

**Submission
No 353**

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

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Hon Jeremy Buckingham MLC
Chair
Portfolio Committee No. 1 – Premier and Finance
NSW Parliament

Dear Chair

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

Thank you for the opportunity to make a submission to the Inquiry into the Impact of the regulatory framework for cannabis in NSW. I look forward to reviewing the detailed findings and recommendations of the Inquiry in due course.

Historic treatment of cannabis in Australia

The Commonwealth of Australia first prohibited the importation of cannabis by the *Customs (Prohibited Imports) Proclamation 1926*, ratifying its obligations under the 1925 *Geneva International Convention relating to Dangerous Drugs*. State prohibition in NSW followed under the *Police Offences Amendment (Drugs) Act 1935*.

Today, cannabis prohibition is enforced through a matrix of Commonwealth and state legislation. Government policy at both the Commonwealth and state levels is guided by the *National Drug Strategy 2017-2026*. The Strategy implements Australia's obligations under international treaties which advocate for the prohibition and regulation of illicit substances. These agreements are:

- the *Single Convention on Narcotic Drugs* (1961)
- the *Convention on Psychotropic Substances* (1971)
- the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (1988).

All Australian states prohibit the production, sale, possession or use of cannabis. However, the enforcement of cannabis-related offences is a state responsibility which results in different penalties being applied depending on the jurisdiction in which the offence occurs. Most states and territories offer diversion programs or drug and alcohol treatment programs before criminal sanctions are applied. However, many of these diversionary programs are discretionary and have been criticised for inequitable application.

Community views of cannabis use have changed drastically since it was first prohibited in Australia. This change is reflected in the decriminalisation of minor quantities of cannabis in South Australia, the ACT and the Northern Territory and the implementation of diversion pathways in Victoria, New South Wales, Western Australia, Queensland and Tasmania.

Personal use of cannabis products

Laws restricting the use of cannabis is an infringement on personal liberty and freedom of choice. The state should not intervene in personal choices of citizens who choose to consume a certain product under the proviso that the individual does not engage in a manner which negatively impacts others. Intrusion on these liberties should be seen as immoral by a democratic society. The use of cannabis in circumstances where the user does not harm or inconvenience another individual can be likened to other exercises of personal choice, such as consuming foods or wearing clothing of one's choice.

Cannabis users pose virtually no adverse impacts to the broader community beyond the impacts which occur as a direct result of cannabis' prohibition. Conversely, cannabis is a highly effective medicine for a range of medical conditions (often in circumstances where a patient cannot use an alternative treatment option), as a material for textiles, and as a commercial food source. There is therefore no valid moral or ethical basis for legislation which seeks to curtail the individual use of cannabis.

Disproportionality

Historically, the harms of cannabis use have been severely overstated. The threat of these harms has then been met with a disproportionately harsh legislative response without adequate justification. The policy aim of harm reduction should be to empower informed decision making at the individual level, avoiding the need for the Government to erode freedom of choice through threat of sanction.

This approach has been taken in relation to tobacco and alcohol products in Australia, with significant regulation imposed in relation to purchase, import, advertising, taxation and sale. This approach, however, has not been taken in relation to cannabis despite its comparatively low individual and social risk of harm. The substance itself poses little danger, instead manifesting from its status as an illicit substance.

It is increasingly being realised that prohibition is not an effective, efficient or equitable approach to drug policy in NSW. The height of this realisation was seen in the *Report of the Special Commission of Inquiry into the Drug 'Ice'* which recommended:

That, in conjunction with increased resourcing for specialist drug assessment and treatment services, NSW Government implement a model for the decriminalisation of the use and possession for personal use of prohibited drugs, which includes removal of the criminal offences of use and possession of prohibited drugs for personal use and the referral of people detected in possession of drugs to an appropriately tailored health, social and/or education intervention.

Practical effects of criminalisation

The prohibition model of regulating cannabis has ironically taken away the state's ability to control the production, sale and use of cannabis products. Users have predictably been driven to black market options with no certainty as to the quality, safety or potency of a cannabis product. Comparatively, tobacco and alcohol consumers are afforded the consumer protections to know they are receiving a product of known specification and origin. The production and profits thereof of cannabis, like other illicit substances, are therefore owned and operated by organised crime and criminal groups.

