LEGISLATIVE COUNCIL

PORTFOLIO COMMITTEE NO. 1

Impact of the regulatory framework for cannabis in New South Wales

First report

Report 65

1

October 2024

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Portfolio Committee No. 1 - Premier and Finance

Impact of the regulatory framework for cannabis in New South Wales

First report

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Impact of the regulatory framework for cannabis in New South Wales

"October 2024"

Chair: Hon Jeremy Buckingham MLC

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Terms of reference

1. That Portfolio Committee No. 1 - Premier and Finance inquire into and report on the impact of the regulatory framework for cannabis in New South Wales, including:

   (a) the historical development and implementation of the regulatory framework for cannabis

   (b) the socioeconomic impact of the current regulatory framework for cannabis

   (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, LGBTIQA+, 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, and

   (h) any other related matters.

2. That the committee report by 8 April 2025.[1]

The terms of reference were self-referred by the committee on 20 March 2024[2].

[1] The original reporting date was 26 September 2024 (*Minutes,* NSW Legislative Council, 20 March 2024, p 1017) and was then extended to 21 November 2024 (*Minutes*, NSW Legislative Council, 8 August 2024, p 1393). The reporting date has been subsequently extended to 8 April 2025 (*Minutes*, NSW Legislative Council, 18 September 2024, p 1495).

[2] *Minutes*, NSW Legislative Council, 20 March 2024, p 1021.

Committee details

Committee members

Hon Jeremy Buckingham MLC	Legalise Cannabis Party	*Chair*
Hon Robert Borsak MLC	Shooters, Fishers and Farmers Party	*Deputy Chair*
Ms Cate Faehrmann MLC*	The Greens	
Hon Dr Sarah Kaine MLC	Australian Labor Party	
Hon Stephen Lawrence MLC	Australian Labor Party	
Hon Natasha Maclaren-Jones MLC*	Liberal Party	
Hon Jacqui Munro MLC*	Liberal Party	
Hon Cameron Murphy MLC*	Australian Labor Party	
Hon John Ruddick MLC*	Libertarian Party	

Contact details

Website	**www.parliament.nsw.gov.au/committees**
Email	**portfoliocommittee1@parliament.nsw.gov.au**
Telephone	**(02) 9230 2809**

* Ms Cate Faehrmann MLC is a participating member from 22 March 2024 for the duration of the inquiry.

* The Hon Natasha Maclaren-Jones MLC substituted for the Hon Damien Tudehope MLC from 28 March 2024 for the duration of the inquiry.

* The Hon Jacqui Munro MLC substituted for the Hon Chris Rath MLC from 27 March 2024 for the duration of the inquiry.

* The Hon John Ruddick MLC is a participating member from 25 March 2024 for the duration of the inquiry.

* The Hon Cameron Murphy MLC substituted for the Hon Bob Nanva MLC from 2 August 2024 for the duration of the inquiry.

Secretariat

Kara McKee, Principal Council Officer

Alice Wood, Senior Council Officer

Reeti Pandharipande, Council Officer

Alex Stedman, Director

Chair's foreword

The legal prohibition of cannabis has been in effect in NSW for a century and has not acted as a significant deterrence, having little or no impact on cannabis supply or use. Cannabis remains the most widely used illicit drug in NSW and Australia and usage rates have been relatively stable for decades. Jurisdictions across the world and Australia have reevaluated or are reevaluating their approach to cannabis and its prohibition; driven by a policy approach that aims to regulate, reduce harms and costs and take cannabis production and profits out of the hands of organised crime.

The committee has been informed by a substantial body of evidence that has shaped its view that law reform regarding the regulation of cannabis in New South Wales is not only urgently needed but is also the only rational course of action. The committee has been persuaded that the current penal approach to cannabis is unduly punitive, inflicting significant social harm with no corresponding social benefit, and creating an enormous economic burden on the people of New South Wales. The data points unequivocally to the fact that ultimately complete legalisation of adult use cannabis is the clearest and most effective option moving forward.

However, we acknowledge that for this to be realised, bold steps must be taken. We are also conscious of the need to ensure that any changes to the regulatory framework are introduced in a way that does not exacerbate cannabis-related harms and, crucially, builds community support for reform.

It is important to note that, as highlighted during this inquiry, the current Premier of New South Wales has ruled out government support for the "decriminalisation of drugs" in this term of Parliament, and the opposition has not indicated any support for such measures either. However, the committee strongly believes that this must not deter the government from pursuing a rational, staged and evidence-based policy that addresses the growing need for legal and regulated cannabis markets.

This first report makes several preliminary findings and recommendations that we hope the government will seriously consider and adopt as part of the upcoming Drug Summit later this year. The committee's final report, expected in 2025, will further build on these recommendations.

The committee is of the view that a staged approach to reforming the regulatory framework for cannabis should be commenced in this term of the parliament. This framework should begin with a relaxation, but not elimination, of the criminalisation of cannabis. It should involve assessment and re-evaluation at every stage and potentially conclude with the legalisation of cannabis in a way that will minimise increases in use and an increase in cannabis related harms.

A pathway for reform is possible that can be embarked upon without committing any members or their parties to eventual full decriminalisation and legalisation of cannabis. Such an iterative and gradual approach to reform will test assumptions and outcomes and bring the community along with the reform process. The majority of committee members are persuaded that at least initial reforms should be considered by government.

Hon Jeremy Buckingham MLC
Committee Chair

Recommendations

Recommendation 1 **69**

That the NSW Government considers, including as part of the Drug Summit, the following law reform measures:

- a reconsideration of the amount classifications in Schedule 1 of the *Drug Misuse and Trafficking Act 1985* in respect of cannabis generally and particularly what amounts of cannabis should be considered a 'small quantity' and a 'traffickable quantity' noting the committee is of the view the threshold for these quantities may be too low
- reduction of the maximum penalty for the possession of cannabis (i.e. the offences of being in possession not for the purposes of supply, cultivating no greater than a small quantity of cannabis plant and using cannabis all of which currently carry a maximum penalty of 2 years imprisonment on summary disposition under the *Drug Misuse and Trafficking Act 1985*) to either a fine only offence or a maximum term of imprisonment of no more than three months
- amendment of cannabis related offences to ensure non-commercial supply of cannabis or gifting, is treated as possession and not supply to align the offences with the policy choice embodied in Chapter 9 of the *Criminal Code 1995* (*Cth*) whereby non-commercial supply is treated as possession
- removal of deemed supply measures that reverse the onus of proof such as section 29 of the *Drug Misuse and Trafficking Act 1985*, in respect of cannabis possession
- amendment of the *Law Enforcement (Powers and Responsibilities) Act 2002* to significantly limit the circumstances in which persons can be searched by police in respect of a small quantity of cannabis not possessed for the purposes of supply. This objective could be achieved by a) amendments providing that police may not exercise any stop and search powers on account of only holding a suspicion that a person unlawfully possesses a non-traffickable quantity of cannabis for personal use and/or b) that such searches only instead be permitted where police hold a reasonable belief as to the requisite circumstances
- amendment of relevant legislation to provide a presumption that a person will receive a section 10 dismissal under the *Crimes (Sentencing Procedure) Act 1999* so will not be convicted when sentenced for the possession of a small quantity of cannabis displaced only if the court is satisfied there are special circumstances and a conviction is appropriate, or a test to similar effect
- reform of the Cannabis Cautioning Scheme to limit police discretion and create a presumption of diversion that operates irrespective of criminal history or prior cautions and is only displaced where the police officer is satisfied there are special and exceptional circumstances or a test to similar effect and amends the criteria to make it more available for use including by applying it to larger amounts of cannabis not possessed for supply
- an expiation scheme for cannabis offences such as exists in South Australia, with wide criteria and a presumption of administrative diversion, allowing small cannabis matters to be finally disposed of without court proceedings, for presumed use where persons are not diverted pursuant to the Cannabis Cautioning Scheme

- changes to police standard operating procedures to ensure police do not unnecessarily target, including in random place-based search operations, persons suspected of possession of a small quantity of cannabis not for the purposes of supply
- trials in certain defined geographical areas of administrative non-enforcement of cannabis possession laws
- a medicinal use defence to the offence of drive with 'presence of a prescribed illicit drug in oral fluid, blood or urine' offence in respect of cannabis such as is legislated for in Tasmania but ensuring that the mixing of cannabis and alcohol is the express subject of an aggravating factor of the relevant criminal offence.

Recommendation 2 **70**

That implementation of these reforms, and any others, be monitored and evaluated and that a whole of Government response be provided to Parliament within 12 months of these changes.

Findings

Conduct of inquiry

The terms of reference for the inquiry were self-referred by the committee on 20 March 2024.

The committee received 358 submissions and six supplementary submissions to date.

The committee held three public hearings: two at Parliament House in Sydney and one in Goonellabah.

The committee also conducted a site visit to Cymra Life Sciences.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

Chapter 1 Background

This chapter provides an outline of the effects, rates, and type of cannabis use in New South Wales. It outlines the regulatory framework for cannabis, including the various criminal offences, traffic offences and diversionary schemes. The chapter provides commentary from inquiry participants on this regulatory framework, foreshadowing various issues that are explored further in chapter 3. It then outlines the international law which impacts cannabis policy. The chapter concludes by identifying various models for regulating cannabis, namely criminalisation, depenalisation, decriminalisation and legalisation.

Cannabis: its effects and uses

1.1 Cannabis is a generic term used to describe drugs that are made from plants of the cannabis genus.[3] Cannabis sativa and cannabis indica are the two most common subspecies that are harvested to make cannabis products.[4] Cannabis plants, including indica and sativa strains, contain cannabinoids, with the two main cannabinoids being the non-psychoactive cannabidiol (CBD) and the psychoactive delta-9-tetrahydrocannabinol (THC).[5]

1.2 Cannabis can come in different forms, including herbal cannabis (the dried leaves and flowers of the cannabis plant), cannabis resin (the dried resin from the cannabis plant) and cannabis oil (oil extracted from the resin).[6] Cannabis can contain THC, CBD or a combination of both of differing levels.

1.3 CBD is generally an oil (although can come in other forms), and can be swallowed, eaten, vapourised or rubbed onto the body.[7] Given it is not psychoactive, CBD will not produce a 'high' or have an intoxicating effect.[8]

1.4 THC can be consumed in a variety of different ways, including by being smoked, eaten, or vapourised.[9] THC is a central nervous system depressant, and can alter sensory perceptions or

3 Australian Institute of Health and Welfare, *Alcohol tobacco & other drugs in Australia* (10 July 2024), https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/drug-types/cannabis, as referenced in Submission 106, Professor Nicholas Lintzeris, p 9.

4 Australian Institute of Health and Welfare, *Alcohol tobacco & other drugs in Australia* (10 July 2024), https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/drug-types/cannabis, as referenced in Submission 106, Professor Nicholas Lintzeris, p 9.

5 Submission 93, Australian Industry Group (AiGroup), p 12; Alcohol and Drug Foundation, *Cannabis* (6 June 2024), Alcohol and Drug Foundation, https://adf.org.au/drug-facts/cannabis/.

6 Australian Institute of Health and Welfare, *Alcohol tobacco & other drugs in Australia* (10 July 2024), https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/drug-types/cannabis, as referenced in Submission 106, Professor Nicholas Lintzeris, p 9.

7 Alcohol and Drug Foundation, *What is Cannabidiol (CBD)?* (6 June 2024), Alcohol and Drug Foundation, https://adf.org.au/drug-facts/cannabidiol/.

8 Alcohol and Drug Foundation, *What is Cannabidiol (CBD)?* (6 June 2024), Alcohol and Drug Foundation, https://adf.org.au/drug-facts/cannabidiol/.

9 Australian Institute of Health and Welfare, *Alcohol tobacco & other drugs in Australia* (10 July 2024), https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/drug-types/cannabis, as referenced in Submission 106, Professor Nicholas Lintzeris, p 9.

cause hallucinogenic effects if consumed in large amounts.[10] The effect of THC varies, and is dependent on a range of factors, including the size, weight and health of the person using THC, the amount they consume generally, the amount or strength of the THC and their environment.[11]

1.5 The psychoactive effects often experienced with THC use can be feelings of relaxation and euphoria, increased sociability, increased appetite, and for larger amounts, memory impairment and slowed reflexes, increased heart rate and anxiety or paranoia.[12]

1.6 The committee received evidence from inquiry participants about the different reasons for using CBD or THC. For example, some reported using CBD for pain relief, relaxation and to assist with sleep.[13] In relation to THC, some reported use for pain relief, relaxation, to assist with sleep or to manage symptoms of mental illness.[14]

Cannabis: rates and types of use

1.7 Cannabis can be used illicitly (often referred to as 'recreationally'), or legally through a medicinal cannabis prescription.[15] Medicinal use of cannabis has been legal in Australia since 2016, however is strictly regulated.[16]

1.8 To legally use medicinal cannabis, a person must have a prescription. Medicinal cannabis can be prescribed via the authorised prescriber scheme or the Special Access Scheme.[17] The Alcohol and Drug Foundation advised that since 2016, over one million new patients have reported access to cannabis through the authorised prescriber scheme in Australia.[18] There has been a further 500,000 approvals under the Special Access Scheme.[19] These schemes differ in the regulatory approvals and requirements for prescribers.[20]

10 Australian Institute of Health and Welfare, *Alcohol tobacco & other drugs in Australia* (10 July 2024), https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/drug-types/cannabis, as referenced in Submission 106, Professor Nicholas Lintzeris, p 9.

11 Alcohol and Drug Foundation, *What is cannabis?* (6 June 2024), https://adf.org.au/drug-facts/cannabis/.

12 Alcohol and Drug Foundation, *What is cannabis?* (6 June 2024), https://adf.org.au/drug-facts/cannabis/.

13 Submission 10, Name suppressed, p 2; Submission 53, Ted Tatum, p 2; Submission 81, Name suppressed, p 2.

14 Submission 3, Mr Peter Foster, p 2; Submission 80, Name suppressed, p 2; Submission 82, Name suppressed, p 2; Submission 84, Mr Matthew Woloszuk, p 2.

15 Alcohol and Drug Foundation, *Medicinal and recreational cannabis vs synthetics: what's the difference?* (9 February 2023), https://adf.org.au/insights/various-cannabis-use/.

16 The *Narcotic Drugs Amendment Act 2016* (Cth) amended the *Narcotic Drugs Act 1967* (Cth) to legalise and regulate medicinal cannabis.

17 Submission 176, National Drug and Alcohol Research Centre, p 5.

18 Submission 107, Alcohol and Drug Foundation, p 5.

19 Submission 107, Alcohol and Drug Foundation, p 5.

20 Submission 176, National Drug and Alcohol Research Centre, p 5.

1.9 Medicinal cannabis products have a range of effects, and are commonly prescribed to treat chronic pain, mental health conditions (such as anxiety and depression) and sleep disorders.[21]

1.10 Recreationally, cannabis is the most commonly used illegal substance in Australia.[22] In the 2022-2023 National Drug Strategy Household Survey, 11.5 per cent of people (around 2.5 million) in Australia had used cannabis in the previous year, with 11 per cent of people doing so in New South Wales.[23] In the same survey, 41 per cent of Australians reported having tried cannabis in their lifetime.[24]

The current regulatory framework for cannabis in New South Wales

1.11 This section details: the legislation which regulates cannabis offences, the various diversionary schemes available in New South Wales, and relevant international law that impacts on drug policy in Australia.

1.12 Cannabis offences are primarily in the following pieces of legislation:

- *Drug Misuse and Trafficking Act 1985* – this Act prohibits the cultivation, manufacture, supply, possession and use of cannabis and other drugs.[25]
- *Road Transport Act 2013* – this Act regulates road transport law, including the offences of driving with a prescribed illicit drug (including cannabis) detected in a person's system, and driving while impaired by alcohol or other drugs (including cannabis).[26]

1.13 The key diversionary schemes relating to cannabis are:

- The Cannabis Cautioning Scheme – this discretionary scheme allows police to issue a caution to adults with small amounts of cannabis.[27]

21 Submission 106, Professor Nicholas Lintzeris, p 6.

22 Submission 107, Alcohol and Drug Foundation, p 3, referencing Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2022-2023* (29 February 2024), Australian Institute of Health and Welfare, https://www.aihw.gov.au/reports/illicit-use-of-drugs/national-drug-strategy-household-survey/contents/about.

23 Submission 102, NSW Council for Civil Liberties, p 3, referencing: Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2022-2023* (29 February 2024), Australian Institute of Health and Welfare, https://www.aihw.gov.au/reports/illicit-use-of-drugs/national-drug-strategy-household-survey/contents/about; Australian Institute of Health and Welfare, *State and Territory summaries of alcohol, tobacco, e-cigarette and other drug use* (29 February 2024), Australian Institute of Health and Welfare, https://www.aihw.gov.au/reports/illicit-use-of-drugs/state-alcohol-drug-use.

24 Submission 107, Alcohol and Drug Foundation, p 3, referencing: Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2022-2023* (29 February 2024), Australian Institute of Health and Welfare, https://www.aihw.gov.au/reports/illicit-use-of-drugs/national-drug-strategy-household-survey/contents/about.

25 *Drug Misuse and Trafficking Act 1985*.

26 *Road Transport Act 2013*, ss 111 and 112.

27 NSW Police Force, 'Cannabis Cautioning Scheme Guidelines for Police – State Crime Command' (April 2024).

- The Magistrates Early Referral into Treatment (MERIT) Program – this program allows the court to a refer a person with criminal charges to drug and alcohol treatment programs.[28]
- Diversions for young people in the *Young Offenders Act 1997* – these include warnings, cautions and youth justice conference referrals which divert young people away from the criminal justice system.[29]

Cannabis offences

1.14 In relation to the *Drug Misuse and Trafficking Act 1985*, the offences most commented on throughout the inquiry were:

- possession of cannabis[30]
- use of cannabis[31]
- supply of cannabis[32]
- deemed supply of cannabis[33]
- cultivation, supply or possession of cannabis plants.[34]

1.15 In the *Drug Misuse and Trafficking Act 1985*, offences relating to cannabis and cannabis plants are dealt with separately, so 'cannabis' and 'cannabis plant' have different definitions. 'Cannabis' means:

- cannabis leaf – any part of the cannabis plant
- cannabis oil – any liquid containing THC
- cannabis resin – separated resin obtained from cannabis leaf.[35]

1.16 'Cannabis plant' means any growing plant of the genus Cannabis.[36]

1.17 A number of inquiry participants criticised the criminalisation of possession and use of small amounts of cannabis, and highlighted the social issues that flow from these offences.[37] Some

28 Local Court New South Wales, *The Magistrates Early Referral into Treatment (MERIT) Program* (8 May 2023), https://localcourt.nsw.gov.au/sentencing--orders-and-appeals/sentencing-in-criminal-cases/diversion-programs/the-merit-program.html.

29 *Young Offenders Act 1997*, Pts 3, 4 and 5.

30 *Drug Misuse and Trafficking Act 1985*, s 10.

31 *Drug Misuse and Trafficking Act 1985*, s 12.

32 *Drug Misuse and Trafficking Act 1985*, s 25.

33 *Drug Misuse and Trafficking Act 1985*, s 29.

34 *Drug Misuse and Trafficking Act 1985*, ss 23.

35 *Drug Misuse and Trafficking Act 1985*, s 3.

36 *Drug Misuse and Trafficking Act 1985*, s 3.

37 Submission 356, Drug Policy Australia, p 4; Submission 102, NSW Council for Civil Liberties, p 5; Evidence, Mr Nicholas Cowdery AO KC, Past President, NSW Council for Civil Liberties, 1 August

also raised concerns about the supply offence and the deemed supply provisions relating to cannabis, which are outlined at 1.23 and 1.27 respectively.

Quantities of cannabis and cannabis plants

1.18 The amount of cannabis or cannabis plants involved in an offence impacts on the maximum penalty and whether the offence is dealt with in the Local Court or the District Court. This section deals with offences up to the commercial quantity. The relevant quantities of cannabis and cannabis plants are outlined at Table 1.

Table 1 Relevant quantities of cannabis[38]

Prohibited plant or prohibited drug	Traffickable quantity	Small quantity	Indictable quantity	Commercial quantity
Cannabis leaf	300 grams	30 grams	1 kilogram	25 kilograms
Cannabis oil	5 grams	2 grams	10 grams	500 grams
Cannabis resin	30 grams	5 grams	90 grams	2.5 kilograms
Cannabis plant	NA	5	50	250

Possession of cannabis

1.19 To possess cannabis is a criminal offence.[39] To possess cannabis means to have exclusive control over it, either alone or with others. Possession can include temporary possession for a short period of time.[40] For example, a person will possess cannabis if they are passed a joint and hold it, even temporarily.[41]

1.20 The maximum penalty for possession is outlined at Table 2.

2024, p 4; Evidence, Ms Samantha Lee, Supervising Solicitor, Redfern Legal Centre, 19 August 2024, p 10; Evidence, Mr David Heilpern, Dean of Law, Southern Cross University, 20 August 2024, p 25; Submission 203, Aboriginal Legal Service NSW/ACT, p 3; Evidence, Dr Will Tregoning, Chief Executive Officer, Unharm, 1 August 2024, p 40; Evidence, Professor Don Weatherburn, Professor, National Drug and Alcohol Research Centre, 19 August 2024, p 32; Evidence, Ms Alice Salomon, Head of Media and Advocacy, Uniting NSW.ACT, 19 August 2024, p 47.

38 *Drug Misuse and Trafficking Act 1985*, Sch 1.

39 *Drug Misuse and Trafficking Act 1985*, s 10.

40 Judicial Commission of New South Wales, *Criminal Trial Courts Bench Book – Possession* (June 2024), Judicial Commission of New South Wales, https://www.judcom.nsw.gov.au/publications/benchbks/criminal/possession.html.

41 State Library of New South Wales, *Possession, use and supply*, State Library of New South Wales, https://www.sl.nsw.gov.au/drug-info/drugs/drugs-and-law/possession-use-and-supply.

Table 2 Maximum penalties for possession of cannabis or cannabis plants

Offence	Maximum fine	Maximum term of imprisonment
Possession of prohibited drugs (including cannabis) (Local Court)[42]	20 penalty units ($2,200 fine)[43]	2 years[44]

Use of cannabis

1.21 To use cannabis is a criminal offence.[45] Use of cannabis can mean to ingest, inhale, smoke or introduce into the body in any other way.[46]

1.22 The maximum penalty for use of cannabis is outlined at Table 3.

Table 3 Maximum penalty for use of cannabis

Offence	Maximum fine	Maximum term of imprisonment
Use of cannabis (self-administration of prohibited drug) (Local Court)[47]	20 penalty units ($2,200 fine)[48]	2 years[49]

Supply of cannabis

1.23 To supply cannabis is a criminal offence.[50] The legal meaning of 'supply' is broad, and includes to:

> [S]ell and distribute, and also includes agreeing to supply, or offering to supply, or keeping or having in possession for supply, or sending, forwarding, delivering or receiving for supply, or authorising, directing, causing, suffering, permitting or attempting any of those acts or things.[51]

42 *Drug Misuse and Trafficking Act 1985*, s 10.
43 *Drug Misuse and Trafficking Act 1985*, s 21; *Crimes (Sentencing Procedure) Act 1999*, s 17.
44 *Drug Misuse and Trafficking Act 1985*, s 21.
45 *Drug Misuse and Trafficking Act 1985*, s 12.
46 *Drug Misuse and Trafficking Act 1985*, s 5.
47 *Drug Misuse and Trafficking Act 1985*, s 12.
48 *Drug Misuse and Trafficking Act 1985*, s 21; *Crimes (Sentencing Procedure) Act 1999*, s 17.
49 *Drug Misuse and Trafficking Act 1985*, s 21.
50 *Drug Misuse and Trafficking Act 1985*, s 25.
51 *Drug Misuse and Trafficking Act 1985*, s 3.

1.24 Supply is often associated with dealing in drugs, such as buying cannabis or other drugs on the black market.[52] However, a person can still commit a supply offence even if there is no exchange of payment. For example, a person will 'supply' cannabis if they gift it to a friend.[53]

1.25 Some inquiry participants identified issues with the supply offence, given it does not distinguish between supply for financial benefit, and non-commercial supply of cannabis or gifting.[54]

1.26 The seriousness of the offences relating to supply vary depending on the amount of cannabis involved in the offence. The maximum penalties are included at Table 4.

Table 4 Maximum penalties for supply of cannabis

Offence	Maximum fine	Maximum term of imprisonment
Supply of not more than a small quantity of cannabis (where dealt with in Local Court)[55]	50 penalty units ($5,500 fine)[56]	2 years[57]
Supply of not more than the indictable quantity of cannabis (where dealt with in the Local Court)[58]	100 penalty units ($11,000 fine)[59]	2 years[60]
Supply of less than a commercial quantity of cannabis (where dealt with in the District Court)[61]	2,000 penalty units ($220,000 fine)[62]	10 years[63]

52 Evidence, Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 1 August 2024, p 23.

53 *Drug Misuse and Trafficking Act 1985*, s 3; Evidence, Mr Michael Balderstone, 20 August 2024, Individual with lived experience, p 41.

54 Evidence, Mr Michael Balderstone, 20 August 2024, Individual with lived experience, p 41; Submission 90, Legal Aid NSW, p 8; Evidence, Ms Keelin O'Reilly, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 1 August 2024, p 28.

55 *Drug Misuse and Trafficking Act 1985*, ss 25(1), 30(1)(c), Sch 1; *Criminal Procedure Act 1986*, Sch 1 Table 2 Pt 8 s 16.

56 *Drug Misuse and Trafficking Act 1985*, s 30(3); *Crimes (Sentencing Procedure) Act 1999*, s 17.

57 *Drug Misuse and Trafficking Act 1985*, s 30(3).

58 *Drug Misuse and Trafficking Act 1985*, ss 25(1), 31(1)(c), Sch 1; *Criminal Procedure Act 1986*, Sch 1 Table 1 Pt 6.

59 *Drug Misuse and Trafficking Act 1985*, s 31(3); *Crimes (Sentencing Procedure) Act 1999*, s 17.

60 *Drug Misuse and Trafficking Act 1985*, s 31(3).

61 *Drug Misuse and Trafficking Act 1985*, ss 25(1), 32(1)(c), 32(1)(h), Sch 1; Submission 139, New South Wales Bar Association, p 3; *Criminal Procedure Act 1986*, Sch 1 Table 1 Pt 6.

62 *Drug Misuse and Trafficking Act 1985*, s 32(1)(h); *Crimes (Sentencing Procedure) Act 1999*, s 17.

63 *Drug Misuse and Trafficking Act 1985*, s 32(1)(h).

Deemed supply of cannabis

1.27 Where a person has a traffickable quantity of cannabis in their possession they are presumed to have it to supply it, unless the person can prove otherwise.[64] This is known as 'deemed supply'.[65] There does not need to be any other evidence that the person intended to supply the cannabis for this provision to apply.

1.28 The onus of proof for criminal offences is on the prosecution to prove that a person committed an offence. Some inquiry participants took issue with this provision as it reverses the onus of proof.[66] Mr Nicholas Cowdery AO KC, Past President, NSW Council for Civil Liberties, argued this, noting that this provision places the onus on the accused person to show that the possession of the drug was not for supply, reversing this onus:

> Certainly the way in which the laws are enforced do raise maybe more rule of law issues rather than human rights issues. For example, deemed supply offences wrongly, in my view, put the onus onto the accused to show that the possession of whatever the quantity was, was not for supply. There's a reversal of the onus of proof in relation to liability. That is contrary to the rule of law in relation to criminal matters in the system that we have.[67]

Cultivation, supply or possession of cannabis plants

1.29 To cultivate, supply or possess cannabis plants are criminal offences.[68] Cultivation includes sowing seed, planting, tending, nurturing or harvesting.[69] There are also offences related to cultivating by enhanced indoor means which are not considered in this report.

1.30 Possession of cannabis plants is under the same section and has the same maximum penalties as cultivation and supply of cannabis plants.[70] Police may charge possession of cannabis plants under this section if there is no evidence of any act of cultivation (such as planting, tending, harvesting), but there is evidence of possession.[71]

1.31 The maximum penalties depend on the amount of cannabis plants involved in the offence. The maximum penalties are included at Table 5.

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64 *Drug Misuse and Trafficking Act 1985*, s 29 and Sch 1.

65 *Drug Misuse and Trafficking Act 1985*, s 29; Evidence, Ms Alice Salomon, Head of Media and Advocacy, Uniting NSW.ACT, 19 August 2024, p 51.

66 Evidence, Ms Alice Salomon, Head of Media and Advocacy, Uniting NSW.ACT, 19 August 2024, p 51; Evidence, Mr Nicholas Cowdery AO KC, Past President, NSW Council for Civil Liberties, 1 August 2024, p 6.

67 Evidence, Mr Nicholas Cowdery AO KC, Past President, NSW Council for Civil Liberties, 1 August 2024, p 6.

68 *Drug Misuse and Trafficking Act 1985*, s 23.

69 *Drug Misuse and Trafficking Act 1985*, s 3; State Library of New South Wales, *Prohibited Plants*, State Library of New South Wales, https://www.sl.nsw.gov.au/drug-info/drugs/drugs-and-law/prohibited-plants.

70 State Library of New South Wales, *Prohibited Plants*, State Library of New South Wales, https://www.sl.nsw.gov.au/drug-info/drugs/drugs-and-law/prohibited-plants.

71 State Library of New South Wales, *Prohibited Plants*, State Library of New South Wales, https://www.sl.nsw.gov.au/drug-info/drugs/drugs-and-law/prohibited-plants.

Table 5 Maximum penalties for the cultivation of cannabis plants

Offence	Maximum fine	Maximum term of imprisonment
Cultivate, supply or possess not more than small quantity of cannabis plants (where dealt with in the Local Court)[72]	50 penalty units ($5,500 fine)[73]	2 years[74]
Cultivate, supply or possess not more than the indictable quantity of cannabis plants (where dealt with in Local Court)[75]	100 penalty units ($11,000 fine)[76]	2 years[77]
Cultivate, supply or possess less than commercial quantity of cannabis plants (where dealt with in the District Court)[78]	2,000 penalty units ($220,000 fine)[79]	10 years[80]

Traffic offences

1.32 As outlined at 1.12, cannabis related traffic offences are in the *Road Transport Act 2013*. This Act regulates traffic law across New South Wales. The two main traffic offences relevant to cannabis raised by some inquiry participants were:

- driving with the presence of a prescribed illicit drug in a person's oral fluid, blood or urine[81]

72 *Drug Misuse and Trafficking Act 1985*, s 23, s 30(1)(a); 30(3); *Criminal Procedure Act 1986*, Sch 1 Table 2 Pt 8 s 16.

73 *Drug Misuse and Trafficking Act 1985*, s 30(3); *Crimes (Sentencing Procedure) Act 1999*, s 17.

74 *Drug Misuse and Trafficking Act 1985*, s 30(3).

75 *Drug Misuse and Trafficking Act 1985*, ss 23, 31(1)(a), 31(3); *Criminal Procedure Act 1986*, Sch 1 Table 1 Pt 6.

76 *Drug Misuse and Trafficking Act 1985*, s 31(3); *Crimes (Sentencing Procedure) Act 1999*, s 17.

77 *Drug Misuse and Trafficking Act 1985*, s 31(3).

78 *Drug Misuse and Trafficking Act 1985*, ss 23(1), 32(1)(a), 32(1)(h), Sch 1; Submission 139, New South Wales Bar Association, p 3; *Criminal Procedure Act 1986*, Sch 1 Table 1 Pt 6.

79 *Drug Misuse and Trafficking Act 1985*, s 32(1)(h); *Crimes (Sentencing Procedure) Act 1999*, s 17.

80 *Drug Misuse and Trafficking Act 1985*, s 32(1)(h).

81 *Road Transport Act 2013,* s 111.

- driving under the influence of alcohol or any other drug.[82]

1.33 For the offence of 'driving with the presence of a prescribed illicit drug in a person's oral fluid, blood or urine', cannabis (containing THC) is classified as a 'prescribed illicit drug'.[83] To commit this offence, cannabis (or another illicit drug) needs to be detected in a person's system, but they do not need to be impaired or affected by cannabis.[84] This is usually detected through a roadside drug test by police, known as Mobile Drug Testing (MDT).[85]

1.34 For the 'drive under the influence of alcohol or any other drug', a person must be impaired or effected by cannabis (or alcohol or another drug) while driving.[86]

1.35 The maximum penalties for these offences are below at Tables 6 and 7. As reflected in these tables, licence disqualification periods apply once a person is convicted of these offences.[87] There is an automatic and a minimum disqualification period. The automatic disqualification applies in the absence of a specific court orders. The court has discretion to reduce this automatic disqualification period when sentencing, but cannot reduce it below the minimum disqualification.[88]

Driving with the presence of a prescribed illicit drug in oral fluid, blood or urine

1.36 Driving with cannabis in a person's oral fluid, blood or urine is a criminal offence.[89] A person does not need to be impaired to commit an offence under this section, the presence of cannabis is sufficient. As outlined by Legal Aid NSW, Mobile Drug Testing (MDT) does not assess the level of cannabis in a person's system.[90]

1.37 A number of inquiry participants criticised this offence, arguing that it is problematic to criminalise cannabis being in a person's system while driving if the person is not impaired.[91]

1.38 The maximum penalty for this offence depends on whether a person is a first offender, or a second or subsequent offender. A person is a second or subsequent offender if they have

82 *Road Transport Act 2013,* s 112. See also *Road Transport Act 2013*, s 111A, presence of both prescribed illicit drug in person's oral fluid, blood or urine and prescribed concentration of alcohol in person's breath or blood.

83 *Road Transport Act 2013*, s 4.

84 *Road Transport Act 2013,* s 111(1).

85 NSW Government Centre for Road Safety, *Drugs & Driving*, NSW Government Centre for Road Safety, https://www.transport.nsw.gov.au/roadsafety/topics-tips/drugs.

86 Evidence, Mr Jonathon Paff, Criminal Solicitor and Coffs Harbour Summary Courts Manager, Legal Aid NSW, 1 August 2024, p 13.

87 *Road Transport Act 2013*, ss 205(2)-(3).

88 *Road Transport Act 2013*, ss 205(2)-(3).

89 *Road Transport Act 2013*, s 111(1).

90 Submission 90, Legal Aid NSW, p 14.

91 Evidence, Mr David Heilpern, Dean of Law, Southern Cross University, 20 August 2024, p 20; Evidence, Mr Nicholas Cowdery AO KC, Past President, NSW Council for Civil Liberties, 1 August 2024, p 7; Evidence, Ms Samantha Lee, Supervising Solicitor, Redfern Legal Centre, 19 August 2024, p 8; Evidence, Mr Patrick Hourigan, Assistant Principal Solicitor, Mid North Coast Legal Centre, 20 August 2024, p 34.

committed an alcohol or drug related traffic offence in the previous five years.[92] The maximum penalties are outlined at Table 6.

Table 6 Maximum penalties for driving with prescribed illicit drug

Offence	Maximum fine/ term of imprisonment	Automatic licence disqualification	Minimum licence disqualification
Driving with prescribed illicit drug (first offence – dealt with on the spot)[93]	On the spot fine of $682 and 3-month licence suspension[94]	NA	NA
Driving with prescribed illicit drug (first offence - challenged unsuccessfully in court)[95]	20 penalty units ($2,200 fine)[96]	6 months[97]	3 months[98]
Drive with prescribed illicit drug (second or subsequent offence)[99]	30 penalty units ($3,300 fine)[100]	12 months[101]	6 months[102]

92 *Road Transport Act 2013*, ss 9 and 205.

93 Transport for NSW, *Drink and drug driving penalties*, NSW Government: Transport for NSW, https://www.nsw.gov.au/driving-boating-and-transport/demerits-penalties-and-offences/offences/alcohol-and-drug-offences/drink-and-drug-driving-penalties.

94 Transport for NSW, *Drink and drug driving penalties*, NSW Government: Transport for NSW, https://www.nsw.gov.au/driving-boating-and-transport/demerits-penalties-and-offences/offences/alcohol-and-drug-offences/drink-and-drug-driving-penalties.

95 *Road Transport Act 2013*, ss 111(1), 205(2).

96 *Road Transport Act 2013*, ss 111(1); *Crimes (Sentencing Procedure) Act 1999*, s 17.

97 *Road Transport Act 2013*, s 205(2)(a).

98 *Road Transport Act 2013*, s 205(2)(a).

99 *Road Transport Act 2013*, ss 111(1), 205(3).

100 *Road Transport Act 2013*, ss 111(1); *Crimes (Sentencing Procedure) Act 1999*, s 17.

101 *Road Transport Act 2013*, s 205(3)(a).

102 *Road Transport Act 2013*, s 205(3)(a).

Driving under the influence

1.39 Driving a vehicle under the influence of cannabis (or alcohol or another drug) is a criminal offence.[103] A person must be impaired by cannabis (or alcohol or another drug) to commit this offence. To prove a person is impaired, police might rely upon:

- statements made by the person about using cannabis (or alcohol or another drug)
- the person's behaviour – if they are unstable, slurring their words or showing other signs of being under the influence
- their manner of driving (although their driving does not need to be impacted to commit this offence)
- blood testing to show cannabis (or alcohol or another drug) in the person's system
- expert evidence about the level of impairment.[104]

1.40 The committee heard evidence that this offence is important to protect the safety of road users, and no inquiry participants raised any significant concerns with this offence.[105]

1.41 The maximum penalty for this offence depends on whether a person is a first offender, or a second or subsequent offender.[106] The maximum penalties are outlined at Table 7.

103 *Road Transport Act 2013*, s 112.

