p 18)

¹⁶ NSW Government. *Key facts about NSW*. <https://www.nsw.gov.au/about-nsw/key-facts-about-nsw>

¹⁷ Australian Institute of Health and Welfare. *Aboriginal and Torres Strait Islander (First Nations) people*. Accessed 22.05.2024. <https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/priority-populations#illicit-drugs>

relating to cannabis were with Aboriginal people, which is a significant over-representation of this community.¹⁸

Recommendations from the Special Commission of Inquiry into the Drug ‘Ice’

The report from the Inquiry notes:

- *“Contact with the criminal justice system, including having a criminal conviction for simple possession, is directly associated with adverse impacts on employment, earning prospects, access to housing, access to treatment, relationships and wellbeing...” (37)¹⁹*
- *“The criminalisation of simple possession has a disproportionate impact on Aboriginal people, including through the high prevalence of secondary offending associated with the imposition of fines for low-level drug offences” (38)²⁰*

Whilst the Inquiry was focused on crystal methamphetamine and other amphetamine-type stimulants, the same principles are relevant when considering the socioeconomic impacts of the current regulatory framework for cannabis on young people, the health system, personal health, employment, road safety, crime, and the criminal justice system.

We have previously called on the NSW Government to implement the recommendations from the Inquiry.²¹ These include an increase in funding for alcohol and other drug services (we welcome the investment of funding to a range of health initiatives²²); education to reduce stigma; and drug law reform. Within the response from the Inquiry, the following Recommendation 11 focussed on drug law reform:

That in conjunction with increased resourcing for specialist drug assessment and treatment services, the NSW Government implement a model for the decriminalisation of the use and possession for personal use of prohibited drugs, which includes the following elements:

- *removal of the criminal offences of use and possession for personal use of prohibited drugs at the point of detection, prohibited drugs to be confiscated and a referral made to an appropriately tailored voluntary health/social and/or education intervention*
- *no limit on the number of referrals a person may receive*
- *no civil sanctions for non-compliance*

Recommendation: to remove the criminal offences of use and possession for personal use of cannabis (decriminalise the use and possession of cannabis, for personal use).

¹⁸ NSW Bureau of Crime Statistics and Research. (2023). *Why are Aboriginal adults less likely to receive cannabis cautions?* <https://www.bocsar.nsw.gov.au/Publications/CJB/CJB258-Report-Cannabis-cautioning-2023.pdf>

¹⁹ Dan Howard SC. (2020). *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants.* <https://www.nsw.gov.au/sites/default/files/noindex/2023-07/Special-inquiry-ice-report-volume-1a.pdf>

²⁰ Ibid

²¹ NSWNMA. (2022). *Position Statement on Harm Reduction.* <https://www.nswnma.asn.au/wp-content/uploads/2023/08/Position-Statement-on-Harm-Reduction.pdf>

²² NSW Health Centre for Alcohol and Other Drugs. *Special commission of inquiry into the drug ‘Ice’ (Ice inquiry).* Accessed 22.05.2024. <https://www.health.nsw.gov.au/aod/Pages/ice-inquiry-update.aspx>

Closing the gap – reducing reduce the rate of incarceration and detention

The NSWNMA is committed to closing the gap between Aboriginal and Torres Strait Islander peoples and the wider Australian population.²³ Aboriginal and Torres Strait Islander people are represented in the criminal justice system – alarmingly, 1 in 3 (30%) people in prison are Aboriginal and Torres Strait Islander.²⁴ Compared with the general population, incarcerated people are some of the most vulnerable people in our society. We know that they face increased risk of homelessness, unemployment, mental health disorders, chronic illness, communicable diseases, tobacco use, excessive alcohol consumption and illicit drug use.²⁵ This is why the importance of the National Closing the Gap targets can't be overstated, including:

- By 2031, reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent.
- By 2031, reduce the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by at least 30 per cent.²⁶

Reducing the rates of Aboriginal and Torres Strait Islander people encountering the criminal justice system will have a significant influence on health and wellbeing outcomes of Aboriginal and Torres Strait Islander people. Reforming the cannabis framework in NSW could influence the likelihood that Aboriginal and Torres Strait Islander people encountering the police or the criminal justice system for personal cannabis use and will contribute to closing the gap.

