

Submission  
No 357

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

**Organisation:** South Asian Research and Advocacy Hub (SARAH)

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Committee Secretary  
Portfolio Committee No.1 - Premier and Finance  
New South Wales Legislative Assembly

**7 August 2024**

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

To whom it may concern,

The South Asian Research and Advocacy Hub (SARAH) appreciates the opportunity to submit to the Inquiry into the impact of the regulatory framework for cannabis in New South Wales. SARAH is a volunteer research group formed last year as part of the Law Reform and Social Justice Department (LRSJ) at the ANU College of Law. We are run by South Asian students who aim to research and advocate for South Asian communities, and are assisted by academics, community associations and other non-government organisations.

This submission will be based on pre-existing research, knowledge within our communities and our own lived experiences. We all belong to communities that are deeply affected by changes in policy surrounding the use and regulation of cannabis and therefore hope to give our perspective on this legislation. We hope to see a policy for cannabis that prioritises community wellbeing and ensures that people suffering from addiction are able to access rehabilitation services and meaningful employment. We wish to recognise the diversity of our communities - and that no single submission can capture our intellectual diversity. Therefore, we in no way mean to represent the perspectives of all South Asian communities - only a section backed by academic literature

This submission will address terms of reference 1B, 1C, 1D and 1E. We will provide a summary of our submissions and then explain our submissions in relation to the terms of reference. We welcome the opportunity to answer any questions from the committee regarding this submission. We can be contacted at [lrsj.anu.sarah@gmail.com](mailto:lrsj.anu.sarah@gmail.com).

Kind regards,

The South Asian Research and Advocacy Hub (SARAH): Alexander Titus, Shaneeq Syed and Nirmidha Sankar.

## **Summary of our Submissions**

**Submission 1.** We submit that it is difficult to quantify South Asian communities' opinions on cannabis usage due to their diversity. However, we also wish to submit that there is a general aversion to all kinds of drug use in South Asian communities - but that this should be solved through rehabilitation and with minimal police involvement.

**Submission 2.** We submit that the NSW government should reduce discretion and widen the requirements of the Cannabis Cautioning Scheme due to its unfair application in minority communities, in particular Aboriginal and/or Torres Strait Islander Peoples but also South Asian Australian communities.

**Submission 3.** The current Regulatory Framework classes the minimum age to be criminally charged for a minor possession offence to be 10 years old. We recommend that the minimum age be increased from 10 to 14 years old for minor possession charges, as having a criminal record can disproportionately affect many minority communities later in their adult lives due to negative stigma.

**Submission 4.** We submit that enhancing the current Regulatory Framework through the integration of rehabilitation with criminal justice reform could provide an holistic approach towards minimising the impact of drug possession and usage on South Asian communities

## **Submission 1: Problems and Perspectives of South Asian Communities on Cannabis**

It is difficult to generalise the opinions of South Asian communities in NSW because they are diverse and hold complex views on cannabis regulation. That being said, there is a general undercurrent within these communities that we shall attempt to characterise in our submission.

Many South Asian cultures maintain a strong stigma against drug use, including alcohol, viewing it as taboo and socially unacceptable (Galvani et al., 2023). This sensibility continues in Australia meaning that many communities including our own will be averse to any measures that seek to promote or normalise drug consumption (Spooner and Hetherington, 2004). However, that does not necessarily translate to a desire to see an increase in carceral punishment - or increased drug sentences.

This aversion is particularly pronounced in specific communities and among older generations, who often emphasise the importance of maintaining a drug-free lifestyle and discouraging any form of drug consumption.

As such, strong stigmas can be attached to drug usage, being labelled as taboo and shameful in many South Asian communities, which may create barriers for individuals who may need to use marijuana for medicinal purposes (Litt, 2023). This clash can complicate the usage of medicinal cannabis, as it may be challenging for members for various South Asian communities to placate the personal choice of using marijuana with societal expectations of drug usage being taboo (Australian Institute of Health and Welfare, 2020). As a result, the stigma of associating the use of cannabis with criminality can act as a deterrence from inquiring about the medicinal elements of cannabis due to a fear of social repercussions and judgement (Bhui et al., 2007). Moreover, familial expectations can mould the perception of cannabis usage; with cultural norms of collective societies clashing with individualist societies' attitudes towards cannabis use (Siddiqui et al., 2022). It is important to note that this stigma is not unique to any particular South Asian Community and can be found in many parts of Anglo-Australia or other ethnic communities although it is motivated by each communities cultural traditions.