104 Evidence, Mr Jonathon Paff, Criminal Solicitor and Coffs Harbour Summary Courts Manager, Legal Aid NSW, 1 August 2024, p 13; Answers to questions on notice, Mr Patrick Hourigan, Assistant Principal Solicitor, Mid North Coast Legal Centre, 26 September 2024, pp 2 and 4.

105 Evidence, Mr Patrick Hourigan, Assistant Principal Solicitor, Mid North Coast Legal Centre, 20 August 2024, p 34; Evidence, Professor Don Weatherburn, Professor, National Drug and Alcohol Research Centre, 19 August 2024, p 34; Evidence, Mr David Heilpern, Dean of Law, Southern Cross University, 20 August 2024, p 21.

106 Transport for NSW, *Drink and drug driving penalties*, NSW Government: Transport for NSW, https://www.nsw.gov.au/driving-boating-and-transport/demerits-penalties-and-offences/offences/alcohol-and-drug-offences/drink-and-drug-driving-penalties.

Table 7 Maximum penalties for driving under the influence of cannabis (or alcohol or another drug)

Offence	Maximum fine/ term of imprisonment	Automatic licence disqualification	Minimum licence disqualification
Driving under the influence (first offence)[107]	30 penalty units ($3,300 fine) and/or 18 months imprisonment[108]	3 years[109]	12 months[110]
Driving under the influence (second or subsequent offence)[111]	50 penalty units ($5,500 fine) and/or two years imprisonment[112]	5 years[113]	2 years[114]

Limitations on section 10 dismissals

1.42 The court has a range of options available when deciding how to sentence a person for an offence. One of these options is section 10 of the *Crimes (Sentencing Procedure) Act 1999*.[115] This allows the court to find a person guilty of an offence, but not convict the person.

107 *Road Transport Act 2013*, s 112.

108 *Road Transport Act 2013*, s 112.

109 Transport for NSW, *Drink and drug driving penalties*, NSW Government: Transport for NSW, https://www.nsw.gov.au/driving-boating-and-transport/demerits-penalties-and-offences/offences/alcohol-and-drug-offences/drink-and-drug-driving-penalties; *Road Transport Act 2013*, s205(2)(d)(i).

110 Transport for NSW, *Drink and drug driving penalties*, NSW Government: Transport for NSW, https://www.nsw.gov.au/driving-boating-and-transport/demerits-penalties-and-offences/offences/alcohol-and-drug-offences/drink-and-drug-driving-penalties; *Road Transport Act 2013*, s205(2)(d)(ii).

111 *Road Transport Act 2013*, s 112(1).

112 *Road Transport Act 2013*, s 112(1).

113 Transport for NSW, *Drink and drug driving penalties*, NSW Government: Transport for NSW, https://www.nsw.gov.au/driving-boating-and-transport/demerits-penalties-and-offences/offences/alcohol-and-drug-offences/drink-and-drug-driving-penalties; *Road Transport Act 2013*, s205(3)(d)(i).

114 Transport for NSW, *Drink and drug driving penalties*, NSW Government: Transport for NSW, https://www.nsw.gov.au/driving-boating-and-transport/demerits-penalties-and-offences/offences/alcohol-and-drug-offences/drink-and-drug-driving-penalties; *Road Transport Act 2013*, s205(3)(d)(ii).

115 *Crimes (Sentencing Procedure) Act 1999,* s 10.

1.43 As outlined in Tables 6 and 7, licence disqualification periods apply when a person is convicted of an offence. Where a section 10 dismissal is imposed for a traffic offence (such as driving with prescribed illicit drug), the disqualification periods do not apply.[116] However, the court cannot order more than one section 10 dismissal for similar driving offences in a five-year period.[117]

1.44 Some inquiry participants expressed concern about this limitation. For example, Mr Patrick Hourigan, Assistant Principal Solicitor, Mid North Coast Legal Centre, raised that a person may have particularly mitigating circumstances surrounding why they drove for a second time with cannabis in their system. Despite these mitigating circumstances, a magistrate must convict them. Once they are convicted, they will be disqualified from driving.[118]

Diversionary schemes

1.45 The Cannabis Cautioning Scheme (CCS) and the Magistrates Early Referral into Treatment (MERIT) Program are two drug diversion schemes available to NSW Police and the courts. The CCS is a depenalisation scheme which allows police to issue a caution for cannabis possession, rather than charging the person and going through the criminal justice system.[119] The Local Court MERIT program refers people with alcohol or drug problems to treatment programs, aiming to improve their health, wellbeing, and reduce re-offending.[120]

1.46 Young people have different diversionary schemes, which are outlined in the *Young Offenders Act 1997*. These schemes allow police to issue warnings, cautions or refer young people to youth justice conferencing rather than charge them with criminal offences.[121] These diversions aim to prevent young people entering the criminal justice system and reduce reoffending by connecting them with support services.

Cannabis Cautioning Scheme

1.47 The CCS is governed by NSW Police Guidelines.[122] For police to exercise their discretion to issue a caution rather than charge a person, the following criteria must be met:

116 *Road Transport Act 2013*, s 205.

117 *Road Transport Act 2013*, s 203; the term 'similar driving offences' means the 'applicable offences' outlined at s 203(2) of the *Road Transport Act 2013* which include a number of alcohol or other drug related driving offences.

118 Evidence, Mr Patrick Hourigan, Assistant Principal Solicitor, Mid North Coast Legal Centre, 20 August 2024, p 35.

119 Submission 90, Legal Aid NSW, p 11; Submission 109, Australian Lawyers Alliance (ALA) NSW, p 5; Evidence, Professor Don Weatherburn, Professor, National Drug and Alcohol Research Centre, 19 August 2024, p 28.

120 Local Court New South Wales, *The Magistrates Early Referral into Treatment (MERIT) Program* (8 May 2023), https://localcourt.nsw.gov.au/sentencing--orders-and-appeals/sentencing-in-criminal-cases/diversion-programs/the-merit-program.html.

121 *Young Offenders Act 1997*, Pts 3, 4 and 5.

122 NSW Police Force, 'Cannabis Cautioning Scheme Guidelines for Police – State Crime Command' (April 2024). The legislation that allows for the Cannabis Cautioning Scheme includes the Criminal Procedure Regulations 2017, Sch 4, reg 1 and 2 and the *Fines Act 1996*, s 19A.

- the person used or possessed 30 grams or less of dried cannabis and/or possessed equipment for the use of cannabis
- the person is an adult
- the cannabis is for personal use
- no other offence is detected which would require a brief of evidence[123]
- the person has no prior convictions of serious drug offences unless the prior conviction is spent.[124]

1.48 The person must admit to possessing cannabis and/or equipment for the use of cannabis to be eligible.[125] The Guidelines specify that police can give two cautions to a person. Once these are exhausted, police are to charge them with a criminal offence.[126] As this is a discretionary power, police can choose to charge a person instead of cautioning, regardless of their eligibility.[127] The written caution itself will warn of the health and legal consequences of cannabis use, and provides contact information for the Alcohol and Drug Information Service (ADIS).[128] For the first time a caution is issued, contacting ADIS is optional, however is mandatory for a second and final caution.[129]

1.49 A number of inquiry participants spoke to the apparent ineffectiveness of the CCS as a diversionary scheme, raising issues with inequitable application of the scheme between Aboriginal and Torres Strait Islander people and non-Aboriginal and Torres Strait Islander people, and issues with its eligibility requirements.[130]

123 Offences that can be dealt with by caution or penalty notice do not require a brief of evidence, see NSW Police Force, 'Cannabis Cautioning Scheme Guidelines for Police – State Crime Command' (April 2024), p 7.

124 NSW Police Force, 'Cannabis Cautioning Scheme Guidelines for Police – State Crime Command' (April 2024), p 7.

125 Evidence, Mr Nicholas Broadbent, Secretary, New South Wales Bar Association, 19 August 2024, p 3.

126 Submission 90, Legal Aid NSW, p 11.

127 NSW Police Force, 'Cannabis Cautioning Scheme Guidelines for Police – State Crime Command' (April 2024), p 5.

128 Submission 109, Australian Lawyers Alliance (ALA) NSW, p 6.

129 Submission 109, Australian Lawyers Alliance (ALA) NSW, p 6.

130 Evidence, Ms Samantha Lee, Supervising Solicitor, Redfern Legal Centre, 19 August 2024, pp 7-8; Evidence, Mr Jonathon Paff, Criminal Solicitor and Coffs Harbour Summary Courts Manager, Legal Aid NSW, 1 August 2024, pp 12-13; Evidence, Mr Nicholas Broadbent, Secretary, New South Wales Bar Association, 19 August 2024, p 3; Evidence, Dr Marianne Jauncey, Medical Director, Uniting Medically Supervised Injecting Centre, Uniting NSW.ACT, 19 August 2024, p 48.

Magistrates Early Referral into Treatment Program

1.50 The MERIT Program is a voluntary alcohol and drug treatment program for people facing criminal charges in the Local Court. A person participates in MERIT before they enter a plea to their criminal charges.[131]

1.51 MERIT is available at 72 of the 137 Local Courts in New South Wales.[132] To access the MERIT program, a person must meet the following eligibility and suitability criteria:

- be an adult
- be released on bail or not require bail
- not be charged with sexual assault matters or an offence in the District Court
- have a treatable alcohol or other drug problem.[133]

1.52 The MERIT program provides a range of treatment and support programs, including counselling, case management, welfare support and residential rehabilitation.[134] When a person completes the MERIT program, they will return to court to resolve their original criminal charges. The magistrate will receive a report from MERIT about their treatment and any recommendations for further treatment, which can be incorporated into their sentencing (where relevant).[135]

1.53 Some inquiry participants spoke to the positive outcomes from the MERIT program, however raised issues with its accessibility.[136]

131 Local Court New South Wales, *The Magistrates Early Referral into Treatment (MERIT) Program* (8 May 2023), https://localcourt.nsw.gov.au/sentencing--orders-and-appeals/sentencing-in-criminal-cases/diversion-programs/the-merit-program.html.

132 Local Court New South Wales, *The Magistrates Early Referral into Treatment (MERIT) Program* (8 May 2023), https://localcourt.nsw.gov.au/sentencing--orders-and-appeals/sentencing-in-criminal-cases/diversion-programs/the-merit-program.html.

133 Submission 203, Aboriginal Legal Service (NSW/ACT) Limited, p 3, referencing Local Court New South Wales, *The Magistrates Early Referral into Treatment (MERIT) Program* (8 May 2023), https://localcourt.nsw.gov.au/sentencing--orders-and-appeals/sentencing-in-criminal-cases/diversion-programs/the-merit-program.html.

134 Submission 203, Aboriginal Legal Service (NSW/ACT) Limited, p 3, referencing Local Court New South Wales, *The Magistrates Early Referral into Treatment (MERIT) Program* (8 May 2023), https://localcourt.nsw.gov.au/sentencing--orders-and-appeals/sentencing-in-criminal-cases/diversion-programs/the-merit-program.html.

135 Submission 203, Aboriginal Legal Service (NSW/ACT) Limited, p 3, referencing Local Court New South Wales, *The Magistrates Early Referral into Treatment (MERIT) Program* (8 May 2023), https://localcourt.nsw.gov.au/sentencing--orders-and-appeals/sentencing-in-criminal-cases/diversion-programs/the-merit-program.html.

136 Evidence, Mr David Heilpern, Dean of Law, Southern Cross University, 20 August 2024, p 22; Evidence, Mr Jonathon Paff, Criminal Solicitor and Coffs Harbour Summary Courts Manager, Legal Aid NSW, 1 August 2024, p 10.

Diversion for young people

1.54 The diversions for young people are regulated by the *Young Offenders Act 1997*. Police can issue warnings, cautions, or refer a young person to youth justice conferencing if they are found with up to 15 grams of cannabis, or up to 30 grams of cannabis if there are special circumstances.[137]

1.55 For a warning to be issued, police must consider whether it is in the interests of justice.[138] A young person does not need to admit to any offence to receive a warning.[139] Police cannot attach any conditions if they issue a warning.[140] A young person can receive a warning even if they have prior criminal history or previous warnings or cautions.[141]

1.56 For police to issue a caution for cannabis possession, the young person must admit to the offence and consent to the caution.[142] A caution is more serious than a warning, and a young person can only receive three cautions before they must be charged or dealt with another way.[143] Cautions for drug matters might include discussions with the young person about the health, social and legal ramifications of drug use.

1.57 If police believe a caution is not appropriate, they can refer the young person to a youth justice conference.[144] A youth justice conference involves the young person sitting down with a support person, a convenor, police and other representatives to discuss the offence. During this conference, the young person may come up with an outcome plan which sets out the tasks for the young person to complete to link them into the community.[145]

1.58 While there was limited evidence as to the effectiveness of these specific diversions for young people, some inquiry participants identified that diverting young people away from the criminal justice system and towards support services will reduce recidivism and improve wellbeing.[146]

International law

1.59 Australia is a signatory to three United Nations conventions relevant to cannabis policy and regulation:

- The Single Convention on Narcotic Drugs 1961 (amended by the 1972 Protocol)
- The Convention on Psychotropic Substances 1971

137 *Young Offenders Act 1997*, ss 8(2A), 13, 18, 35; *Drug Misuse and Trafficking Act 1985*, Sch 1.

138 *Young Offenders Act 1997*, Pt 3.

139 *Young Offenders Act 1997*, Pt 3.

140 *Young Offenders Act 1997*, s 15.

141 *Young Offenders Act 1997*, s 14(3).

142 *Young Offenders Act 1997*, s 19.

143 *Young Offenders Act 1997*, s 20(7).

144 *Young Offenders Act 1997*, Pt 5.

145 NSW Government, *What is a Youth Justice Conference?* NSW Government, https://www.nsw.gov.au/legal-and-justice/youth-justice/conferencing/what-is-youth-justice-conference.

146 Evidence, Mr Kieran Palmer, Director of Clinical Services, Ted Noffs Foundation, 20 August 2024, pp 53-54.

- United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988.[147]

1.60 The United Nations agencies responsible for these conventions are the Commission on Narcotic Drugs, the International Narcotics Control Board, and the United Nations Office on Drugs and Crime.[148] These conventions and agencies take a prohibitionist approach to illicit drugs (including cannabis), except for medical or scientific purposes.[149]

1.61 Some inquiry participants argued that such a prohibitionist approach could be a breach of human rights obligations.[150] It was also noted that United Nations agencies have shifted their stance on illicit substances towards a health and human rights-based approach.[151]

Different types of cannabis regulation

1.62 Jurisdictions have utilised various models of cannabis regulation, generally regulating on two levels:

- type of cannabis use – recreational and medicinal[152]
- cannabis related behaviours – possession, production and distribution.[153]

1.63 Many jurisdictions have utilised different models for different types of cannabis use and cannabis related behaviours. For example, many jurisdictions have criminalised recreational cannabis, but legalised medicinal cannabis.

147 Answers to questions on notice, Ms Liz Barrett, Research Officer and Ms Keelin O'Reilly, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 27 August 2024, p 8.

148 Answers to questions on notice, Ms Liz Barrett, Research Officer and Ms Keelin O'Reilly, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 27 August 2024, p 8.

149 Answers to questions on notice, Ms Liz Barrett, Research Officer and Ms Keelin O'Reilly, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 27 August 2024, p 7.

150 Answers to questions on notice, Ms Liz Barrett, Research Officer and Ms Keelin O'Reilly, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 27 August 2024, p 10; Evidence, Mr Nicholas Cowdery AO KC, Past President, NSW Council for Civil Liberties, 1 August 2024, p 6.

151 Answers to questions on notice, Ms Liz Barrett, Research Officer and Ms Keelin O'Reilly, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 27 August 2024, p 7.

152 Submission 176, National Drug and Alcohol Research Centre, p 7.

153 Submission 176, National Drug and Alcohol Research Centre, p 7.

Criminalisation

1.64 A full criminalisation model criminalises all behaviour relating to cannabis, including its possession, production and distribution.[154] This is also referred to as a prohibitionist approach, which aims to prevent widespread cannabis use.[155]

1.65 The National Drug and Alcohol Research Centre note that a full criminalisation model is uncommon.[156] For example, in New South Wales recreational cannabis is criminalised (with some depenalisation schemes), whereas medicinal cannabis is legalised with heavy regulation.[157]

Depenalisation

1.66 Under a depenalisation model, there are criminal offences for cannabis related behaviours, coupled with depenalisation policies which allow police to exercise their discretion to take a minimal response to the behaviour. For example, allowing police to issue warnings or cautions.[158]

1.67 The Cannabis Cautioning Scheme is an example of a depenalisation policy, where police have discretion to give a cannabis caution.[159] A depenalisation approach relies upon police exercising their discretion, and is usually governed by a guiding policy.

Decriminalisation

1.68 Decriminalisation removes criminal sanctions for certain behaviour. For example, if cannabis use and possession was decriminalised, a person could not be prosecuted for this behaviour.[160] Decriminalisation can be coupled with administrative regulation, including confiscating and destroying the cannabis and/or civil sanctions, such as a fine.[161]

Legalisation

1.69 Legalisation removes criminal sanctions relating to cannabis, including possession, use and supply, and allows the cultivation, manufacture and distribution of cannabis within a regulated

154 Submission 176, National Drug and Alcohol Research Centre, p 7.

155 Submission 102, NSW Council for Civil Liberties, p 4.

156 Submission 176, National Drug and Alcohol Research Centre, p 7.

157 See generally Drug Misuse and Trafficking Act 1985, ss 10, 12, 25(1), 23(1)(a); the *Narcotic Drugs Amendment Act 2016* (Cth) amended the *Narcotic Drugs Act 1967* (Cth) to legalise and regulate medicinal cannabis.

158 Submission 139, New South Wales Bar Association, pp 19-20.

159 NSW Police Force, 'Cannabis Cautioning Scheme Guidelines for Police – State Crime Command' (April 2024).

160 Submission 139, New South Wales Bar Association, p 19.

161 Submission 139, New South Wales Bar Association, p 19.

market.[162] This contrasts to decriminalisation, where it usually remains illegal to supply and manufacture cannabis.[163]

1.70 The legalisation model involves various regulatory options in terms of production and distribution. These models are explored further in Chapter 4, which details various models of cannabis regulation in other countries.

Committee comment

1.71 This introductory chapter has touched on the key regulatory and policy settings for cannabis in New South Wales. While this chapter references some observations of inquiry participants as to the effectiveness of the current framework, the committee explores these observations further in subsequent chapters.

[162] Submission 139, New South Wales Bar Association, p 21.

[163] Submission 139, New South Wales Bar Association, p 21.

Chapter 2 Public health considerations regarding cannabis use

Cannabis use is associated with both positive and negative health impacts. The first part of this chapter considers the benefits of medicinal cannabis as a treatment for a range of conditions; alongside the risks associated with cannabis use, such as its impacts on mental illness. The second part of this chapter turns to the medicinal cannabis scheme, in operation since 2016. It considers evidence about the barriers to obtaining a prescription under this scheme and whether this is leading to widening inequalities in the way cannabis is accessed in New South Wales.

The health impacts of cannabis use

2.1 This inquiry received a range of evidence about the health impacts of cannabis. These included positive health impacts arising from its medicinal uses, as well as negative impacts and risks for certain groups.

Medicinal benefits of cannabis

2.2 The committees heard about a range of therapeutic benefits from the use of cannabis. These were primarily associated with the use of medicinal cannabis although, as discussed further below, have also been linked to the use of recreational cannabis.

2.3 Inquiry participants told the committee that cannabis can be used as a treatment for the following conditions:

- chronic pain[164]
- anxiety, depression, and post-traumatic stress syndrome[165]
- insomnia and other sleep disorders[166]

164 Submission 106, Professor Nicholas Lintzeris, p 6, 9; Submission 135, The Royal Australian College of General Practitioners (RACGP) NSW and ACT, p 3; Submission 285, Australian Natural Therapeutics Group (ANTG), p 6; Evidence, Mr Michael Balderstone, Individual with lived experience, 20 August 2024, p 40; Evidence, Mr David Heilpern, Dean of Law, Southern Cross University, 20 August 2024, p 24; Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 4.

165 Submission 103, Positive Life NSW, p 4; Submission 106, Professor Nicholas Lintzeris, p 6; Submission 135, The Royal Australian College of General Practitioners (RACGP) NSW and ACT, p 3; Evidence, Mr David Heilpern, Dean of Law, Southern Cross University, 20 August 2024, p 24; Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 4.

166 Submission 103, Positive Life NSW, p 3; Submission 106, Professor Nicholas Lintzeris, p 6; Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 4.

- epilepsy[167]
- multiple sclerosis[168]
- chemotherapy-induced nausea[169]
- nerve pain and cognitive impacts associated with HIV;[170] and
- as part of palliative care treatment.[171]

2.4 However, some participants were more circumspect about the medicinal benefits of cannabis. This was mostly attributed to a lack of scientifically rigorous evidence.

2.5 Dr Thomas Lu, General Practitioner, Royal Australian College of General Practitioners stated that 'the literature is not well defined on the role of medicinal cannabis', saying that the evidence base 'is of mild to moderate quality' and 'not strong compared to some of the more traditional forms of therapies'.[172] In its submission, Royal Australian College of General Practitioners (RACGP) NSW and ACT further indicated that the evidence base for the use of medicinal cannabis is limited, although anecdotal evidence suggests some patients benefit from it:

> At present, the evidence base for the use of MC [medicinal cannabis] products is limited and inconclusive. The current evidence base is heterogeneous, comprising a small number of randomised clinical trials (RCTs), of varying quality. Anecdotal evidence suggests that many patients have found real benefits from MC use, however there is a need for more research and greater information to support GPs in understanding the clinical role of MC and MC containing products.[173]

2.6 Dr Lu expressed the view that medicinal cannabis is 'not a panacea', but that it can play a role 'within a multidisciplinary, holistic and integrated framework'.[174]

2.7 Professor Lintzeris explained that 'the majority of scientific research has focussed on the harms associated with cannabis use' because it has historically been criminalised.[175] He said that 'the

167 Submission 90, Legal Aid NSW, p 9; Submission 106, Professor Nicholas Lintzeris, p 9; Submission 135, The Royal Australian College of General Practitioners (RACGP) NSW and ACT, p 3; Submission 285, Australian Natural Therapeutics Group (ANTG), p 6.

168 Submission 90, Legal Aid NSW, p 9; Submission 106, Professor Nicholas Lintzeris, p 9; Submission 285, Australian Natural Therapeutics Group (ANTG), p 6.

169 Submission 90, Legal Aid NSW, p 9; Submission 106, Professor Nicholas Lintzeris, p 9; Submission 135, The Royal Australian College of General Practitioners (RACGP) NSW and ACT, p 3.

170 Submission 103, Positive Life NSW, pp 2-3; Evidence, Mr Andrew Heslop, Senior Health Promotion and Peer Navigation Manager, Positive Life NSW, 1 August 2024, p 38.

171 Submission 90, Legal Aid NSW, p 9; Submission 106, Professor Nicholas Lintzeris, p 9; Submission 135, The Royal Australian College of General Practitioners (RACGP) NSW and ACT, p 3.

172 Evidence, Dr Thomas Lu, General Practitioner, Royal Australian College of General Practitioners, 19 August 2024, p 19.

173 Submission 135, The Royal Australian College of General Practitioners (RACGP) NSW and ACT, pp 2-3.

174 Evidence, Dr Thomas Lu, General Practitioner, Royal Australian College of General Practitioners, 19 August 2024, p 19.

175 Submission 106, Professor Nicholas Lintzeris, p 9.

past two decades has seen increasing evidence of its potential therapeutic effects', while noting that the evidence is still emerging.[176]

2.8 The Royal Australian and New Zealand College of Psychiatrists submitted that 'the evidence to assess the efficacy, effectiveness and safety of medicinal cannabis products is limited'.[177] They commented that 'despite the lack of evidence, Australia has followed the global trend towards using medicinal cannabis because it is considered to have a low risk of harm'.[178]

The use of cannabis to treat chronic pain

2.9 The use of cannabis as an alternative treatment for chronic pain was highlighted by inquiry participants. Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences said that increasingly, people are moving away from using drugs that are 'warned or controlled or blacklisted by the TGA', such as opioids, benzodiazepines and pregabalin, and towards using cannabis instead.[179] Mr Hardy said that in his opinion, 'cannabis is a great alternative to those drugs that are more what I would consider pharmaceutical with long-term side effects'.[180]

2.10 The Royal Australian College of General Practitioners (RACGP) NSW and ACT added that medicinal cannabis may be similarly effective to opioids in improving pain, physical functioning, and sleep quality.[181] They further noted that 'unlike with opioids, hyperalgesia to painful stimuli does not appear to occur with chronic use of cannabis and analgesic effects can be retained, even as tolerance develops'.[182]

2.11 The use of cannabis instead of opioids may also result in lower dependence and overdose rates within the population. Positive Life submitted that the use of cannabis to reduce the pain and discomfort of peripheral neuropathy among people living with HIV is associated with a lower use of prescription opioid analgesics, and therefore opioid dependence, amongst this group.[183]

2.12 Professor Nicolas Lintzeris, Conjoint Professor in Addiction Medicine, Faculty of Medicine and Health, University of Sydney said that 'increasing epidemiological evidence from North America suggests that communities with regulated cannabis markets may have lower population rates of opioid-related overdose deaths'.[184]

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176 Submission 106, Professor Nicholas Lintzeris, p 9.

177 Submission 296, The Royal Australian and New Zealand College of Psychiatrists (RANZCP), p 4. See also Evidence, Mr Michael Whaites, Assistant General Secretary, NSW Nurses and Midwives' Association, and Assistant Branch Secretary, Australian Nursing and Midwifery Federation, NSW Branch, 19 August 2024, p 27.

178 Submission 296, The Royal Australian and New Zealand College of Psychiatrists (RANZCP), p 5.

179 Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 6.

180 Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 6.

181 Submission 135, The Royal Australian College of General Practitioners (RACGP) NSW and ACT, p 3.

182 Submission 135, The Royal Australian College of General Practitioners (RACGP) NSW and ACT, p 3.

183 Submission 103, Positive Life NSW, p 4.

184 Submission 106, Professor Nicholas Lintzeris, p 9.

Negative health impacts of cannabis use

2.13 This inquiry received evidence about negative health impacts associated with cannabis use. These included its relationship with mental illness, cannabis use disorder, and others.

Cannabis use and mental illness

2.14 There is a documented relationship between cannabis use and mental illness. Cannabis use (especially heavy cannabis use) is associated with an increased risk of developing schizophrenia or psychosis, particularly for young people or those with a genetic predisposition to these disorders.[185]

2.15 However, it was noted that this increased risk is small relative to the overall population.[186] Dr Robert May, Chair of Addiction Psychiatry, Royal Australian and New Zealand College of Psychiatrists, New South Wales Branch explained that 'it is a very small increase to an already small number':

> There is a relationship with the incidence of schizophrenia and cannabis, which is related to age of onset of first cannabis dependence. For individuals who smoke cannabis daily at age 15 or below, there is an increased risk of schizophrenia, to the order of double. However, schizophrenia is a low-prevalence disorder affecting less than 1 per cent of the community, and the population who would be smoking cannabis aged 15 or below daily is extremely small already. So it is a very small increase to an already small number.[187]

2.16 Cannabis misuse, particularly by heavy users, can exacerbate existing mental illnesses such as anxiety and depression.[188] Professor Lintzeris advised that despite the relationship between cannabis use and mental illness, in Canada and the United States, where it is largely legalised, 'there has not been any marked increase in psychosis-related presentations to hospitals'.[189] In his submission, he added that 'the evidence to date is clear that cannabis legalisation does not appear to be associated with any major increases in mental health presentations'.[190]

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185 Submission 106, Professor Nicholas Lintzeris, p 9; Submission 111, Penington Institute, p 5; Submission 296, The Royal Australian and New Zealand College of Psychiatrists (RANZCP), p 5; Evidence, Professor Nicolas Lintzeris, Conjoint Professor in Addiction Medicine, Faculty of Medicine and Health, University of Sydney, 1 August 2024, pp 21-22; Evidence, Dr Robert May, Chair of Addiction Psychiatry, Royal Australian and New Zealand College of Psychiatrists, New South Wales Branch, 19 August 2024, p 16.

186 Evidence, Professor Nicolas Lintzeris, Conjoint Professor in Addiction Medicine, Faculty of Medicine and Health, University of Sydney, 1 August 2024, p 21; Evidence, Dr Robert May, Chair of Addiction Psychiatry, Royal Australian and New Zealand College of Psychiatrists, New South Wales Branch, 19 August 2024, p 16.

187 Evidence, Dr Robert May, Chair of Addiction Psychiatry, Royal Australian and New Zealand College of Psychiatrists, New South Wales Branch, 19 August 2024, p 16.

188 Evidence, Dr Robert May, Chair of Addiction Psychiatry, Royal Australian and New Zealand College of Psychiatrists, New South Wales Branch, 19 August 2024, pp 13-14.

189 Evidence, Professor Nicolas Lintzeris, Conjoint Professor in Addiction Medicine, Faculty of Medicine and Health, University of Sydney, 1 August 2024, p 17.

190 Submission 106, Professor Nicholas Lintzeris, p 10.

Cannabis use disorder

2.17 Daily use of cannabis may create dependence, and ceasing use may lead to withdrawal symptoms.[191]

2.18 This inquiry heard that a small number of cannabis users will develop cannabis use disorder.[192] Professor Lintzeris noted that this rate may be higher for medicinal cannabis users, citing Australian research which showed some medical cannabis users met the criteria for a cannabis use disorder.[193]

2.19 Penington Institute explained that cannabis use disorder occurs when 'people experience various negative outcomes resulting from cannabis use yet find themselves unable to reduce or cease consumption'.[194]

2.20 The Royal Australian and New Zealand College of Psychiatrists added that cannabis use disorder 'manifests in isolation and disengagement from education, employment, relationships, and other social networks' and can lead to depression, anxiety or more serious mental health conditions.[195]

2.21 Dr May stated that 'the knowledge of cannabis use disorder is quite low in the population'.[196] He said this means people may not be aware they have the disorder or know where to get treatment. Additionally, he commented that there is a shortage of treatment services for cannabis use disorder.[197]

2.22 Professor Lintzeris advised that medicinal cannabis may be a 'legitimate treatment' for cannabis use disorder. He described this as similar to methadone or buprenorphine treatment for heroin dependence or nicotine replacement therapy for tobacco addiction.[198] He said that benefits to this include that the medicinal cannabis will be of known composition, grown under safe conditions, and involving safer routes of administration; and that this enables regular contact with medical professionals.[199]

191 Evidence, Dr Robert May, Chair of Addiction Psychiatry, Royal Australian and New Zealand College of Psychiatrists, New South Wales Branch, 19 August 2024, p 17.

192 Submission 296, The Royal Australian and New Zealand College of Psychiatrists (RANZCP), p 4; Evidence, Dr Robert May, Chair of Addiction Psychiatry, Royal Australian and New Zealand College of Psychiatrists, New South Wales Branch, 19 August 2024, p 14.

193 Submission 106, Professor Nicholas Lintzeris, p 6.

194 Submission 111, Penington Institute, p 5.

195 Submission 296, The Royal Australian and New Zealand College of Psychiatrists (RANZCP), p 4.

196 Evidence, Dr Robert May, Chair of Addiction Psychiatry, Royal Australian and New Zealand College of Psychiatrists, New South Wales Branch, 19 August 2024, p 14.

197 Evidence, Dr Robert May, Chair of Addiction Psychiatry, Royal Australian and New Zealand College of Psychiatrists, New South Wales Branch, 19 August 2024, p 14.

198 Submission 106, Professor Nicholas Lintzeris, p 6.

199 Submission 106, Professor Nicholas Lintzeris, p 6.

Other negative health impacts

2.23 Inquiry participants raised other negative health impacts associated with cannabis use. Some noted that there are potential risks around drug interactions associated with poly-drug use, where cannabis is taken with other drugs like alcohol or opioids.[200] Cannabis use is also associated with cardiovascular and respiratory harms, particularly where it is smoked.[201] It can also lead to cannabis hyperemesis syndrome, which involves severe vomiting caused by cannabis use.[202]

Medicinal cannabis in New South Wales

2.24 Medicinal cannabis was legalised in Australia in 2016. This section outlines characteristics of the medicinal cannabis scheme and issues in its operation that arose in evidence.

The legalisation of medicinal cannabis in 2016

2.25 Medicinal cannabis was legalised in 2016 following amendment to the *Narcotic Drugs Act 1967* (Cth).[203] The legalisation of medicinal cannabis has led to heavy regulation of the cultivation and manufacturing of cannabis, and separate regulation surrounding prescription of medicinal cannabis to patients with certain medical conditions.[204]

2.26 The *Narcotic Drugs Act 1967* (Cth) outlines the framework for the licensing and permits for the cultivation, production and/or manufacturing of medicinal cannabis. The Office of Drug Control is the regulatory body overseeing this regulatory framework.[205] Cultivators and manufacturers are subject to strict licensing and regulation requirements when producing medicinal cannabis.[206]

2.27 Prescription and access to medicinal cannabis is regulated federally under the *Therapeutic Goods Act 1989* (Cth).[207] Cannabis is an 'unapproved' therapeutic good and classified as a schedule 8 drug, which can be prescribed through either the:

200 Evidence, Professor Nicolas Lintzeris, Conjoint Professor in Addiction Medicine, Faculty of Medicine and Health, University of Sydney, 1 August 2024, pp 17-18; Evidence, Mr James Gaskell, Chief Operating Officer, Australian Natural Therapeutics Group, 19 August 2024, p 36.

201 Submission 86, Dr James Moylan, pp 96-97; Submission 106, Professor Nicholas Lintzeris, p 9; Submission 111, Penington Institute, p 5; Submission 355, Justice Action, p 10; Evidence, Professor Nicolas Lintzeris, Conjoint Professor in Addiction Medicine, Faculty of Medicine and Health, University of Sydney, 1 August 2024, p 17.

202 Evidence, Dr Mary Ellen Harrod, Chief Executive Officer, NSW Users and AIDS Association, 1 August 2024, p 35.

203 The *Narcotic Drugs Amendment Act 2016* (Cth) amended the *Narcotic Drugs Act 1967* (Cth) to legalise and regulate medicinal cannabis.

204 Submission 90, Legal Aid NSW, p 9.

205 Submission 285, Australian Natural Therapeutics Group (ANTG), p 3; *Narcotic Drugs Act 1967* (Cth), ch 2.

206 Submission 285, Australian Natural Therapeutics Group (ANTG), p 2.

207 Submission 176, National Drug and Alcohol Research Centre, p 5.

- Special Access Scheme (SAS)
- Authorised Prescriber Scheme[208]

2.28 The SAS allows a clinician to prescribe medicinal cannabis on a case-by-case basis to a single patient. The Authorised Prescriber Scheme allows a registered medical practitioner to apply to become an authorised prescriber of medicinal cannabis, allowing them to prescribe directly to multiple patients on a needs-assessment basis.[209]

Availability of access to medicinal cannabis

2.29 Several participants to this inquiry raised concerns about limited or inequitable access to medicinal cannabis in New South Wales. This was mostly attributed to price, availability of prescribing doctors, and the complexity of the system.

The price of medicinal cannabis

2.30 Concerns about the price of medicinal cannabis heard in this inquiry included those around both the cost of the product itself, and the cost of a medical appointment to receive a prescription. The committee heard that most doctors do not bulk bill for an appointment to obtain a medicinal cannabis prescription. This means patients must pay an out-of-pocket appointment fee.[210]

2.31 Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences explained that every time a patient wants to change their prescription, they must attend and pay for another consultation. He explained 'cannabis, which is quite a unique drug, has different effects from different products, so that makes it quite costly to keep going back to the doctor'.[211]

2.32 Additionally, the NSW Users and AIDS Association explained that there is a prohibition on product substitution for medicinal cannabis. This means that if a product is not available from a pharmacy, patients must go back to the doctor and obtain another prescription, which adds additional cost.[212]

2.33 It was noted that medicinal cannabis products are more expensive than mainstream medicines because they are not subsidised through the Pharmaceutical Benefits Scheme.[213]

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208 Submission 176, National Drug and Alcohol Research Centre, p 5; Therapeutic Goods (Poisons Standard – June 2024) Instrument 2024, Sch 8.

209 Submission 176, National Drug and Alcohol Research Centre, p 5; Evidence, Dr Thomas Lu, General Practitioner, Royal Australian College of General Practitioners, 19 August 2024, p 24.

210 Submission 90, Legal Aid NSW, p 10; Evidence, Mr Jonathon Paff, Criminal Solicitor and Coffs Harbour Summary Courts Manager, Legal Aid NSW, 1 August 2024, p 12; Evidence, Dr Thomas Lu, General Practitioner, Royal Australian College of General Practitioners, 19 August 2024, p 24.

211 Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 2.

212 Submission 112, NSW Users and AIDS Association (NUAA), p 5.

213 Submission 90, Legal Aid NSW, p 6; Submission 112, NSW Users and AIDS Association (NUAA), p 6; Submission 285, Australian Natural Therapeutics Group (ANTG), p 3; Evidence, Dr Thomas Lu, General Practitioner, Royal Australian College of General Practitioners, 19 August 2024, p 24.

