

Submission
No 356

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

Organisation: Drug Policy Australia

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Submission to the Inquiry into the Impact of the Regulatory Framework for Cannabis In New South Wales



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Portfolio Committee No. 1
Premier and Finance,
Parliament of New South Wales
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1. Introduction

Drug Policy Australia is pleased to provide our submission to the ***Inquiry into the impact of the regulatory framework for cannabis in New South Wales.***

We intend to respond to these Terms of Reference:

1(c) the historical, current and future financial cost of cannabis prohibition to the Government and the economy

1(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

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

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

The regulatory framework for cannabis in New South Wales is based on a prohibitionist model that emphasises the elimination and complete abstinence from all illicit drugs. Drug Policy Australia considers this to be an unrealistic and counterproductive goal. The primary purpose of prohibition is to discourage the use of cannabis by prosecuting the consumers. It punishes citizens who commit an act in their own home that affects only themselves.

Drug Policy Australia advocates a full **legal regulation** model for cannabis that will result in increased public health and public safety. A legal regulated model will replace the illegal black

market trade and provide the New South Wales Government considerable taxation revenue.

Cannabis is the most used illegal drug in Australia. According to the Australian Institute of Health and Welfare, 11.5% of Australians used cannabis in 2022-2023, approximately unchanged from 2019, and 41% were lifetime users, an increase of 5% from 2019¹.

Australia ranks third-highest per capita for cannabis consumption² in the world while NSW has the largest number of cannabis users in Australia³. It is an enduring truth that people, especially youth, will seek mood-altering substances to enhance social interactions, recreation, and pleasure. Ignoring this reality has led to significant social and financial costs for the entire NSW community. While a health-oriented government policy can deter young people from using cannabis, it cannot entirely prevent its use. Attempts to stop people using Cannabis results in more societal harm than good.

2. Changing Attitudes to Cannabis in Australia

Since 2013, public attitudes toward cannabis have become increasingly supportive of legalisation and decriminalisation. The 2019 survey marked the milestone of more support for legalisation (45%) than opposition (39%)⁴.

Figure 5: Support for cannabis-related policies and statements, people in Australia aged 14 and over, 2010 to 2022–2023

¹ Cannabis in the NDSHS, from National Drug Strategy Household Survey 2022–2023.

<https://www.aihw.gov.au/reports/illicit-use-of-drugs/cannabis-ndshs>

² New report into Australia's drug habits finds we're a 'stimulant nation'.