Despite a general aversion and stigmatisation of drug use in many South Asian Communities - it generally does not correlate with a desire to see increased prison sentences or punishment. There is a general understanding that many South Asian communities came to Australia to

provide better lives for their children - and families more broadly. This mentality is present in many sections of first generation migrants and is generally a shared communal narrative (Mansouri et al., 2013). Consequently, most communities are highly protective of their children - and will be quite protective against measures that would damage or harm them in any way such as increased punishment especially for minors (Snowball and Weatherburn, 2006). Moreover, there is a growing perspective, who want a stronger rehabilitative approach to drug control that ensures that drug consumption does not attract criminal sentences but instead rehabilitation (National Library of Medicine, 2016). This shift is particularly evident among younger generations who, like their parents, still largely oppose the distribution and consumption of drugs in contrast to Anglo-Australian youth but increasingly advocate policies that highlight rehabilitation over punitive actions (Lancaster, Ritter and Matthew-Simmons, 2013).

Moreover, most South Asian communities share other minority Australian communities' aversion and scepticism of increasing police involvement to tackle drug incidents. Police involvement remains generally unpopular - a sentiment that should be respected in designing a data driven policy towards cannabis use.

The scepticism towards law enforcement has its roots in a growing distrust of the police's ability to fairly and unbiasedly carry out procedures free from racial targeting or discrimination. South Asian communities generally share the preference that many other minority groups have in Australia: to minimise police involvement particularly in non violent issues favouring civil support and health services and ensuring police that are fair, and clear and minimise the negative impacts on young South Asians rather than solely relying on punitive measures which may perpetuate existing inequities and inequalities.

Obtaining a coherent picture of the South Asian community's stance on cannabis regulation is challenging due to the diversity of opinions within this population. However, despite these overarching differences, there is commonality of prioritising the well-being of the community and the need to seek viable solutions to mitigate harm from drug abuse while subsequently preventing the normalisation of drug use. Therefore, with these considerations, the regulatory framework for cannabis in NSW must incorporate culturally sensitive approaches that address the needs and perspectives of the South Asian communities. By balancing the aversion to drug use with the focus on rehabilitation and support, NSW can be able to create a more humane and effective regulatory environment which promotes public health.

## **Submission 2: Issues with the discretion and eligibility of the Cannabis Cautioning Scheme**

The Cannabis Cautioning Scheme gives police officers discretion to caution offenders (instead of charging) for minor cannabis offences (excluding supplying) and are encouraged to call the Cannabis Caution Line for a telehealth session about their cannabis use (Government of New South Wales & NSW Police Force, n.d.).

While this can be said to prevent drug users from receiving formal charges and shifts the focus on rehabilitation, past data has revealed that police officers' discretion does not favour minority communities including but not limited to South Asian communities and or Aboriginal and/or Torres Strait Islander peoples. Compared to non-Aboriginal offenders, who were 73.9% likely to be cautioned without being charged, Aboriginal offenders were only 39.5% likely to be cautioned (Teperski & Rahman, 2023).

We are referring to data on Aboriginal and/or Torres Strait Islander peoples because of a lack of data pertaining to South Asian communities specifically. However, we do this to highlight that some of this prejudice, but not all of it, is reflective of police attitudes towards other minority communities including but not limited to South Asian Communities.

It should be noted that a large reason for the disparity in cautioning between Aboriginal and non-Aboriginal offenders is due to the majority of Aboriginal offenders, 78% compared to 45%, not meeting the eligibility requirements for the CCS (Teperski & Rahman, 2023). The CCS prevents those who have received two or more cautions from being cautioned again, but also those who have had prior drug, violent or sexual offences (Teperski & Rahman, 2023). It also cannot be issued if the offender has committed another offence (Teperski & Rahman, 2023). Since many of the Aboriginal offenders did not meet the Scheme's eligibility, they were unable to be issued a caution.

However, another key aspect of why Aboriginal offenders were not issued cautions can also be attributed to their overall treatment by law enforcement. In order to be issued a caution, the offender must consent to being cautioned rather than being charged, but it is well-known that many Aboriginal and Torres Strait Islander people have little trust in law enforcement. This is due to over-policing in areas with larger populations of Aboriginal or Torres Strait Islander people (Teperski & Rahman, 2023), but also cultural differences not being acknowledged or understood by law enforcement, such as refraining from making eye contact

with authority figures or answering yes unwillingly (Yehia, 2012). Due to these factors, Aboriginal and Torres Strait Islander people are more likely to be charged, as they may misunderstand what law enforcement officials are saying and be unwilling to cooperate (Yehia, 2012).