2.34 The cost of accessing medicinal cannabis was therefore described by participants as 'prohibitive'[214] and 'a significant barrier' to access.[215]

Availability of prescribing doctors and pharmacies

2.35 The committee heard that the limited availability of healthcare providers in rural and regional areas may restrict these communities from accessing medicinal cannabis.[216] Mr Edward Strong, Head of Government Relations, Montu Group Pty Ltd said that there are 'real challenges' for regional and rural patients to access medicinal cannabis:

> It is incredibly difficult for regional and rural patients to access health care in general, but particularly medicinal cannabis as a treatment pathway. Only about 5 per cent of GPs are able to prescribe medicinal cannabis. As such, most bricks-and-mortar GPs, particularly in regional areas, might not be able to prescribe through TGA's two pathways. That causes real challenges for those patients who are looking to access medicinal cannabis.[217]

2.36 It was noted that the lack of general practitioners able to prescribe medicinal cannabis in rural and regional areas meant patients were either forced to 'travel significant distances'[218] or obtain prescriptions via telehealth.[219] However, Dr Thomas Lu, General Practitioner, Royal Australian College of General Practitioners said that telehealth appointments can carry disadvantages over face-to-face appointments, as the latter is more suited 'in providing holistic and integrated care', especially for patients with complex needs.[220]

2.37 The Royal Australian College of General Practitioners (RACGP) NSW and ACT noted that access to medicinal cannabis also requires a pharmacy that can compound and dispense this medication, which may be limited in regional and rural areas.[221]

The complexity of the medicinal cannabis scheme

2.38 The complexity of the medicinal cannabis scheme was identified as a barrier to accessing medicinal cannabis by participants.

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214 Submission 90, Legal Aid NSW, p 10; Submission 135, The Royal Australian College of General Practitioners (RACGP) NSW and ACT, p 4.

215 Submission 285, Australian Natural Therapeutics Group (ANTG), p 3.

216 Submission 90, Legal Aid NSW, p 10; Submission 135, The Royal Australian College of General Practitioners (RACGP) NSW and ACT, p 4; Evidence, Mr Edward Strong, Head of Government Relations, Montu Group Pty Ltd, 19 August 2024, p 40.

217 Evidence, Mr Edward Strong, Head of Government Relations, Montu Group Pty Ltd, 19 August 2024, p 40.

218 Submission 90, Legal Aid NSW, p 10.

219 Evidence, Mr Edward Strong, Head of Government Relations, Montu Group Pty Ltd, 19 August 2024, p 40.

220 Evidence, Dr Thomas Lu, General Practitioner, Royal Australian College of General Practitioners, 19 August 2024, p 24.

221 Submission 135, The Royal Australian College of General Practitioners (RACGP) NSW and ACT, p 4.

2.39 The NSW Users and AIDS Association submitted that the system is confusing to navigate, with consumers needing a high degree of digital literacy and the ability to conduct self-research to understand the system and advocate for themselves:

> The system is confusing to navigate, hard for consumers to access and self-advocate. Despite the expanded access enabled by telehealth, the system remains confusing at a consumer level. This includes a reliance on high consumer digital literacy to access and understand the system, a reliance on self-research to understand available products and where to access doctors that bulk bill, unclear requirements for third party payments to order product, and inability to substitute product despite the medicinal cannabis industry expanding. The high level of bureaucracy and regulation contributes to a confusing system to navigate. These issues make it hard for some consumers to self-advocate and for others is a complete barrier to accessing medicinal cannabis.[222]

2.40 The committee heard that the system can also be confusing for medical practitioners. The Royal Australian College of General Practitioners (RACGP) NSW and ACT said that there are more than 190 medicinal cannabis products in Australia, which makes it difficult for doctors to understand 'which products should be prescribed, and when'.[223] Additionally, it submitted that there is a lack of education, training and development opportunities, and practitioners 'report challenge in identifying reliable and unbiased sources of information'.[224]

2.41 Mr Matthew McCrone, Industry and Government Engagement Lead, Montu Group Pty Ltd added that the TGA pathways to prescribe cannabis are 'complicated' and not something that a 'normal GP' would engage in on a day-to-day basis.[225] He stated that 'GPs say that their patients come to ask them about medicinal cannabis and they don't know what to say'.[226]

2.42 The case study below of Mr Benn Banasik outlines certain benefits, issues and barriers to access to medicinal cannabis in New South Wales.

Case study – Benn Banasik

In February 2021, Benn Banasik found out that he had a rare type of cancer called dermatofibrosarcoma protuberans (DFSP). DFSP is unresponsive to chemo and the only way to ensure recurrence is by removing all connecting tissue. After a major surgery, Mr Banasik's doctor confirmed that his DFSP had been removed. However, Mr Banasik was in terrible pain as most of his muscles and nerves were cut, and "every reach or clench brought extreme pain to the chest". As he recovered over the next few months, the pain was constant. Mr Banasik took a range of pain management measures, including opioids, prescription medication and physiotherapy, with limited to no relief.

222 Submission 112, NSW Users and AIDS Association (NUAA), pp 5-6.

223 Submission 135, The Royal Australian College of General Practitioners (RACGP) NSW and ACT, p 3.

224 Submission 135, The Royal Australian College of General Practitioners (RACGP) NSW and ACT, p 3.

225 Evidence, Mr Matthew McCrone, Industry and Government Engagement Lead, Montu Group Pty Ltd, 19 August 2024, p 40.

226 Evidence, Mr Matthew McCrone, Industry and Government Engagement Lead, Montu Group Pty Ltd, 19 August 2024, p 40.

Mr Banasik had to step away from his business before his surgery. Due to his pain post-surgery, his work started to suffer and he was unable to lift much with his right arm. He needed a permanent solution to manage the pain and in January 2022 he saw a specialist in pain management. The doctor put him on a mixture of medicinal cannabis products, which helped him through the pain.

The medication has relieved Mr Banasik of his pain but the presence of THC in his system means that he is unable to drive. New South Wales driving laws are not compatible pertaining to those who require medicinal cannabis and need to drive. Mr Banasik compared the difference in the legality of driving after having had opioids and antidepressants, and medicinal cannabis. He said:

> … I think it is tantamount to unfair that your Federal and your State parties think that it's okay for me to be on opioids, which affects your driving as well. It has the same sticker on the opioids that you get, but I'm legally allowed to drive on opioids. I'm legally allowed to drive on antidepressants. I'm not legally allowed to drive on this, despite it having the same tantamount effect. Why is that?

Mr Banasik could not take opioids for pain relief due to their adverse impacts on his health:

> … I can take medicinal cannabis and it has no ongoing effects; or I can take opioids that'll rip holes through my stomach lining because I suffer from acute acid reflux …

He told Committee members that opioids and antidepressants had the same effect as cannabis on his mind and asked that there should be a sobriety test for opioid users in the same way as there is a sobriety test for cannabis users. He juxtaposed this with the scenario of him being tested while having THC in his system:

> I know if I'm pulled over by the police today and they test my blood, it will be in my blood. It stays in there for up to 90 days.

Mr Banasik did not advocate for a change in driving legislation for recreational cannabis use. However, he argued that medicinal cannabis use affects people differently and therefore a doctor, rather than a police officer, was better placed to conduct an assessment on a medical cannabis user's ability to drive. He added:

> In relation to a medicinal product, I would argue that it's exactly the same as an opioid and therefore it should be up to the assessment of a doctor, not the assessment of a police officer, whether they dislike me for whatever reason and want me to get a blood test, whether I should lose my licence. Because that's the end result here. That's the end result for every person that's on medicinal cannabis.

Mr Banasik lives in an area that has limited public transport options and therefore he has no option but to drive and there were other people in a similar situation. His doctor has advised him to not drive under the influence of cannabis.

Mr Banasik hopes that the system will change for him and many like him and allow them to have the ability to drive with medicinal cannabis without the fear of breaking the law.

* Evidence, Mr Benn Banasik, 1 August 2024, pp 49-53; Submission 128, Mr Benn Banasik, pp 1-8.

Concerns about the ease of access to medicinal cannabis

2.43 While most evidence before the committee on this issue focussed on barriers to accessing medicinal cannabis, some participants expressed the view that medicinal cannabis is being over, or inappropriately, prescribed.

2.44 The Royal Australian and New Zealand College of Psychiatrists noted concerns about the prescription of medicinal cannabis in some instances.[227] Dr Robert May, Chair of Addiction Psychiatry, Royal Australian and New Zealand College of Psychiatrists, New South Wales Branch said there has been 'a rapid uptake' of 'very easily accessible' prescribed cannabis.[228] He expressed a preference for face to face consultations between patients and practitioners to avoid the situation where patients with pre-existing mental health conditions being prescribed cannabis via telehealth services.[229]

2.45 The Alcohol and Drug Foundation were concerned about 'the emergence of commercial actors in the medicinal cannabis space in Australia' which are vertically integrated, that is, they both prescribe and dispense cannabis to a patient.[230] The Foundation said these entities may be motivated by financial rather than medical incentives, which 'has the potential to cause harms if cannabis products are inappropriately prescribed'.[231]

The use of illicit cannabis for medicinal purposes and licit cannabis for recreational purposes

2.46 The barriers to accessing medicinal cannabis led some inquiry participants to suggest there is a two-tier system in Australia, where socio-economically advantaged people can navigate the medicinal cannabis scheme to access legal cannabis, while disadvantaged people can only access it illegally, even where they have a legitimate therapeutic need.

227 Submission 296, The Royal Australian and New Zealand College of Psychiatrists (RANZCP), p 5.

228 Evidence, Dr Robert May, Chair of Addiction Psychiatry, Royal Australian and New Zealand College of Psychiatrists, New South Wales Branch, 19 August 2024, p 13.

229 Evidence, Dr Robert May, Chair of Addiction Psychiatry, Royal Australian and New Zealand College of Psychiatrists, New South Wales Branch, 19 August 2024, p 14.

230 Submission 107, Alcohol and Drug Foundation, p 5.

231 Submission 107, Alcohol and Drug Foundation, p 5.

The use of illicit cannabis for medicinal purposes

2.47 Some inquiry participants suggested that the barriers to accessing medicinal cannabis means that people who cannot afford or cannot physically access a prescription are forced to acquire cannabis illegally.

2.48 Legal Aid NSW submitted that some of their clients obtain cannabis illegally because they cannot afford the 'hundreds of dollars' required to access a prescription:

> Our clients from low-socioeconomic backgrounds who suffer from neurological pain, epilepsy, PTSD, anxiety and a wide range of other chronic conditions, cannot afford the hundreds of dollars needed for a medicinal cannabis prescription. In practice, this means that despite having a valid prescription, some obtain cannabis illegally.[232]

2.49 Professor Nicolas Lintzeris, Conjoint Professor in Addiction Medicine, Faculty of Medicine and Health, University of Sydney cited evidence from the recent National Household Drug Survey showing that only 30 per cent of medical cannabis users access a prescription. He said this highlights 'that whilst medical cannabis is legally available across Australia, the vast majority of Australians using cannabis for medical reasons continue to use illegal supplies'.[233]

2.50 A range of witnesses to this inquiry provided anecdotal evidence supporting this point:

- Mr Michael Balderstone said that in Nimbin, a lot of people with epilepsy use cannabis as a treatment; and there are others who use it to assist with ending an addiction to alcohol, methamphetamine, or heroin.[234]
- The Drug Policy Modelling Program, SPRC, UNSW said many of the people they interviewed who grew cannabis in the ACT did so for medicinal purposes, including to treat cancer symptoms, for pain relief, for stress relief, and to treat insomnia.[235]
- Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences said he believed the illicit market is 'part-medical as well,' with many people using cannabis to treat anxiety or other illnesses.[236]

2.51 The Royal Australian College of General Practitioners (RACGP) NSW and ACT expressed concerns about 'people choosing to access illicit cannabis products to self-medicate', noting that this can carry quality, safety, and criminal implications.[237]

The use of licit cannabis for recreational purposes

2.52 Some participants suggested that, as the flipside to the above, the medicinal cannabis scheme is facilitating access to cannabis for those with the means and knowledge to use it. Dr Will

232 Submission 90, Legal Aid NSW, p 10.

233 Submission 106, Professor Nicholas Lintzeris, p 6.

234 Evidence, Mr Michael Balderstone, Individual with lived experience, 20 August 2024, p 40.

235 Submission 110, Drug Policy Modelling Program, SPRC, UNSW, p 4.

236 Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 5.

237 Submission 135, The Royal Australian College of General Practitioners (RACGP) NSW and ACT, p 5.

Tregoning, Chief Executive Officer, Unharm said there is a 'two-track system' in New South Wales which typically favours 'white middle-class people':

> We've got a two-track system right now. People like us are not at risk of arrest for cannabis use, especially given that we can afford to get cannabis prescribed and access it from pharmacies. Meanwhile, New South Wales police arrest around 15,000 people every year for cannabis use, or about 40 every day, on average. I'm often struck by how, when I talk to white middle-class people, they're often not sure whether cannabis is still illegal. I think that represents the two-track system that we're currently living with.[238]

2.53 The Alcohol and Drug Foundation similarly suggested that the medicinal market 'may be evolving into … a pathway to access to legal cannabis for those able to afford and navigate the system'.[239] It said that this 'may have the effect of further entrenching inequalities in the application of cannabis laws, where some are able to access cannabis via a legal pathway and others will remain in the illicit market'.[240]

2.54 Dr James Moylan contended that because the legislative scheme allows for 'wide latitude' regarding the types of conditions for which a prescription may be granted, cannabis can increasingly be prescribed for 'commonplace health and wellbeing difficulties' like stress, emotional issues, and poor sleep. He said this 'may provide a facility for some segments of the Australian community to gain access to a legally sanctioned supply of cannabis'.[241]

Committee comment

2.55 Since the legalisation of cannabis in 2016, over one million Australians have been prescribed cannabis for medicinal use. Evidence to this committee demonstrates that it can have therapeutic benefits in the treatment of a range of conditions including chronic pain, anxiety, insomnia, epilepsy, and multiple sclerosis.

2.56 However, participants acknowledged that the scientific evidence base for the medicinal benefits of cannabis is still emerging. There is a need for more research to improve our understanding of the benefits of medicinal cannabis.

Finding 1

Cannabis has a range of medicinal purposes, but more research is required to understand the full scope of its potential benefits.

2.57 This committee also received evidence of the harmful health impacts that can arise from cannabis use. These include an increased risk of developing mental illness in certain populations,

238 Evidence, Dr Will Tregoning, Chief Executive Officer, Unharm, 1 August 2024, p 35. See also Submission 135, The Royal Australian College of General Practitioners (RACGP) NSW and ACT, pp 4-5.

239 Submission 107, Alcohol and Drug Foundation, p 3.

240 Submission 107, Alcohol and Drug Foundation, p 3.

241 Submission 86, Dr James Moylan, pp 3-4.

cannabis use disorder, and other impacts such as respiratory or cardiovascular harms. Any changes to the regulatory framework for cannabis must bear these risks in mind.

2.58 This inquiry received a range of evidence about the operation of the medicinal cannabis scheme. It became clear that there needs to be further investigation of reported barriers to accessing medicinal cannabis in New South Wales, including high costs, low coverage in regional and rural areas, and difficulties in navigating the system.

Finding 2

There needs to be further investigation of reported barriers to accessing medicinal cannabis in New South Wales, including high prices, low coverage in regional and rural areas, and a complex system that is difficult to navigate.

2.59 The barriers to accessing medicinal cannabis led some inquiry participants to contend that there is a 'two-tier' system in New South Wales, which enables socioeconomically advantaged people to access licit cannabis while others are prevented from doing so. Of particular concern is evidence that people with genuine therapeutic needs for cannabis are being forced into acquiring it from the illicit market, putting them at risk of criminal sanctions.

Finding 3

The barriers to accessing medicinal cannabis are forcing some people with genuine medical needs to acquire cannabis from the illicit market.

2.60 The committee received evidence which indicates that the current medicinal cannabis scheme is likely being used to facilitate both medicinal and recreational use of cannabis, potentially leading to an arbitrary distinction between those who lawfully possess cannabis and those who do so in breach of the criminal law.

Finding 4

The medicinal cannabis scheme is likely being used to facilitate both medicinal and recreational use of cannabis, potentially leading to an arbitrary distinction between those who lawfully possess cannabis and those who do so in breach of the criminal law.

Chapter 3 Effectiveness of the current regulatory model for cannabis in New South Wales

This chapter explores the effectiveness of the current regulatory framework for cannabis in New South Wales, which was outlined in chapter 1. It begins by documenting the issues and commentary of inquiry participants concerning cannabis related offences and depenalisation schemes. It also explores whether criminal sanctions are effective in deterring cannabis use. The social implications of criminalising cannabis, including policing practices, impacts on criminalised individuals and consequences for human rights are then analysed. This chapter goes on to consider the financial impact of the current regulatory framework. Next, the effectiveness of current workplace regulations and policies around cannabis use are considered. The chapter concludes by looking at the efficacy of the regulation of medicinal cannabis in New South Wales.

Cannabis offences and depenalisation schemes: effectiveness and issues

3.1 The committee heard evidence about issues with some cannabis related offences and depenalisation schemes. The offences, provisions and depenalisation schemes considered in this section are:

- supply of cannabis[242]
- deemed supply of cannabis[243]
- driving with the presence of a prescribed illicit drug in a person's oral fluid, blood or urine[244]
- the Cannabis Cautioning Scheme[245]
- the Magistrates Early Referral into Treatment Program[246]
- diversions for young people.[247]

242 *Drug Misuse and Trafficking Act 1985*, s 25.

243 *Drug Misuse and Trafficking Act 1985*, s 29.

244 *Road Transport Act 2013*, s 111(1).

245 NSW Police Force, 'Cannabis Cautioning Scheme Guidelines for Police – State Crime Command' (April 2024).

246 Local Court New South Wales, *The Magistrates Early Referral into Treatment (MERIT) Program* (8 May 2023), https://localcourt.nsw.gov.au/sentencing--orders-and-appeals/sentencing-in-criminal-cases/diversion-programs/the-merit-program.html.

247 *Young Offenders Act 1997*, Pts 3, 4 and 5.

Supply of cannabis

3.2 To supply cannabis is a criminal offence.[248] Supply is often associated with drug dealing, or the exchange of drugs for money on the black market.[249] However, a person can still commit a supply offence if there is no exchange of payment. As explained by Mr Michael Balderstone, Individual with lived experience, '[i]f I pass a joint, that's supply'.[250]

3.3 Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW expressed concern for this aspect of supply and supported a distinction between more serious supply for commercial gain and gifting in a non-profit way to another person.[251]

3.4 Dr Michala Kowalski, Postdoctoral Research Fellow, National Drug and Alcohol Research Centre, advised that in some jurisdictions around the world, gifting without the exchange of money is not treated as supply.[252]

3.5 The Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023 also proposes this distinction, by keeping supply for financial gain illegal, and legalising sharing or gifting of small quantities of cannabis.[253] This bill is considered further in chapter 4.

Deemed supply of cannabis

3.6 If a person has a traffickable quantity of cannabis in their possession, they are presumed to have it to supply it.[254] There does not need to be any other evidence that the person intended to supply the cannabis for this provision to apply.

3.7 There was concern expressed about this provision, as it could unfairly criminalise someone possessing cannabis for their personal use, and it reverses the onus of proof from the prosecution to the accused person.[255]

3.8 Ms Alice Salomon, Head of Media and Advocacy, Uniting NSW.ACT argued this provision unreasonably criminalises people who possess cannabis for personal use:

> Currently, it is the quantity of drug you are in possession of that says whether it is personal use or supply. We argue that that's an improper way to go about making that

248 *Drug Misuse and Trafficking Act 1985*, s 25(1).

249 Evidence, Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 1 August 2024, p 23.

250 Evidence, Mr Michael Balderstone, 20 August 2024, Individual with lived experience, p 41.

251 Evidence, Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 1 August 2024, p 28.

252 Evidence, Ds Michala Kowalski, Postdoctoral Research Fellow, National Drug and Alcohol Research Centre, 19 August 2024, p 34.

253 Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023 Sch 1[4].

254 *Drug Misuse and Trafficking Act 1985*, ss 29, Sch 1.

255 Evidence, Ms Alice Salomon, Head of Media and Advocacy, Uniting NSW.ACT, 19 August 2024, p 51; Evidence, Mr Nicholas Cowdery AO KC, Past President, NSW Council for Civil Liberties, 1 August 2024, p 6.

> assessment. We know, for instance, personal use for our clients at MSIC [medically supervised injecting clinic] will look very different to other people who are casual drug users. Some people might buy their month's supply.[256]

3.9 Mr Nicholas Cowdery AO KC, Past President, NSW Council for Civil Liberties, outlined that reversing the onus of proof is contrary to the rule of law:

> [S]upply offences wrongly, in my view, put the onus onto the accused to show that the possession of whatever the quantity was, was not for supply. There's a reversal of the onus of proof in relation to liability. That is contrary to the rule of law in relation to criminal matters in the system that we have.[257]

Driving with the presence of a prescribed illicit drug in oral fluid, blood or urine

3.10 The following issues concerning the offence of driving with the presence of a prescribed illicit drug in oral fluid, blood or urine were raised during the inquiry:

- a person does not need to be impaired by cannabis, it only needs to be detected in their system[258]
- there is no exemption for medicinal cannabis users[259]
- the inability for the court to impose multiple section 10 dismissals.[260]

Length of time cannabis can be detected in a person's system

3.11 Police test for the presence of illicit substances through Mobile Drug Testing (MBT).[261] The presence of cannabis in a person's system is sufficient for them to be found guilty of the offence, they do not need to be impaired.[262]

3.12 Cannabis is lipid, rather than water soluble, meaning that it can be detected for long periods of time after cannabis use.[263] A common issue raised was that MDT detects cannabis when a

256 Evidence, Ms Alice Salomon, Head of Media and Advocacy, Uniting NSW.ACT, 19 August 2024, p 51.

257 Evidence, Mr Nicholas Cowdery AO KC, Past President, NSW Council for Civil Liberties, 1 August 2024, p 6.

258 Evidence, Mr David Heilpern, Dean of Law, Southern Cross University, 20 August 2024, p 20; Evidence, Mr Nicholas Cowdery AO KC, Past President, NSW Council for Civil Liberties, 1 August 2024, p 7; Evidence, Ms Samantha Lee, Supervising Solicitor, Redfern Legal Centre, 19 August 2024, p 8; Submission 136, Conditsis Lawyers, p 8.

259 Evidence, Mr Patrick Hourigan, Assistant Principal Solicitor, Mid North Coast Legal Centre, 20 August 2024, p 32; Evidence, Mr David Heilpern, Dean of Law, Southern Cross University, 20 August 2024, p 21-22.

260 Evidence, Mr Patrick Hourigan, Assistant Principal Solicitor, Mid North Coast Legal Centre, 20 August 2024, p 32.

261 NSW Government Centre for Road Safety, *Drugs & Driving*, NSW Government Centre for Road Safety, https://www.transport.nsw.gov.au/roadsafety/topics-tips/drugs.

262 *Road Transport Act 2013*, s 111(1).

263 Submission 107, Alcohol and Drug Foundation, p 9.

person is not impaired, their driving ability is not impacted, and they consumed cannabis sometime prior.[264]

3.13 In the matter of *NSW Police v Carrall*, the court found that an accused person had tested positive following MDT at least nine days after consuming cannabis.[265] It was argued that it is problematic to criminalise the detection of cannabis in a person's system while driving if the person is not impaired.[266]

3.14 It was also asserted that regular cannabis users, including those with prescribed medicinal cannabis, are likely to develop tolerance to cannabis which can reduce the risk of driving impairment, even though cannabis would be detected.[267]

No medical exemption for medicinal cannabis patients

3.15 There is no medical exemption in the driving offence for medicinal cannabis patients.[268] On that basis a person can be legally taking their prescription medicinal cannabis, drive unimpaired and face criminal sanctions.[269]

3.16 Conditsis Lawyers noted that people may need to choose between addressing their genuine medical needs and their need to use a car for day-to-day travel.[270]

3.17 Montu Group Pty Ltd outlined that in their June 2023 National Patient Survey, 86 per cent of patients reported worsened symptoms when they don't take their prescribed medicinal cannabis because of a need to drive.[271]

3.18 Mr David Heilpern, Dean of Law, Southern Cross University expressed frustration at the challenges faced by medicinal cannabis patients who drive:

> Most people who are prescribed cannabis take it at four or five or six in the afternoon and then don't drive until the next morning—every day. That's what the doctors prescribe. They are all criminals. If they get caught once, they're likely to lose their licence because it will be automatically suspended. If they get caught twice, there's no

264 Submission 90, Legal Aid NSW, p 14; Evidence, Mr Nicholas Cowdery AO KC, Past President, NSW Council for Civil Liberties, 1 August 2024, p 7.

265 *NSW Police v Carrall* [2016] NSWLC 4; Submission 136, Conditsis Lawyers, p 9.

266 Evidence, Mr David Heilpern, Dean of Law, Southern Cross University, 20 August 2024, p 20; Evidence, Mr Nicholas Cowdery AO KC, Past President, NSW Council for Civil Liberties, 1 August 2024, p 7; Evidence, Ms Samantha Lee, Supervising Solicitor, Redfern Legal Centre, 19 August 2024, p 8; Evidence, Mr Patrick Hourigan, Assistant Principal Solicitor, Mid North Coast Legal Centre, 20 August 2024, p 34.

267 Submission 135, The Royal Australian College of General Practitioners (RACGP) NSW and ACT, p 4; Submission 112, NSW Users and AIDS Association (NUAA), p 6.

268 Submission 114, Mid North Coast Legal Centre, p 5.

269 Submission 114, Mid North Coast Legal Centre, p 5.

270 Submission 136, Conditsis Lawyers, p 9.

271 Answers to questions on notice, Mr Edward Strong, Head of Government Relations and Mr Matthew McCrone, Industry and Government Engagement Lead, Montu Group Pty Ltd, 16 September 2024, p 2.

> choice for the courts. You can commit murder twice and have no penalty the second time, but you can't do that with drug driving. That's how crazy our laws are.[272]

3.19 It was often raised throughout the inquiry that a driving exemption for medicinal cannabis patients should be introduced.[273] Mr Heilpern advised that an exemption exists in Tasmania, where it is not an offence to drive with cannabis in a person's system if they have a prescription for medicinal cannabis and are unimpaired.[274]

3.20 Mr Jonathon Paff, Criminal Solicitor and Coffs Harbour Summary Courts Manager, Legal Aid NSW illustrated the distinct approaches to medicinal cannabis and other medications, commenting that in New South Wales, 'there is an exemption … for prescribed morphine, and there is not for prescribed cannabis'.[275]

3.21 Noting the different approaches to the regulation of medicinal cannabis and other prescription medication for this offence, Mr Heilpern argued that it is hypocritical to exempt some medications and not others:

> No-one is asking, "How do we test for impairment for all these other prescription drugs?" We do. We have systems in place…
>
> [I]f some[one] is weaving all over the road, they're pulled over and if there is a suspicion they're using an illicit drug, they're arrested, they're taken to the hospital, they're given a blood test and they're dealt with in the normal way, as everyone is dealt with for every other prescription drug. So the short answer to the question is: Impairment is a furphy when it's only applied to cannabis. We have an offence of impairment. It should remain. It remains in Tasmania, it remains in New Zealand, it remains in all northern European countries, for all other prescription drugs. All I'm arguing, and all I think the drug law reform movement is arguing in Drive Change is, "Hey, let's just apply the same rules to cannabis as a medicine as we do to every single other medicine."[276]

Limitation on the use of a section 10 dismissal

3.22 If a person is convicted of driving with a prescribed illicit drug in their oral fluid, blood or urine, they are subject to automatic disqualification periods. If a magistrate chooses to dismiss a person's charge under section 10 ('section 10 dismissal'), they are unable to receive another section 10 dismissal for similar driving offences for the following five years.[277]

3.23 Mr Patrick Hourigan, Assistant Principal Solicitor, Mid North Coast Legal Centre, claimed that a person may have particularly mitigating circumstances surrounding why those drove for a

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272 Evidence, Mr David Heilpern, Dean of Law, Southern Cross University, 20 August 2024, p 20.

273 Evidence, Mr David Heilpern, Dean of Law, Southern Cross University, 20 August 2024, p 24; Submission 103, Positive Life NSW, p 4; Submission 112, NSW Users and AIDS Association (NUAA), p 4; Submission 90, Legal Aid NSW, pp 14-15.

274 Evidence, Mr David Heilpern, Dean of Law, Southern Cross University, 20 August 2024, p 24.

275 *Road Transport Act 2013*, s 111(5); Evidence, Mr Jonathon Paff, Criminal Solicitor and Coffs Harbour Summary Courts Manager, Legal Aid NSW, 1 August 2024, p 13.

276 Evidence, Mr David Heilpern, Dean of Law, Southern Cross University, 20 August 2024, p 21.

277 *Road Transport Act 2013*, s 203; the term 'similar driving offences' means the 'applicable offences' outlined at s 203(2) of the *Road Transport Act 2013* which include a number of alcohol or other drug related driving offences.

second time with cannabis in their system.[278] For example, a person could have had their drink spiked or be fleeing domestic violence when they test positive to cannabis while driving, and they will be unable to receive a section 10 dismissal if they have previously committed a similar driving offence.[279]

3.24 Mr Heilpern, and Mr Hourigan both reported that licence disqualification periods can have particularly negative impacts on people living in rural or remote areas due to the lack of public transportation or alternative transportation options.[280]

Diversion – Cannabis Cautioning Scheme

3.25 The Cannabis Cautioning Scheme (CCS) is a depenalisation scheme, which aims to diverts an individual away from the criminal justice system.[281] The CCS was introduced after the 1999 NSW Drug Summit as a way to prevent criminal convictions for people unlikely to offend in any other way.[282]

3.26 As outlined by Legal Aid NSW, in a review of the CCS the NSW Auditor-General found that over a ten-year period, the CCS had saved at least $20 million in court costs and found that people cautioned for minor cannabis offences were less likely to reoffend that those deal with by the courts.[283] However, the use of cannabis cautions has declined over the past decade.

3.27 Professor Don Weatherburn, Professor, National Drug and Alcohol Research Centre, advised that there has been a decline in the relative use of cannabis cautions to prosecutions for cannabis use and possession:

> As it turns out though, the ratio of cannabis cautions to prosecutions for cannabis use and possession last year was less than half of what it was in 2013. In other words, there's been this steady decline in the relative use of cautions compared with prosecutions, so much so that in the past year there were some 4,300 individuals prosecuted for the use and possession of cannabis compared with the 2,600 who actually received a cannabis caution.[284]

3.28 Two key issues with the CCS are explored in this section, namely:

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278 Evidence, Mr Patrick Hourigan, Assistant Principal Solicitor, Mid North Coast Legal Centre, 20 August 2024, p 35.

279 Evidence, Mr Patrick Hourigan, Assistant Principal Solicitor, Mid North Coast Legal Centre, 20 August 2024, p 36.

280 Evidence, Mr David Heilpern, Dean of Law, Southern Cross University, 20 August 2024, pp 22-23; Evidence, Mr Patrick Hourigan, Assistant Principal Solicitor, Mid North Coast Legal Centre, 20 August 2024, p 33.

281 Evidence, Mr Nicholas Broadbent, Secretary, New South Wales Bar Association, 19 August 2024, p 3; Submission 109, Australian Lawyers Alliance (ALA) NSW, p 5.

282 Submission 90, Legal Aid NSW, p 11; Submission 109, Australian Lawyers Alliance (ALA) NSW, p 5; Evidence, Professor Don Weatherburn, Professor, National Drug and Alcohol Research Centre, 19 August 2024, p 28.

283 Submission 90, Legal Aid NSW, p 12.

284 Evidence, Professor Don Weatherburn, Professor, National Drug and Alcohol Research Centre, 19 August 2024, p 28.

- inequitable application of the scheme
- eligibility requirements unreasonably limiting its availability.[285]

Is the Cannabis Cautioning Scheme inequitably applied?

3.29 The inequitable application of the CCS was identified in relation to:

- Aboriginal and Torres Strait Islander people, and non-Aboriginal and Torres Strait Islander people[286]
- location.[287]

3.30 As outlined in chapter 1, police have discretion as to whether to apply the CCS, regardless of eligibility.[288]

3.31 Data from the NSW Bureau of Crime Statistics and Research (BOSCAR) found that between 2013 to 2017 NSW Police were four times less likely to caution Aboriginal people caught with cannabis compared with non-Aboriginal people.[289]

3.32 The BOCSAR data also found 82 per cent of Aboriginal people found with a non-indictable amount of cannabis were pursued through the court system, compared with 52 per cent of non-Aboriginal people.[290]

3.33 While eligibility between Aboriginal and non-Aboriginal people was a reason accounting for these discrepancies, the data also found that fewer eligible Aboriginal people were referred for a caution than non-Aboriginal people.[291]

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285 Evidence, Ms Samantha Lee, Supervising Solicitor, Redfern Legal Centre, 19 August 2024, pp 7-8; Evidence, Mr Jonathon Paff, Criminal Solicitor and Coffs Harbour Summary Courts Manager, Legal Aid NSW, 1 August 2024, pp 12-13; Evidence, Mr Nicholas Broadbent, Secretary, New South Wales Bar Association, 19 August 2024, p 3; Evidence, Dr Marianne Jauncey, Medical Director, Uniting Medically Supervised Injecting Centre, Uniting NSW.ACT, 19 August 2024, p 48.

286 Submission 356, Drug Policy Australian, pp 3-4; Evidence, Ms Samantha Lee, Supervising Solicitor, Redfern Legal Centre, 19 August 2024, pp 7-8; Submission 102, NSW Council for Civil Liberties, p 5.

287 Submission 111, Penington Institute, p 5; Submission 109, Australian Lawyers Alliance (ALA) NSW, p 7; Submission 176, National Drug and Alcohol Research Centre, p 6.

288 NSW Police Force, 'Cannabis Cautioning Scheme Guidelines for Police – State Crime Command' (April 2024), p 5.

289 Submission 90, Legal Aid NSW, p 12 referencing Adam Teperski and Sara Rahman, 'Why are Aboriginal adults less likely to receive cannabis cautions?' (June 2023) 258 *NSW Bureau of Crime Statistics and Research - Crime and Justice Bulletin.*

290 Submission 90, Legal Aid NSW, p 12 referencing Adam Teperski and Sara Rahman, 'Why are Aboriginal adults less likely to receive cannabis cautions?' (June 2023) 258 *NSW Bureau of Crime Statistics and Research - Crime and Justice Bulletin.*

291 Submission 90, Legal Aid NSW, p 12 and Submission 176, National Drug and Alcohol Research Centre, p 6 referencing Adam Teperski and Sara Rahman, 'Why are Aboriginal adults less likely to receive cannabis cautions?' (June 2023) 258 *NSW Bureau of Crime Statistics and Research - Crime and Justice Bulletin.*

3.34 The National Drug and Alcohol Research Centre advised that based on the eligibility criteria in 2020 for the CCS, the caution rate for eligible Aboriginal people was 39.5 per cent, compared with eligible non-Aboriginal people who have a caution rate of 73.9 per cent.[292]

3.35 Over policing of Aboriginal people was identified as one of the causes for the inequitable application of the CCS.[293] Over policing generally refers to an excessive or disproportionate presence of police in certain communities.

3.36 The NSW Council for Civil Liberties argued that the inequitable application of the CCS shows a 'clear bias starkly illustra[ting] how the current criminalisation of cannabis disadvantages Aboriginal people in NSW'.[294] A number of other inquiry participants took the same view, arguing that Aboriginal people face a disproportionate amount of policing when it comes to cannabis offences, and differential treatment by police in general.[295]

3.37 'Postcode justice' or the inequitable application of the CCS dependent on location, was also seen as a problem with the CCS.[296] The Australian Lawyers Alliance referred to the percentage of cautions issued in different areas. More affluent areas like the Northern Beaches (75 per cent), Byron Bay (66 per cent) and the Northern Beaches (64 per cent), received a higher percentage of cautions than Penrith (36 per cent), Newcastle (34 per cent), Cessnock (28 per cent) and Singleton (11 per cent).[297] They argued that these percentages show police are more willing to caution individuals in affluent suburbs.[298]

3.38 Similarly, the National Drug and Alcohol Research Centre highlighted that cautioning rates are lower outside metropolitan regions in New South Wales, with court proceedings for use and possession of cannabis being concentrated in the regions.[299] They noted that this disparity reflects:

- an intersection with the inequitable cautioning rates of Aboriginal Australians

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292 Answers to questions on notice, Dr Michala Kowalski, Postdoctoral Research Fellow and Professor Don Weatherburn, Professor, National Drug and Alcohol Research Centre (NDARC), 16 September 2024, p 2.

293 Submission 356, Drug Policy Australian, pp 3-4; Evidence, Ms Samantha Lee, Supervising Solicitor, Redfern Legal Centre, 19 August 2024, pp 7-8; Submission 102, NSW Council for Civil Liberties, p 5.

294 Submission 102, NSW Council for Civil Liberties, p 5.

295 Submission 139, New South Wales Bar Association, p 21; Evidence, Ms Samantha Lee, Supervising Solicitor, Redfern Legal Centre, 19 August 2024, p 7.

296 Submission 111, Penington Institute, p 5; Submission 109, Australian Lawyers Alliance (ALA) NSW, p 7; Submission 176, National Drug and Alcohol Research Centre, p 6.

297 Submission 109, Australian Lawyers Alliance (ALA) NSW, p 7 referencing Damon Cronshaw, 'NSW crime data shows Cannabis Cautioning Scheme has gone to pot and become a 'class war'', *Newcastle Herald*, 20 December 2020, www.newcastleherald.com.au/story/7055185/cannabis-use-class-war-between-the-hunter-and-wealthy-sydney-areas.

298 Submission 109, Australian Lawyers Alliance (ALA) NSW, p 7 referencing Damon Cronshaw, 'NSW crime data shows Cannabis Cautioning Scheme has gone to pot and become a 'class war'', *Newcastle Herald*, 20 December 2020, www.newcastleherald.com.au/story/7055185/cannabis-use-class-war-between-the-hunter-and-wealthy-sydney-areas.

