

Submission  
No 176

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

**Organisation:** National Drug and Alcohol Research Centre

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**UNSW**  
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NDARC

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Portfolio Committee No.1 – Premier and Finance  
Legislative Council

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

Thank you for the opportunity to participate in this Inquiry into the impact of the regulatory framework for cannabis in NSW.

The National Drug and Alcohol Research Centre (NDARC) at UNSW Sydney is Australia's leading research group in the alcohol and other drug sector. Established in 1986, the Centre receives funding from the Australian Government Department of Health and Aged Care under the Drug and Alcohol Program and UNSW Sydney. NDARC produces evidence based multidisciplinary research that informs treatment, policy and our communities regarding alcohol and other drug related harms. The Centre's strategic research program is focused around eight key priorities:

- prevention and early intervention research,
- clinical research,
- mental & physical comorbidity research,
- epidemiology of drug and alcohol use and harms,
- justice health and drug policy,
- indigenous health and wellbeing,
- health economics and biostatistics, and
- families, communities and society.

The Centre is highly regarded nationally and internationally, and staff and students work closely with collaborators across Australia and the world. Former and current researchers based at the Centre have led research on cannabis use and health related harms, cannabis policy reforms, enforcement of cannabis policy, the economics of cannabis policy reforms and small-scale cannabis growers' views regarding policy reform in an Australian as well an international setting. Drawing on our own research and others, we would like to provide the Inquiry with evidence that addresses two points from the terms of reference:

**(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.**

We would be happy to provide the Inquiry with copies of our research and any other relevant information.

Yours sincerely,

Dr. Michala Kowalski & Prof Michael Farrell  
National Drug and Alcohol Research Centre

## National Drug and Alcohol Research Centre, UNSW submission to the Inquiry into the impact of the regulatory framework for cannabis in New South Wales

The current regulatory framework for cannabis in New South Wales as found in the *NSW Drug Misuse and Trafficking Act 1985* consists of a blended approach of criminal and civil penalties for the use and or possession of cannabis in small quantities for non-medicinal purposes. The law applies criminal penalties for the production of cannabis, the severity of the penalties (ranging from 20 penalty units to 24 years imprisonment) is determined by the scale and circumstances of the production. The distribution of cannabis is also subject to criminal penalties (ranging from 2000 penalty units to 25 years imprisonment) which, like the production of cannabis, are determined by the scale and circumstances of the distribution.

Access to medicinal cannabis was regulated under the federal *Therapeutic Goods Act 1989* in 2016 (Hallinan & Bonomo 2022). Cannabis is currently regulated under the *Act* as an 'unapproved' therapeutic good which can be prescribed through two schemes: 1) the Special Access Scheme (SAS) which allows a prescriber to prescribe medicinal cannabis on a case-by-case basis to a single patient, and the 2) Authorised Prescriber Scheme (AP) which allows registered medical practitioners to apply to become authorised prescribers of medicinal cannabis products to multiple patients on a needs-assessment basis. Under the AP there is no need to notify the regulator each time the practitioner prescribes medicinal cannabis. The commonwealth Department of Health and Aged Care maintains a deidentified dashboard aggregating all Authorised Prescriber approvals for medicinal cannabis products by the TGA. While the dashboard displays applications per product rather than numbers of prescribers, over 1,500 applications to prescribe schedule 8 cannabis without the approval of an ethics board were received from medical practitioners based in the state (Department of Health and Aged Care 2024).

Industrial hemp cannabis is subject to state-based regulation under *NSW Hemp Industry Act 2008*. Low-THC hemp is defined as cannabis that has no more than 1% THC (delta-9 THC) in any part of the plant. The production and distribution of industrial hemp cannabis is subject to a licensing scheme. The production of extracts from low-THC hemp is not explicitly unlawful under the *Act*. Low-THC hemp contains small amounts of other cannabinoids (psychoactive compounds) such as delta-8 THC and delta-10 THC. In the United States, such extracts have been used to manufacture concentrates of delta-8 THC, a molecule that is psychoactive and similar to THC, and that is sold widely in jurisdictions that do not have legal recreational cannabis markets (LoParco et al. 2023).

Under the current regulatory framework for cannabis in NSW, cannabis possession (for non-medicinal purposes) continues to account for most of the drug-related possession proceedings, making up 57% of all drug possession proceedings in 2021 (NSW Bureau of Crime Statistics and Research 2022).

**(E) the impact of the regulatory framework for cannabis on Aboriginal, LGBTQIA+, regional, multicultural and lower socioeconomic communities.**

The current cannabis regulatory framework in NSW has unequal impacts on Aboriginal people and residents of the regions. This inequality stems from ‘the law on the books’ (the legislation) and ‘the law on the streets’ (enforcement) (Baker & Goh 2004, Teperski & Rahman 2023). Evaluations of the Cannabis Cautioning Scheme have consistently found that Aboriginal people are more likely to be charged with cannabis possession than people who are not Aboriginal (Baker & Goh 2004, Teperski & Rahman 2023). While Aboriginal people who were intercepted were more likely to have prior convictions than non-Aboriginal people and less likely to admit the offence (Baker & Goh 2004, Teperski & Rahman 2023), and therefore ineligible for a caution, BOCSAR also found that fewer eligible Aboriginal people were referred for a caution than eligible non-Aboriginal people (Teperski & Rahman 2023). Subsequently, an unintended consequence of the Cannabis Cautioning Scheme, that was first publicised in 2004, found that due to the inequitable distribution of cautions the scheme had increased the over-representation of Aboriginal people in the state’s criminal justice system (Baker & Goh 2004).