Many minority communities, particularly immigrants, experience similar issues to Aboriginal and Torres Strait Islander peoples due to a lack of English proficiency and cultural differences, such as not wanting to say “no” to authority figures or answering unwillingly. We draw on examples of how Aboriginal and Torres Strait Islander peoples are treated by law enforcement as an analogy to our own lived experiences with law enforcement and the cultural norms heavily predominant in immigrant communities, especially South-Asian communities.

It is widely common amongst South-Asian communities to hold respect for authority figures similar to how Aboriginal and Torres Strait Islander peoples do, so we can draw parallels and understanding to explain why Aboriginal, Torres Strait Islander and minorities face similar issues with law enforcement. Therefore, if police officers are not aware of these cultural differences due to a lack of knowledge or unconscious or conscious bias, these minority communities may be unfairly discriminated against by the police. No race should feel prejudiced or unfairly biased against law enforcement as the police should be protecting the community, not potentially endangering them.

This level of discretion should be scrutinised heavily, as minority communities generally believe that the police do hold prejudice and negative biases against minority communities and are more likely to be treated unfairly by law enforcement (Sivasubramaniam & Goodman-Delahunty, 2008). When examining whether certain races feel that the police were biased against their own race, Asians, Indians and Arabic or Middle Eastern people were two times more likely to feel biased against the police compared to Anglo-Australians (Sivasubramaniam & Goodman-Delahunty, 2008).

The New South Wales Government should therefore tighten the discretion around the CCS due to the discrepancy between Anglo Australian offenders and minority offenders. This is because on a micro level, police officers have not used their discretion to caution minority communities due to conscious or unconscious bias, and on a macro level, the CCS's

eligibility has resulted in many people being excluded from being cautioned, resulting in them being criminally charged.

Therefore, to improve the CCS, there should be stricter regulation on police officers' discretion, broader eligibility for the CCS to allow those who have been cautioned less than four times to be cautioned instead of two times to ensure drug users are able to access rehabilitation options rather than be criminally charged, and ensuring that the police force is representative of the community and is educated on cultural norms in their communities.

### **Submission 3: Raising the age for legislation within the Regulatory Framework**

One of the most pressing issues NSW's current Regulatory Framework faces is that for minor possession offences, the focus is on punishing the offender or user with criminal charges rather than rehabilitating them to stop using drugs. It is widely known that criminal charges are very limited in their ability to deter drug users compared to actual rehabilitation efforts, and while avenues like the NSW Drug Court are a small step in the right direction, many of them are inaccessible to a very vulnerable population: minors.

Currently, all relevant legislation included in NSW's Regulatory Framework for cannabis dictates that the minimum age to be guilty of an offence is 10, as is the case across criminal law in NSW. This means that in a criminal trial, if *doli incapax*, the presumption that children cannot offend, can be proven false, a child can be given a custodial sentence for a minor possession charge.

The reason why drug users should not be criminally charged for minor drug possession offences is because this offence has the ability to change their life for the worse. An offender who enters the criminal justice system once is more likely to reoffend compared to someone who has had no contact with the system (Jason Payne, 2007). This is because inside the system, they are exposed to a poor environment that prevents them from truly rehabilitating, and outside the system, they are not only back in the same, most likely harmful environment that made them turn to drugs but are given the burden of a criminal record that can prevent them from holding a job, or may cut them off from their support network (Jason Payne, 2007).



It should be no surprise that these reasons only worsen when applied to underage offenders. Not only are younger people simply more likely to reoffend due to their inability to properly understand the extent of their actions, but they are unable to use the same rehabilitation methods adult offenders do, as limited programs exist specifically for juvenile offenders (Jason Payne, 2007). This also hinders their ability to transition into their adult life, as they will be burdened with a criminal record from their youth that cannot be excused, potentially hindering them from certain opportunities an adult with no juvenile record could access (Jason Payne, 2007).

For children not of Anglo-Australian backgrounds however, the issue of criminal charges is much more concerning. It is already difficult enough for many children of minority backgrounds due to the prevalence of racism and bias in schools (Priest et al., 2019), but by adding a criminal record further unfairly burdens them to achieve the same success their Anglo-Australian counterparts can.

Many children of foreign backgrounds, particularly South-Asian children, have come here because their parents wanted a better life for them. A juvenile record can set them back well into their adult life and while there is no Australian-specific research on the cross-combination of race and having a criminal record, research in the United States correlates with the notion that prior criminal records can entrench racism to prevent minority communities from accessing opportunities to better themselves like career advancement or housing (Jain et al., 2021). These parents did not bring their children to Australia to see their life get squandered because of a mistake made in their childhood, but instead, to see them flourish and have a better life because of the sacrifice those parents put in.