299 Submission 176, National Drug and Alcohol Research Centre, p 6.

- differences in the priority of command areas and interpretation of legislation across police precincts.[300]

3.39 Mr Paff observed that 'it's often the case that people of a higher socio-economic status are able to access this Cannabis Cautioning Scheme and have all the benefits that flow from that'.[301]

Eligibility requirements of the Cannabis Cautioning Scheme

3.40 This section will explore the following eligibility requirements of the scheme:

- the requirement to admit the offence for the CCS to apply[302]
- the requirement to have no previous convictions for serious drug offences.[303]

3.41 The committee heard that it is problematic to require a person to admit to offending in order to receive a cannabis caution.[304]

3.42 As advised by Mr Nicholas Broadbent, Secretary, New South Wales Bar Association, the standard legal advice when being questioned by police is to 'say nothing'.[305] Concerns were raised that this requirement is particularly problematic for Aboriginal people who are less likely to admit to offending, noting longstanding issues of trust towards police and the standard legal advice.[306]

3.43 In relation to the legal implications of this requirement, Mr Broadbent argued that 'if a person is going to be admitting to some conduct or to an offence … they [should] have some certainty as to the outcome before they do that'.[307]

300 Submission 176, National Drug and Alcohol Research Centre, p 6.

301 Evidence, Mr Jonathon Paff, Criminal Solicitor and Coffs Harbour Summary Courts Manager, Legal Aid NSW, 1 August 2024, p 13.

302 Evidence, Mr Nicholas Broadbent, Secretary, New South Wales Bar Association, 19 August 2024, p 4; Evidence, Ms Samantha Lee, Supervising Solicitor, Redfern Legal Centre, 19 August 2024, p 8.

303 Evidence, Professor Don Weatherburn, Professor, National Drug and Alcohol Research Centre, 19 August 2024, p 33; Evidence, Ms Samantha Lee, Supervising Solicitor, Redfern Legal Centre, 19 August 2024, p 8; Evidence, Dr Will Tregoning, Chief Executive Officer, Unharm, 1 August 2024, p 40.

304 Evidence, Mr Nicholas Broadbent, Secretary, New South Wales Bar Association, 19 August 2024, p 3; Submission 138, NSW Nurses and Midwives' Association, p 6; Submission 176, National Drug and Alcohol Research Centre, p 6; Evidence, Ms Samantha Lee, Supervising Solicitor, Redfern Legal Centre, 19 August 2024, p 8.

305 Evidence, Mr Nicholas Broadbent, Secretary, New South Wales Bar Association, 19 August 2024, p 4.

306 Evidence, Mr Nicholas Broadbent, Secretary, New South Wales Bar Association, 19 August 2024, p 3; Submission 138, NSW Nurses and Midwives' Association, p 6; Submission 176, National Drug and Alcohol Research Centre, p 6.

307 Evidence, Mr Nicholas Broadbent, Secretary, New South Wales Bar Association, 19 August 2024, p 4.

3.44 The requirement that a person cannot have been convicted of a serious drug offence to receive a cannabis caution was also seen as problematic.[308]

3.45 Professor Weatherburn argued that this requirement punishes a person twice for the same conduct, as they have been sentenced for an offence and then are excluded from a caution on the basis of the same offence:

> [P]rior history is the big driver here of whether you are going to end up getting a caution or whether you are not. To some extent, that could be seen as somewhat unjust in the sense that whatever prior offences a person has done they have already served time for. In a sense, it is like double punishment to deny them a caution, if that's all they have got—a small quantity of cannabis.[309]

3.46 It was raised that over policing of Aboriginal people has cumulative impacts on eligibility for the cautioning scheme.[310] This was explained by Dr Will Tregoning, Chief Executive Officer, Unharm, who remarked on the effects of over policing on eligibility:

> We have the Aboriginal community already targeted by law enforcement and, therefore, by nature of that, more likely to have prior offences. Disqualifying them from being able to access cautioning only compounds the status quo.[311]

Diversion – Magistrates Early Referral into Treatment Program

3.47 The MERIT program is a voluntary alcohol and drug treatment program for people with criminal charges in the Local Court.[312] The MERIT program is available at 72 of 137 Local Courts in New South Wales, and is subject to eligibility criteria and availability.[313]

3.48 The committee heard that the MERIT program is effective and beneficial for those that it is available to.[314] Mr Heilpern, advocated for the program and argued that if it were better funded 'we would be seeing much less drug harm in our society'.[315]

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308 NSW Police Force, 'Cannabis Cautioning Scheme Guidelines for Police – State Crime Command' (April 2024), p 7; Evidence, Professor Don Weatherburn, Professor, National Drug and Alcohol Research Centre, 19 August 2024, p 33.

309 Evidence, Professor Don Weatherburn, Professor, National Drug and Alcohol Research Centre, 19 August 2024, p 33.

310 Submission 107, Alcohol and Drug Foundation, p 4; Evidence, Dr Will Tregoning, Chief Executive Officer, Unharm, 1 August 2024, p 40.

311 Evidence, Dr Will Tregoning, Chief Executive Officer, Unharm, 1 August 2024, p 40.

312 Local Court New South Wales, *The Magistrates Early Referral into Treatment (MERIT) Program* (8 May 2023), https://localcourt.nsw.gov.au/sentencing--orders-and-appeals/sentencing-in-criminal-cases/diversion-programs/the-merit-program.html.

313 Local Court New South Wales, *The Magistrates Early Referral into Treatment (MERIT) Program* (8 May 2023), https://localcourt.nsw.gov.au/sentencing--orders-and-appeals/sentencing-in-criminal-cases/diversion-programs/the-merit-program.html.

314 Evidence, Mr Jonathon Paff, Criminal Solicitor and Coffs Harbour Summary Courts Manager, Legal Aid NSW, 1 August 2024, p 10; Evidence, Mr David Heilpern, Dean of Law, Southern Cross University, 20 August 2024, p 22.

315 Evidence, Mr David Heilpern, Dean of Law, Southern Cross University, 20 August 2024, p 22.

3.49 The NSW Council for Civil Liberties advocated for the implementation of the ICE Inquiry Report recommendations, including the expansion of the MERIT program.[316]

3.50 Professor Nicholas Lintzeris called into question the value of the MERIT program in relation to people who use cannabis, in contrast with people who use other drugs (such as heroin or methamphetamine).[317] He outlined that while cannabis can be associated with harms to the individual and the community, these are usually much less severe than harms associated with heroin or methamphetamine.[318] While Professor Lintzeris expressed the value of the MERIT program, he argued that places currently being taken on the program for people with cannabis-related offences 'could be better utilised provided treatment for people with methamphetamine or heroin use disorders'.[319]

Diversion – young people

3.51 The committee has received limited evidence to date on the specific effectiveness of the current diversions available for young people found with small amounts of cannabis, which include warnings, cautions, or referrals to youth justice conferencing.[320]

3.52 However, there was discussion more generally on the issues faced by young people in relation to cannabis or other drug use and arguments for the benefit of support programs.[321] Dr Mary Hellen Harrod, Chief Executive Officer, NSW Users and AIDS Association, advocated for increased investment into youth mental health and substance use services, noting insufficient investment in appropriate services for young people who experience substance use issues.[322]

Does the current model of regulation prevent cannabis use?

3.53 The cannabis related offences discussed in chapter 1 criminalise recreational cannabis possession, use, cultivation and supply in New South Wales. This prohibitionist or criminalisation approach has operated in New South Wales since cannabis was formally prohibited in 1935.[323] This section will consider whether this prohibitionist approach has been effective in achieving its aim of deterring the community from using cannabis.

316 Submission 102, NSW Council for Civil Liberties, p 6.

317 Submission 106, Professor Nicholas Lintzeris, p 5.

318 Submission 106, Professor Nicholas Lintzeris, p 5.

319 Submission 106, Professor Nicholas Lintzeris, p 5.

320 *Young Offenders Act 1997*, Pts 3, 4 and 5.

321 Evidence, Dr Mary Ellen Harrod, Chief Executive Officer, NSW Users and AIDS Association, 1 August 2024, p 36; Evidence, Mr Kieran Palmer, Director of Clinical Services, Ted Noffs Foundation, 20 August 2024, pp 53-54.

322 Evidence, Dr Mary Ellen Harrod, Chief Executive Officer, NSW Users and AIDS Association, 1 August 2024, p 36.

323 Submission 90, Legal Aid NSW, p 23 referencing the *Police Offences (Amendment) Act 1908*.

Deterrence

3.54 As outlined by the New South Wales Bar Association, criminal sanctions are often justified on the basis that they will deter individuals and the community from using cannabis.[324] Criminal sanctions are intended to operate twofold, deterring an individual from continuing to offend by using drugs (specific deterrence), and more broadly deterring the community by sending a signal that society discourages drug use (general deterrence).[325]

3.55 The maximum penalties for possession and use of prohibited drugs (including cannabis) was a $2,000 fine and/or two years' imprisonment when originally introduced with the *Poisons Act 1966*.[326] The current maximum penalties for the same offences are substantially similar, being a $2,200 fine and/or two years' imprisonment.[327] Deterrence was posited as a reason for introducing these maximum penalties in 1966.[328]

3.56 During the second reading of the Poisons Bill 1966, the Hon Arthur Bridges MLC argued that the 'penalty of two years' imprisonment which can be imposed by the court, having regard to the nature of the offence, should be a deterrent' and that '[i]if the court imposed the maximum penalty this would be a real deterrent…'[329]

3.57 During the inquiry, a commonly contended view was that specific and general deterrence of criminal sanctions is ineffective.[330] Mr Greg Barns SC, Spokesperson on Criminal Justice and Human Rights, Australian Lawyers Alliance, asserted that '[t]here is zero evidence – and I mean zero evidence – that the law has any impact on the usage of cannabis … It does not deter'.[331]

3.58 To demonstrate the ineffectiveness of criminal sanctions, Professor Lintzeris outlined research conducted on 998 individuals who had recently come into contact with police for cannabis use or possession.[332] Following this contact with police, there was no clinically relevant reduction in cannabis use by the individuals, and no difference in future criminal offending.[333]

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324 Submission 139, New South Wales Bar Association, p 35.

325 *Crimes (Sentencing Procedure) Act 1999*, s 3A(b); Submission 140, Uniting NSW.ACT, p 15; Evidence, Mr Greg Barns SC, Spokesperson on Criminal Justice and Human Rights, Australian Lawyers Alliance, 1 August 2024, p 10.

326 *Poisons Act 1966*, Div 3 ss 32-33.

327 *Drug Misuse and Trafficking Act 1985*, ss 10, 12, 21.

328 *Hansard*, NSW Legislative Council, 29 March 1966, p 4663 (Arthur Bridges); *Drug Misuse and Trafficking Act 1985*, ss 10, 12, 21; *Poisons Act 1966* Div 3 ss 32-33.

329 *Hansard*, NSW Legislative Council, 29 March 1966, p 4663 (Arthur Bridges).

330 Submission 106, Professor Nicholas Lintzeris, p 8; Evidence, Mr Greg Barns SC, Spokesperson on Criminal Justice and Human Rights, Australian Lawyers Alliance, 1 August 2024, p 10-11.

331 Evidence, Mr Greg Barns SC, Spokesperson on Criminal Justice and Human Rights, Australian Lawyers Alliance, 1 August 2024, p 10-11.

332 Submission 106, Professor Nicholas Lintzeris, pp 7-8, referencing Marian Shanahan, Caitlin Hughes and Tim McSweeney, 'Police diversion for cannabis offences: Assessing outcomes and cost-effectiveness' (June 2017) 532 *Trends & issues in crime and criminal justice, Australian Institute of Criminology*.

333 Submission 106, Professor Nicholas Lintzeris, pp 7-8, referencing Marian Shanahan, Caitlin Hughes and Tim McSweeney, 'Police diversion for cannabis offences: Assessing outcomes and cost-effectiveness' (June 2017) 532 *Trends & issues in crime and criminal justice, Australian Institute of Criminology*.

3.59 The ineffectiveness of deterrence was also demonstrated by the prevalence of cannabis use and its widespread availability.[334] As outlined by the New South Wales Bar Association, cannabis is the most commonly used illicit drug used in New South Wales.[335]

3.60 The National Drug and Alcohol Research Centre claimed that only 4.2 per cent of the Australian population who currently don't use cannabis would try it were it legal, supporting the argument that threat of prosecution does not act as a significant deterrent.[336]

3.61 While many people who use cannabis are not dependent, up to 10 per cent of cannabis users meet the criteria for cannabis use disorder.[337] As noted in chapter 2, the Penington Institute explains that cannabis use disorder occurs when 'people experience various negative outcomes resulting from cannabis use yet find themselves unable to reduce or cease consumption'.[338] Where a person is dependent on a drug, the New South Wales Bar Association notes that the compulsion involved in drug dependence lessens the effectiveness of deterrence.[339]

3.62 While deterrence is posited as a reason for criminal sanctions, it was commonly argued that deterrence has not been effective in preventing cannabis use.[340]

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334 Tabled document, Professor Don Weatherburn, Professor, National Drug and Alcohol Research Centre, *Problems with current policy responses to cannabis*, 19 August 2024, p 2; Evidence, Mr Greg Barns SC, Spokesperson on Criminal Justice and Human Rights, Australian Lawyers Alliance, 1 August 2024, p 10-11; Submission 102, NSW Council for Civil Liberties, p 4; Submission 139, New South Wales Bar Association, p 4; Evidence, Mr Nicholas Broadbent, Secretary, New South Wales Bar Association, 19 August 2024, p 2.

335 Submission 139, New South Wales Bar Association, p 4, referencing Australian Institute of Health and Welfare, *Alcohol, tobacco & other drugs in Australia* (10 July 2024), Australian Institute of Health and Welfare, https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/drug-types/cannabis and Australian Institute of Health and Welfare, *State and Territory summaries of alcohol, tobacco, e-cigarette and other drug use* (29 February 2024), Australian Institute of Health and Welfare, https://www.aihw.gov.au/reports/illicit-use-of-drugs/state-alcohol-drug-use.

336 Tabled document, Professor Don Weatherburn, Professor, National Drug and Alcohol Research Centre, *Problems with current policy responses to cannabis*, 19 August 2024, p 2 referencing Donald Weatherburn, Shane Darke, Emma Zahra and Michael Farrell, 'Who would try (or use more) cannabis if it were legal?' (2022) 41(2) *Drug and Alcohol Review* and Ojmarrh Mitchell, Joshua Cochran, Daniel Mears and William Bales, 'The effectiveness of prison for reducing drug offender recidivism: a regression discontinuity analysis' (2017) 13 *Journal of Experimental Criminology*.

337 Evidence, Dr Robert May, Chair of Addiction Psychiatry, Royal Australian and New Zealand College of Psychiatrists, 19 August 2024, p 14.

338 Submission 111, Penington Institute, p 5.

339 Submission 139, New South Wales Bar Association, p 14.

340 Tabled document, Professor Don Weatherburn, Professor, National Drug and Alcohol Research Centre, *Problems with current policy responses to cannabis*, 19 August 2024, p 2; Evidence, Mr Greg Barns SC, Spokesperson on Criminal Justice and Human Rights, Australian Lawyers Alliance, 1 August 2024, p 10-11; Submission 102, NSW Council for Civil Liberties, p 4; Submission 139, New South Wales Bar Association, p 4; Evidence, Mr Nicholas Broadbent, Secretary, New South Wales Bar Association, 19 August 2024, p 2.

Social implications of cannabis criminalisation

3.63 The committee heard evidence about the social implications that flow from criminalising cannabis related behaviours. These implications are discussed in this section.

Policing practices

3.64 The committee heard that the criminalisation of cannabis can contribute to problematic policing practices. Two of the key, and interrelated issues identified were:

- over policing[341]
- strip searches.[342]

3.65 Over policing generally refers to an excessive or disproportionate presence of police in certain communities. Concerns were raised that the criminalisation of cannabis has facilitated the over policing of vulnerable communities, including Aboriginal and Torres Strait Islander people, young people and LGBTIQA+ people.[343]

3.66 The NSW Council for Civil Liberties advised that between 2020 to 2022, 54,174 people came into contact with police for possessing cannabis in New South Wales.[344] Of these interactions 35 per cent were Aboriginal people, despite only making up three per cent of the New South Wales population.[345]

3.67 The NSW Council for Civil Liberties argued that LGBTIQA+ people are also over policed, referencing the disproportionate scale of police operations at LGBTIQA+ events to the size and risks of these events.[346] They argued there is insufficient evidence that this level of policing is necessary for community safety, giving a perception of biased policing.[347]

3.68 The *Law Enforcement (Powers and Responsibilities Act) 2002* outlines police stop and search powers, including powers to conduct general and strip searches.[348] A strip search can involve a person being made to remove all their clothing. When not at a police station, police can only conduct

341 Submission 356, Drug Policy Australia, p 3; Submission 102, NSW Council for Civil Liberties, p 5; Evidence, Mr Nicholas Cowdery AO KC, Past President, NSW Council for Civil Liberties, 1 August 2024, p 4; Evidence, Ms Samantha Lee, Supervising Solicitor, Redfern Legal Centre, 19 August 2024, p 10; Evidence, Mr David Heilpern, Dean of Law, Southern Cross University, 20 August 2024, p 25.

342 Evidence, Mr Jonathon Paff, Criminal Solicitor and Coffs Harbour Summary Courts Manager, Legal Aid NSW, 1 August 2024, p 14; Submission 203, Aboriginal Legal Service NSW/ACT, p 3; Evidence, Dr Will Tregoning, Chief Executive Officer, Unharm, 1 August 2024, p 40.

343 Submission 356, Drug Policy Australia, p 3; Submission 102, NSW Council for Civil Liberties, p 5; Evidence, Mr Nicholas Cowdery AO KC, Past President, NSW Council for Civil Liberties, 1 August 2024, p 4; Evidence, Ms Samantha Lee, Supervising Solicitor, Redfern Legal Centre, 19 August 2024, p 10; Evidence, Mr David Heilpern, Dean of Law, Southern Cross University, 20 August 2024, p 25.

344 Submission 102, NSW Council for Civil Liberties, p 5.

345 Submission 102, NSW Council for Civil Liberties, p 5.

346 Submission 102, NSW Council for Civil Liberties, p 5.

347 Submission 102, NSW Council for Civil Liberties, p 5.

348 *Law Enforcement (Powers and Responsibilities Act) 2002* Pt 4, Div 1 and 4.

a strip search where it would be necessary for the purposes of the search, and where there are serious and urgent circumstances requiring a strip search.[349]

3.69 According to the Redfern Legal Centre, in the 2018-2019 financial year 91 per cent of all recorded reasons for strip searches were suspicion that a person possessed prohibited drugs.[350]

3.70 It was also claimed during the inquiry that strip searches unfairly impact Aboriginal people and young people.[351] Between June 2016 to July 2023, over a thousand children were strip searched by police, with the youngest being a 10-year-old.[352] Aboriginal children accounted for 45 per cent of those children who were strip searched.[353]

3.71 The NSW Council for Civil Liberties outlined that sniffer dogs can be used to 'sense drugs and screen for suspicious behaviour' which can then be used as a basis for general or strip searches.[354]

3.72 The NSW Ombudsman's Review of the *Police Powers (Drug Detection Dogs) Act 2011* found that drug detection dogs were costly, harmful to public health and ineffective in reducing drug supply.[355]

3.73 The NSW Council for Civil Liberties noted of 4006 searches conducted in 2023 following drug dog detection, drugs were identified 29 per cent of the time.[356]

3.74 The case study below outlines an account of a strip search of a young person on the basis of suspicion of cannabis possession following detection by a drug dog.

Case study – Strip searches

17-year-old Jess saved up for months to buy a ticket to attend a music festival. While she was standing in the queue to enter the festival, she was asked to step aside and told that the drug dog had detected the presence of drugs on her.

Jess was taken to a tented area, where she was again told that the drug dog had given an indication of drugs on her. She was asked if she had any drugs on her. She said she did not possess any and that she hadn't done any drugs. Jess also said that her friend had smoked some marijuana just before they came to the festival.

The police did not believe her and asked her to take off all her clothes and stand facing the wall with her hands up against the wall. They repeatedly asked her if she was in procession of drugs and her answer was the same. The process left Jess in tears. A female officer was in the tent, and they asked

349 *Law Enforcement (Powers and Responsibilities Act) 2002* s 31.

350 Submission 222, Redfern Legal Centre, p 5.

351 Submission 203, Aboriginal Legal Service NSW/ACT, p 3; Evidence, Ms Samantha Lee, Supervising Solicitor, Redfern Legal Centre, 19 August 2024, p 7.

352 Submission 222, Redfern Legal Centre, p 5.

353 Submission 222, Redfern Legal Centre, p 5.

354 Submission 102, NSW Council for Civil Liberties, p 5.

355 Submission 102, NSW Council for Civil Liberties, p 5.

356 Submission 102, NSW Council for Civil Liberties, p 5.

Jess to squat, they asked her to cough, and she was asked to pull her buttocks apart and lift her breasts. Jess was crying and continuously said that she did not have any drugs. Nothing was found on her. The police searched her bag, and nothing was found in it either. She was asked to get dressed and leave the festival. She was in tears, but no consideration of her wellbeing was made. Two police officers walked her out of the festival and her tickets were confiscated.

Jess felt humiliated and was strip-searched only on the basis of suspicion of minor drug procession.

* Evidence, Ms Samantha Lee, Supervising Solicitor, Redfern Legal Centre, 19 August 2024, p 7.

3.75 It was claimed during the inquiry that over policing and strip searches can be interrelated.[357] For example, the Aboriginal Legal Service NSW/ACT, noted that Aboriginal people are more likely to be subjected to proactive policing in public places than non-Aboriginal people, and that police are more likely to use force, conduct strip searches, and charge rather than divert Aboriginal people.[358]

3.76 Similarly, Mr Jonathon Paff, Criminal Solicitor and Coffs Harbour Summary Courts Manager, Legal Aid NSW, argued that people who are over policed are more likely to have criminal records, which are subsequently used as a basis for searches.[359]

3.77 Dr Will Tregoning, Chief Executive Officer, Unharm, asserted that the threat or possibility of searches can in and of itself make public spaces less safe for Aboriginal people:

> Being Aboriginal in a public place means, for very many people, the experiences of constant fear of being stopped and searched by police. Even the threat of stop and search for a cannabis offence essentially makes public space less safe for people who are visibly Aboriginal in their appearance.[360]

Social implications for individuals

3.78 The committee heard evidence that criminal prosecution for minor cannabis offences can have significant impacts on an individual that outweigh the harm of the offence, including:

- negative impacts on wellbeing[361]

357 Evidence, Mr Jonathon Paff, Criminal Solicitor and Coffs Harbour Summary Courts Manager, Legal Aid NSW, 1 August 2024, p 14; Submission 203, Aboriginal Legal Service NSW/ACT, p 3; Evidence, Dr Will Tregoning, Chief Executive Officer, Unharm, 1 August 2024, p 40.

358 Submission 203, Aboriginal Legal Service NSW/ACT, p 3.

359 Evidence, Mr Jonathon Paff, Criminal Solicitor and Coffs Harbour Summary Courts Manager, Legal Aid NSW, 1 August 2024, p 14.

360 Evidence, Dr Will Tregoning, Chief Executive Officer, Unharm, 1 August 2024, p 40.

361 Submission 90, Legal Aid NSW, p 16; Submission 102, NSW Council for Civil Liberties, p 6; Evidence, Dr Mary Ellen Harrod, Chief Executive Officer, NSW Users and AIDS Association, 1 August 2024, p 41; Evidence, Mr Nicholas Cowdery AO KC, Past President, NSW Council for Civil Liberties, 1 August 2024, p 6.

- exposure to the criminal justice system[362]
- socioeconomic impacts.[363]

Negative impacts on wellbeing

3.79 It was highlighted that a conviction for drug possession has adverse impacts on employment, education, earning prospects, access to housing, travel, as well as negative impacts on relationships and wellbeing.[364] A conviction can also have personal implications, carrying significant stigma, and enduring harm to reputation and identity disproportionate to the harm of the cannabis use or possession.[365]

Exposure to the criminal justice system

3.80 The committee also heard that contact with the criminal justice system for a minor cannabis matter can cause people to get caught up in the criminal justice system.[366] This was explained by Mr Paff who noted that a person's criminal record can often be traced back to an original minor possession matter:

> It's often the case at Legal Aid that we can trace back someone's original sentence to be a very minor possession matter or a very minor matter that they got a good behaviour bond for, which they then breached or they didn't attend community corrections, and that ultimately results in the imposition of a period of imprisonment for an offence that objectively had really no reason to impose that sentence.[367]

3.81 The issue of 'secondary offending' which can flow from being convicted for an offence was explained by Mr Broadbent:

> [T]here is a substantial risk of what is referred to as "secondary offending" that can flow from a person being convicted of a particular offence. If conditions are placed upon them—an example of that can be where the way that a person travels might somehow be restricted. In a remote and regional area where public transport, for instance, is not available or not particularly well resourced, then that's something that can give rise to, in effect, secondary offending.

362 Submission 90, Legal Aid NSW, p 16; Submission 102, NSW Council for Civil Liberties, p 6; Evidence, Dr Mary Ellen Harrod, Chief Executive Officer, NSW Users and AIDS Association, 1 August 2024, p 41; Evidence, Mr Nicholas Cowdery AO KC, Past President, NSW Council for Civil Liberties, 1 August 2024, p 6; Professor Don Weatherburn, Professor, National Drug and Alcohol Research Centre, 19 August 2024, p 32.

363 Submission 106, Professor Nicholas Lintzeris, pp 7-8; Evidence, Dr Robert May, Chair of Addiction Psychiatry, Royal Australian College and New Zealand College of Psychiatrists, 19 August 2024, p 16; Evidence, Ms Samantha Lee, Supervising Solicitor, Redfern Legal Centre, 19 August 2024, p 8.

364 Submission 90, Legal Aid NSW, p 16; Submission 102, NSW Council for Civil Liberties, p 6.

365 Submission 102, NSW Council for Civil Liberties, p 6; Evidence, Dr Mary Ellen Harrod, Chief Executive Officer, NSW Users and AIDS Association, 1 August 2024, p 41; Evidence, Mr Nicholas Cowdery AO KC, Past President, NSW Council for Civil Liberties, 1 August 2024, p 6.

366 Evidence, Mr Nicholas Cowdery AO KC, Past President, NSW Council for Civil Liberties, 1 August 2024, p 6; Evidence, Professor Don Weatherburn, Professor, National Drug and Alcohol Research Centre, 19 August 2024, p 32.

367 Evidence, Mr Jonathon Paff, Criminal Solicitor and Coffs Harbour Summary Courts Manager, Legal Aid NSW, 1 August 2024, p 13.

> Secondary offending is problematic because, particularly where it flies in the face of an order of the court, that is, in and of itself, quite a serious matter, and it is viewed as such. Very quickly, people's levels of criminality can escalate and increase.[368]

3.82 The significant and problematic flow on effects for young people facing court for minor cannabis matters was commented on during the inquiry. Mr Cowdery AO KC, outlined the impacts of a conviction for young Aboriginal people:

> A lot of studies have been done about First Nations youth in relation to this in particular. Once they have their first conviction, they are pretty much set on a path of further convictions and, ultimately, imprisonment. That has to be broken at an early point. [369]

3.83 Mr Broadbent claimed that contact with the criminal justice system for young people can disrupt education and lead to a normalisation of criminality and punishment:

> [O]ne of the other issues I think, particularly for young people, is a change in expectations. There is a normalisation of criminality and punishment as being part of life. We have also made reference to the fact that criminalisation disrupts education, particularly if there is incarceration involved. It can disrupt working prospects. That's a very significant matter. [370]

3.84 It was posited that the cyclical nature of offending is concerning where there is limited evidence that cannabis causes further anti-social behaviours.[371] As contended by Ms Alice Salomon, Head of Media and Advocacy, Uniting NSW.ACT, most people using drugs lead normal lives and it is the harms associated with criminalisation that have the most significant impact:

> … Uniting has significant interest in reforming laws to ensure a health-based approach to drug use and dependency and better outcomes for people and communities … most people use drugs and lead very ordinary lives; nothing needs to be done. It is the harm of criminalisation that is having the most impact.[372]

3.85 Ms Salomon continued, outlining that the current system can prevent those that do need treatment from seeking help:

> For a small number of individuals who do go on to develop drug dependency, the current approach erects barriers to accessing help and support. Existing drug laws create unnecessary obstacles, hindering people from seeking treatment, amplifying stigma and exacerbating the isolation felt by those who might actually benefit from connection.[373]

368 Evidence, Mr Nicholas Broadbent, Secretary, New South Wales Bar Association, 19 August 2024, p 5.

369 Evidence, Mr Nicholas Cowdery AO KC, Past President, NSW Council for Civil Liberties, 1 August 2024, p 6.

370 Evidence, Mr Nicholas Broadbent, Secretary, New South Wales Bar Association, 19 August 2024, p 5.

371 Evidence, Mr Nicholas Broadbent, Secretary, New South Wales Bar Association, 19 August 2024, p 2.

372 Evidence, Ms Alice Salomon, Head of Media and Advocacy, Uniting NSW.ACT, 19 August 2024, p 47.

373 Evidence, Ms Alice Salomon, Head of Media and Advocacy, Uniting NSW.ACT, 19 August 2024, p 47.

Socioeconomic impacts

3.86 The impact of cannabis criminalisation on individuals from a socioeconomic perspective was also discussed during the inquiry.[374] Professor Lintzeris noted that individuals charged in court for cannabis use or possession (in comparison to people diverted from the criminal justice system), were more likely to experience employment problems, including being denied or losing employment.[375]

3.87 This view was echoed by Dr Robert May, Chair of Addiction Psychiatry, Royal Australian College and New Zealand College of Psychiatrists, who outlined the impact of the criminalisation of cannabis on people who use drugs with mental illness. Dr May argued that criminalisation further stigmatises this population, limits their capacity to gain employment and rejoin the workforce.[376]

3.88 Ms Samantha Lee, Supervising Solicitor, Redfern Legal Centre expressed frustration at the costs to the community and the individual of cannabis prosecutions in comparison to the harm of the behaviour:

> The amount of money that you're looking at in terms of getting these young people through the justice system is ludicrous. At first, you have the policing costing, then you have the solicitors and youth workers, and then you have the judges and the legal system. All of this is for a small amount of cannabis. Then you have the impacts later on of them getting a criminal record that's impacting on their employment. In terms of an economic scale, it does not make sense.[377]

Human rights

3.89 Australia is a signatory to three United Nations conventions relevant to cannabis policy and regulation:

- the Single Convention on Narcotic Drugs (1961 as amended by the 1972 Protocol)
- the Convention on Psychotropic Drugs (1971)
- the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).[378]

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374 Submission 106, Professor Nicholas Lintzeris, pp 7-8; Evidence, Dr Robert May, Chair of Addiction Psychiatry, Royal Australian College and New Zealand College of Psychiatrists, 19 August 2024, p 16; Evidence, Ms Samantha Lee, Supervising Solicitor, Redfern Legal Centre, 19 August 2024, p 8.

375 Submission 106, Professor Nicholas Lintzeris, pp 7-8, referencing Marian Shanahan, Caitlin Hughes and Tim McSweeney, 'Police diversion for cannabis offences: Assessing outcomes and cost-effectiveness' (June 2017) 532 *Trends & issues in crime and criminal justice, Australian Institute of Criminology*.

376 Evidence, Dr Robert May, Chair of Addiction Psychiatry, Royal Australian College and New Zealand College of Psychiatrists, 19 August 2024, p 16.

377 Evidence, Ms Samantha Lee, Supervising Solicitor, Redfern Legal Centre, 19 August 2024, p 8.

378 Answers to questions on notice, Ms Liz Barrett, Research Officer and Ms Keelin O'Reilly, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 27 August 2024, p 8.

3.90 The Commission on Narcotic Drugs (CND), the International Narcotics Control Board (INCB), and the United Nations Office on Drugs and Crime (UNOCD) are the agencies responsible for these conventions.[379] These conventions take a prohibitionist approach to illicit drugs.

3.91 The Drug Policy Modelling Program, UNSW noted that while these agencies maintain a prohibitionist approach, the CND and UNODC have 'softened' their language around drug regulation.[380] This is reflected in the INCB President's statement that the 'use of alternatives to conviction and punishment [for use and possession], as provided for by the conventions, can form an integral part of a balanced and human-rights based approach to drug policy'.[381]

3.92 Some inquiry participants have argued that while the use of cannabis is not expressly a human right, its use may flow from other human rights.[382] For example, Mr Cowdery AO KC, noted that a person's choice to use cannabis could flow from the right to privacy and the right to bodily integrity.[383]

3.93 The Drug Policy Modelling Program, UNSW, argued that other United Nations agencies have expressed that a prohibitionist approach to drugs conflicts with state responsibilities under other international treaties that include responsibility for provisions of health and harm reduction initiatives.[384] For example:

- United Nations General Assembly Resolution: taking into account the severe impact that a conviction for a drug-related offence can have on a person's life, alternatives to prosecution and imprisonment for minor, non-violent drug-related offences should be considered.[385]

379 Answers to questions on notice, Ms Liz Barrett, Research Officer and Ms Keelin O'Reilly, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 27 August 2024, p 8.

380 Answers to questions on notice, Ms Liz Barrett, Research Officer and Ms Keelin O'Reilly, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 27 August 2024, p 8.

381 Answers to questions on notice, Ms Liz Barrett, Research Officer and Ms Keelin O'Reilly, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 27 August 2024, p 9 referencing Press Release, International Narcotics Control Board, 'INCB President presents annual reports to Economic and Social Council, focusing on illicit financial flows related to drug trafficking and their impact on development and security', 9 June 2022.

382 Evidence, Mr Nicholas Cowdery AO KC, Past President, NSW Council for Civil Liberties, 1 August 2024, p 6; Evidence, Dr James Moylan, Law Reform Activity, 20 August 2024, p 16.

383 Evidence, Mr Nicholas Cowdery AO KC, Past President, NSW Council for Civil Liberties, 1 August 2024, p 6.

384 Answers to questions on notice, Ms Liz Barrett, Research Officer and Ms Keelin O'Reilly, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 27 August 2024, p 8.

385 Answers to questions on notice, Ms Liz Barrett, Research Officer and Ms Keelin O'Reilly, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 27 August 2024, p 11.

- Human Rights Council: Study on the impact of the world drug problem on the enjoyment of human rights – includes a call for member states to consider 'removing obstacles to the right to health including by decriminalising the person use and possession of drugs.'[386]

3.94 The Drug Policy Modelling Program, UNSW, further argued that the conventions are 'antiquated, not reflective of best practice evidence in relation to the use of drugs and can lead to serious breaches of other international conventions – notably the UN charter of human rights'.[387]

Costs of the current framework

3.95 The Drug Policy Modelling Program UNSW cited research that the social costs associated with cannabis in Australia in 2015/2016 were approximately $4.4 billion. With CPI applied, the cost for 2022/2023 would be $5.34 billion.[388] The costs broken down from the 2015/2016 figure are:

- $2.4 billion - criminal justice system costs, including imprisonment and the administration of court orders
- $714 million – healthcare
- $560 million – workplace costs
- $194 million – traffic accidents
- $470 million – other costs.[389]

3.96 Cannabis possession offences made up 57 per cent of all drug possession court proceedings in New South Wales in 2021.[390] Professor Lintzeris outlined an estimated average cost of enforcement mechanisms for cannabis use and possession:

- charge - $1918.10
- caution - $318

386 Answers to questions on notice, Ms Liz Barrett, Research Officer and Ms Keelin O'Reilly, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 27 August 2024, p 11.

387 Answers to questions on notice, Ms Liz Barrett, Research Officer and Ms Keelin O'Reilly, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 27 August 2024, p 10.

388 Submission 110, Drug Policy Modelling Program, SPRC, UNSW, p 7, referencing Steve Whetton et al, 'Quantifying the Social Costs of Cannabis Use to Australia in 2015/16' (June 2020), National Drug Research Institute, Curtin University.

389 Answers to questions on notice, Ms Liz Barrett, Research Officer and Ms Keelin O'Reilly, Research Officer, Drug Policy Modelling Program, SPRC, UNSW, 27 August 2024, p 5; Submission 106, Professor Nicholas Lintzeris, p 7.

390 Submission 176, National Drug and Alcohol Research Centre, p 5.

- warning - $122.60.[391]

3.97 In its submission, Legal Aid NSW commented that both drug possession and drug driving matters relating to cannabis take up a significant portion of Local Court workload. In advocating for decriminalisation, Legal Aid NSW argued that this would result in measurable savings on court and legal resources, as well as custodial costs.[392]

Workplace regulations and policies

3.98 The *Work Health and Safety Act 2011* and related regulations and Codes of Practice (WHS regulation) regulate duties of employers and employees in New South Wales.[393] Employers have obligations to ensure workers are not exposed to hazards and risks which might impact workplace safety, including the use of alcohol or drugs which could result in impairment at work.[394] Employees have obligations to take care of their own health and safety and not adversely affect the safety of others, including using alcohol or drugs which could cause impairment in the workplace.[395]

3.99 As discussed in chapter 1, cannabis (both prescribed and illegally obtained) contains delta-9-tetrahydrocannabinol (THC) which is psychoactive. The Australian Industry Group identified the following key risks in relation to the consumption of THC:

- that it may impair cognitive and memory function
- it may cause intoxication, anxiety, panic, disorientation and dizziness
- it may impair driving performance.[396]

3.100 The Australian Industry Group stated 'that there is still so much evidence out there that is saying that THC is the problem' and it creates 'an impairment level that employers need to think about. It has become very complex for them'.[397]

3.101 Also according to the Australian Industry Group, the risk of injury or harm to an employee or to others due to an employee's use of cannabis increases if that employee conducts safety critical tasks, such as operating machinery, driving, using hazardous substances or performing complex tasks that require concentration and/or motor coordination.[398]

391 Submission 106, Professor Nicholas Lintzeris, pp 7-8, referencing Marian Shanahan, Caitlin Hughes and Tim McSweeney, 'Police diversion for cannabis offences: Assessing outcomes and cost-effectiveness' (June 2017) 532 *Trends & issues in crime and criminal justice, Australian Institute of Criminology*.