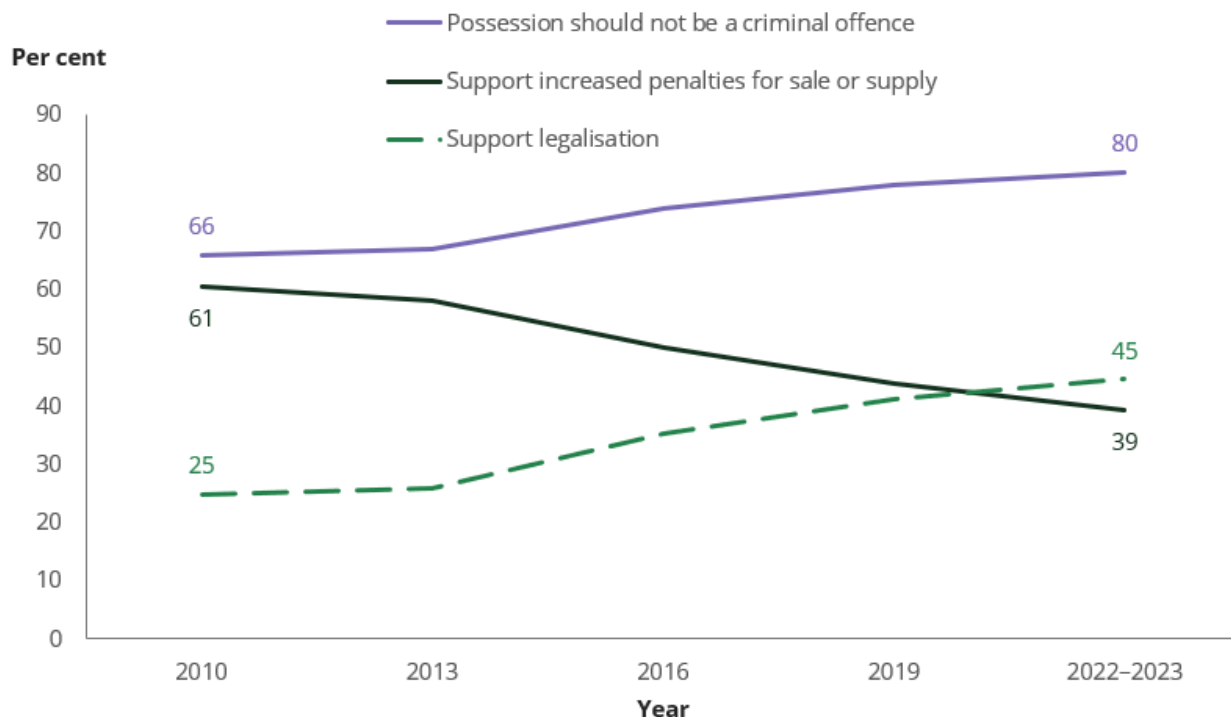
<https://www.abc.net.au/news/2024-07-10/wastewater-report/104080298>

³ State and Territory summaries of alcohol, tobacco, e-cigarette and other drug use, from National Drug Strategy Household Survey 2022–2023.

<https://www.aihw.gov.au/reports/illicit-use-of-drugs/state-alcohol-drug-use>

⁴ Cannabis in the NDSHS, from National Drug Strategy Household Survey 2022–2023.

<https://www.aihw.gov.au/reports/illicit-use-of-drugs/cannabis-ndshs>



Source: NDSHS 2022–2023, Tables 11.15, 11.23, and 11.27.

3. Over-Policing of Indigenous community on cannabis minor offences

Police statistics and research on the indigenous and non-indigenous Australians receiving Cannabis Cautions is limited. However, existing data highlights the vulnerability of indigenous people to biased policing. A study conducted by Weatherburn and Thomas in 2022 found that indigenous young people received approximately 17.4% fewer Cannabis Cautions than non-indigenous young people from 2010 to 2021, compared to being proceeded against by the police⁵. In 2023, Teperski and Rahman found that the disparity in cautioning rates between indigenous offenders and non-indigenous offenders rose up to 32.2 p.p. (11.7% and 43.9%, respectively) based on the data from 2017 to 2020⁶. Furthermore, the authors noted that it is difficult to understand the law enforcement interactions with indigenous offenders, indicating the actual gap could be wider.