Individuals caught with cannabis can face criminal penalties which carry financial penalty and imprisonment. Long term implications can include harsh restrictions on future residential applications, workforce participation, and international travel. This can act as a primary driver for an individual's decline into poverty, homelessness, and higher order criminality.

The unavailability of cannabis for recreational use has also impeded its research and development for medical treatment. A 2022 thematic study of submissions to the Senate Community Affairs References Committee *Inquiry into the current barriers to patient access to medical cannabis in Australia* found that an overwhelming majority of patients, advocacy groups and the medicinal cannabis industry described the current regulatory and access models as 'not fit for purpose'.

Options for regulation

Successful models of regulation in other jurisdictions have seen the state create a licensing scheme for manufacturers and retailers of cannabis products. Regulation in this manner ensures minimum standards and consumer protections can be applied to cannabis retail products and their supply chains, analogous to the food and pharmaceutical industries.

Like alcohol and tobacco, regulations on advertising and packaging could be designed to highlight health and content warnings. This approach is commensurate with harm reduction principles outlined in the *National Drug Strategy*. Introducing cannabis products as an alternative option may also reduce the market share of tobacco and alcohol consumption.

Tax can be imposed in a similar manner to established systems for tobacco and alcohol in line with the need to deter excessive use. Colorado, United States, the first US jurisdiction to legalise and regulate the sale of cannabis products, imposes a 15% State Retail Marijuana Sales Tax and a 15% Marijuana Wholesale Sales Tax on top of its general state sales tax of 2.9%. In calendar year 2023, Colorado collected approx. \$405 million AUD from cannabis taxation (excluding general sales tax). This accounted for 1.33% of its total state tax revenue. It should be noted this does not include the amount of state funds saved on not prosecuting and housing offenders in relation to cannabis-related offences. Below is a breakdown of the US Census Bureau's 2023 cannabis excise revenue data for 18 US states that have legalised cannabis.

State	2023 Cannabis Excise Tax Revenue (\$US)	Percent of Total State Revenue	Excise Tax Structure
Alaska	\$28.3 million	1.34%	\$50 per ounce (flower)
Colorado	\$263 million	1.33%	15% (retail); 15% (wholesale)
Washington	\$460.3 million	1.23%	37% (retail)
Montana	\$49.4 million	1.05%	20% (retail)
Nevada	\$121.5 million	0.99%	10% (retail); 15% (wholesale)
Oregon	\$169.4 million	0.88%	17% (retail)
Arizona	\$176.2 million	0.78%	16% (retail)
Michigan	\$270.4 million	0.70%	10% (retail)
Maine	\$33.8 million	0.51%	10% (retail); \$335/pound (flower)
Illinois	\$278.2 million	0.44%	7% (wholesale); 10% (<35% THC); 25% (>35% THC); 20% (infused prods.)
Massachusetts	\$168.1 million	0.41%	10.75% (retail)
Missouri	\$67.4 million	0.39%	6% (retail)
New Mexico	\$45.3 million	0.32%	12% (retail)
Vermont	\$13.9 million	0.31%	14% (retail)
California	\$567.4 million	0.24%	15% (retail)
Rhode Island	\$5.2 million	0.11%	10% (retail)
Connecticut	\$17.3 million	0.08%	Per Milligram THC: \$0.00625 (flower); \$0.00275 (edibles); \$0.009 (other)
New York	\$33.5 million	0.03%	Per Milligram THC: \$0.03 (edibles); \$0.005 (flower); \$0.008 (concentrate); 13% (retail)

Impact of ACT decriminalisation

In January 2020, the ACT decriminalised possession of small amounts of cannabis, use of cannabis in the home, and the growth of a limited number of cannabis plants for people aged 18 and over. The *National Drug Strategy Household Survey 2022-23* found that despite this regulatory change, the use of cannabis in the ACT in the past 12 months has remained stable. The use of cannabis in the ACT in 2022-23 was also lower than the rest of Australia.

The Survey notably found that in 2022-23, people in ACT were much less likely to obtain cannabis from their friends without an identifiable increase in the proportion of people sourcing cannabis from a dealer.

Conclusion

For all the above reasons, I support the passage of the *Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023*. The amendment promotes harm reduction and freedom of choice in NSW, while ensuring individuals are not criminalised for possessing or consuming a naturally occurring substance proven to cause less harm than tobacco and alcohol.

I thank you again for the opportunity to make a submission to this important Inquiry and I eagerly await the publication of the Committee's report.

Sincerely,

Seppy Pour

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