392 Submission 90, Legal Aid NSW, p 20.

393 *Work Health and Safety Act 2011*.

394 Submission 93, Australian Industry Group (Ai Group), p 3.

395 Submission 93, Australian Industry Group (Ai Group), p 3.

396 Submission 93, Australian Industry Group (Ai Group), pp 12-13.

397 Evidence, Ms Tracey Browne, Manager, National Work Health and Safety and Workers' Compensation, Australian Industry Group, 1 August 2024, p 33.

398 Submission 93, Australian Industry Group (Ai Group), p 4.

Workplace drug testing

3.102 The Australian Industry Group advised that employers have obligations to implement control measures which eliminate or minimise risks of injury or harms in the workplace due to impairment associated with cannabis or other drug use.[399]

3.103 In most cases, where there is a risk of injury or harm in the workplace, employers will implement a drug and alcohol policy which the Australian Industry Groups outlines 'may regulate permitted levels of THC (which may be zero)' and allow for workplace drug testing.[400]

3.104 The Australian Industry Group acknowledged that a positive result to THC following workplace drug testing may not mean a person is impaired by cannabis:

> [T]here is debate about whether a positive result for THC indicates cannabis impairment or whether it simply indicates a person is cannabinoid positive. This is because unlike alcohol and some other drugs, traces of THC may be present for some time after use.[401]

3.105 The Australian Industry Group claimed that until an objective test exists, establishing impairment remains 'highly subjective and dependent on a health practitioner's skill'.[402]

3.106 Unions NSW outlined that the purpose of workplace screening for cannabis is not necessarily achieved through current testing regimes:

> [W]orkplaces which screen for cannabis do so to control the perceived safety risks of impairment. The current testing regime, which tests for presence instead of impairment, is therefore ill-equipped for this purpose and causes unnecessary punitive outcomes for both workers and workplaces.[403]

Dismissals for breaching a drug and alcohol policy – unfair dismissal laws

3.107 If an employee is dismissed by an employer due to a breach of the employer's drug and alcohol policy, the employee may apply for an unfair dismissal remedy under the *Fair Work Act 2009* (Cth).[404] The dismissal is deemed unlawful if the Fair Work Commission finds it was harsh, unjust or unreasonable.[405] In most cases, if an employee fails to comply with a drug and alcohol policy, either by breaching the policy (failing the workplace drug test) or refusing to take the test, the dismissal will be deemed lawful and reasonable.[406]

399 Submission 93, Australian Industry Group (Ai Group), p 4.

400 Submission 93, Australian Industry Group (Ai Group), p 4.

401 Submission 93, Australian Industry Group (Ai Group), p 16.

402 Submission 93, Australian Industry Group (Ai Group), p 17.

403 Submission 358, Unions NSW, p 5.

404 Submission 93, Australian Industry Group (Ai Group), p 7; *Fair Work Act 2009* (Cth), pt 3-2.

405 *Fair Work Act 2009* (Cth), Pt 3-2, Div 3, s 385.

406 Submission 93, Australian Industry Group (Ai Group), p 7.

3.108 According to the Australian Industry Group, 'a drug and alcohol policy supported by workplace drug testing is likely to be lawful and reasonable if it is necessary to ensure the safety and welfare of the employee and other people in the workplace'.[407]

3.109 It was raised by Unions NSW that '65% of Australian resources industry employers take a "zero-tolerance" approach to drug and alcohol use'.[408] Unions NSW argued that this approach makes 'the likely outcome of a failed drug test … very serious for workers'.[409] They identified the flow on effects for an employee terminated for a positive drug test:

> A worker whose employment is terminated due to a failed drug test will likely struggle to regain employment in a similar role or industry, especially if their industry has a zero-presence policy for drugs.[410]

Anti-discrimination laws

3.110 In their submission, the Australian Industry Group considered whether the term 'disability' extends to users of medicinal cannabis under the *Anti-Discrimination Act 1977*.[411] They found that 'a drug and alcohol policy which prohibits or limits a person from using prescribed medicinal cannabis, may be a requirement, condition or practice with which the worker is unable to comply because of their disability' and that this may equate to unlawful discrimination.[412]

3.111 However, the Australian Industry Group also stated that under the *Anti-Discrimination Act 1977* an employer can 'lawfully impose a discriminatory requirement, condition or practice … where is it reasonable in the circumstances of the case'.[413] They claimed that prohibiting the use of medicinal cannabis where that use 'would diminish an employer's general safety standards' is likely to be reasonable.[414]

3.112 Unions NSW provided an alternative perspective, that 'the presence testing regime in workplaces is particularly discriminatory for those who are prescribed medicinal cannabis for legitimate health purposes'.[415] They explained that 'medicinal users whose employers have a zero-tolerance policy are generally unable to consume their medication as prescribed' and that this has 'a significant impact on them and their workplace, creating an additional work health and safety risk by preventing the appropriate medical consumption of the required dose'.[416] Unions NSW argued that disciplining such medicinal users could potentially breach employer obligations:

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407 Submission 93, Australian Industry Group (Ai Group), p 7.

408 Submission 358, Unions NSW, p 5.

409 Submission 358, Unions NSW, p 5.

410 Submission 358, Unions NSW, p 5.

411 Submission 93, Australian Industry Group (Ai Group), p 8.

412 Submission 93, Australian Industry Group (Ai Group), p 9.

413 Submission 93, Australian Industry Group (Ai Group), p 9; *Anti-Discrimination Act 1977,* Pt 4A, Div 1, s 49B(1)(b).

414 Submission 93, Australian Industry Group (Ai Group), p 9.

415 Submission 358, Unions NSW, p 5.

416 Submission 358, Unions NSW, p 5.

> The practice of disciplining a medicinal user is discriminatory and problematic for employers' obligations under the *Work Health and Safety Act 2011* (NSW) to make 'reasonable adjustments' to work practices for those with an injury, illness, or disability.[417]

Privacy laws

3.113 As explained by the Australian Industry Group, employers have an obligation to comply with the Australian Privacy Principles contained in the *Privacy Act 1988* (Cth).[418] These principles apply when collecting health information, including information about prescription medication, medical disability and workplace drug testing information.[419]

3.114 However, Unions NSW contend that medicinal cannabis users often face privacy violations in the workplace:

> Other forms of workplace discrimination that medicinal users often face include having their privacy violated through being required to discuss their medical condition, experiencing reduced shifts, or being more frequently subjected to drug testing.[420]

Traffic offences

3.115 Under the *Road Transport Act 2013*, a person must not drive with the presence of a prescribed illicit drug in their oral fluid, blood or urine.[421] The Transport Workers' Union of New South Wales explained how current road safety legislation impacts employees working within the transport industry:

> Currently, driving a vehicle under the influence of cannabis, medicinal or not, carries a zero-tolerance offence. This proves to be a difficult scenario to deal with on the part of transport workers, and heavy vehicle drivers specifically, as this law completely disincentivises their use of medicinal cannabis for the treatment of their health conditions, where applicable.[422]

3.116 The Transport Workers' Union of New South Wales argued for further study into medicinal cannabis use and driving impairment to better inform policy:

> [T]he effects of medicinal cannabis on driving ability cannot be identified in a concrete manner. Therefore … it is necessary to invest in further practical studies if the relationship between medicinal cannabis and driving impairment can be properly assessed, especially if the development of policy is concerned.[423]

417 Submission 358, Unions NSW, p 5.

418 Submission 93, Australian Industry Group (Ai Group), p 9; *Privacy Act 1988* (Cth).

419 Submission 93, Australian Industry Group (Ai Group), p 9; *Privacy Act 1988* (Cth).

420 Submission 358, Unions NSW, p 5.

421 *Road Transport Act 2013,* s 111.

422 Submission 113, Transport Workers' Union of New South Wales, p 4.

423 Submission 113, Transport Workers' Union of New South Wales, p 4.

Regulation of medicinal cannabis

3.117 Throughout the course of the inquiry, cultivators and manufacturers of medicinal cannabis raised concerns with respect to the extensive regulations and protocols that impede the growth and accessibility of Australian-grown medicinal cannabis, namely:

- regulation of imported versus domestic products
- quality control requirements
- accessibility of medicinal cannabis products.[424]

Regulation of imported versus domestic products

3.118 The committee heard evidence that it is more difficult to produce medicinal cannabis in Australia than to import it due to regulatory burden.[425]

3.119 Mr Joel Hardy, Chief Executive Officer, Cymra Life Sciences, advised that currently, it is still much easier to obtain an import permit for a product rather than to develop the product within Australia:

> [I]f you want to get an import permit for a product, it's very easy. You fill in paperwork, you ask for it and you can ship it over. If I want to create a new space within my site, six months and about $50,000 is basically what I've got to go do. There is a big difference. And I've got to prove where it's going to go because they're worried about diversion or they're worried about if I can oversupply and things like that. There's a big difference between how easy it is to import.[426]

3.120 Mr Hardy argued that the government should 'at least create a position where importers are subject to the same conditions that we are, which is to prove where this is going, who you are, background checks and whether we need this supply or not'.[427]

3.121 This issue was also identified by Mr James Gaskell, Chief Operating Officer, Australian Natural Therapeutics Group. Mr Gaskell outlined that it is much easier for import businesses to secure a permit compared to Australian producers, who also have infrastructure costs, employees, greater restrictions and compliance procedures.[428]

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424 Submission 285, Australian Natural Therapeutics Group, pp 2-4; Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, pp 2-9; Evidence, Mr James Gaskell, Chief Operating Officer, Australian Natural Therapeutics Group, 19 August 2024, p 36; Evidence, Mr Edward Strong, Head of Government Relations, Montu Group Pty Ltd, 19 August 2024, p 40.

425 Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 2; Evidence, Mr James Gaskell, Chief Operating Officer, Australian Natural Therapeutics Group, 19 August 2024, p 36.

426 Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 2.

427 Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 4.

428 Evidence, Mr James Gaskell, Chief Operating Officer, Australian Natural Therapeutics Group, 19 August 2024, p 36.

3.122 Mr Hardy explained that 70 per cent of medicinal cannabis product that comes into Australia is imported and that this can cause oversupply issues.[429] Mr Hardy advised that in order to prevent the oversupply of medicinal cannabis into Australia, a mechanism should be applied to allow for demands to be met first by domestically sourced products, rather than imports:

> …within the UN convention, the INCB, there is a mechanism for understanding oversupply in the country and making sure that there's an ability for local production to occur, which is what happens in opiates. There should be a similar adjustment in Australia as well.[430]

3.123 Mr Hardy also advised that 'of the top five countries that import [medicinal cannabis] to this country … we can't export to any of those countries' and elaborated on this further to explain the impact that this has on Australian producers:[431]

> We're one of the agriculture capitals of the world, yet we're allowing a country that doesn't have an agricultural history to import products into our country and we're not allowed to export to them. That's really frustrating for a producer who is trying to put local jobs in regional areas and grow things in an industry that is ripe for Australian producers and Australian growers.[432]

Quality control requirements

3.124 Australian producers must comply with the good manufacturing process (GMP), which is a set of standards written by manufacturers to adhere to the Therapeutic Goods Administration regulations.[433] Since 1 July 2023, imported medicinal cannabis products must also meet GMP standards.[434]

3.125 Mr Hardy asserts that these standards are 'not only a way of controlling quality' but 'also a way of producing a very clean product'.[435] Mr Hardy explained what is required at the operational level for producers to achieve the GMP standard:

> Whenever even I walk into the facility, I have to do certain things when I'm in that facility that mean that I don't affect the product in any way or touch anything, and that applies to every single employee. So, we have to train every single employee who comes

429 Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 2.

430 Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 3.

431 Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 2. Countries listed in evidence include Canada, South Africa, Columbia, and Portugal.

432 Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 2.

433 Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 6.

434 Australian Government – Department of Health, Therapeutic Goods Administration, Special Access Scheme – Guidance for Sponsors, March 2023, https://www.tga.gov.au/sites/default/files/2023-02/special-access-scheme-sas-guidance-sponsors.pdf.

435 Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 6.

> into our facility about what they can and can't do, what protective gear they need to wear, where they need to put things, the steps, the paperwork, all that sort of stuff, because we are a controlled drug.[436]

3.126 Mr Hardy advised that for the first five years of the TGA Special Access Scheme category B, the GMP standard did not apply to imported products and stated that it was 'unfortunate' that imports would be favoured over domestic production.[437]

Accessibility of medicinal cannabis products

3.127 The following key issues were raised by manufacturers of medicinal cannabis throughout the inquiry which impact the ability of patients to access medicinal cannabis products:

- costs
- lack of ability to choose a product
- lack of training and education.

3.128 According to the Australian Natural Therapeutics Group 'the high cost of medicinal cannabis remains a significant barrier for many patients' and 'unlike other medications, most medicinal cannabis products are not covered by the Pharmaceutical Benefits Scheme (PBS), making medications expensive'.[438]

3.129 Mr Hardy advised that the 'price is not just the product price; it's also the cost of appointments'.[439] Mr Hardy explained that the current system requires patients to go back to their doctor every time they want to change their prescription, which is 'typically around $100 to $150' and that there are other supply chain costs that get added to the total price.[440]

3.130 In evidence, Mr Hardy explained that 'there are lots of different formats and lots of different [cannabis] products' however, in the current system, patients have no control over what product their doctor prescribes.[441]

3.131 Another concern raised was that general practitioners are generally not educated on medicinal cannabis and the products available to patients.[442]

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436 Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 6.

437 Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 2.

438 Submission 285, Australian Natural Therapeutics Group, p 3.

439 Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 2.

440 Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 7.

441 Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 2.

442 Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 2.

3.132 Mr Edward Strong, Head of Government Relations, Montu Group Pty Ltd, advised that 'only about five per cent of GPs [general practitioners] are able to prescribe medicinal cannabis'.[443] Mr Matthew McCrone, Industry and Government Engagement Lead, Montu Group Pty Ltd, commented on the issue of general practitioners not having sufficient knowledge about prescribing medicinal cannabis:

> GPs say that their patients come to ask them about medicinal cannabis and they don't know what to say. As much as the TGA [Therapeutic Goods Administration] access pathways do work, they are complicated.[444]

NSW Drug Summit 2024

3.133 The current NSW Government made a pre-election commitment to hold a Drug Summit in NSW, which has now been confirmed to take place in November and December 2024.[445] The Drug Summit will include two regional forums in Griffith and Lismore, and two forums in Sydney.[446] The summit will be Chaired by former NSW Deputy Premier Carmel Tebbutt and former NSW Leader of the Opposition, John Brogden.[447]

3.134 The summit will focus on health promotion and wellbeing, equity, respect and inclusion, safety and justice, keeping young people safe, supporting families, and integration of support and social services.[448]

3.135 The summit will include medical experts, police, people with lived experience, families, service providers, drug user organisations and other stakeholders.[449]

3.136 According to the government, the upcoming Drug Summit offers an appropriate and timely forum to discuss drug policies in depth.[450]

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443 Evidence, Mr Edward Strong, Head of Government Relations, Montu Group Pty Ltd, 19 August 2024, p 40.

444 Evidence, Mr Matthew McCrone, Industry and Government Engagement Lead, Montu Group Pty Ltd, 19 August 2024, p 40.

445 Media Release, the Hon Chris Minns MP, Premier and the Hon Ryan Park MP, Minister for Health, Minister for Regional Health, and Minister for the Illawarra and the South Coast, '$33.9 million for drug and alcohol support and Drug Summit date confirmed', 12 July 2024.

446 Media Release, the Hon Chris Minns MP, Premier and the Hon Ryan Park MP, Minister for Health, Minister for Regional Health, and Minister for the Illawarra and the South Coast, '$33.9 million for drug and alcohol support and Drug Sumit date confirmed', 12 July 2024; Media Release, the Hon Ryan Park MP, Minister for Health, Minister for Regional Health, and Minister for the Illawarra and the South Coast, 'Drug Summit co-chairs appointed, regional forums confirmed', 6 September 2024.

447 Media Release, the Hon Ryan Park MP, Minister for Health, Minister for Regional Health, and Minister for the Illawarra and the South Coast, 'Drug Summit co-chairs appointed, regional forums confirmed', 6 September 2024.

448 NSW Health, *NSW Drug Summit 2024*, NSW Health, https://www.health.nsw.gov.au/aod/summit/Pages/default.aspx.

449 Media Release, the Hon Ryan Park MP, Minister for Health, Minister for Regional Health, and Minister for the Illawarra and the South Coast, 'Drug Summit co-chairs appointed, regional forums confirmed', 6 September 2024.

450 *Hansard*, NSW Legislative Council, 7 August 2024, pp 8-9 (Courtney Houssos).

Committee comment

3.137 The committee heard a significant volume of evidence about the effectiveness of the current regulatory framework for cannabis in New South Wales. Comment is structured by the following topics:

- current offences and depenalisation schemes
- social implications
- NSW Drug Summit 2024
- deterrence
- medicinal cannabis regulation.

Current offences and depenalisation schemes

3.138 Evidence to this committee demonstrates that some offences and depenalisation schemes relating to cannabis could be improved.

3.139 The committee notes the lack of distinction between supplying for commercial gain and non-commercial supply of cannabis, or gifting, in supply offences. Supplying cannabis for commercial gain, or 'dealing' in cannabis, is more serious criminal conduct than gifting or sharing cannabis amongst adult friends or family. The committee finds that there are sufficient grounds to distinguish between supply for commercial gain and non-commercial supply of cannabis or gifting in cannabis related offences.

Finding 5

That there are sufficient grounds to distinguish between supply for commercial gain and non-commercial supply of cannabis or gifting in cannabis related offences.

3.140 The concern from the community and legal experts about the *Road Transport Act 2013* section 111 'presence of a prescribed illicit drug in oral fluid, blood or urine' offence is acknowledged. The committee notes that mobile drug testing does not test for levels of cannabis in a person's system or impairment, nor is impairment necessary for a person to commit this offence.

3.141 A conviction and subsequent licence disqualification can have considerable impacts on individuals, noting that licence disqualification periods can restrict a person's ability to go about their daily life, particularly in regional or remote areas.

3.142 It is noted that cannabis can remain in a person's system long after they have consumed it, when it is most likely no longer causing any effects that would impair their driving. This is problematic given there is no exemption for medicinal cannabis patients who drive unimpaired and have cannabis detected in their system. Further, they are committing an offence under section 111 'presence of prescribed illicit drug in person's oral fluid, blood or urine'. The committee finds this offence is likely unreasonably criminalising medicinal cannabis patients who need to drive. However, the committee is yet to conclude its considerations of this issue and will be taking

further evidence from witnesses expert in road safety and in the experience in Tasmania where a medicinal cannabis use defence has been legislated for. The committee is acutely aware of the need to ensure that road safety is not jeopardised.

Finding 6

That people who drive unimpaired after consuming medicinal cannabis are unfairly criminalised and legislative reform that does not jeopardise road safety should be considered.

3.143 The committee heard concerning evidence about the Cannabis Cautioning Scheme in relation to: its inequitable application between Aboriginal and Torres Strait Islander people and non-Aboriginal and Torres Strait Islander people; and some of its eligibility requirements, namely that a person must admit to offending and cannot have previous convictions for serious drug offences. It was also raised that police have discretion as to whether to apply the scheme, regardless of eligibility.

3.144 The committee supports diversionary schemes which prevent individuals coming before the courts for minor cannabis matters. However, it is apparent that the application of the Cannabis Cautioning Scheme could be better.

3.145 It was alarming to receive statistical evidence showing that Aboriginal people are less likely to receive a cannabis caution than their non-Aboriginal counterparts.

3.146 The committee acknowledges that the current eligibility requirements may prevent some Aboriginal people from receiving a cannabis caution. However, the evidence also indicates that over policing of Aboriginal people also contributes to the inequitable application of the scheme. This is unsatisfactory.

Finding 7

That there are issues with the application of the Cannabis Cautioning Scheme which unreasonably limits its availability to people who would otherwise benefit from a cannabis caution, particularly Aboriginal and Torres Strait Islander people.

Social implications

Strip searches

3.147 Police conducting strip searches on individuals because of suspicions of cannabis possession can be problematic. Evidence indicates that strip searches are more often conducted on Aboriginal people and young people, than others. Strip searches can have significant psychological impacts on those subjected to them. On that basis the committee questions why a strip search would be appropriate where police suspect a person of possessing cannabis.

Finding 8

That strip searches on individuals, especially young people, by police on suspicion of cannabis possession are problematic as they can cause significant psychological harm and disproportionately impact Aboriginal and Torres Strait Islander people and young people.

Impacts on individuals

3.148 The committee heard evidence about the significant harms to an individual that can follow a criminal prosecution for a minor cannabis offence. It is noted that an offence of cannabis possession carries a significant maximum penalty of a $2,200 fine and/or two years' imprisonment. Some of these harms can include reputational damage, stigma, loss of employment, earning prospects and negative impacts on relationships and wellbeing. The committee did not receive evidence that the behaviour involved in minor cannabis offences is serious enough to warrant such negative social outcomes for an individual.

3.149 It was troubling to hear that a minor cannabis offence has the potential to cause an individual to become caught up in the criminal justice system, leading to further offending. This was particularly disturbing in relation to young people, with some inquiry participants noting that such early contact with the criminal justice system can lead to a normalisation of criminalisation, punishment, and disruption to education.

Finding 9

That the criminal prosecution of minor cannabis offences can cause considerable harms to the individual which is disproportionate to their actions.

3.150 Evidence to this committee suggests that searching of persons on account of a mere suspicion of the possession of a small quantity of cannabis is likely to be often unjustified and inconsistent with community expectations in a free society and that the widespread availability of medicinal cannabis may make it increasingly difficult for police to form the requisite state of mind to conduct searches.

Finding 10

That searching of persons on account of a mere suspicion of the possession of a small quantity of cannabis is likely to be often unjustified and inconsistent with community expectations in a free society and that the widespread availability of medicinal cannabis may make it increasingly difficult for police to form the requisite state of mind to conduct searches.

Costs

3.151 The evidence before the committee shows that there are considerable costs associated with cannabis. While it was acknowledged that a proportion of these costs relate to other areas such as healthcare, workplaces and traffic accidents, the criminal justice system is where the costs are the highest.

3.152 The criminalisation of minor cannabis offences can cause considerable harms, as noted above. On that basis the committee suggests that the criminal justice system costs associated with cannabis criminalisation are unreasonably high.

Finding 11

That the criminal justice system related costs of cannabis criminalisation are unreasonably high.

Regulating cannabis in the workplace

3.153 There is complexity for workplace regulation of medicinal cannabis. This presents challenges for employers who have obligations to ensure safe workplaces. There are also issues for employees who have been prescribed medicinal cannabis who are subject to stringent alcohol and drug policies. This is an area of work health and safety that requires further exploration.

NSW Drug Summit 2024

3.154 The upcoming NSW Drug Summit is an important step towards much needed drug law reform in New South Wales. The committee welcomes the summit and urges the NSW Government to utilise the opportunity provided by the summit to develop cannabis law reform.

3.155 With this in mind, the committee recommends that the NSW Government considers, including as part of the Drug Summit, the following law reform measures:

- a reconsideration of the amount classifications in Schedule 1 of the *Drug Misuse and Trafficking Act 1985* in respect of cannabis generally and particularly what amounts of cannabis should be considered a 'small quantity' and a 'traffickable quantity' noting the committee is of the view the threshold for these quantities may be too low
- reduction of the maximum penalty for the possession of cannabis (i.e. the offences of being in possession not for the purposes of supply, cultivating no greater than a small quantity of cannabis plant and using cannabis all of which currently carry a maximum penalty of 2 years imprisonment on summary disposition under the *Drug Misuse and Trafficking Act 1985*) to either a fine only offence or a maximum term of imprisonment of no more than three months
- amendment of cannabis related offences to ensure non-commercial supply of cannabis or gifting, is treated as possession and not supply to align the offences with the policy choice embodied in Chapter 9 of the *Criminal Code 1995 (Cth)* whereby non-commercial supply is treated as possession
- removal of deemed supply measures that reverse the onus of proof such as section 29 of the *Drug Misuse and Trafficking Act 1985*, in respect of cannabis possession
- amendment of the *Law Enforcement (Powers and Responsibilities) Act 2002* to significantly limit the circumstances in which persons can be searched by police in respect of a small quantity of cannabis not possessed for the purposes of supply. This objective could be achieved by a) amendments providing that police may not exercise any stop and search powers on account of only holding a suspicion that a person unlawfully possesses a non-traffickable quantity of cannabis for personal use and /or b) that such searches only

instead be permitted where police hold a reasonable belief as to the requisite circumstances

- amendment of relevant legislation to provide a presumption that a person will receive a section 10 dismissal under the *Crimes (Sentencing Procedure) Act 1999* so will not be convicted when sentenced for the possession of a small quantity of cannabis displaced only if the court is satisfied there are special circumstances and a conviction is appropriate, or a test to similar effect
- reform of the Cannabis Cautioning Scheme to limit police discretion and create a presumption of diversion that operates irrespective of criminal history or prior cautions and is only displaced where the police officer is satisfied there are special and exceptional circumstances or a test to similar effect and amends the criteria to make it more available for use including by applying it to larger amounts of cannabis not possessed for supply
- an expiation scheme for cannabis offences such as exists in South Australia, with wide criteria and a presumption of administrative diversion, allowing small cannabis matters to be finally disposed of without court proceedings, for presumed use where persons are not diverted pursuant to the Cannabis Cautioning Scheme
- changes to police standard operating procedures to ensure police do not unnecessarily target, including in random place-based search operations, persons suspected of possession of a small quantity of cannabis not for the purposes of supply
- trials in certain defined geographical areas of administrative non-enforcement of cannabis possession laws
- a medicinal use defence to the offence of drive with 'presence of a prescribed illicit drug in oral fluid, blood or urine' offence in respect of cannabis such as is legislated for in Tasmania but ensuring that the mixing of cannabis and alcohol is the express subject of an aggravating factor of the relevant criminal offence.

Recommendation 1

That the NSW Government considers, including as part of the Drug Summit, the following law reform measures:

- a reconsideration of the amount classifications in Schedule 1 of the *Drug Misuse and Trafficking Act 1985* in respect of cannabis generally and particularly what amounts of cannabis should be considered a 'small quantity' and a 'traffickable quantity' noting the committee is of the view the threshold for these quantities may be too low
- reduction of the maximum penalty for the possession of cannabis (i.e. the offences of being in possession not for the purposes of supply, cultivating no greater than a small quantity of cannabis plant and using cannabis all of which currently carry a maximum penalty of 2 years imprisonment on summary disposition under the *Drug Misuse and Trafficking Act 1985*) to either a fine only offence or a maximum term of imprisonment of no more than three months
- amendment of cannabis related offences to ensure non-commercial supply of cannabis or gifting, is treated as possession and not supply to align the offences with the policy choice embodied in Chapter 9 of the *Criminal Code 1995* (*Cth*) whereby non-commercial supply is treated as possession
- removal of deemed supply measures that reverse the onus of proof such as section 29 of the *Drug Misuse and Trafficking Act 1985*, in respect of cannabis possession
- amendment of the *Law Enforcement (Powers and Responsibilities) Act 2002* to significantly limit the circumstances in which persons can be searched by police in respect of a small quantity of cannabis not possessed for the purposes of supply. This objective could be achieved by a) amendments providing that police may not exercise any stop and search powers on account of only holding a suspicion that a person unlawfully possesses a non-traffickable quantity of cannabis for personal use and/or b) that such searches only instead be permitted where police hold a reasonable belief as to the requisite circumstances
- amendment of relevant legislation to provide a presumption that a person will receive a section 10 dismissal under the *Crimes (Sentencing Procedure) Act 1999* so will not be convicted when sentenced for the possession of a small quantity of cannabis displaced only if the court is satisfied there are special circumstances and a conviction is appropriate, or a test to similar effect
- reform of the Cannabis Cautioning Scheme to limit police discretion and create a presumption of diversion that operates irrespective of criminal history or prior cautions and is only displaced where the police officer is satisfied there are special and exceptional circumstances or a test to similar effect and amends the criteria to make it more available for use including by applying it to larger amounts of cannabis not possessed for supply
- an expiation scheme for cannabis offences such as exists in South Australia, with wide criteria and a presumption of administrative diversion, allowing small cannabis matters to be finally disposed of without court proceedings, for presumed use where persons are not diverted pursuant to the Cannabis Cautioning Scheme
- changes to police standard operating procedures to ensure police do not unnecessarily target, including in random place-based search operations, persons suspected of possession of a small quantity of cannabis not for the purposes of supply
- trials in certain defined geographical areas of administrative non-enforcement of cannabis possession laws

- a medicinal use defence to the offence of drive with 'presence of a prescribed illicit drug in oral fluid, blood or urine' offence in respect of cannabis such as is legislated for in Tasmania but ensuring that the mixing of cannabis and alcohol is the express subject of an aggravating factor of the relevant criminal offence.

3.156 The committee recommends that upon the implementation of these reforms, and any others, be monitored and evaluated and that a whole of Government response be provided to Parliament within 12 months of these changes.

Recommendation 2

That implementation of these reforms, and any others, be monitored and evaluated and that a whole of Government response be provided to Parliament within 12 months of these changes.

Deterrence

3.157 Cannabis use and possession has been historically criminalised in New South Wales. The committee heard that deterring cannabis use is a key reason for criminal sanctions for minor cannabis offences.

3.158 However, evidence received indicates that criminal sanctions for minor cannabis offences have been ineffective in deterring cannabis use. This is borne out by statistical evidence showing the prevalence, use and availability of cannabis in New South Wales. This calls into question the value of continuing to criminalise minor cannabis offences. The committee finds that criminal sanctions for minor cannabis offences do not deter individuals or the community from using cannabis and this is particularly so in respect of people most vulnerable to cannabis related harm. However, the committee will be taking further evidence from witnesses.

Finding 12

That criminal sanctions for minor cannabis offences do not deter individuals or the community from using cannabis.

Medicinal cannabis regulation

3.159 Medicinal cannabis is highly regulated in Australia, and growers and importers are subject to stringent federal and state regulation.

3.160 Australian producers of medicinal cannabis have had to comply with the good manufacturing process, which is a set of standards written by manufacturers to adhere to the Therapeutic Goods Administration regulations. This requirement has only applied to imported medicinal cannabis products since 1 July 2023.

3.161 Further, the evidence indicates that Australian growers face a higher regulatory burden than importers of medicinal cannabis. For example, it was put forward that currently, it is easier to obtain an import permit for a product rather than to develop the product within Australia.

3.162 The committee recognises that quality control mechanisms and other regulatory frameworks are necessary to ensure safe medicinal cannabis products. However, regulation should not impede the growth and accessibility of Australian-grown medicinal cannabis.

Chapter 4 Regulatory models for cannabis in other jurisdictions

Recent history has seen significant changes in the way cannabis is regulated across the world. A number of jurisdictions, including the Australian Capital Territory, have introduced reforms to decriminalise or legalise cannabis. This chapter outlines the approaches in some of these places. It also discusses a bill, currently before the New South Wales Parliament, which would permit certain conduct relating to cannabis use. Finally, the chapter outlines stakeholder perspectives on the learnings and considerations that arise from the approaches to cannabis regulation in other jurisdictions.

Regulatory models in other jurisdictions

4.1 This section outlines the approaches to cannabis regulation in six jurisdictions: the Australian Capital Territory, the United States, Canada, Portugal, Spain, and Thailand.

4.2 These are the jurisdictions that have been discussed most in evidence before the committee to date. It is not a comprehensive list of places that have decriminalised or legalised cannabis. Others that were mentioned in evidence include Germany, Malta, Colombia, Uruguay, and South Africa.

The Australian Capital Territory

4.3 The Australian Capital Territory (ACT) became the first Australian jurisdiction to decriminalise cannabis use when it introduced reforms in 2020. Under these rules, it is no longer an offence to:

- possess up to 50 grams of dried cannabis or up to 150 grams of fresh cannabis
- grow up to two cannabis plants per person, with a maximum of four plants per household, or
- use cannabis in your own home.[451]

4.4 However, it is still an offence to sell or give cannabis to another person. Children under 18 are also prohibited from growing, possessing or using cannabis.[452]

4.5 Inquiry participants provided evidence about the impacts of these changes. The committee heard that, following the reforms:

451 *Drugs of Dependence Act 1989* (ACT) ss 162, 171AA, 171AAA, 171AB. See ACT Government, *Know the ACT Cannabis rules*, https://www.act.gov.au/cannabis/home#:~:text=If%20you%27re%20aged%2018,your%20home%20(personal%20use).

452 See ACT Government, *Know the ACT Cannabis rules*, https://www.act.gov.au/cannabis/home#:~:text=If%20you%27re%20aged%2018,your%20home%20(personal%20use).

- rates of cannabis use have remained stable[453]
- the number of cannabis-related hospitalisations has not increased,[454] and
- the number of cannabis-related driving offences has not increased.[455]

4.6 Some participants were positive about these reforms. Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW noted research she had conducted in the ACT following the reforms. She said she interviewed 40 people, of whom all but one supported the reforms.[456]

4.7 However, other participants felt that the ACT reforms did not go far enough. NSW Users and AIDS Association (NUAA) said they were 'a good first step towards ending criminalisation and prohibition of cannabis' but were still in favour of 'moving towards legal and regulated supply for personal use'.[457]

4.8 Professor Nicolas Lintzeris, Conjoint Professor in Addiction Medicine, Faculty of Medicine and Health, University of Sydney said that the ACT reforms involved 'a very limited approach to regulating cannabis … which was politically attainable but unlikely to achieve the outcomes that society expects or wants'.[458] He said the 'grow-your-own model' is limited because 'the vast majority of people are not growing their own,' so there will still be a population accessing cannabis through the illicit market.[459]

Issues in the operation of the ACT scheme

4.9 Some specific issues with the way the ACT laws operate, and suggested improvements, were identified in evidence.

4.10 Mr Matt Noffs, Chief Executive Officer, Ted Noffs Foundation was critical of the fact that the law permits the use of cannabis in a private home but not the sharing of it. He said this was a 'black hole' that 'leaves a space open for people not to take the law seriously'.[460]

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453 Submission 90, Legal Aid NSW, p 8; Submission 111, Penington Institute, p 8; Submission 355, Justice Action, pp 12-13; Evidence, Mr Michael Whaites, Assistant General Secretary, NSW Nurses and Midwives' Association, and Assistant Branch Secretary, Australian Nursing and Midwifery Federation, NSW Branch, 19 August 2024, p 25.

454 Submission 111, Penington Institute, p 8; Submission 296, The Royal Australian and New Zealand College of Psychiatrists (RANZCP), p 6

455 Submission 111, Penington Institute, p 8; Submission 296, The Royal Australian and New Zealand College of Psychiatrists (RANZCP), p 6

456 Evidence, Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 1 August 2024, p 24.

457 Submission 112, NSW Users and AIDS Association (NUAA), p 8.

458 Evidence, Professor Nicolas Lintzeris, Conjoint Professor in Addiction Medicine, Faculty of Medicine and Health, University of Sydney, 1 August 2024, p 17.

459 Evidence, Professor Nicolas Lintzeris, Conjoint Professor in Addiction Medicine, Faculty of Medicine and Health, University of Sydney, 1 August 2024, p 19.

460 Evidence, Mr Matt Noffs, Chief Executive Officer, Ted Noffs Foundation, 20 August 2024, p 55.

4.11 Ms Barrett identified some concerns with the rules around plant material. She explained that purchasing seeds for cannabis plants is illegal, so most people purchase them through the illicit market.[461] This means, often, people 'can't get any information about that product, because it's illegal and there's nowhere to test your plant, so it's trial and error'.[462] She said that in contrast, seeds sold overseas will often have information about the THC and CBD content, the cultivar of the plant, and its effects. She believed that 'making seeds available and making that kind of knowledge available would be very beneficial to people'.[463]

4.12 Ms Barrett also said that the ACT laws ban the cultivation of cannabis under an artificial source of light or heat, which was generally interpreted as a ban on growing plants indoors.[464] However, she said that as it is very difficult to grow cannabis plants outdoors in Canberra's climate, many people are forced to grow plants indoors illegally.[465] This was also said to discriminate against people living in apartments.[466]

4.13 Another issue was the limit of two plants per person or four per household. Ms Barrett explained that only female cannabis plants that produce the bud, but it can be difficult to identify the sex of a plant when it is growing.[467] She said this means 'if you have two and they're both males, then you don't have anything that you can use'.[468] Ms Barrett suggested a more 'sensible and practical' approach would be to increase the limit to five or six plants.[469]

The United States

4.14 There are a range of different regulatory approaches to cannabis across the 50 states (and various territories) of the United States (US). These include legalisation, decriminalisation, legalisation of medicinal cannabis only, and full criminalisation.

4.15 The map below shows the current mix of cannabis laws in the US:

461 Evidence, Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 1 August 2024, p 27.

462 Evidence, Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 1 August 2024, p 27.

463 Evidence, Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 1 August 2024, p 27.

464 Evidence, Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 1 August 2024, p 27. See *Drugs of Dependence Act 1989* (ACT) s 162.