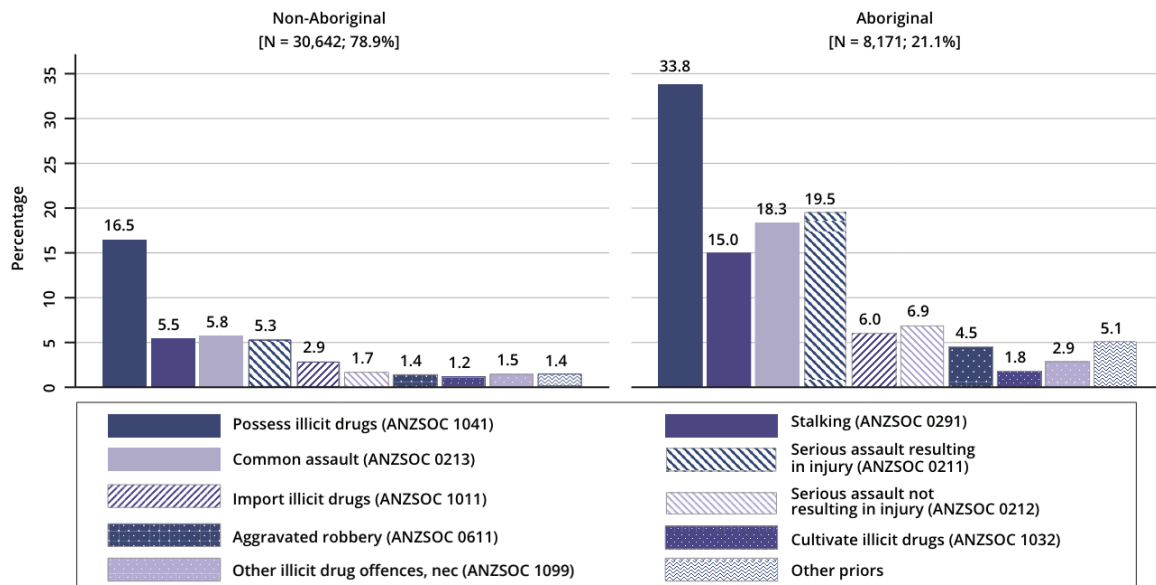
⁵ Weatherburn, D., & Thomas, B. (2022). The influence of Indigenous status on the issue of police cautions. *Journal of Criminology*. <https://doi.org/10.1177/26338076221146326>

⁶ Why are Aboriginal adults less likely to receive cannabis cautions? <https://www.bocsar.nsw.gov.au/Publications/CJB/CJB258-Report-Cannabis-cautioning-2023.pdf>

Those with past criminal records who are easily affected by over-policing can also be adversely affected whether they are eligible for Cannabis Caution rather than prosecution in New South Wales. The study adds to concerns that the police are able to exercise excessive discretion in the issue of cannabis caution, contributing to a greater overrepresentation of indigenous people in the criminal justice system, and creating a vicious circle.

The study highlights concerns about the excessive discretion police have in issuing Cannabis Cautions, which contributes to the overrepresentation of Indigenous people in the criminal justice system, perpetuating a vicious cycle. Individuals with even minor criminal records are susceptible to over-policing and can be negatively impacted, even if they qualify for a Cannabis Caution.

Figure 3. Prior drug, violent and sexual offences by Aboriginality, main sample



Source: Teperski, A., & Rahman, S. (2023). *Why are Aboriginal adults less likely to receive cannabis cautions?* New South Wales Bureau of Crime Statistics and Research.

Legalizing and regulating cannabis would eliminate the arbitrary implementation of the current Cannabis Cautions scheme. It would also:

- Reduce the high rate of arrests of indigenous groups for cannabis-related minor offenses;
- Reduce over-policing of indigenous populations;
- Decrease the burden on the criminal justice system.

4. Legalising Cannabis as a Global Trend

In 2013, Uruguay became the first country to legalise cannabis in order to cut the connection between the cannabis trade and local criminals and return control of cannabis to the government. In the following years, Canada, a Commonwealth country with a similar cultural history as Australia, had fully legalised the use of cannabis by adults. A similar regulatory model applies in Canada, where domestic production, distribution, consumption, and sales of cannabis products are regulated. The regulatory process implemented the levy and tightened penalties for those who provide cannabis to minors or drive while impaired.

Many other countries have also amended their legislation or reduced the severity of cannabis-related penalties (Collins, 2018)⁷. As of today, 24 states in the US have legalised the recreational use of cannabis⁸. Their cannabis revenue is used to fund education and drug rehabilitation programs, so that drug-related harm can be reduced in a more effective manner. Besides, crime rates and opioid overdose deaths have both decreased significantly in states that have legalised cannabis.