Recommendation: reform the regulatory framework for cannabis in NSW, to contribute toward 'closing the gap' so Aboriginal and Torres Strait Islander people (including young people) are not overrepresented in the criminal justice system.

PROVISIONS OF THE DRUG MISUSE AND TRAFFICKING AMENDMENT (REGULATION OF PERSONAL ADULT USE OF CANNABIS) BILL 2023

The Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023 would make it lawful to possess small quantities of cannabis for personal use, and for an adult to cultivate not more than six cannabis plants for personal use.

The NSWNMA is supportive of this proposed legislation. It is consistent with the recommendations from the Inquiry and aligns with best practice and international evidence as mentioned previously. We know that under the current regulatory framework for cannabis, certain groups such as Aboriginal and Torres Strait Islander people, LGBTIQ+ people, people in regional, rural and remote areas, and lower

²³ NSWNMA (2021). *Position Statement on the Health of Aboriginal and Torres Strait Islander People*.

<https://www.nswnma.asn.au/wp-content/uploads/2023/08/NSWNMA-Position-Statement-on-the-Health-of-Aboriginal-and-Torres-Strait-Islander-People.pdf>

²⁴ Ibid

²⁵ Australian Institute of Health and Welfare. *Health of people in prison*. Accessed 22.05.2024.

<https://www.aihw.gov.au/reports/australias-health/health-of-people-in-prison>

²⁶ Closing the Gap. *National Agreement Targets*. Accessed 22.05.2024. <https://www.closingthegap.gov.au/national-agreement/targets>

socioeconomic communities are currently at risk of greater harm from coming into contact with law enforcement and the criminal justice system.

Drug testing – detection versus impairment

Our understanding is that current roadside drug testing indicates the presence of THC (cannabis) but is not able to ascertain impairment from or by THC. If the Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023 came into force, we would like to see reforms of THC related roadside drug testing. The NSWNMA is supportive of measures that prevent road traumas, and associated morbidity and mortality, however road safety measures must be evidence-based.

If it were to become lawful to use cannabis, it seems counter-intuitive to have roadside drug testing that is only able to detect the *presence* of THC rather than *impairment* from THC. We are supportive of evidence-based interventions and would suggest that a mechanism for *impairment* rather than *detection* seems more appropriate. Internationally, there are offences relating to driving when impaired and mechanisms to test for impairment, such as Standardised Field Sobriety Tests or Drug Recognition Evaluations²⁷ and modelling from these could be a way forward. There is some concern that, should taking cannabis become lawful, our members may register a positive roadside drug test despite not being impaired, because the test may detect the *presence* of THC (rather than impairment) up to a week after use.

We know this is currently a concern for our members who access prescribed medicinal cannabis, under the care and supervision of a health practitioner. We note a range of submissions that were made to the Inquiry into *Road Transport Amendment (Medicinal Cannabis-Exemptions from Offences) Bill 2021*, most notably from the NSW Council for Civil Liberties, the New South Wales Bar Association and the Law Society of New South Wales. The themes in these submissions are all similar highlighting lack of ability to test for impairment, lack of ‘medical defence’ currently provided (despite a provision for morphine), and other prescribed medications that have potential to affect driving (ability such as benzodiazepines, opioids, and antipsychotics) which are not captured in roadside drug testing. We are generally supportive of the concerns raised in these submissions.

Recommendation: implement an evidence-based approach to cannabis use and driving (including for medicinal cannabis) – should be an offence to drive when impaired or intoxicated. If testing is required it should measure *impairment* rather than *detection*.

Recommendation: provide a public health promotion and awareness campaign around cannabis use and driving, to increase awareness around not driving whilst impaired.

CONCLUSION

In summary, the NSWNMA is supportive of public policy and legislative changes that are informed by the best available evidence. We support a harm minimisation approach that recognises that drug use is complex phenomenon, and that a health-based approach provides the best outcomes for individuals and the broader community. We are committed to closing the gap for Aboriginal and Torres Strait Islander

²⁷ Government of Canada. (2021). *Drug Impaired Driving Laws*. <https://www.justice.gc.ca/eng/cj-ip/sidl-rlcfa/qa2-qr2.html>

people and urge the Inquiry to consider the evidence that criminalisation of simple possession has a disproportionate impact on Aboriginal people. We urge the Inquiry to adopt evidence-based approaches when considering the impact of the regulatory framework for cannabis in New South Wales.



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