It is crucial that the Regulatory Framework for criminal law across NSW is able to support children to actually seek rehabilitation and stop using cannabis. Therefore, increasing the minimum age of the Framework will prevent the criminal justice system from cutting their opportunities short, and instead, focus on helping children.

#### **Submission 4: Enhancing the Regulatory Framework**

An increase in outreach promoting Rehabilitation facilities synergised with a structurally reformed Criminal Justice System that encourages an upward trajectory for rehabilitated

offenders may be able to enhance the regulatory framework for cannabis in NSW, utilising a more humane and effective approach towards cannabis regulation and tackling drug addiction.

Under the current regulatory framework for cannabis in NSW, individuals caught with a small possession of drugs will receive a criminal charge. Instituted in 2019, NSW started issuing on-the-spot \$400 fines for small possession and drug consumption in public areas in an attempt to discourage drug abuse (NSW Police, 2019). As such, fines make up a significant proportion of prosecuting actions by NSW police, with the NSW Bureau of Crime Statistics and Research (BOCSAR) citing 14 644 recorded incidents of small cannabis possession/drug use in 2023 (NSW BOSCAR, 2024). It is questionable whether the allocation of fining individuals caught with small possession/drug use reduces cannabis usage; potentially having a negative effect of preventing such individuals from necessary treatment. Observing the issue of cannabis possession and usage linearly as a crime being committed rather than approaching it as a broader issue perpetuates the cycle of criminal behaviour and drug usage (Pierce et al., 2017).

The positive effects rehabilitation facilities have on drug abusers are demonstrative in the latest statistic of recorded cannabis possession/drug use in 2023 by BOSCAR. Small quantity cannabis possession/drug use in 2023 was a 6.4% decrease from 2022, strongly indicating a downward trend in the number of cannabis drug use/possession incidents recorded by NSW police (NSW BOSCAR, 2024). Additionally, investment into drug and alcohol rehabilitation services was lowered from \$36.4 in 2023 (NSW Health, 2021) to \$33.9 million in 2024 (Health, 2024). At a glance the reduction of funding rehabilitation services seems disingenuous, NSW has had an overall decline in the number of drug use/possession incidents for all drug types (except amphetamines and ecstasy), with cannabis being the most significant decrease from 2022 to 2023 (NSW BOSCAR, 2024). These figures reiterate the positive effect of rehabilitation in decreasing the number of drug users and processes in NSW; treating drug abuse as a public health crisis and not strictly a criminal act.

Additionally, the disparities of law enforcement can disproportionately affect minority groups like the South Asian communities in drug related offences. BOSCAR reported that minority communities often face persistent unequal treatment in sentencing and policing, especially in regards to small drug possession/usage (Legal Aid, 2024). Shifting towards a criminal justice system focusing on rehabilitation may provide better future outcomes for individuals caught

in small drug possession/usage. Systems that reduce recidivism and promote reintegration would be particularly beneficial to minority groups who may come from a low socioeconomic status, especially first time offenders (UNODC, 2018). This is because systems that focus on bettering rather than brutally punishing offenders breaks the cycle of pain and suffering that can occur when the normalisation of illicit activities is prevalent in an offender's environment (Magnuson, 2023). Rehabilitation allows offenders, especially individuals from a minority group, a more supportive path towards recovering from their drug addiction, allowing an expedited route towards reentering society.

Although drug possession/usage incidents have been declining, the issue of having a criminal possession charge on the record is contentious. The charge may hinder these individuals' future opportunities post-sentencing, affecting first-time offenders significantly. Utilising the data by BOSCAR, most individuals caught in possession/usage will likely receive a fine or an unsupervised or supervised community sentence (NSW BOSCAR, 2024). To further reform the sentencing, this submission proposes that on top of the necessary community sentence or fine, the offender may have a chance to have their possession charge expunged from their record if they check into a certified rehabilitation facility that then deems the offender individual as "clean." This process on top of alleviating prison crowding and preventing possession charges to be taken into custody, prioritises the need for the offender to be quickly reintegrated into society rather than sitting in prisons at the expense of Australian tax dollars. This prioritises the rehabilitation process and incentivises the government to invest more into such integration efforts, as these individuals after rehabilitation, which is usually shorter and less expensive than a prison sentence, may contribute more towards the NSW economy with their clear criminal record.

Furthermore, an additional expedited route for first-time offenders through means of drug education programs, counselling and procurement of job opportunities for offenders, provides them with an upward trajectory in their lives once they leave rehabilitation. This gives these individuals a path towards rehabilitation, guiding them off the path towards addiction and greater suffering.

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