Australia has made progress on medicinal cannabis and will ultimately be affected by these irreversible international trends towards legalisation. We believe that the New South Wales government should immediately legalise the possession and use of cannabis and, following the successful experience of the Canadian government, allowing cannabis plants to be grown at home, as recommended in "A Framework for the Legalisation and Regulation of Cannabis in Canada"⁹.

In addition, the Australian Parliamentary Budget Office forecast that when cannabis is legalised in Australia, the market value for recreational cannabis would reach 2.8 billion AUD in the first decade¹⁰. As a state with a large population and a high cannabis consumption rate, New South Wales has the potential to gain considerable tax benefits from cannabis legalisation. The figure is based on the assumption that there are sufficient regulations in place to track and tax cannabis cultivation. The resulting taxation revenue could be used for harm reduction initiatives, education and drug treatment programs.

⁷ Collins, J. Why are so many countries now saying cannabis is OK?

<https://www.bbc.com/news/world-46374191>

⁸ "State Medical Cannabis Laws". National Conference of State Legislatures.

<https://www.ncsl.org/health/state-medical-cannabis-laws>

⁹

<https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/laws-regulations/task-force-cannabis-legalization-regulation/framework-legalization-regulation-cannabis-in-canada.html>

¹⁰ <https://www.pbo.gov.au/sites/default/files/2023-03/Legalise%20Cannabis%20Nationally%20PDF.pdf>

5. Cannabis in New South Wales

5.1 Overview

As reported by the National Drug Strategy Household Survey (NDSHS) 2022–2023, one in six people in New South Wales have used an illicit drug in a year from 2022–2023, with cannabis constituting the most commonly used drug (11%)¹¹.

Table 1: Top 5 illicit drugs used in the previous 12 months in NSW, people aged 14 and over, 2019 and 2022–2023

No.	2019	2022–2023
1	Cannabis (11.0%)	Cannabis (11.0%)
2	Cocaine (5.0%)	Cocaine (5.0%)
3	Ecstasy ^(a) (3.1%)	Hallucinogens (2.2%)
4	Pain-relievers and opioids ^(b) (2.7%)	Pain-relievers and opioids ^(b) (2.0%)
5	Tranquillisers/sleeping pills ^(b) (1.7%)	Ecstasy ^(a) (1.9%)

Source: NDSHS 2022–2023, Table 9b.32.

In the most recent Illicit Drug Data Report released by the Australian Criminal Intelligence Commission in 2023, there were over 15,000 cannabis arrests in New South Wales during 2020–2021, a staggering figure that ranks second only to Queensland¹².

¹¹ State and Territory summaries of alcohol, tobacco, e-cigarette and other drug use, from National Drug Strategy Household Survey 2022–2023.

<https://www.aihw.gov.au/reports/illicit-use-of-drugs/state-alcohol-drug-use>

¹² https://www.acic.gov.au/sites/default/files/2023-10/cannabis_iddr_2020-21_forweb.pdf

TABLE 6: Number and percentage change of national cannabis arrests, 2019–20 and 2020–21

State/Territory ^a	Arrests		
	2019–20	2020–21	% change
New South Wales	17,474	15,101	-13.6
Victoria	11,860	11,855	0.0
Queensland	23,697	20,437	-13.8
South Australia	3,482	2,439	-30.0
South Australia (CENs)^b	6,850	4,920	-28.2
Western Australia	8,921	7,577	-15.1
Western Australia (CIRs)^c	1,538	1,395	-9.3
Tasmania	1,598	1,439	-9.9
Northern Territory	412	426	3.4
Northern Territory (DINs)^d	691	622	-10.0
Australian Capital Territory	117	74	-36.8
Australian Capital Territory (SCONs)^e	29	0	-100.0
Total	76,669	66,285	-13.5

- a. The arrest data for each state and territory include Australian Federal Police data.
- b. Cannabis Expiation Notices.
- c. Cannabis Intervention Requirements.
- d. Drug Infringement Notices.
- e. Simple Cannabis Offence Notices.