465 Evidence, Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 1 August 2024, p 27.

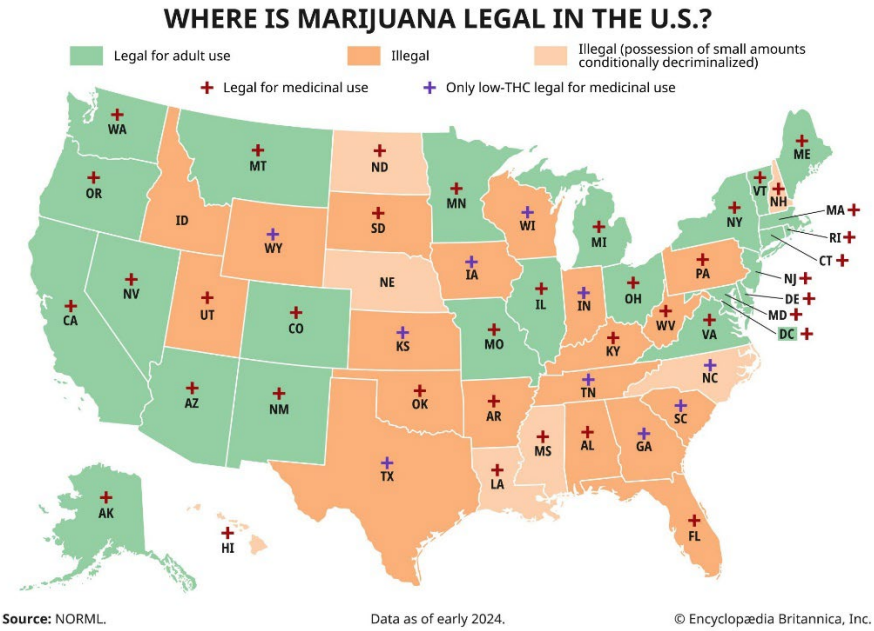
466 Submission 110, Drug Policy Modelling Program, SPRC, UNSW, p 5.

467 Evidence, Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 1 August 2024, p 27. See also Submission 110, Drug Policy Modelling Program, SPRC, UNSW, p 5.

468 Evidence, Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 1 August 2024, p 27. See also Submission 110, Drug Policy Modelling Program, SPRC, UNSW, p 5.

469 Evidence, Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 1 August 2024, p 27. See also Submission 110, Drug Policy Modelling Program, SPRC, UNSW, p 5.

Figure 1 Approaches to cannabis regulation in the United States



Source: Amy Tikkanen, Where Is Marijuana Illegal in the US?, Encyclopaedia Brittanica, https://www.britannica.com/story/why-is-marijuana-illegal-in-the-us.

4.16 The committee heard a range of perspectives on the regulatory approaches to cannabis in the US. Some stakeholders were critical of US states that have legalised cannabis, saying it had led to over-commercialisation. For example, Dr Will Tregoning, Chief Executive Officer, Unharm said some US states have tipped the balance 'too far in the direction of commercial interests':

> I think one of the considerations in designing an effective regulatory system for commercial supply of cannabis is not to tip the balance too far in favour of commercial interests. I say that as a parent who doesn't want promotion of cannabis products to my children. We have seen in some of the US legalisation regimes a tipping of the balance too far in the direction of commercial interests over public health.[470]

4.17 Penington Institute also commented that 'nearly all' of the states where cannabis is legalised have 'opted for highly commercialised markets'.[471] It said that these models 'have led to some documented health harms, such as increased cases of acute intoxication among youths'.[472] At the same time, however, it said there had been no evidence showing a rise in youth consumption or cannabis-induced schizophrenia or psychosis.[473]

4.18 Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences commented that synthetic cannabis was common in some areas in the US, saying, '[t]hey're selling vapes that are made of synthetic cannabis in gas stations in Kentucky, you know what I mean? That's not

470 Evidence, Dr Will Tregoning, Chief Executive Officer, Unharm, 1 August 2024, pp 39-40. See also Evidence, Mr Matt Noffs, Chief Executive Officer, Ted Noffs Foundation, 20 August 2024, p 56.

471 Submission 111, Penington Institute, p 7.

472 Submission 111, Penington Institute, p 7.

473 Submission 111, Penington Institute, p 7.

safe'.[474] Mr Hardy said that if cannabis were to be legalised in Australia, it would be important to introduce a well-regulated regime to prevent this from happening.[475]

4.19 Witnesses also commented on the need to limit consumption of cannabis in public areas. Dr Ben Mostyn, Academic Fellow, Sydney Law School said that in New York, 'you can buy cannabis on every block from a corner store. None of that is regulated'.[476] He commented that the shift to legalisation had been handled 'quite badly' in that jurisdiction.[477]

4.20 Dr Tregoning also mentioned perceived problems around cannabis consumption in public in New York City.[478] However, he was of the view that these issues would be unlikely to arise if cannabis was legalised in Australia, because there are already regulations around smoking (tobacco) in public places that are 'effective' and could apply to cannabis.[479]

4.21 Dr Mary Ellen Harrod, Chief Executive Officer, NSW Users and AIDS Association identified California as a desirable model to emulate. She pointed to the existence of regulations and the potential tax revenue that can be generated from legalisation:

> Personally, the regulated supply that you'll see in places like California, where you have a dispensary, you go in, you know what you're getting, you have your ID checked, your age is checked and there are provisions for people who have medicinal cannabis use where they don't pay tax on it, and you have that revenue from the tax on the product coming to the Government and supporting other social services. To me, I've seen that in action and I think it works really well. I've seen the reduction in stigma between parents and children, for example, under that model. While you can smell cannabis smoke from time to time, it's not a huge issue, in my opinion. That would be what I think we should ultimately be aiming for. I think there's public support for it and it would have a benefit in terms of government revenue.[480]

Canada

4.22 Recreational use of cannabis was legalised in Canada in 2018. While it is legal across the entire country, the provinces and territories are able to set individual regulations around sale and use.

4.23 Mr Greg Barns SC, Spokesperson on Criminal Justice and Human Rights, Australian Lawyers Alliance described the Canadian approach as 'pretty heavily regulated'.[481]

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474 Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 6.

475 Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 6.

476 Evidence, Dr Ben Mostyn, Academic Fellow, Sydney Law School, 1 August 2024, p 20.

477 Evidence, Dr Ben Mostyn, Academic Fellow, Sydney Law School, 1 August 2024, p 20.

478 Evidence, Dr Will Tregoning, Chief Executive Officer, Unharm, 1 August 2024, p 36.

479 Evidence, Dr Will Tregoning, Chief Executive Officer, Unharm, 1 August 2024, p 36.

480 Evidence, Dr Mary Ellen Harrod, Chief Executive Officer, NSW Users and AIDS Association, 1 August 2024, p 39.

481 Evidence, Mr Greg Barns SC, Spokesperson on Criminal Justice and Human Rights, Australian Lawyers Alliance, 1 August 2024, p 14.

4.24 Penington Institute explained that 'the Canadian model severely curtails promotion of cannabis products, and many Canadian provinces have adopted additional features and controls'.[482] Additionally, some provinces have a government monopoly model, in which cannabis can only be purchased from authorised government outlets.[483]

4.25 Some stakeholders spoke positively about the Canadian model. The NSW Users and AIDS Association (NUAA) said their members 'commented on the effectiveness of [the Canadian] approach in turning around decades of entrenched stigma associated with cannabis use and reducing harm caused by prohibitive measures'.[484]

4.26 Professor Nicolas Lintzeris, Conjoint Professor in Addiction Medicine, Faculty of Medicine and Health, University of Sydney said the approach 'has actually resulted in a very clever model, and I think we've got a lot to learn from the Canadian experience'.[485] However, he commented that the government monopoly model may not be as culturally palatable in Australia as it is in Canada.[486]

4.27 Mr Matt Noffs, Chief Executive Officer, Ted Noffs Foundation also said that he thought that government control over cannabis 'makes a lot of sense', although he couldn't see it happening in Australia.[487]

4.28 On the other hand, Students for Sensible Drug Policy Australia did not support a government monopoly model, on the basis it 'limit[s] the sale of cannabis to only government-owned shops and restrict other avenues such as cannabis social clubs, community trusts, and small businesses that can benefit communities'.[488]

4.29 Penington Institute cited a five-year independent review of the Canadian regime which found that the illicit cannabis market had shrunk, interactions with the criminal justice system relating to cannabis had dropped markedly, and the legal industry generally provided quality-control products and complied with packaging and promotional rules.[489] The Institute also noted evidence that 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'.[490]

4.30 However, Dr Ben Mostyn, Academic Fellow, Sydney Law School remarked that the legal industry in Canada had not necessarily resulted in the closure of the illicit market. Dr Mostyn explained that the black market had been retained, which was a 'surprise' to him:

482 Submission 111, Penington Institute, p 7.

483 Submission 111, Penington Institute, p 7.

484 Submission 112, NSW Users and AIDS Association (NUAA), p 8.

485 Evidence, Professor Nicolas Lintzeris, Conjoint Professor in Addiction Medicine, Faculty of Medicine and Health, University of Sydney, 1 August 2024, p 18.

486 Evidence, Professor Nicolas Lintzeris, Conjoint Professor in Addiction Medicine, Faculty of Medicine and Health, University of Sydney, 1 August 2024, p 18.

487 Evidence, Mr Matt Noffs, Chief Executive Officer, Ted Noffs Foundation, 20 August 2024, p 57.

488 Submission 115, Students for Sensible Drug Policy Australia, p 5.

489 Submission 111, Penington Institute, p 7.

490 Submission 111, Penington Institute, p 7.

> The problem that Canada is having in the transfer—and this came as a surprise to me—is that the assumption that once you have a white market, everyone will just leave the black market and go to the white market didn't actually come true in Canada. It turns out people like going to their friend's house who has a plant and maybe smoking with their friend, getting it off their friends. There's also probably a bit of an anti-government culture. People go, "I don't want to pay taxes on my cannabis. I can grow it myself." That is a real issue that needs to be considered.[491]

4.31 The Alcohol and Drug Foundation submitted that the model in Quebec, especially, was 'very effective at moderating public health impacts'.[492] It pointed to features including that certain products that may be appealing to children are banned; profits from sales are used for a cannabis education and prevention fund; there is increased control over the supply chain, so the variety of product types and potency is reduced; and outlet density is managed.[493]

4.32 Mr Robert Taylor, Manager – Policy and Engagement, Alcohol and Drug Foundation added that Canada was doing 'some really interesting work' around harm reduction and safe use guidelines for cannabis.[494] He said it was 'a good way for supplying factual information to people who are using cannabis about what are safer ways to use'.[495]

Portugal

4.33 In 2001, Portugal decriminalised the personal possession and consumption of all illicit drugs, including cannabis, and reclassified these activities as administrative violations.[496] Under this model, those found in possession of illicit drugs are referred to a local committee called the Commission for the Dissuasion of Drug Addiction, 'which determine whether the person's drug use is problematic and the appropriate response' This can include issuing a fine, an order for that person to undertake community service or voluntary treatment.[497] These local commissions are regional panels comprised of 'legal professionals, health professionals and social workers'.[498]

4.34 Mr Nicholas Cowdery AO, KC, Past President, NSW Council for Civil Liberties discussed the factors and circumstances that are considered by the Commissions for the Dissuasion of Drug Addiction before making a determination:

> [The Commissions for the Dissuasion of Drug Addiction] have hearings and discussions with them, exploring their drug use, exploring their backgrounds, their

491 Evidence, Dr Ben Mostyn, Academic Fellow, Sydney Law School, 1 August 2024, p 20. See also Submission 129, Dr Ben Mostyn, p 2.

492 Submission 107, Alcohol and Drug Foundation, p 8.

493 Submission 107, Alcohol and Drug Foundation, p 8. See also Evidence, Mr Robert Taylor, Manager – Policy and Engagement, Alcohol and Drug Foundation, 1 August 2024, pp 46-47.

494 Evidence, Mr Robert Taylor, Manager – Policy and Engagement, Alcohol and Drug Foundation, 1 August 2024, p 46.

495 Evidence, Mr Robert Taylor, Manager – Policy and Engagement, Alcohol and Drug Foundation, 1 August 2024, p 46.

496 Answers to questions on notice, Australian Lawyers Alliance, 27 August 2024, pp 2-3.

497 Submission 140, Uniting NSW.ACT, p 16. See also Answers to questions on notice, Australian Lawyers Alliance, received 27 August 2024, p 3.

498 Answers to questions on notice, Australian Lawyers Alliance, 27 August 2024, p 3.

> family histories, their employment histories, the circumstances that brought them into using drugs, the impact that the drug use has had on them—exploring all of this in great detail and then developing a plan for the management of that person, for that person to manage their own situation but with the assistance of experts.[499]

4.35 In their submission, Uniting NSW.ACT, advised that 'around 80% of matters before these Commissions [for the Dissuasion of Drug Addiction] are deemed non-problematic and are dismissed without action'.[500] Uniting NSW.ACT also addressed the long-term impacts of the 2001 regulatory drug reform on Portugal:

> There has been no major increase in drug use in Portugal in the nearly two decades since criminal penalties were removed, while rates of problematic use and use by adolescents has fallen, as have rates of drug-related deaths. Outcomes have also improved, with fewer people appearing before the courts, increased rates of people receiving drug treatment, and reduced social costs of drug misuse.[501]

4.36 Uniting NSW.ACT cited evidence that suggests that similar regulatory reform would be supported by the general public here in Australia:

> There is some evidence that these kinds of options are increasingly supported by public opinion here in Australia. The National Drug Strategy Household Survey shows that in 2019, Australians wanted 65.2% of drug budget resources allocated to drug education and treatment, and the proportion was increasing (current spending is around one-third).[502]

4.37 In relation to the sale and quality control of medicinal cannabis, Australian Lawyers Alliance advised that 'there are laws regulating all activities in the [supply] chain – including cultivation, manufacture and distribution, prescription and dispensation, import, export and wholesale trade'.[503] They added that 'in order to cultivate cannabis in Portugal, all companies must be licensed, meet a set of legal requirements to ensure quality and safety and implement security measures.[504]

4.38 A number of other inquiry participants were generally supportive of the Portuguese regulatory model.[505]

4.39 Dr Marianne Jauncey, Medical Director, Uniting Medically Supervised Injecting Centre, Uniting NSW.ACT explained that 'it's actually very clear that what happened in Portugal was not merely the decriminalisation; it was, at the same time, the really significant investment in treatment and support services' and 'broadly speaking, there really isn't a lot of contention that [the

499 Evidence, Mr Nicholas Cowdery, AO, KC, Past President, NSW Council for Civil Liberties, 1 August 2024, p 3.

500 Submission 140, Uniting NSW.ACT, p 16.

501 Submission 140, Uniting NSW.ACT, p 16.

502 Submission 140, Uniting NSW.ACT, p 16.

503 Answers to questions on notice, Australian Lawyers Alliance, 27 August 2024, pp 3-4.

504 Answers to questions on notice, Australian Lawyers Alliance, 27 August 2024, p 4.

505 Evidence, Mr Nicholas Cowdery, AO, KC, Past President, NSW Council for Civil Liberties, 1 August 2024, p 3; Evidence, Mr Greg Barns, SC, Spokesperson on Criminal Justice and Human Rights, Australian Lawyers Alliance, 1 August 2024, p 9; Evidence, Dr Thomas Lu, General Practitioner, Royal Australian College of General Practitioners, 19 August 2024, p 23.

decriminalisation of illicit drugs and regulatory reform in Portugal] was anything other than a good thing'.[506]

4.40 Mr Cowdery stated that 'the Portuguese model is the world example of what we should all be doing' and that it 'has been examined by government and non-government organisations from all around the world, with a huge number of reports produced, almost all of them unequivocally supporting the initiative that's been adopted'.[507] Mr Cowdery implored the Government to consider removing the criminal penalty whilst maintaining a cautionary scheme, and to provide 'an opportunity for people to be supported and assisted to seek advice, to seek assistance, if they're having difficulty with drug use'.[508]

Spain

4.41 In Spain, cannabis cannot be commercially grown or sold, but the government cannot penalise private use of it. This legal framework has led to the creation of cannabis social clubs, which emerged in the early 1990s and are a popular model of cannabis consumption in Spain.[509]

4.42 Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW explained that cannabis social clubs are 'membership-based, legally constituted, not-for profit organisations where adult members can collectively cultivate cannabis for their own personal consumption'.[510] Ms Barrett said that most often, cannabis social clubs 'are conceptualised as an extension of home grown supply options, as they essentially provide an alternative method/space for cultivation'.[511]

4.43 Students for Sensible Drug Policy Australia were supportive of the cannabis social club model. They argued they 'provide spaces for cannabis use, build and foster a supportive community, offer education, and contribute to positive social and economic impacts'.[512]

4.44 The Alcohol and Drug Foundation commented that 'community control of production and retail can enhance public health outcomes compared to commercial models, as profit incentives

506 Evidence, Dr Marianne Jauncey, Medical Director, Uniting Medically Supervised Injecting Centre, Uniting NSW.ACT, 19 August 2024, pp 47, 49.

507 Evidence, Mr Nicholas Cowdery, AO, KC, Past President, NSW Council for Civil Liberties, 1 August 2024, pp 3-4.

508 Evidence, Mr Nicholas Cowdery, AO, KC, Past President, NSW Council for Civil Liberties, 1 August 2024, p 3.

509 Submission 115, Students for Sensible Drug Policy Australia, pp 7-8; Evidence, Mr Marc Selan, Individual with lived experience, 19 August 2024, p 47; Natalie Fertig, *Spain's confusing cannabis policies spark similar problems faced by US states* (11 December 2023), Politico, https://www.politico.com/news/2023/11/12/spains-cannabis-dilemma-mirrors-problems-faced-by-u-s-states-00125584.

510 Answers to questions on notice, Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 27 August 2024, pp 20-21.

511 Answers to questions on notice, Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 27 August 2024, pp 20-21.

512 Submission 115, Students for Sensible Drug Policy Australia, pp 7-8.

from retail sales are removed'.[513] They added that the cannabis social club model can also 'be effective in displacing illicit cannabis markets and reducing their associated harms'.[514]

4.45 Ms Barrett added that other benefits include that users in cannabis social clubs have better knowledge of the product they are consuming, and there is peer monitoring of members, which facilitates harm reduction strategies and interventions where required.[515]

4.46 On the other hand, the Alcohol and Drug Foundation noted that because access to cannabis social clubs is generally invitation-only, some marginalised populations may be excluded.[516] It further noted that model may be harder to regulate and monitor than others.[517]

4.47 Mr Marc Selan gave evidence of his experience running a cannabis social club in Barcelona. The club, called Organic Oz, had about 800 to 1,000 members and cultivated organic cannabis in indoor and outdoor facilities and greenhouses.[518] He said the club was not regulated by the government but 'flourished and ran very effectively'.[519]

4.48 Mr Selan said that his club had members from a broad section of the community, with age ranges from 21 to 75 years old.[520] He said that members were generally 'pretty respectful,' and that in eight years, there were only two times he had to ask people not to come back.[521] He attributed this to the fact that new members must be referred by an existing member and must sign the rules of the club when they join.[522]

4.49 Mr Selan said that the Spanish police and law enforcement bodies support the cannabis social club model and will 'advise people to go to clubs to consume cannabis and not on the street'.[523] Mr Selan concluded that he believed cannabis social clubs are 'a really good model' that 'we in Australia could benefit from'.[524]

Thailand

4.50 In June 2022, Thailand became the first country in Asia to decriminalise cannabis for medicinal purposes.[525] However, in practice, Thailand has taken a 'largely unregulated approach' towards

513 Submission 107, Alcohol and Drug Foundation, pp 7-8.

514 Submission 107, Alcohol and Drug Foundation, pp 7-8.

515 Evidence, Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 1 August 2024, p 26.

516 Submission 107, Alcohol and Drug Foundation, pp 7-8.

517 Submission 107, Alcohol and Drug Foundation, pp 7-8.

518 Evidence, Mr Marc Selan, Individual with lived experience, 19 August 2024, p 46.

519 Evidence, Mr Marc Selan, Individual with lived experience, 19 August 2024, p 46.

520 Evidence, Mr Marc Selan, Individual with lived experience, 19 August 2024, p 46.

521 Evidence, Mr Marc Selan, Individual with lived experience, 19 August 2024, p 47.

522 Evidence, Mr Marc Selan, Individual with lived experience, 19 August 2024, p 46.

523 Evidence, Mr Marc Selan, Individual with lived experience, 19 August 2024, p 47.

524 Evidence, Mr Marc Selan, Individual with lived experience, 19 August 2024, p 46.

525 Rasmon Kalayasiri and Suriyan Boonthae, *Trends of Cannabis Use and Related Harms Before and After Legalization for Recreational Purpose in a Developing Country in Asia*, 19 May 2023, [National Library of

the regulation of cannabis and currently operates as an 'open market'.[526] In 2022 'all criminal penalties associated with cannabis were entirely removed and only a very meagre regulatory oversight system was instituted'.[527]

4.51 Dr James Moylan, Law Reform Activist, advised that currently in Thailand, 'the only regulations governing the commercial distribution of cannabis are that it not be sold to minors, […] those breastfeeding, or to pregnant mothers'.[528]

4.52 In evidence, Dr Moylan advised that through visits to Thailand and in speaking with communities there, he had been 'unable to identify any harm'.[529] However he also noted that 'this is not to say that such an entirely unregulated situation is either desirable or readily achievable within a western jurisdiction such as Australia'.[530]

4.53 Some stakeholders were critical of Thailand's regulatory model, or rather the lack of regulation.[531] Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, stated that 'the evidence … shows that where you have a market model … where there is increased access to a cannabis product but there are very limited safeguards and regulation around that, then consumption increases'.[532]

4.54 When asked about the key harms that have been identified with respect to the operation of an open market and the unregulated Thai experience, Professor Nicholas Lintzeris, Conjoint Professor in Addiction Medicine, Faculty of Medicine and Health, University of Sydney, remarked that there 'hasn't been much published evidence' on the Thai experience and that this may be somewhat due to the fact that the changes were only implemented recently.[533] Professor Lintzeris added that 'the Thai Government doesn't appear to have invested a lot into research'.[534]

4.55 Professor Lintzeris, explained that by looking at other international regulatory models, experts have been able to identify a 'sweet spot,' which is essentially somewhere between overregulation and deregulation:

Medicine - National Center for Biotechnology Information], [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10197039/].

526 Evidence, Professor Nicholas Lintzeris, Conjoint Professor in Addiction Medicine, Faculty of Medicine and Health, University of Sydney, 1 August 2024, p 15.

527 Submission 86, Dr James Moylan, Law Reform Activist, p 39.

528 Submission 86, Dr James Moylan, Law Reform Activist, p 39.

529 Evidence, Dr James Moylan, Law Reform Activist, 20 August 2024, p 15.

530 Submission 86, Dr James Moylan, Law Reform Activist, p 61.

531 Evidence, Professor Nicholas Lintzeris, Conjoint Professor in Addiction Medicine, Faculty of Medicine and Health, University of Sydney, 1 August 2024, p 15; Submission 106, Professor Nicholas Lintzeris, p 11; Evidence, Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 1 August 2024, p 24.

532 Evidence, Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 1 August 2024, p 24.

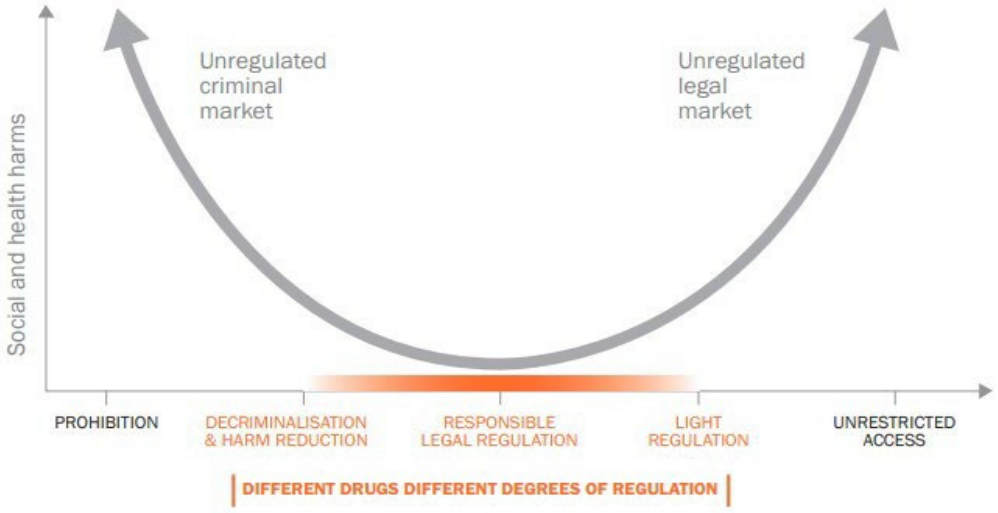
533 Evidence, Professor Nicholas Lintzeris, Conjoint Professor in Addiction Medicine, Faculty of Medicine and Health, University of Sydney, 1 August 2024, p 15.

534 Evidence, Professor Nicholas Lintzeris, Conjoint Professor in Addiction Medicine, Faculty of Medicine and Health, University of Sydney, 1 August 2024, p 15.

> We actually have some natural experiments underway internationally that allow us to look at the outcomes of different approaches. I think in my submission I also use that […] idea of "hitting the sweet spot" when it comes to drug regulations. If we're too open market, unregulated, there are harms; if we're too over-restrictive in our regulations, there are harms. We've seen that, for example, with cannabis regulation. You could argue how countries such as Thailand and their experience is very much at one end of the spectrum, which is the open market, largely unregulated approach, and the potential harms there.[535]

4.56 Professor Lintzeris provided the following diagram to demonstrate the role of different regulatory models and their impact upon social and health outcomes:

Figure 2 Regulatory models and their impact upon social and health outcomes:[536]



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

4.57 The Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023 was introduced in the Legislative Council on Wednesday 29 November 2023 by the Hon Jeremy Buckingham MLC.[537]

4.58 The bill seeks to amend the *Drug Misuse and Trafficking Act 1985* to permit certain conduct relating to cannabis use in New South Wales. The bill would allow adults to cultivate up to six cannabis plants, possess up to 50 grams of cannabis leaf for personal use and gift up to 50 grams of

535 Evidence, Professor Nicholas Lintzeris, Conjoint Professor in Addiction Medicine, Faculty of Medicine and Health, University of Sydney, 1 August 2024, p 15.

536 Submission 106, Professor Nicholas Lintzeris, p 11.

537 *Minutes*, NSW Legislative Council, 29 November 2023, p 772.

cannabis leaf to another adult.[538] It would also remove the power of New South Wales Police to seize a cannabis plant or cannabis leaf possessed under the above circumstances.[539]

4.59 Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW said the bill was 'a sensible and practical policy that reduces inequities that result from current policing of cannabis, but also avoids the hazards of a commercial for-profit cannabis market, including increased consumption and harms'.[540] Noting concerns about the application of the Cannabis Cautioning Scheme (discussed in chapter 3), she believed the bill would 'provide a level playing field in law and remove the discretionary element from the current scheme'.[541]

4.60 Ms Keelin O'Reilly, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW added that she thought the bill was 'a great first step'.[542] She said it was 'unlikely to increase use and may address some parts of the black market as well'.[543]

4.61 Mr Robert Taylor, Manager – Policy and Engagement, Alcohol and Drug Foundation said that the Foundation supported the provisions of the bill 'because we believe they will remove the harms that criminalisation of cannabis currently causes in New South Wales, which are significant and disproportionately affect certain communities'; and because they believed it would reduce stigma, allowing people to access services and support.[544] He added that he thought the bill was a 'sensible first step' that would not increase use of, or harm from, cannabis.[545]

4.62 Several other stakeholders also expressed support for the bill.[546]

538 Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023, Sch 1[4].

539 Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023, Sch 1[5].

540 Evidence, Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 1 August 2024, p 23. See also Submission 110, Drug Policy Modelling Program, SPRC, UNSW, p 2.

541 Evidence, Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 1 August 2024, p 23.

542 Evidence, Ms Keelin O'Reilly, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 1 August 2024, p 24.

543 Evidence, Ms Keelin O'Reilly, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 1 August 2024, p 24.

544 Evidence, Mr Robert Taylor, Manager – Policy and Engagement, Alcohol and Drug Foundation, 1 August 2024, p 44.

545 Evidence, Mr Robert Taylor, Manager – Policy and Engagement, Alcohol and Drug Foundation, 1 August 2024, p 46.

546 See, eg, Submission 130, Unharm, p 6; Submission 138, NSW Nurses and Midwives' Association, pp 8-9; Submission 203, Aboriginal Legal Service (NSW/ACT) Limited, p 3; Submission 341, 360Edge, pp 4-5; Submission 355, Justice Action, p 14.

4.63 Penington Institute commented that ' the provisions provided for in this bill would be preferable to the status quo', but expressed the view that this alone was 'insufficient'.[547] Instead, it preferred 'a regulated adult-use cannabis market'.[548]

4.64 NSW Users and AIDS Association (NUAA), while expressing support for the bill, recommended that it should also include provisions 'regarding the expungement of any personal-use criminal records'.[549]

4.65 Dr Will Tregoning, Chief Executive Officer, Unharm also supported an additional provision to expunge criminal records, saying this would 'further improve this bill'.[550]

4.66 Both the provisions that allowed self-cultivation and gifting were commented on by stakeholders.

4.67 In relation to cultivation, Ms Barrett said that 'self-supply of cannabis is a low-risk practice that can yield several benefits to consumers, including the ability to avoid interaction with illegal markets and with suppliers'.[551] Ms O'Reilly added that allowing self-supply was a sensible approach because 'if you decriminalised use and possession but don't allow home growing, it leaves people with very little ways to actually possess without engaging in criminal activity in some way'.[552]

4.68 Additionally, the Drug Policy Modelling Program, SPRC, UNSW submitted that self-supply of cannabis carries benefits to consumers, including the ability to produce 'milder, healthier and more organic' cannabis, gain greater knowledge about products, and avoid potential contaminants.[553]

4.69 In relation to gifting, Dr Tregoning said that the bill 'improves on the ACT bill in that it makes legal non-commercial supply of cannabis and, yes, that is definitely the direction that we should be going'.[554] He explained that at present, 'most supply is through social networks. Any situation where people might share a joint, for example, technically constitutes a supply offence,' which he described as a 'perverse law'.[555]

4.70 360Edge submitted that a survey of 200 regular cannabis users across Australia found that 93 per cent of people had shared cannabis with their friends in the past month.[556] They therefore

547 Submission 111, Penington Institute, p 8.

548 Submission 111, Penington Institute, p 8.

549 Submission 112, NSW Users and AIDS Association (NUAA), p 8.

550 Evidence, Dr Will Tregoning, Chief Executive Officer, Unharm, 1 August 2024, p 35.

551 Evidence, Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 1 August 2024, p 23.

552 Evidence, Ms Keelin O'Reilly, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 1 August 2024, p 24.

553 Submission 110, Drug Policy Modelling Program, SPRC, UNSW, p 4. See also Submission 341, 360Edge, pp 4-5.

554 Evidence, Dr Will Tregoning, Chief Executive Officer, Unharm, 1 August 2024, p 42.

555 Evidence, Dr Will Tregoning, Chief Executive Officer, Unharm, 1 August 2024, p 42.

556 Submission 341, 360Edge, pp 4-5.

contended that 'removing criminal sanctions for gifting cannabis would be a sensible move, as socially sharing cannabis is already a common practice across Australia'.[557]

Considerations in implementing a new regulatory model

4.71 Many stakeholders suggested that the experiences in other jurisdictions contain potential learnings about measures that may, and may not, lead to good policy outcomes. Outlined below are the considerations that arose most frequently in evidence. Some of these are more relevant to certain regulatory models (like legalisation) than others.

Preventing the over commercialisation of cannabis

4.72 Some inquiry participants argued that the experience of other jurisdictions, notably the US and Thailand, demonstrated that a highly commercial model of cannabis regulation does not lead to good policy outcomes.

4.73 Mr Robert Taylor, Manager – Policy and Engagement, Alcohol and Drug Foundation said that 'highly commercialised models tend to be associated with higher rates of health harms'.[558] He likened this to commercial markets for alcohol and tobacco. He explained this was because commercial incentives and profit motives 'are in conflict with our public health outcomes'.[559]

4.74 The Drug Policy Modelling Program, SPRC, UNSW similarly said that 'commercialisation of cannabis supply with limited regulatory guardrails' can lead to poor public health outcomes.[560] These included including increased rates of cannabis use disorder among adults and cannabis-related hospital presentations.[561]

4.75 Mr Matthew Cantelo, Chief Executive Officer, Australian Natural Therapeutics Group added that in highly commercialised markets, 'the proliferation of dispensaries on every street corner is not necessarily a good thing for society in general and/or cannabis and the stigma related around it'.[562]

4.76 Some inquiry participants suggested specific actions that can limit the commercialisation of cannabis. These include:

- restricting the density of outlets that supply cannabis[563]

557 Submission 341, 360Edge, pp 4-5.

558 Evidence, Mr Robert Taylor, Manager – Policy and Engagement, Alcohol and Drug Foundation, 1 August 2024, p 46.

559 Evidence, Mr Robert Taylor, Manager – Policy and Engagement, Alcohol and Drug Foundation, 1 August 2024, p 47. See also Submission 107, Alcohol and Drug Foundation, p 6.

560 Submission 110, Drug Policy Modelling Program, SPRC, UNSW, p 4.

561 Submission 110, Drug Policy Modelling Program, SPRC, UNSW, p 4.

562 Evidence, Mr Matthew Cantelo, Chief Executive Officer, Australian Natural Therapeutics Group, 19 August 2024, p 36.

563 Submission 107, Alcohol and Drug Foundation, p 6; Evidence, Mr Robert Taylor, Manager – Policy and Engagement, Alcohol and Drug Foundation, 1 August 2024, p 47.

- restricting the trading hours of outlets that supply cannabis[564]
- restricting or banning advertising and promotion of cannabis products,[565] and
- setting minimum prices for cannabis products, with prices correlated to THC content.[566]

4.77 Additionally, several stakeholders expressed the view that access to cannabis products should be restricted to adults, and they should not be available to anyone under the age of 18.[567]

4.78 Dr Michala Kowalski, Postdoctoral Research Fellow, National Drug and Alcohol Research Centre emphasised that 'the ideal time to put these safeguards in place is while designing the regulatory model'.[568] She pointed to Quebec, saying this was an example of a jurisdiction that learned from different places and designed and implemented public health related regulatory measures in advance of legalisation reforms taking effect.[569]

Regulating the quality, content and type of cannabis products

4.79 Some inquiry participants contended that other jurisdictions have shown there are benefits from regulating the quality, content and type of cannabis products available.

4.80 Dr Kowalski said that an ideal regulatory model should set limits on the percentage of psychoactive compounds in available cannabis. She said that 'in places that don't have limits, such as Washington state in the US, they've found different products on the market with up to 70 per cent of active THC'.[570] Dr Kowalski said this had been raised with concern by public health officials.[571]

564 Submission 107, Alcohol and Drug Foundation, p 6; Evidence, Mr Robert Taylor, Manager – Policy and Engagement, Alcohol and Drug Foundation, 1 August 2024, p 47.

565 Submission 106, Professor Nicholas Lintzeris, p 12; Submission 107, Alcohol and Drug Foundation, p 6; Submission 111, Penington Institute, p 9; Submission 176, National Drug and Alcohol Research Centre, p 7; Evidence, Mr Robert Taylor, Manager – Policy and Engagement, Alcohol and Drug Foundation, 1 August 2024, p 45; Evidence, Dr Michala Kowalski, Postdoctoral Research Fellow, National Drug and Alcohol Research Centre, 19 August 2024, pp 28-29, 31.

566 Evidence, Mr Robert Taylor, Manager – Policy and Engagement, Alcohol and Drug Foundation, 1 August 2024, p 47

567 Submission 106, Professor Nicholas Lintzeris, p 12; Submission 111, Penington Institute, p 9; Evidence, Dr Mary Ellen Harrod, Chief Executive Officer, NSW Users and AIDS Association, 1 August 2024, p 35; Evidence, Ms Alice Pierce, Director of Programs, NSW Users and AIDS Association, 1 August 2024, p 36; Evidence, Dr Michala Kowalski, Postdoctoral Research Fellow, National Drug and Alcohol Research Centre, 19 August 2024, pp 28-29.

568 Evidence, Dr Michala Kowalski, Postdoctoral Research Fellow, National Drug and Alcohol Research Centre, 19 August 2024, pp 28-29.

569 Evidence, Dr Michala Kowalski, Postdoctoral Research Fellow, National Drug and Alcohol Research Centre, 19 August 2024, pp 30-31.

570 Evidence, Dr Michala Kowalski, Postdoctoral Research Fellow, National Drug and Alcohol Research Centre, 19 August 2024, p 31.

571 Evidence, Dr Michala Kowalski, Postdoctoral Research Fellow, National Drug and Alcohol Research Centre, 19 August 2024, p 31.

4.81 Professor Nicholas Lintzeris, Conjoint Professor in Addiction Medicine, Faculty of Medicine and Health, University of Sydney concurred, noting that 'poorly regulated high potency (e.g. 80, 90%) THC products' in the US have been associated with cannabis toxicity.[572] The Alcohol and Drug Foundation pointed to the availability of high potency products in the US like dabs, shatter, concentrates and oils as an example.[573]

4.82 Australian Natural Therapeutics Group (ANTG) said that ideally, cannabis products should be subject to stringent testing requirements, including testing for contaminants such as heavy metals, pesticides, and mould.[574] They also recommended detailed labelling and traceability requirements for all cannabis products, including information on the origin, cultivation methods, and cannabinoid content.[575]

4.83 Penington Institute similarly spoke of the benefits of robust testing standards and stringent labelling requirements.[576]

Where should cannabis be purchased from?