Cautioning rates are consistently lower outside the metropolitan regions in the state, this has been observed since the evaluation of the first three years of the Cannabis Cautioning Scheme in NSW (Baker & Goh 2004, Teperski & Rahman 2023). Consequently, proceedings for use/possess of cannabis are largely concentrated in the regions when analysed on a per-capita basis (NSW Bureau of Crime Statistics and Research 2023). Researchers have suggested that this regional difference in policing intersects with the inequitable cautioning rates of Aboriginal and Torres Strait Islander people (Baker & Goh 2004, Teperski & Rahman 2023). It also suggests that there is a wide variety in the interpretation of the legislation across different precincts, and the priorities of different command areas may also be coming into play in the enactment of this legislation (Baker & Goh 2004).

The impacts of NSW current cannabis regulatory framework on people who identify as LGBTQIA+ have not been formally evaluated to date. Both Australian and international self-reported samples of drug use indicate that cannabis use rates are higher amongst sexual orientation minorities (LGBQ) than those reported by the heterosexual population (Mooney-Somers et al. 2020, Roxburgh et al. 2016). A working paper from 2015 that examined bias in policing as reported in a self-report survey (the *Global Drug Survey 2012* - online survey that collected data in late 2011) found that a slightly higher proportion of people who did not identify as heterosexual reported being ‘stopped and searched’ for drugs in the preceding 12-month period than people who identified as heterosexual in Australia (Stevens et al. 2015). More targeted research is needed to assess the direct impacts of the current NSW cannabis regulatory framework on people who identify as LGBTQIA+.

**(F) Alternative approaches to the regulatory framework for cannabis in other jurisdictions.**

Jurisdictions around the world have had to consider how to regulate the cannabis plant with regards to three different use-cases of the plant (medicinal, recreational, industrial hemp) and three different cannabis related behaviours (possession, production and distribution). In a forthcoming piece of research, along with international co-authors, researchers at NDARC have compiled the regulatory approaches (as represented by ‘the law in the books’) to cannabis that are practiced in 79 jurisdictions across 18 countries. A wide range of policy options have developed around the world for the regulation of cannabis, and jurisdictions differ widely in their choice of policy options. Options included full criminalisation of cannabis (which was uncommon), the administration of civil penalties for possession, the administration of civil penalties for possession and production, regulation of possession and civil penalties for production, civil penalties for distribution, and full regulation (Kowalski & Potter NA).

With regards to recreational cannabis many jurisdictions, including NSW, had developed regulatory frameworks that allowed for civil penalties (ranging from a mix of criminal and civil penalties to regulation) for cannabis possession, particularly for possession of ‘small amounts’. Jurisdictions such as the ACT, Victoria, South Australia, Austria, Italy, Massachusetts (USA), the Netherlands, Quebec (CA) and Washington (USA) had allowed for the application of civil penalties (ranging from a mix of criminal and civil penalties to regulation) for small-scale production of cannabis as well. The application of civil penalties for social supply (gift-based distribution of ‘small amounts’) of cannabis was less common in the jurisdictions we studied, although this is in place in the following jurisdictions: the Netherlands, Washington (USA), New Jersey (USA), Oregon (USA) and Uruguay. It is interesting to note that all the jurisdictions mentioned here apply full criminal penalties for all cannabis-related behaviours that do not fully comply with the letter of the law outlining the application of civil penalties or legalisation (Kowalski & Potter NA).

Forthcoming research on the policy preferences of small-scale growers has also found that people who engage in small-scale production of cannabis around the world, and in Australia, have expressed their support for a regulatory framework that would enable adults to produce their own cannabis legally (Kowalski et al. NA). Most of the small-scale growers in the sample said that they would take steps to comply with such a regulatory framework if steps such as registration were required (Kowalski et al. 2024). This is consistent with the reported behaviour of small-scale cannabis growers in jurisdictions that have legalised the possession and production of recreational cannabis (Kowalski et al. NA).

Jurisdictions such as Quebec (CA) and Uruguay have put in place restrictions on the influence of their local cannabis industries on the development of regulation. Policy researchers that have studied alternative regulatory frameworks for cannabis possession, production and distribution recommend restricting industry influence on regulation, banning promotional materials and advertising for cannabis, restricting access to cannabis for minors, setting limits on the percentage of psychoactive compounds in the cannabis through taxation systems or regulation, and restricting where cannabis can be consumed (Jernigan et al. 2021, Caulkins et al. 2016).

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