Source: Illicit Drug Data Report 2020-2021, pg. 64.

It is clear that the current strict cannabis regulatory framework has not been successful in reducing cannabis use in New South Wales. Individuals can still obtain recreational cannabis easily. The recreational cannabis market in New South Wales and Australia as a whole is large and profitable. It is important to note that when a market is characterised as "illegal," it is not subject to adequate legal supervision. These risks include, but are not limited to:

- The cooperation between illicit drug sellers and organised criminal groups is difficult to detect and cannot be effectively combated;
- Minors especially adolescents are able to purchase cannabis without age and quantity restrictions;
- Over-commercialised cannabis products may be contaminated with other highly potent drugs, posing a serious threat to public health.

5.2 Cannabis Driving and the Law

Furthermore, the New South Wales driving laws are arbitrary and discriminatory, towards cannabis consumers. Since they were introduced in 2007, a zero-tolerance approach has been in place, where any level of THC in the body results in mandatory license cancellation. They do not distinguish between recreational or medicinal use of cannabis nor rely on actual impairment. As New South Wales MP Jeremy Buckingham stated, "it was never about impairment, but about illegality."¹³

Due to strict laws, drivers in New South Wales can be charged long after the effects of cannabis have worn off, sometimes weeks after consumption. Since THC is stored in body fat, it can be detected in the blood while having no effect on driving ability.

Canada and some US states have adopted a proof of impairment strategy. It is not difficult to accomplish; you set a legal limit of THC in blood and do a roadside impairment test¹⁴, similar to the standard governing drunk driving. Failing both tests would result in a penalty.

Massive supports for the reform of driving laws have been delivered to the New South Wales Parliament by a petition with more than 11,000 signatures¹⁵. We implore the New South Wales government to be open to reforming the driving laws to be impairment-based, not cannabis-based. In order to truly strike a balance between public health and safety concerns and respect for individuals' rights, the New South Wales government should encourage more empirical research on cannabis driving, as well as consider whether cannabis is recent use or residual traces.

6. Conclusion

Drug Policy Australia advocates that the current regulatory framework for cannabis in New South Wales needs urgent reform so that the health risks of consuming cannabis can be mitigated and costly criminal prosecutions can be avoided.

The adoption of a regulation framework for cannabis in New South Wales, with a health and

¹³ <https://www.cannabiz.com.au/drug-driving-reform-in-nsw-the-governments-majority-could-depend-on-it/>

¹⁴ <https://www.justice.gc.ca/eng/cj-jp/sidl-rlcfa/qa2-gr2.html>

¹⁵ <https://www.parliament.nsw.gov.au/lc/papers/pages/qanda-tracking-details.aspx?pk=99754>
Adopting a regulatory framework for cannabis in New South Wales, with a focus on harm reduction, would be a more just and humane approach to combating organized crime and underage cannabis use

harm reduction focus would create a more equitable and just community.

It would be beneficial to bring the cannabis market under government control instead of spending taxpayer money and government investments to illegalise cannabis, which has already failed. This would lead to substantial economic benefits and control of organised crime.

As a "criminalised minority," adult cannabis consumers, especially indigenous people, are stigmatised for using cannabis. The war on drugs has actually resulted in a war on people. Drug Policy Australia strongly believes that without adequate input of citizens' voices, and fearless political debate on alternatives to the failed prohibition, the existing framework will continue to adversely affect health and security of the people in New South Wales.

Further, considering the above, we predict that these, or similar sad words of contrition will again be spoken in the New South Wales Parliament, hopefully, in the not too distant future.

"To those who survived these terrible years, and to those who never made it through, we are truly sorry. We're sorry for every person convicted under legislation that should never have existed. For every person that experienced fear as a result of that legislation." — NSW Premier Chris Minns speech to the NSW Parliament apologising for the criminal laws that persecuted homosexuals. - June 6 2024¹⁶.

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<https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1323879322-142119/link/98>