4.84 Some stakeholders expressed views on models where access to recreational cannabis is limited.

4.85 Professor Lintzeris said that in a legalised regulatory model for non-medical cannabis use, the sale of cannabis products should be through licensed venues.[577] He said that this could either occur through licensing retail venues, similar to the scheme for sale of alcohol, or by providing that cannabis can only be sold over the counter at pharmacies.[578] Professor Lintzeris said the benefits of the pharmacy model are that consumers would have confidentiality, and that pharmacists would be able to provide health advice to consumers.[579]

4.86 Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences similarly commented on these options. He said that the retail option would require the development of an entirely new regulatory and licensing scheme.[580] Instead, he contended an advantage of the pharmacy option is that pharmacies are already licensed and governed by the Pharmacy Guild. Additionally, he commented that pharmacies 'know how to manage drugs, they know how to manage transactions and they know how to report on drugs'.[581]

4.87 Witnesses from Ted Noffs Foundation were also in favour of a model in which cannabis could only be purchased from a health professional like a pharmacist or doctor. Mr Kieran Palmer,

572 Submission 106, Professor Nicholas Lintzeris, p 12.

573 Submission 107, Alcohol and Drug Foundation, p 7.

574 Submission 285, Australian Natural Therapeutics Group (ANTG), p 9.

575 Submission 285, Australian Natural Therapeutics Group (ANTG), p 9.

576 Submission 111, Penington Institute, p 9.

577 Submission 106, Professor Nicholas Lintzeris, p 12.

578 Submission 106, Professor Nicholas Lintzeris, p 12.

579 Submission 106, Professor Nicholas Lintzeris, p 12.

580 Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 9.

581 Evidence, Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, 20 August 2024, p 9.

Director of Clinical Services said that this would allow the purchase of cannabis to be a 'health intervention'.[582] He said, 'there is no drug dealer out there that is going to be able to pick in a young person who might be predisposed to psychosis, for example, or who might have an underlying mental health issue—but a GP might and a pharmacist might'.[583]

4.88 Mr Matt Noffs, Chief Executive Officer saw this as an extension of the medicinal cannabis scheme in Australia. He said that doctors should 'still be a significant part of the regulation of cannabis' and that overall, 'drugs should always be a health issue'.[584]

4.89 Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW said that models involving 'government supply, for instance, through chemists', like in Uruguay, are associated with reduced public health harms, such as hospital presentations and overall rates of use.[585]

4.90 Mr James Gaskell, Chief Operating Officer, Australian Natural Therapeutics Group also said that along with other benefits, providing for access to cannabis through a pharmacy would benefit producers, as it would maintain 'the level of safety, scrutiny over interaction and supply chain efficacy and security'.[586]

Providing public health information and education

4.91 Several inquiry participants contended that a learning from other jurisdictions is the importance of providing public health information and education when implementing any change to the regulatory framework for cannabis.

4.92 Dr Robert May, Chair of Addiction Psychiatry, Royal Australian and New Zealand College of Psychiatrists, New South Wales Branch said that 'in terms of overall policy and harm minimisation, for people who are accessing any form of recreational substance, the more information available to them would better guide their decisions'.[587] Dr May pointed to the education that was provided in the ACT following decriminalisation of cannabis, saying this was 'helpful to their decision-making as a State and as individual users of cannabis'.[588]

4.93 Dr Will Tregoning, Chief Executive Officer, Unharm said that 'you can't expect that law reform is going to solve every problem related to cannabis'.[589] He said a 'lot of it' will come through

582 Evidence, Mr Kieran Palmer, Director of Clinical Services, Ted Noffs Foundation, 20 August 2024, p 52.

583 Evidence, Mr Kieran Palmer, Director of Clinical Services, Ted Noffs Foundation, 20 August 2024, p 52.

584 Evidence, Mr Matt Noffs, Chief Executive Officer, Ted Noffs Foundation, 20 August 2024, p 57.

585 Evidence, Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, 1 August 2024, p 24.

586 Evidence, Mr James Gaskell, Chief Operating Officer, Australian Natural Therapeutics Group, 19 August 2024, pp 36-37.

587 Evidence, Dr Robert May, Chair of Addiction Psychiatry, Royal Australian and New Zealand College of Psychiatrists, New South Wales Branch, 19 August 2024, p 14.

588 Evidence, Dr Robert May, Chair of Addiction Psychiatry, Royal Australian and New Zealand College of Psychiatrists, New South Wales Branch, 19 August 2024, p 14.

589 Evidence, Dr Will Tregoning, Chief Executive Officer, Unharm, 1 August 2024, p 42.

pathways like better education, an increase in the perceived credibility of government sources, and prevention programs in schools, noting that the latter has already been 'really effective in, for example, reducing rates of alcohol use and tobacco'.[590]

4.94 Ms Alice Pierce, Director of Programs, NSW Users and AIDS Association said that it was 'really important' than any change to the regulatory framework has a 'significant increase in the investment in education around cannabis use'.[591] She also recommended improvements to the current education around cannabis use in New South Wales, which she said is 'often incorrect and sometimes even harmful'.[592]

4.95 Others suggested that in a legal model, taxes collected from the sale of cannabis could be used to fund public health campaigns, as well as drug and alcohol treatment services.[593]

Committee comment

4.96 The last decade has seen significant changes in the way cannabis is regulated across the world. A number of jurisdictions, including one in Australia, have introduced reforms to decriminalise or legalise cannabis. This chapter outlined the approaches in some of these places.

4.97 These examples demonstrate that there are a multitude of ways to approach regulation of cannabis, with every jurisdiction tailoring its approach to its specific context. Evidence suggests that some places have been more effective at designing an appropriate scheme than others.

4.98 It would be advisable for the New South Wales Government to consider the learnings from these experiences in initiating any changes to the regulatory framework for cannabis in this state.

4.99 The Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023, currently before Parliament, aims to decriminalise certain conduct relating to cannabis use. Participants to this inquiry provided a range of perspectives on this bill, including suggestions for how it could be improve.

590 Evidence, Dr Will Tregoning, Chief Executive Officer, Unharm, 1 August 2024, p 42.

591 Evidence, Ms Alice Pierce, Director of Programs, NSW Users and AIDS Association, 1 August 2024, p 36.

592 Evidence, Ms Alice Pierce, Director of Programs, NSW Users and AIDS Association, 1 August 2024, p 36.

593 Submission 111, Penington Institute, p 9; Submission 115, Students for Sensible Drug Policy Australia, p 7; Evidence, Mr Kieran Palmer, Director of Clinical Services, Ted Noffs Foundation, 20 August 2024, p 52.

Appendix 1 Submissions

No.	Author
1	Mr Matthew Hendry
2	Name suppressed
3	Mr Peter Foster
4	Name suppressed
5	Name suppressed
6	Confidential
7	Robin Dennerley
8	Name suppressed
9	Name suppressed
10	Name suppressed
11	Name suppressed
12	Ms Louise Schachter
13	Name suppressed
14	Mr Jarra Hyland
15	Name suppressed
16	Mr Eric Bathe
17	Mr Steven Bridge
18	Name suppressed
19	Mr Jeff Tarrant
20	Name suppressed
21	Confidential
22	Name suppressed
23	Name suppressed
24	Name suppressed
25	Mr James Furness
26	Name suppressed
27	Name suppressed
28	Name suppressed
29	Mr Alexander Kreisler
30	Mr Kenny Collins
31	Mr Daniel Ross
32	Confidential

No.	Author
33	Name suppressed
34	Name suppressed
35	Confidential
36	Name suppressed
37	Name suppressed
38	Mr Peter Butler
38a	Mr Peter Butler
38b	Mr Peter Butler
39	Mr Peter Godfrey
40	Mr Seyed Hossein Mir Karimi
41	Mrs Veronica Fallon
42	Confidential
43	Mrs Kerry-Ann Taylor
44	Name suppressed
45	Name suppressed
46	The Hon Jason Blake
47	Mr Zachary McGill
48	Cannabis Psychedelics
49	Mr Patrick Hutchinson
50	Mr Frank Lindner
51	Mr Garry Mahony
52	Name suppressed
53	Ted Tatam
54	Mr Michael Balderstone
55	Mr Dean Connolly
56	Mr Caleb Sandercock
57	Mr Brian Bollard
58	Ms Sarah Taylor
59	Mr Dez Hoy
60	Name suppressed
61	Mr Thomas Sanders
62	Mr Marcus Hoskin
63	Name suppressed
64	Mr Ryan Garner
65	Name suppressed

No.	Author
66	Mr Cameron Sojan
67	Name suppressed
68	Name suppressed
69	Dr Keith Bolton
70	Ms Joanne Symonds
71	Name suppressed
72	Ms Alex Pelli
73	Name suppressed
74	Name suppressed
75	Mr Gilbert Grace
76	Name suppressed
77	Mr Mark Howells
78	Mr Langdon Brown
79	Name suppressed
80	Name suppressed
81	Name suppressed
82	Name suppressed
83	Name suppressed
84	Mr Matthew Woloszuk
85	Andrew Ongley
86	Dr James Moylan
87	Name suppressed
88	Confidential
89	Sophie Watkins
90	Legal Aid NSW
91	Mr Wayne Wilkins
92	Medical Cannabis Users Association of Australia (MCUA)
93	Australian Industry Group (Ai Group)
94	Name suppressed
95	Andrew Fenwick
96	Miss Tihema Elliston
97	Name suppressed
98	Name suppressed
99	Name suppressed
100	Mr Jim Billington

No.	Author
101	Mr Cameron Keatings
102	NSW Council for Civil Liberties
103	Positive Life NSW
104	Mr John Ruddick
105	Mr Matthew Rowland
106	Professor Nicholas Lintzeris
107	Alcohol and Drug Foundation
108	Confidential
109	Australian Lawyers Alliance (ALA) NSW
110	Drug Policy Modelling Program, SPRC, UNSW
111	Penington Institute
112	NSW Users and AIDS Association (NUAA)
113	Transport Workers' Union of New South Wales
114	Mid North Coast Legal Centre
115	Students for Sensible Drug Policy Australia
116	Cannabis Policy Project
117	Mr Walter Scragg
118	Confidential
119	Jonathan Soady
120	Mr Wayne Craft
121	Name suppressed
122	Name suppressed
123	Ms Louise Whyte - McDonnell
124	Marc Selan
125	Confidential
126	Name suppressed
127	Name suppressed
128	Mr Benn Banasik
129	Dr Ben Mostyn
130	Unharm
131	Name suppressed
132	Mr Donald Fuggle
133	Confidential
134	NSW Young Labor
135	The Royal Australian College of General Practitioners (RACGP) NSW and ACT

No.	Author
136	Conditsis Lawyers
137	Mr Macciza Macpherson
138	NSW Nurses and Midwives' Association
139	New South Wales Bar Association
140	Uniting NSW.ACT
141	Mr Alex Harvey
142	Name suppressed
143	Mr Cameron Lowe
144	Mr Neil Mccosh
145	Name suppressed
146	Name suppressed
147	Name suppressed
148	Mr Michael Combley
149	Mr Steven Cassell
150	Name suppressed
151	Mr David Seidel
152	Mr James Harris
153	Name suppressed
154	Name suppressed
155	Name suppressed
156	Name suppressed
157	Name suppressed
158	Mr Bevan McBride
159	Mr Donald Campey
160	Name suppressed
161	Name suppressed
162	Mrs Michelle Hugginson
163	Name suppressed
164	Miss Mikayla Ryan
165	Name suppressed
166	Mr Warwick Botfield
167	Mr Terence Mahony
168	Mr Hayden Bueno
169	Name suppressed
170	Confidential

No.	Author
171	Mr David Williams
172	Miss Janine Sanders
173	Mr Jamie Wrigley
174	Ms Madeline Kerkham
175	Miss Jessica Gaddes
176	National Drug and Alcohol Research Centre
177	Name suppressed
178	Name suppressed
179	Name suppressed
180	Name suppressed
181	Ms Penny Lomax
182	Name suppressed
183	Mr Kyle Buchanan
184	Mrs Jenny McFadden
185	Name suppressed
186	Mr James Ewan
187	Mr Adrian Norman
188	Name suppressed
189	Mr Joel Love
190	Name suppressed
191	Name suppressed
191a	Name suppressed
192	Name suppressed
193	Mr Jared Weston
194	Name suppressed
195	Name suppressed
196	Name suppressed
197	Ms Frances Lightfoot
198	Name suppressed
199	Name suppressed
200	Name suppressed
201	Name suppressed
202	Mrs Sharon Avakian
203	Aboriginal Legal Service (NSW/ACT) Limited
204	Name suppressed

No.	Author
205	Name suppressed
206	Craig Mcgarry
207	Name suppressed
208	Name suppressed
209	Name suppressed
210	Name suppressed
211	Name suppressed
212	Mr Bradley McMillan
213	Mr Darren Lloyd
214	Name suppressed
215	Name suppressed
216	Mr Peter Watson
217	Mr Kenneth Gillett
217a	Mr Kenneth Gillett
218	Mr Clayton Tattersall
219	Name suppressed
220	Name suppressed
221	Dr Stefahn Dunn
222	Redfern Legal Centre
223	Name suppressed
224	Jose Paz Vermal
225	Mrs Heather Gladman
226	Name suppressed
227	Name suppressed
228	Name suppressed
229	Name suppressed
230	Name suppressed
231	Brett McInnes
232	Confidential
233	Name suppressed
234	Name suppressed
235	Name suppressed
236	Name suppressed
237	Mr James Provoost
238	Mr Peter Hajenko

No.	Author
239	Mr Steven Minch
240	Mr Glen Millar
241	Name suppressed
242	Mr Anthony Roy Poynton
243	Name suppressed
244	Elly Hes
245	Mr Harald Steingruber
246	Mr Paul Wallis
247	Name suppressed
248	Mr Sassall Sola
249	Name suppressed
250	Name suppressed
251	Name suppressed
252	Mr Lee Smith
253	Dr Andrea Leong
254	Name suppressed
255	Name suppressed
256	Ms Elissa Smith
257	Name suppressed
258	Name suppressed
259	Name suppressed
260	Name suppressed
261	Confidential
262	Name suppressed
263	Name suppressed
264	Confidential
265	Adam Nelson
266	Name suppressed
267	Mrs Linda Schicht
268	Name suppressed
269	Name suppressed
270	Mr Kit Laughlin & Associates
271	Name suppressed
272	Mr Adrian Keefe
272a	Mr Adrian Keefe

No.	Author
273	Name suppressed
274	Confidential
275	Name suppressed
276	Name suppressed
277	Name suppressed
278	Name suppressed
279	Name suppressed
280	Mr Andrew Putnam
281	Mr Rodney Jenkins
282	Mrs Mariah Fraser
283	Name suppressed
284	Mr Adam Yarnold
285	Australian Natural Therapeutics Group (ANTG)
286	Ms Michele Lacroix
287	Confidential
288	Name suppressed
289	Name suppressed
290	Name suppressed
291	Name suppressed
292	Name suppressed
293	Name suppressed
294	Mr Jake Standing
294a	Mr Jake Standing
295	Name suppressed
296	The Royal Australian and New Zealand College of Psychiatrists (RANZCP)
297	Ms Margaret Holles
298	Meaghan Morrison
299	Mrs Susan Bonaccorsi
300	Kim McMillan
301	Miss Elizabeth Grant
302	Name suppressed
303	Name suppressed
304	Mr Antony Zbik
305	Name suppressed
306	Name suppressed

No.	Author
307	Name suppressed
308	Name suppressed
309	Name suppressed
310	Name suppressed
311	Name suppressed
312	Name suppressed
313	Name suppressed
314	Anthony George
315	Name suppressed
316	Name suppressed
317	Name suppressed
318	Name suppressed
319	Name suppressed
320	Name suppressed
321	Name suppressed
322	Name suppressed
323	Name suppressed
324	Name suppressed
325	Name suppressed
326	Name suppressed
327	Name suppressed
328	Name suppressed
329	Confidential
330	Mr Joshua Pomfrett
331	Name suppressed
332	Name suppressed
333	Mr Andrew Murphy
334	Ms Rebecca Chenoweth
335	Mrs Melinda Jane Wilson
336	Name suppressed
337	Mrs Joan Chenoweth
338	Ted Noffs Foundation Ltd
339	Name suppressed
340	Confidential
341	360Edge

No.	Author
342	Mr Derek Pyrah
343	Confidential
344	Name suppressed
345	Mr Mark Hoskins
346	Name suppressed
347	Mr Timothy Harris
348	Mr Daniel Dryden
349	Name suppressed
350	Mrs Crystal White
351	Mr Mark Smith
352	Mrs Gail Hester
353	Mr Seppy Pour
354	Montu Group Pty Ltd
355	Justice Action
356	Drug Policy Australia
357	South Asian Research and Advocacy Hub (SARAH)
358	Unions NSW

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Thursday, 1 August 2024 **Macquarie Room** **Parliament House, Sydney**	Mr Nicholas Cowdery AO, KC	Past President, NSW Council for Civil Liberties
	Mr Jonathon Paff	Criminal Solicitor & Coffs Harbour Summary Courts Manager, Legal Aid NSW
	Mr Greg Barns SC	Spokesperson on Criminal Justice and Human Rights, Australian Lawyers Alliance
	Dr Ben Mostyn	Academic Fellow, The University of Sydney Law School
	Professor Nicholas Lintzeris	Conjoint Professor in Addiction, Medicine, The University of Sydney
	Ms Liz Barrett	Research Officer, Drug Policy Modelling Program, SPRC, UNSW
	Ms Keelin O'Reilly	Research Officer, Drug Policy Modelling Program, SPRC, UNSW
	Ms Tracey Browne	Manager – National WHS and Workers' Compensation, Australian Industry Group (Ai Group)
	Mr Scott Barklamb	Principal Adviser, Workplace Relations Policy, Australian Industry Group (Ai Group)
	Dr Will Tregoning	CEO, Unharm
	Mr Andrew Heslop	Senior Health Promotion and Peer Navigation Manager, Positive Life
	Dr Mary Ellen Harrod	CEO, NSW Users and AIDS Association
	Ms Alice Pierce	Director of Programs, NSW Users and AIDS Association
	Mr Robert Taylor	Manager – Policy & Engagement, Alcohol and Drug Foundation

Date	Name	Position and Organisation
	Mr Benn Banasik	Individual with lived experience
Monday, 19 August 2024 **Macquarie Room** **Parliament House, Sydney**	Mr Nicholas Broadbent	Secretary, NSW Bar Association
	Ms Samantha Lee	Supervising solicitor, Redfern Legal Centre
	Dr Robert May	Chair of Addiction Psychiatry for the NSW Branch of The Royal Australian and New Zealand College of Psychiatrists (RANZCP)
	Dr Thomas Lu	General Practitioner, the Royal Australian College of General Practitioners
	Mr Michael Whaites	Assistant General Secretary, NSW Nurses and Midwives' Association; Assistant Branch Secretary, Australian Nursing and Midwifery Federation NSW Branch
	Ms Michala Kowalski	Postdoctoral Research Fellow, National Drug and Alcohol Research Centre
	Professor Don Weatherburn	Professor, National Drug and Alcohol Research Centre
	Mr Matthew Cantelo	Chief Executive Officer, Australian Natural Therapeutics Group
	Mr James Gaskell	Chief Operating Officer, Australian Natural Therapeutics Group
	Mr Edward Strong	Head of Government Relations, Montu Group Pty Ltd
	Matthew McCrone	Industry and Government Engagement Lead, Montu Group Pty Ltd
	Ms Alice Salomon	Head of Media and Advocacy, Uniting NSW.ACT
	Dr Marianne Jauncey	Medical Director, Uniting Medically Supervised Injecting Centre, Uniting NSW.ACT
Tuesday, 20 August 2024 **Invercauld House**	Mr Joel Hardy	Chief Executive Officer and Co-founder, Cymra Life Sciences
Goonellabah, NSW	Dr James Moylan	Law Reform Activist

Date	Name	Position and Organisation
	Mr David Michael Heilpern	Dean of Law, Southern Cross University
	Dr Keith Gordon Edward Bolton	Founding Director, Water Operations Division Supervisor, Ecotechnology Australia Pty Ltd
	Mr Patrick Hourigan	Assistant Principal Solicitor, Mid North Coast Legal Centre
	Mr Michael Balderstone	Individual with lived experience
	Mr Marc Selan	Individual with lived experience
	Mr Matt Noffs	Chief Executive Officer, Ted Noffs Foundation
	Mr Kieran Palmer	Director of Clinical Services, Ted Noffs Foundation

Appendix 3 Minutes

Minutes no. 23
Friday 5 April 2024
Portfolio Committee No. 1 – Premier and Finance
Via videoconference 10.05 am

1. Members present
Mr Buckingham *Chair*
Dr Kaine
Mr Lawrence
Mrs Maclaren-Jones (substituting for Mr Tudehope)
Ms Munro (substituting for Mr Rath)
Mr Nanva
Mr Ruddick (participating)

2. Apologies
Mr Borsak *Deputy Chair*
Ms Faehrmann

3. Correspondence
The committee noted the following items of correspondence:

Received

- 22 March 2024 – Email from Ms Cate Faehrmann MLC requesting to participate on the Inquiry into the impact of the regulatory framework for cannabis in New South Wales
- 25 March 2024 – Email from the Office of the Hon John Ruddick MLC requesting to participate on the Inquiry into the impact of the regulatory framework for cannabis in New South Wales
- 27 March 2024 – Email from the Opposition Whip's Office advising that the Hon Jacqui Munro MLC will substitute for the Hon Chris Rath MLC for the during of the inquiry into the impact of the regulatory framework for cannabis in New South Wales
- 19 March 2024 – Letter from the Hon Mark Latham MLC to the Chair, requesting the committee follow up Ms Abigail Boyd MLC regarding discussion during the Budget Estimates Legislature hearing on 4 March 2024
- 25 March 2024 – Letter from Ms Abigail Boyd MLC to the Chair, responding to the Chair's letter regarding the Budget Estimates Legislature hearing on 4 March 2024
- 28 March 2024 – Email from the Opposition Whip's Office advising that the Hon Natasha Maclaren-Jones MLC will substitute for the Hon Damien Tudehope MLC for the during of the inquiry into the impact of the regulatory framework for cannabis in New South Wales.

Sent

- 22 March 2024 – Letter from the Chair to Ms Abigail Boyd MLC, requesting Ms Boyd to produce documentation as raised in the Budget Estimates Legislature hearing on Monday 4 March 2024.

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

4.1 Terms of reference
The committee noted the referral on 20 March 2024 of the following terms of reference:

(1) That Portfolio Committee No. 1 - Premier and Finance inquire into and report on the impact of the regulatory framework for cannabis in New South Wales, including:
  (a) the historical development and implementation of the regulatory framework for cannabis,
  (b) the socioeconomic impact of the current regulatory framework for cannabis,

(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, LGBTIQA+, 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, and
(h) any other related matter.

(2) That the committee report by 26 September 2024.

5. Conduct of the inquiry into the impact of the regulatory framework for cannabis in New South Wales

5.1 Closing date for submissions
Resolved, on the motion of Mr Nanva: That the closing date for submissions be Friday 17 May 2024.

5.2 Stakeholder list
Resolved, on the motion of Mrs Maclaren-Jones: That the secretariat circulate to members the Chair's proposed list of stakeholders to provide them with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

5.3 Approach to submissions
Resolved, on the motion of Dr Kaine: That, to enable significant efficiencies for members and the secretariat while maintaining the integrity of how submissions are treated, in the event that 200 or more individual submissions are received, the committee may adopt the following approach to processing short submissions:

- All submissions from individuals 250 words or less in length will:
  - have an individual submission number, and be published with the author's name or as name suppressed, or kept confidential, according to the author's request
  - be reviewed by the secretariat for adverse mention and sensitive/identifying information, in accordance with practice
  - be channelled into one single document to be published on the inquiry website
- All other submissions will be processed and published as normal.

5.4 Hearing dates and proposed regional travel
Resolved, on the motion of Ms Munro: That hearing dates and regional travel be determined by the committee after the submission closing date and following consultation with members regarding their availability.

6. Inquiry into Budget Estimates 2023-2024
Resolved, on the motion of Mr Nanva: That a brief paragraph discussing the exchange of correspondence between Mr Latham and Ms Boyd regarding The Legislature hearing on 4 March 2024 be circulated to the committee via email for consideration prior to inclusion in the Chair's draft report.

7. Adjournment
The committee adjourned at 10.22 am, *sine die*.

Kara McKee
Committee Clerk

Minutes no. 25
Friday 28 June 2024
Portfolio Committee No. 1 – Premier and Finance
Via videoconference, 10.32 am

1. Members present
Mr Buckingham, *Chair*
Mr Borsak, Deputy Chair
Dr Kaine
Mr Lawrence (from 10.34 am)
Mr Nanva
Mr Ruddick (participating)

2. Apologies
Mr Tudehope

3. Previous minutes

Resolved, on the motion of Mr Borsak: That draft minutes no. 23 be confirmed.

4. Correspondence
The committee noted the following items of correspondence:

Received

- 19 June 2024 – Email from the Office of the Hon. John Ruddick MLC requesting to participate on the Inquiry into the Alcohol Consumption in Public Places (Liberalisation) Bill 2024.

5. Inquiry into the Alcohol Consumption in Public Places (Liberalisation) Bill 2024

5.1 Terms of reference
The committee noted the following terms of reference referred by the House on 18 June 2024:

That:

(a) The Alcohol Consumption in Public Places (Liberalisation) Bill 2024 be referred to Portfolio Committee No. 1 – Premier and Finance at the conclusion of the mover's second reading speech in the Council, and
(b) The committee report by 20 September 2024.

5.2 Proposed timeline

Resolved, on the motion of Mr Nanva: That the committee adopt the following timeline for the administration of the inquiry:

- Submissions close – Friday 19 July 2024
- Hearing – Monday 12 August 2024
- Report deliberative – Friday 13 September 2024

5.3 Stakeholder list
Resolved, on the motion of Mr Lawrence: That:

- the secretariat circulate to members the Chair's proposed list of stakeholders to be invited to make a submission
- members have two days from when the Chair's proposed list is circulated to make amendments or nominate additional stakeholders
- the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

5.4 Approach to submissions

Resolved, on the motion of Mr Borsak: That, to enable significant efficiencies for members and the secretariat while maintaining the integrity of how submissions are treated, in the event that 50 or more individual submissions are received, the committee may adopt the following approach to processing short submissions:

- All submissions from individuals 250 words or less in length will:
    - have an individual submission number, and be published with the author's name or as name suppressed, or kept confidential, according to the author's request
    - be reviewed by the secretariat for adverse mention and sensitive/identifying information, in accordance with practice
    - be channelled into one single document to be published on the inquiry website
- All other submissions will be processed and published as normal.

5.5 Online questionnaire

Resolved, on the motion of Mr Lawrence: That the committee use an online questionnaire to capture individuals' views, and that the draft questions be as follows:

1. Name

2. Email address

3. Postcode

4. The object of the Bill is to remove restrictions and prohibitions on the consumption of alcohol in public places, other than in public places prescribed by the regulations that are of cultural or religious significance, or where a person is intoxicated or disorderly. What is your position on the Alcohol Consumption in Public Places (Liberalisation) Bill 2024? Select one of these options:

a. Support

b. Partially support

c. Support with amendments

d. Oppose

5. Please explain why you support/partially support/support with amendments/oppose the bill. (max 300 words)

6. What amendments, if any, would you like incorporated?

7. Do you have any other comments? (max 300 words)

Resolved, on the motion of Mr Lawrence: That:

- the committee not accept proformas
- the media release announcing the establishment of the inquiry and emails to stakeholders note that there will be an online questionnaire to capture individuals' views
- that the following wording be included on the committee's website:
    - **Submissions**

      Individuals are invited to submit their comments on the terms of reference here This is a new way for individuals to participate in inquiries and it means we will no longer accept proformas.

Resolved, on the motion of Mr Lawrence: That the secretariat prepare a summary report of responses to the online questionnaire for publication on the website and use in the report, and that:

- the committee agree to publication of the report via email, unless a member raises any concerns
- individual responses be kept confidential on tabling.

5.6 Provision of documents to participating members
Resolved, on the motion of Dr Kaine: That Mr Ruddick, who has advised the committee that he intends to participate for the duration of the inquiry into Alcohol Consumption in Public Places (Liberalisation) Bill 2024, be provided with copies of meeting papers and unpublished submissions.

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

6.1 Submissions
Resolved, on the motion of Mr Borsak: That the committee re-open submissions until Wednesday 31 July 2024.

6.2 Participating members
Resolved, on the motion of Mr Borsak: That Ms Faehrmann and Mr Ruddick, as participating members for the duration of the Impact of the regulatory framework for cannabis in New South Wales be provided with copies of all committee papers and that all costs associated with their participation in the inquiry be covered by the committee.

6.3 Lismore travel
Resolved, on the motion of Mr Borsak: That the committee agree to:

- travel to Lismore on Tuesday 20 August 2024 to Wednesday 21 August 2024
- conduct a hearing in Lismore
- conduct a site visit to the Cymra Life Sciences Medicinal Cannabis facility in Alstonville, subject to the agreement of the facility
- an indicative costing of $18,000 for this regional travel.

6.4 Extension of reporting date
Resolved, on the motion of Mr Borsak: That the Chair seek a resolution from the House to extend the reporting date for the Cannabis inquiry to Thursday 21 November 2024.

7. Adjournment
The committee adjourned at 10.45 am, until 10.00 am on Friday 5 July 2024, Room 1043, Parliament House, Sydney (report deliberative – Artificial Intelligence (AI) in New South Wales).

Alex Stedman
Committee Clerk

Minutes no. 29
Thursday 1 August 2024
Portfolio Committee No. 1 – Premier and Finance
Macquarie Room, Parliament House, Sydney at 9.01 am

1. Members present
Mr Buckingham, *Chair*
Dr Kaine (from 9.14 am)
Mr Lawrence (until 3.58 pm)
Mrs Maclaren-Jones (until 9.50 am, and from 2.15 pm)
Ms Munro (from 9.11 am)
Mr Murphy (substituting for Mr Nanva via videoconference)
Mr Ruddick (participating) (from 9.30 am until 1.00 pm)

2. Apologies
Mr Borsak
Ms Faehrmann

3. Previous minutes

Resolved, on the motion of Mr Lawrence: That draft minutes no. 25 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 12 April 2024 – Email from Ms Jackie Fitzgerald, BOSCAR, to the secretariat, in response to stakeholder invitation for submission to the Inquiry into the impact of the regulatory framework for cannabis in New South Wales, noting that BOSCAR does not ordinarily make submissions, but BOSCAR could receive questions from the committee
- 8 May 2024 – Email from the Mental Health Coordinating Council to the Chair, advising they do not have sufficient resources to provide a submission, and would like to be informed as to the progress of the Inquiry into the impact of the regulatory framework for cannabis in NSW
- 31 May 2024 – Email from Mr Avi Rebera, Office of Drug Control, Australian Government Department of Health and Aged Care, to the Chair, in response to the stakeholder invitation for submission to the Inquiry into the impact of the regulatory framework for cannabis in New South Wales, referring to submissions to other inquiries by the Department of Health and Aged Care and providing some background information on the International, Federal and State legislative scheme surrounding cannabis
- 6 June 2024 – Email from Ms Marianne Kearney, Office of the Advocate for Children and Young People, advising that due to competing priorities the Advocate will not be making a submission to the inquiry into the impact of the regulatory framework for cannabis in NSW
- 18 June 2024 – Email from Professor Nicholas Lintzeris to secretariat, declining to attend the hearing for the inquiry into the impact of the regulatory framework for cannabis on Friday 28 June 2024 due to unavailability, noted available to attend a hearing after 2 July 2024
- 18 June 2024 – Email from Dr Ben Mostyn, declining the invitation declining to attend the hearing for the inquiry into the impact of the regulatory framework for cannabis on Friday 28 June 2024 due to unavailability, noted interest in appearing at a future hearing
- 19 June 2024 – Email from Ms Paris Dounoukos, Alcohol and Drug Foundation to secretariat, declining the invitation declining to attend the hearing for the inquiry into the impact of the regulatory framework for cannabis on Friday 28 June 2024 due to unavailability, noted interest in appearing at a future hearing
- 20 June 2024 – Email from Mr Andrew Heslop, Positive Life NSW, to secretariat, requesting that the NSW Users and AIDS Association be invited to the hearing for the inquiry into the impact of the regulatory framework for cannabis on Friday 28 June 2024
- 21 June 2024 – Email from Ms Elenore Levi, Australian Lawyers Alliance to secretariat, declining the invitation declining to attend the hearing for the inquiry into the impact of the regulatory framework for cannabis on Friday 28 June 2024 due to unavailability, noted interest in appearing at a future hearing
- 22 June 2024 – Email from Mr Daniel Peric, Transport Workers' Union of NSW to secretariat, declining the invitation declining to attend the hearing for the inquiry into the impact of the regulatory framework for cannabis on Friday 28 June 2024 due to unavailability
- 24 June 2024 – Email from Ms Naiomi Levack-Payne, Royal Australian College of General Practitioners to secretariat, declining the invitation declining to attend the hearing for the inquiry into the impact of the regulatory framework for cannabis on Friday 28 June 2024 due to unavailability
- 24 June 2024 – Email from Ms Peta Waller-Bryant, Office of the Hon. Penny Sharpe MLC, in response to emails from the secretariat advising that the NSW Government does not intend to make a submission to the inquiry into the impact of the regulatory framework for cannabis
- 9 July 2024 – Email from Mr Anthony Roy Poynton to secretariat, requesting that his supplementary submission replace his published submission in relation to the inquiry into the impact of the regulatory framework for cannabis in NSW
- 11 July 2024 – Email from Mr Thomas Mortimer, Australian Workers' Union, confirming the Australian Workers' Union will not be making a submission to the inquiry for the impact into the regulatory framework for cannabis in NSW

- 18 July 2024 – Email from Mr Daniel Peric, Transport Workers' Union of NSW, declining the invitation to attend the hearing for the inquiry into the impact of the regulatory framework for cannabis in NSW on 1 August 2024
- 25 July 2024 – Email from Ms Naiomi Levack-Payne, Royal Australian College of General Practitioners, declining the invitation to the attend the hearing for the inquiry into the impact of the regulatory framework for cannabis in NSW on Thursday 1 August 2024, as they are unable to find an appropriate representative.

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

5.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1, 3, 7, 12, 14, 16-17, 19, 25, 29-31, 38, 38a, 38b, 39- 41, 43, 46-51, 53-59, 61-62, 64, 66, 69-70, 72, 75, 77-78, 84- 86, 89-93, 95-96, 100-107, 109-115, 117, 119-120, 123-124, 129-130, 132, 134-141, 143-144, 148-149, 151-152, 158-159, 162, 164, 166-168, 171-176, 181, 183-184, 186-187, 189, 197, 202-203, 206, 212-213, 216-217, 217a, 218, 221-222, 224-225, 231, 237-240, 242, 244-246, 248, 252-253, 256, 265, 267, 270, 272, 272a, 280-282, 284-286, 294, 294a, 296-301 and 314.

Resolved, on the motion of Mrs Maclaren-Jones: That the committee accept and replace submission no. 242 with supplementary submission 242a as per the request of the author.

5.2 Partially confidential submissions

Resolved, on the motion of Mr Murphy: That the committee keep the following information confidential, as per the request of the author, names and/or identifying information in submissions nos. 2, 4-5, 8-11, 13, 15, 18, 20, 22-24, 26, 28, 33-34, 36, 44-45, 52, 60, 63, 65, 67-68, 71, 73-74, 76, 79-83, 87, 94, 97-98, 121, 126-127, 131, 142, 145-147, 150, 153-157, 160-161, 163, 165, 169, 177-180, 182, 185, 188, 190-192, 194-196, 198-201, 204-205, 207-211, 214- 215, 219-220, 223, 226-230, 233-236, 241, 243, 247, 249-251, 254-255, 257-260, 263, 266, 268-269, 271, 273, 275-279, 283, 288-293, 295, 302-303, 305-313.

Resolved, on the motion of Mrs Maclaren-Jones: That:

- The committee authorise the publication of submission nos. 37, 116, 128, 262 and 304 with the exception of identifying and/or sensitive information which is to remain confidential as per the recommendation of the secretariat.
- the committee authorise the publication of submission no. 122 with the exception of sensitive and/or identifying information which is to remain confidential as per:
    - the recommendation of the secretariat (page 1 of the submission)
    - the request of the author (page 3 of the submission).

5.3 Confidential submissions

Resolved, on the motion of Mr Lawrence: That the committee keep submission nos. 6, 21, 32, 35, 42, 88, 108, 118, 125, 133, 170, 232, 261, 264, 274 and 287 confidential, as per the request of the author as they contain identifying and/or sensitive information.

5.4 Lismore regional travel

Resolved, on the motion of Mr Lawrence: That the committee agree to conduct a hearing on Tuesday 20 August 2024 in Lismore at Invercauld House, 163 Invercauld Road, Goonellabah, NSW, from approximately 12 pm to 6.30 pm – 7 pm.

5.5 Public hearing

Sequence of questions

Resolved, on the motion of Mr Lawrence: That the allocation of questions to be asked at the hearing be left in the hands of the Chair.

The Chair made an opening statement regarding parliamentary privilege and other matters.

Witnesses, the media and the public were admitted at 9.15 am.

The following witness was sworn and examined:

- Mr Nicholas Cowdery AO, KC, Past President, NSW Council for Civil Liberties

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Jonathon Paff, Criminal Solicitor & Coffs Harbour Summary Courts Manager, Legal Aid NSW
- Mr Greg Barns SC, Spokesperson on Criminal Justice and Human Rights, Australian Lawyers Alliance

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Ben Mostyn, Academic Fellow, The University of Sydney Law School
- Professor Nicholas Lintzeris, Conjoint Professor in Addiction, Medicine, The University of Sydney

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Liz Barrett, Research Officer, Drug Policy Modelling Program, SPRC, UNSW
- Ms Keelin O'Reilly, Research Officer, Drug Policy Modelling Program, SPRC, UNSW

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Tracey Browne, Manager – National WHS and Workers' Compensation, Australian Industry Group (Ai Group)
- Mr Scott Barklamb, Principal Adviser, Workplace Relations Policy, Australian Industry Group (Ai Group)

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Will Tregoning, CEO, Unharm
- Mr Andrew Heslop, Senior Health Promotion and Peer Navigation Manager, Positive Life
- Dr Mary Ellen Harrod, CEO, NSW Users and AIDS Association
- Ms Alice Pierce, Director of Programs, NSW Users and AIDS Association

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Robert Taylor, Manager – Policy & Engagement, Alcohol and Drug Foundation

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Benn Banasik, Individual with lived experience

The evidence concluded and the witness withdrew.

The public hearing concluded at 4.29 pm. The public and the media withdrew.

6. Adjournment

The committee adjourned at 4.29 pm until Monday 19 August 2024, Parliament House, Sydney (Inquiry into the impact of the regulatory framework for cannabis in New South Wales – public hearing).

Alice Wood
Committee Clerk

Minutes no. 31
Monday 19 August 2024
Portfolio Committee No. 1 – Premier and Finance
Macquarie Room, Parliament House, Sydney at 8.53 am

1. Members present
Mr Buckingham, *Chair*
Mr Borsak, *Deputy Chair* (until 12.02 pm)
Ms Faehrmann (participating from 9.41 am)
Dr Kaine (via videoconference)
Mr Lawrence (from 9.14 am)
Mrs Maclaren-Jones (from 8.56 am until 9.43 am, and from 1.28 pm)
Mr Murphy (substituting for Mr Nanva for the duration of the inquiry into the impact of the regulatory framework for cannabis in New South Wales)
Mr Ruddick (participating from 9.16 am)

2. Apologies
Ms Munro

3. Previous minutes
Resolved, on the motion of Mr Murphy: That draft minutes no. 29 be confirmed.

4. Correspondence
The committee noted the following items of correspondence:

Received

- 31 July 2024 – Email from Mr Adam Nelson to the committee, attaching submission of Mr Michael White to the Road Safety Strategy, in relation to the inquiry into the impact of the regulatory framework for cannabis in New South Wales
- 2 August 2024 – Email from the Office of the Hon Bob Nanva MLC to secretariat, advising that the Hon Cameron Murphy MLC will substitute for the Hon Bob Nanva MLC for the duration of the inquiry into the impact of the regulatory framework for cannabis in New South Wales
- 2 August 2024 – Email from Dr James Moylan to secretariat, requesting that he and Mr Michael Balderstone attend the hearing in Lismore on 20 August 2024 for the inquiry into the impact of the regulatory framework for cannabis in New South Wales
- 12 August 2024 – Email from Mr Edward Strong, Montu Group Pty Ltd, requesting to appear individually, rather than on a panel with Australian Natural Therapeutics Group for the hearing on 19 August 2024 for the inquiry into the impact of the regulatory framework for cannabis in New South Wales
- 13 August 2024 – Email from Ms Kate Renehan, Aboriginal Legal Service NSW/ACT declining invitation to attend the hearing on 19 August 2024 for the inquiry into the impact of the regulatory framework for cannabis in New South Wales due to lack of capacity.

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

5.1 Public Submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 330, 333-335, 337-338, 341-342, 345, 347-348, 350-355.

5.2 Partially confidential submissions

Resolved, on the motion of Mr Murphy: That the committee keep the following information confidential, as per the request of the author: names and/or identifying and sensitive information in submissions nos. 191a, 315-325, 327-328, 331-332, 336, 339, 344, 346 and 349.

5.3 Confidential submissions

Resolved, on the motion of Mr Murphy: That the committee keep submission nos. 329, 340 and 343 confidential, as per the request of the author.

5.4 Lismore regional travel

The committee noted the itinerary for the Lismore regional travel from Tuesday 20 August 2024 to Wednesday 21 August 2024.

5.5 Public hearing

Resolved, on the motion of Mr Murphy: That the allocation of questions to be asked at the hearing be left in the hands of the Chair.

The Chair made an opening statement regarding parliamentary privilege and other matters.

Witnesses, the media and the public were admitted at 9.00 am.

The following witness was sworn and examined:

- Mr Nicholas Broadbent, Secretary, NSW Bar Association

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Ms Samantha Lee, Supervising solicitor, Redfern Legal Centre

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Dr Robert May, Chair of Addiction Psychiatry for the NSW Branch of The Royal Australian and New Zealand College of Psychiatrists (RANZCP)

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Dr Thomas Lu, General Practitioner, the Royal Australian College of General Practitioners

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Michael Whaites, Assistant General Secretary, NSW Nurses and Midwives' Association; Assistant Branch Secretary, Australian Nursing and Midwifery Federation NSW Branch

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Michala Kowalski, Postdoctoral Research Fellow, National Drug and Alcohol Research Centre
- Professor Don Weatherburn, Professor, National Drug and Alcohol Research Centre

Professor Don Weatherburn tendered the following document:

- Don Weatherburn, Professor, National Drug and Alcohol Research Centre, University of New South Wales, 'Problems with current policy responses to cannabis'.

Dr Michala Kowalski tendered the following document:

- 'NSW residents who completed the GCCRC ICCQ2 Alternative Policies Module'.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Matthew Cantelo, Chief Executive Officer, Australian Natural Therapeutics Group
- Mr James Gaskell, Chief Operating Officer, Australian Natural Therapeutics Group

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Edward Strong, Head of Government Relations, Montu Group Pty Ltd
- Matthew McCrone, Industry and Government Engagement Lead, Montu Group Pty Ltd

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Alice Salomon, Head of Media and Advocacy, Uniting NSW/ACT
- Dr Marianne Jauncey, Medical Director, Uniting Medically Supervised Injecting Centre, Uniting NSW/ACT

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 3.48 pm. The public and the media withdrew.

6. Tendered documents

Resolved, on the motion of Mr Lawrence: That the committee accept and publish the following documents tendered during the hearing:

- Don Weatherburn, Professor, National Drug and Alcohol Research Centre, University of New South Wales, 'Problems with current policy responses to cannabis'
- 'NSW residents who completed the GCCRC ICCQ2 Alternative Policies Module'.

7. Adjournment

The committee adjourned at 3.49 pm until 6.30 am on Tuesday 20 August 2024, Departure Gate, Sydney Airport (inquiry into the impact of the regulatory framework for cannabis – Lismore regional travel).

Kara McKee
Committee Clerk

Minutes no. 32
Tuesday 20 August 2024
Portfolio Committee No. 1 – Premier and Finance
Departure Gate, Sydney Airport at 6.30 am

1. Members present

Mr Buckingham, *Chair*
Ms Faehrmann (participating)
Dr Kaine (via videoconference until 3.45 pm)
Mr Lawrence
Mrs Maclaren-Jones
Ms Munro

Mr Murphy

2. Apologies

Mr Borsak
Mr Ruddick

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

3.1 Election of Deputy Chair

The Chair noted the absence of the Deputy Chair for the meeting.

The Chair called for nominations for Deputy Chair.

Mr Lawrence moved: That Mrs Maclaren-Jones be elected Deputy Chair of the committee for the purposes of the meeting.

There being no further nominations, the Chair declared Mrs Maclaren-Jones Deputy Chair for the purposes of the meeting.

3.2 Public hearing – Invercauld House, Goonellabah

Resolved, on the motion of Mrs Maclaren-Jones: That the allocation of questions to be asked at the hearing be left in the hands of the Chair.

The Chair made an opening statement regarding parliamentary privilege and other matters.

Witnesses, the media and the public were admitted at 12.00 pm.

The following witness was sworn and examined:

- Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Dr James Moylan, Law Reform Activist

Dr Moylan tendered the following documents:

- Pertinent legal advice: Australia is in breach of its civil rights obligations
- Immediately required actions
- Dr James Moylan – presentation
- Dr James Moylan – slides

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr David Michael Heilpern, Dean of Law, Southern Cross University

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Dr Keith Gordon Edward Bolton, Founding Director, Water Operations Division Supervisor, Ecotechnology Australia Pty Ltd

Dr Bolton tendered the following document:

- Submission by Keith Bolton: inquiry into impact of the regulatory framework for Cannabis in NSW

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Patrick Hourigan, Assistant Principal Solicitor, Mid North Coast Legal Centre

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Michael Balderstone, Individual with lived experience

Mr Balderstone tendered the following document:

- Further statement from Michael Balderstone

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Marc Selan, Individual with lived experience

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Matt Noffs, Chief Executive Officer, Ted Noffs Foundation
- Mr Kieran Palmer, Director of Clinical Services, Ted Noffs Foundation

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 6.30 pm. The public and the media withdrew.

4. Tendered documents

Resolved, on the motion of Mrs Maclaren-Jones: That the committee accept and publish the following documents tendered during the hearing:

- Pertinent legal advice: Australia is in breach of its civil rights obligations
- Immediately required actions
- Dr James Moylan – presentation
- Dr James Moylan – slides
- Keith Bolton: inquiry into impact of the regulatory framework for Cannabis in NSW
- Further statement from Michael Balderstone.

5. Adjournment

The committee adjourned at 6.32 pm until 8.30 am on Wednesday 21 August 2024, Invercauld House, Goonellabah (inquiry into the impact of the regulatory framework for cannabis – site visit to Cymra Life Sciences).

Kara McKee
Committee Clerk

Minutes no. 33
Wednesday 21 August 2024
Portfolio Committee No. 1 – Premier and Finance
Invercauld House, Goonellabah at 8.45 am

1. Members present

Mr Buckingham, *Chair*

Ms Faehrmann (participating)
Mr Lawrence
Ms Munro
Mr Murphy

2. Apologies
Mr Borsak
Dr Kaine
Mrs Maclaren-Jones
Mr Ruddick

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

3.1 Site visit – Cymra Life Sciences
The committee travelled by bus to Cymra Life Sciences to observe the cultivation and manufacture of medicinal cannabis. The committee met with Cymra Life Sciences staff including:
- Mr Joel Hardy, CEO and Co-founder, Cymra Life Sciences
- Mr Simon Pettinger, COO and Co-founder.

4. Adjournment
The committee adjourned at 5.25 pm to 8.45 am on Wednesday 28 August 2024, Macquarie Room, Parliament House, Sydney (Portfolio Committee No. 1 – Budget Estimates Premier public hearing).

Kara McKee
Committee Clerk

Minutes no. 40
Friday 13 September 2024
Portfolio Committee 1
Room 1136, Parliament House, Sydney at 2.00 pm

1. Members present
Mr Buckingham, *Chair* (via videoconference)
Dr Kaine
Mr Lawrence (via videoconference)
Ms Munro
Mr Nanva (via videoconference)
Mr Rath
Mr Ruddick (participating)

2. Apologies
Mr Borsak, *Deputy Chair*

3. Previous minutes
Resolved, on the motion of Mr Nanva: That draft minutes no. 30 be confirmed.

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

4.1 Interim report and extension of reporting deadline
Resolved, on the motion of Mr Lawrence: That:
- the committee hold an interim report deliberative on Friday 25 October 2024.
- the Chair seek a resolution from the House to:

- table an interim report in the House for the inquiry on Thursday 31 October 2024, and
- extend the reporting deadline for the inquiry to Tuesday 8 April 2025.

5. Inquiry into the Alcohol Consumption in Public Places (Liberalisation) Bill 2024

5.1 Answers to questions on notice

The committee noted that the answers to questions on notice from Mr David Reynolds, Executive Officer, Local Government NSW, received 10 September 2024, were published by the committee clerk under the authorisation of the resolution appointing the committee.

Resolved, on the motion of Mr Lawrence: That:

- the answers to questions on notice from Ms Donna Ausling, Director Planning and Sustainability, Narrabri Shire Council, received 13 September 2024, be published, with the exception of the document entitled 'Crime and Crime Prevention in Narrabri Shire Research Results: Internal Use' which is to remain confidential, as per the request of the author.

5.2 Consideration of Chair's draft report

The Chair submitted his draft report entitled *Alcohol Consumption in Public Places (Liberalisation) Bill 2024,* which, having been previously circulated, was taken as being read.

Resolved, on the motion of Dr Kaine: that the following new paragraphs be inserted at paragraph 2.1:

'Current restrictions on the public consumption of alcohol

Local Government NSW explained that 'there is a misconception that alcohol is prohibited in all parks and public places'. [FOOTNOTE: Answers to questions on notice, Mr David Reynolds, Chief Executive, Local Government NSW, 10 September 2024, p 1.] They clarified the existing general freedom to consume alcohol in public places, and the process in which restrictions can be imposed:

> It is important to acknowledge that in most parks and outdoor public places across NSW it remains perfectly legal to responsibly consume alcohol. In a limited number of cases, councils and other public land holders have consulted with their communities to determine where outdoor alcohol restrictions may be appropriately applied, and in many cases the restriction applies only overnight, or during special events. [FOOTNOTE: Answers to questions on notice, Mr David Reynolds, p 2.]

When questioned about the current number of alcohol-free zones in New South Wales, Local Government NSW responded that there is 'no central register of outdoor alcohol restrictions', and stated that they are not aware of the number of restrictions across NSW. [FOOTNOTE: Answers to questions on notice, Mr David Reynolds, p 2.]'

Resolved, on the motion of Dr Kaine: that footnote 37 be amended by omitting 'Committee members queried the number of restrictions across NSW, and whether they are increasing. At the time of reporting, the Committee does not have details of the full extent of public alcohol restrictions in place across NSW, and whether there is a publicly available register of restrictions' after 'Submission 11, NSW Government, p 1'.

Resolved, on the motion of Dr Kaine: That:

- The draft report as amended be the report of the committee and that the committee present the report to the House,
- The transcripts of evidence, tabled documents, submissions, correspondence, responses and summary report to the online questionnaire, and answers to questions taken on notice be tabled in the House with the report,

- Upon tabling, all unpublished transcripts of evidence, tabled documents, submissions, correspondence, responses and summary report to the online questionnaire, and answers to questions taken on notice be published by the committee, except for those documents kept confidential by resolution of the committee,
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting,
- The secretariat to table the report on Friday 20 September,
- The Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

6. Adjournment

The committee adjourned at 2.09 pm, *sine die*.

Verity Smith
Committee Clerk

Draft minutes no. 41
Friday 25 October 2024
Portfolio Committee No. 1 – Premier and Finance
Room 1043, Parliament House, Sydney at 10.02 am

1. Members present

Mr Buckingham, *Chair*
Mr Donnelly (substituting for Dr Kaine)
Mr Lawrence
Mrs Maclaren-Jones
Ms Munro
Mr Murphy

2. Apologies

Mr Borsak, *Deputy Chair*
Ms Faehrmann (participating)
Mr Ruddick (participating)

3. Previous minutes

Resolved, on the motion of Mr Murphy: That draft minutes nos. 31, 32 and 33 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 6 August 2024 – Email from Mr Robert Taylor, Alcohol and Drug Foundation, providing transcript corrections following his appearance at the hearing on 1 August 2024 for the inquiry into the impact of the regulatory framework for cannabis in New South Wales
- 19 August 2024 – Email from Dr Will Tregoning, Unharm, providing transcript corrections following his appearance at the hearing on 1 August 2024 for the inquiry into the impact of the regulatory framework for cannabis in New South Wales

- 22 August 2024 – Email from Mr Macciza Macpherson to the committee, regarding models of cannabis regulation, in relation to the inquiry into the impact of the regulatory framework for cannabis in New South Wales
- 27 August 2024 – Email from Mr Macciza Macpherson to the committee, attaching 'International guidelines on human rights and drug policy' and an appraisal of Christian doctrinal and ethical positions on drug policy, in relation to the inquiry into the impact of the regulatory framework for cannabis in New South Wales
- 29 August 2024 – Email from Mr Keith Bolton confirming he has no transcript corrections following his appearance as a witness in relation to the inquiry into the impact of the regulatory framework for cannabis in New South Wales, and requesting the committee pass on his expression to participate in the NSW Drug Summit 2024.

Sent:

- 16 August 2024 – Letter from the Chair to the Hon Janelle Saffin MP, notifying Ms Saffin of the committee's visit to Lismore for the inquiry into the impact of the regulatory framework for cannabis in New South Wales
- 26 August 2024 – Letter from the Chair to Mr Joel Hardy, Cymra Life Sciences, thanking him for facilitating a site visit at Cymra Life Sciences for the inquiry into the impact of the regulatory framework for cannabis in New South Wales.

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

5.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 193, 356, 357 and 358.

5.2 Partially confidential submissions

Resolved, on the motion of Mr Lawrence: That the committee keep the following information confidential, as per the request of the author: names and/or identifying in submissions nos. 27, 99 and 326.

5.3 Answers to questions on notice

The committee noted the following answers to questions on notice and additional information were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Ms Liz Barrett, Research Officer and Ms Keelin O'Reilly, Research Officer, Drug Policy Modelling Program UNSW, received Tuesday 27 August 2024
- answers to questions on notice from Mr Greg Barns SC, Spokesperson on Criminal Justice and Human Rights, Australian Lawyers Alliance, received Tuesday 27 August 2024
- answers to questions on notice from Ms Tracey Browne, Manager, National WHS and Workers' Compensation and Mr Scott Barklamb, Principal Adviser, Workplace Relations Policy, Australian Industry Group, received 3 September 2024
- answers to questions on notice and additional information from Mr Joel Hardy, Chief Executive Officer and Co-founder, Cymra Life Sciences, received 3 September 2024
- answers to questions on notice from Ms Samantha Lee, Supervising Solicitor, Redfern Legal Centre, received 11 September 2024
- answers to questions on notice from Mr Michael Whaites, Assistant General Secretary, NSW Nurses and Midwives' Association; Assistant Branch Secretary, Australian Nursing and Midwifery Federation NSW Branch, received 19 September 2024
- answers to questions on notice from Dr Michala Kowalski, Postdoctoral Research Fellow and Professor Don Weatherburn, Professor, National Drug and Alcohol Research Centre, received 16 September 2024
- answers to questions on notice from Mr Edward Strong, Head of Government Relations and Mr Matthew McCrone, Industry and Government Engagement Lead, Montu Group Pty Ltd, received 16 September 2024
- answers to questions on notice from Mr Patrick Hourigan, Assistant Principal Solicitor, Mid North Coast Legal Centre, received 26 September 2024.

5.4 Consideration of Chair's draft report

The Chair submitted his draft report entitled *Impact of the regulatory framework for cannabis in New South Wales – First report*, which, having been previously circulated, was taken as being read.

Chapter 2

Resolved, on the motion of Mr Lawrence: That Finding 2 be omitted: 'There are barriers to accessing medicinal cannabis in New South Wales, including high prices, low coverage in regional and rural areas, and a complex system that is difficult to navigate,' and the following new finding be inserted instead:

'There needs to be further investigation of reported barriers to accessing medicinal cannabis in New South Wales, including high prices, low coverage in regional and rural areas, and a complex system that is difficult to navigate.'

Resolved, on the motion of Mr Lawrence: That the following new finding be inserted after Finding 3:

'Finding X

The medicinal cannabis scheme is likely being used to facilitate both medicinal and recreational use of cannabis, potentially leading to an arbitrary distinction between those who lawfully possess cannabis and those who do so in breach of the criminal law.'

Chapter 3

Mrs Maclaren-Jones moved: That paragraph 3.139 be omitted: 'The committee notes the lack of distinction between supplying for commercial gain and non-commercial supply of cannabis, or gifting, in supply offences. Supplying cannabis for commercial gain, or 'dealing' in cannabis, is more serious criminal conduct than gifting or sharing cannabis amongst adult friends or family. The committee finds that there are sufficient grounds to distinguish between supply for commercial gain and non-commercial supply of cannabis or gifting in cannabis related offences.'

Question put.

The committee divided.

Ayes: Mrs Maclaren-Jones, Ms Munro.

Noes: Mr Buckingham, Mr Donnelly, Mr Lawrence, Mr Murphy.

Question resolved in the negative.

Mrs Maclaren-Jones moved: That Finding 4 be omitted: 'That there are sufficient grounds to distinguish between supply for commercial gain and non-commercial supply of cannabis or gifting in cannabis related offences.'

Question put.

The committee divided.

Ayes: Mrs Maclaren-Jones, Ms Munro.

Noes: Mr Buckingham, Mr Donnelly, Mr Lawrence, Mr Murphy.

Question resolved in the negative.

Mrs Maclaren-Jones moved: That the following paragraph be inserted after paragraph 3.142:

'The committee heard evidence there is a challenge in determining the precise role of cannabis in impaired driving due to the lack of medicinal-specific studies on the effects of medicinal cannabis on driving ability. Therefore, before implementing changes it is necessary to invest in further studies if the relationship between medicinal cannabis and driving impairment can be properly assessed.'

Question put.

The committee divided.

Ayes: Mrs Maclaren-Jones, Ms Munro.

Noes: Mr Buckingham, Mr Donnelly, Mr Lawrence, Mr Murphy.

Question resolved in the negative.

Mrs Maclaren-Jones moved: That Finding 5 be omitted: 'That people who have been prescribed medicinal cannabis and are unimpaired when driving are unfairly criminalised and there are grounds for legislative change,' and the following new finding be inserted instead:

'That further investigation be undertaken to determine the relationship between prescription medicinal cannabis and driving impairment, including the assessment of impairment, to ensure work and road safety is not jeopardised.'

Question put.

The committee divided.

Ayes: Mrs Maclaren-Jones, Ms Munro.

Noes: Mr Buckingham, Mr Donnelly, Mr Lawrence, Mr Murphy.

Question resolved in the negative.

Resolved, on the motion of Mr Lawrence: That paragraph 3.142 be amended by:

a) inserting 'likely' before 'unreasonably criminalising'

b) inserting at the end of the paragraph: 'However, the committee is yet to conclude its considerations of this issue and will be taking further evidence from witnesses expert in road safety and in the experience in Tasmania where a medicinal cannabis use defence has been legislated for. The committee is acutely aware of the need to ensure that road safety is not jeopardised'.

Resolved, on the motion of Mr Lawrence: That Finding 5 be omitted: 'That people who have been prescribed medicinal cannabis and are unimpaired when driving are unfairly criminalised and there are grounds for legislative change,' and the following new finding be inserted instead:

'That people who drive unimpaired after consuming medicinal cannabis are unfairly criminalised and legislative reform that does not jeopardise road safety should be considered.'

Mrs Maclaren-Jones moved: That Finding 7 be amended by omitting 'significant' before 'psychological harm.'

Question put.

The committee divided.

Ayes: Mrs Maclaren-Jones, Ms Munro.

Noes: Mr Buckingham, Mr Donnelly, Mr Lawrence, Mr Murphy.

Question resolved in the negative.

Mr Lawrence moved: That the following new finding be inserted after paragraph 3.149:

'Finding X

That searching of persons on account of a mere suspicion of the possession of a small quantity of cannabis is likely to be often unjustified and inconsistent with community expectations in a free society and that the widespread availability of medicinal cannabis may make it increasingly difficult for police to form the requisite state of mind to conduct searches'.

Question put.

The committee divided.

Ayes: Mr Buckingham, Mr Donnelly, Mr Lawrence, Mr Murphy.

Noes: Mrs Maclaren-Jones, Ms Munro.

Question resolved in the affirmative.

Mrs Maclaren-Jones moved: That Finding 8 be amended by omitting the words 'can cause considerable harms' and insert instead 'may cause considerable harms'.

Question put and negatived.

Mrs Maclaren-Jones moved: That:

a) paragraph 3.151 be amended by omitting 'cannabis criminalisation are unreasonably high' and inserting instead 'cannabis criminalisation are high'.

b) Finding 9 be amended by omitting 'cannabis criminalisation are unreasonably high' and inserting instead 'cannabis criminalisation are high'.

Question put.

The committee divided.

Ayes: Mrs Maclaren-Jones, Ms Munro.

Noes: Mr Buckingham, Mr Donnelly, Mr Lawrence, Mr Murphy.

Question resolved in the negative.

Mrs Maclaren-Jones moved: That:

a) paragraph 3.153 be omitted: 'The upcoming NSW Drug Summit is an important step towards much needed drug law reform in New South Wales. The committee welcomes the summit and urges the NSW Government to utilise the opportunity provided by the summit to develop cannabis law reform.'

b) paragraph 3.154 be omitted: 'With this in mind, the committee recommends that the NSW Government and its Drug Summit consider and further develop a first tranche of cannabis law reforms designed to relax, but not eliminate, at least initially, the criminalisation of cannabis. Wide consultation should occur on the proposals.'

c) Recommendation 1 be omitted: 'That the NSW Government and its Drug Summit:

- consider and further develop a first tranche of cannabis law reforms designed to relax, but not eliminate, at least initially, the criminalisation of cannabis, and
- wide consultation should occur on the proposals.

and the following new recommendation be inserted instead:

'That further investigation be undertaken before making formal recommendations to government.'

Question put.

The committee divided.

Ayes: Mrs Maclaren-Jones, Ms Munro.

Noes: Mr Buckingham, Mr Donnelly, Mr Lawrence, Mr Murphy.

Question resolved in the negative.

Mrs Maclaren-Jones moved: That:

a) paragraph 3.155 be omitted: 'In relation to this first tranche, the committee recommends a range of reforms for the NSW Government to consider and develop, including:

- a reduction in the maximum penalty for possession of cannabis so that it is a fine only offence, or carries a maximum term of imprisonment of no more than three months

- amendment of cannabis related offences so that non-commercial supply of cannabis or gifting, is treated as cannabis possession rather than supply
- removing deemed supply measures that reverse the onus of proof
- amendment of police powers so that police cannot stop and search a person where the only suspicion is that the person has a small quantity of cannabis in their possession
- introducing a presumption that a person being sentenced for possession of a small quantity of cannabis will receive a section 10 dismissal under the *Crimes (Sentencing Procedure) Act 1999*
- reform to the Cannabis Cautioning Scheme to remove police discretion to apply the scheme, and make relevant amendments to the eligibility criteria to expand its use
- conducting trials in certain geographical areas of administrative non-enforcement of cannabis possession laws
- introducing a medicinal use defence for the drive with 'presence of a prescribed illicit drug in oral fluid, blood or urine' offence in relation to cannabis.'

b) paragraph 3.156 be omitted: 'It is further recommended that this first tranche of reforms be monitored and evaluated by suitable government agencies for a period of at least 18 months and the New South Wales Parliament be informed of progress.'

c) Recommendation 2 be omitted: 'That the NSW Government in its policy development process in this first tranche law reform package involve consideration of at least the following measures, or some combination of them:

- reduction of the maximum penalty for the possession of cannabis to either a fine only offence or a maximum term of imprisonment of no more than three months
- amendment of cannabis related offences to ensure non-commercial supply of cannabis or gifting, is treated as possession and not supply
- removal of deemed supply measures that reverse the onus of proof
- amendment of the *Law Enforcement (Powers and Responsibilities) Act 2002* to provide that police may not exercise any stop and search powers on account of only holding a suspicion that a person possesses a small quantity of cannabis for personal use
- amendment of relevant legislation to provide a presumption that a person will receive a section 10 dismissal under the *Crimes (Sentencing Procedure) Act 1999* so will not be convicted when sentenced for the possession of a small quantity of cannabis
- reform of the Cannabis Cautioning Scheme (CCS) that remove police discretion and amends the criteria to make it to more available for use
- trials in certain defined geographical areas of administrative non-enforcement of cannabis possession laws
- a medicinal use defence to the offence of drive with 'presence of a prescribed illicit drug in oral fluid, blood or urine' offence in respect of cannabis.

That the operation of this first tranche of reforms be monitored and evaluated by suitable government agencies for a period of at least 18 months and the New South Wales Parliament be informed of progress' and the following new recommendation be inserted instead:

'That the committee continue consultation with important stakeholders who have not yet been given an opportunity to comment publicly, including public service agencies, or answer questions from committee members regarding their submissions.'

Question put.

The committee divided.

Ayes: Mrs Maclaren-Jones, Ms Munro.

Noes: Mr Buckingham, Mr Donnelly, Mr Lawrence, Mr Murphy.

Question resolved in the negative.

Resolved, on the motion of Mrs Maclaren-Jones: That paragraph 3.158 be amended by omitting 'evidence indicates that' and inserting instead 'evidence received indicates that.'

Mrs Maclaren-Jones moved: That paragraph 3.158 be amended by omitting at the end: 'This calls into question the value of continuing to criminalise minor cannabis offences. The committee finds that the criminal sanctions for minor cannabis do not deter individuals or the community from using cannabis'.

Question put.

The committee divided.

Ayes: Mrs Maclaren-Jones, Ms Munro.

Noes: Mr Buckingham, Mr Donnelly, Mr Lawrence, Mr Murphy.

Question resolved in the negative.

Resolved, on the motion of Mr Lawrence: That paragraph 3.158 be amended by inserting at the end: 'and this is particularly so in respect of people most vulnerable to cannabis related harm'.

Resolved, on the motion of Mrs Maclaren-Jones: That paragraph 3.158 be amended by inserting at the end: 'However, the committee will be taking further evidence from witnesses'.

Mrs Maclaren-Jones moved: That Finding 10 be omitted: 'That criminal sanctions for minor cannabis offences do not deter individuals or the community from using cannabis.'

Question put.

The committee divided.

Ayes: Mrs Maclaren-Jones, Ms Munro.

Noes: Mr Buckingham, Mr Donnelly, Mr Lawrence, Mr Murphy.

Question resolved in the negative.

Resolved, on the motion of Mr Lawrence: That Recommendation 1 be omitted: 'That the NSW Government and its Drug Summit:

- consider and further develop a first tranche of cannabis law reforms designed to relax, but not eliminate, at least initially, the criminalisation of cannabis, and
- wide consultation should occur on the proposals.'

Mr Lawrence moved: That Recommendation 2 be omitted:

'That the NSW Government in its policy development process in this first tranche law reform package involve consideration of at least the following measures, or some combination of them:

- reduction of the maximum penalty for the possession of cannabis to either a fine only offence or a maximum term of imprisonment of no more than three months
- amendment of cannabis related offences to ensure non-commercial supply of cannabis or gifting, is treated as possession and not supply
- removal of deemed supply measures that reverse the onus of proof

- amendment of the *Law Enforcement (Powers and Responsibilities) Act 2002* to provide that police may not exercise any stop and search powers on account of only holding a suspicion that a person possesses a small quantity of cannabis for personal use
- amendment of relevant legislation to provide a presumption that a person will receive a section 10 dismissal under the *Crimes (Sentencing Procedure) Act 1999* so will not be convicted when sentenced for the possession of a small quantity of cannabis
- reform of the Cannabis Cautioning Scheme (CCS) that remove police discretion and amends the criteria to make it to more available for use
- trials in certain defined geographical areas of administrative non-enforcement of cannabis possession laws
- a medicinal use defence to the offence of drive with 'presence of a prescribed illicit drug in oral fluid, blood or urine' offence in respect of cannabis.

That the operation of this first tranche of reforms be monitored and evaluated by suitable government agencies for a period of at least 18 months and the New South Wales Parliament be informed of progress', and the following new recommendation be inserted instead: 'That the NSW Government considers, including as part of the Drug Summit, the following law reform measures:

- a reconsideration of the amount classifications in Schedule 1 of the *Drug Misuse and Trafficking Act 1985* in respect of cannabis generally and particularly what amounts of cannabis should be considered a 'small quantity' and a 'trafficable quantity noting the committee is of the view the threshold for these quantities may be too low'
- reduction of the maximum penalty for the possession of cannabis (i.e. the offences of being in possession not for the purposes of supply, cultivating no greater than a small quantity of cannabis plant and using cannabis all of which currently carry a maximum penalty of 2 years imprisonment on summary disposition under the *Drug Misuse and Trafficking Act 1985*) to either a fine only offence or a maximum term of imprisonment of no more than three months
- amendment of cannabis related offences to ensure non-commercial supply of cannabis or gifting, is treated as possession and not supply to align the offences with the policy choice embodied in Chapter 9 of the *Criminal Code 1995 (Cth)* whereby non-commercial supply is treated as possession
- removal of deemed supply measures that reverse the onus of proof such as section 29 of the *Drug Misuse and Trafficking Act 1985*, in respect of cannabis possession
- amendment of the *Law Enforcement (Powers and Responsibilities) Act 2002* to significantly limit the circumstances in which persons can be searched by police in respect of a small quantity of cannabis not possessed for the purposes of supply. This objective could be achieved by a) amendments providing that police may not exercise any stop and search powers on account of only holding a suspicion that a person unlawfully possesses a non-trafficable quantity of cannabis for personal use and/or b) that such searches only instead be permitted where police hold a reasonable belief as to the requisite circumstances
- amendment of relevant legislation to provide a presumption that a person will receive a section 10 dismissal under the *Crimes (Sentencing Procedure) Act 1999* so will not be convicted when sentenced for the possession of a small quantity of cannabis displaced only if the court is satisfied there are special circumstances and a conviction is appropriate, or a test to similar effect
- reform of the Cannabis Cautioning Scheme (CCS) to limit police discretion and creates a presumption of diversion that operates irrespective of criminal history or prior cautions and

is only displaced where the police officer is satisfied there are special and exceptional circumstances or a test to similar effect and amends the criteria to make it to more available for use including by applying it to larger amounts of cannabis not possessed for supply

- an expiation scheme for cannabis offences such as exists in South Australia, with wide criteria and a presumption of administrative diversion, allowing small cannabis matters to be finally disposed of without court proceedings, for presumed use where persons are not diverted pursuant to the Cannabis Cautioning scheme
- changes to police standard operating procedures to ensure police do not unnecessarily target, including in random place-based search operations, persons suspected of possession of a small quantity of cannabis not for the purposes of supply
- trials in certain defined geographical areas of administrative non-enforcement of cannabis possession laws
- a medicinal use defence to the offence of drive with 'presence of a prescribed illicit drug in oral fluid, blood or urine' offence in respect of cannabis such as is legislated for in Tasmania but ensuring that the mixing of cannabis and alcohol is the express subject of an aggravating factor of the relevant criminal offence.

Question put.

The committee divided.

Ayes: Mr Buckingham, Mr Donnelly, Mr Lawrence, Mr Murphy.

Noes: Mrs Maclaren-Jones, Ms Munro.

Question resolved in the affirmative.

Resolved, on the motion of Mr Lawrence: That the following new recommendation be inserted after Recommendation 2:

'Recommendation X

That implementation of these reforms, and any others, be monitored and evaluated and that a whole of Government response be provided to Parliament within 12 months of these changes'.

Resolved, on the motion of Mr Lawrence: That:

- the draft report as amended be the report of the committee and that the committee present the report to the House;
- the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- the committee secretariat be authorised to update any committee comments where necessary to reflect changes to findings, recommendations or new findings or recommendations resolved by the committee;
- dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- the secretariat table the report on Thursday 31 October 2024;
- the Chair advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

6. Adjournment

The committee adjourned at 11.18 am, until Wednesday 11 December 2024, Macquarie Room, Parliament House (public hearing – inquiry into the impact of the regulatory framework for cannabis in New South Wales).

Emma Rogerson and Alice Wood
Committee

Appendix 4 Dissenting statements

The Hon Natasha Maclaren-Jones MLC and the Hon Jacqui Munro MLC, Liberal Party of Australia (NSW Division)

This dissenting statement has been produced in response to concerns held about some of the findings and recommendations in the interim report on the impact of the regulatory framework for cannabis in New South Wales.

While the interim report generally covers the terms of reference, there was no specific mention of releasing an interim report with detailed recommendations to be considered at the Drug Summit. As stakeholders were unaware that the Committee was considering specific recommendations for the Drug Summit, we are concerned they were not given the opportunity to offer feedback. Therefore, we did not support Recommendation 1 and instead recommended:

> *"That further investigation be undertaken before making formal recommendations to government."*

The Committee is yet to hear from government agencies including the Department of Justice or NSW Police and our concern is this interim report does not adequately assess or consider the concerns of stakeholders before recommending options for cannabis reform. We did not support Recommendation 2 and instead recommended:

> *"That the committee continue consultation with important stakeholders who have not yet been given an opportunity to comment publicly, including public service agencies, or answer questions from committee members regarding their submissions."*

Without further information from stakeholders who have not yet provided evidence to the Committee, we don't support the recommendation to change the Drug Misuse and Trafficking Act 1985 in relation to the supply and possession of cannabis, nor changes to the Law Enforcement (Powers and Responsibilities) Act 2002 to significantly limit the circumstances in which persons can be searched by police without further evidence. We do not support pre-emptive recommendations given the Committee has not yet heard evidence from or had the opportunity to raise these proposed changes with the Attorney-General or NSW Police.

Furthermore, we are concerned that the following finding is not clear in its assertion and is a confusing comment in the context of the evidence received so far:

> *"That searching of persons on account of a mere suspicion of the possession of a small quantity of cannabis is likely to be often unjustified and inconsistent with community expectations in a free society and that the widespread availability of medicinal cannabis may make it increasingly difficult for police to form the requisite state of mind to conduct searches".*