REPORT ON PROCEEDINGS BEFORE

PORTFOLIO COMMITTEE NO. 1 – PREMIER AND FINANCE

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

UNCORRECTED

At Macquarie Room, Parliament House, Sydney on Thursday 1 August 2024

The Committee met at 9:15.

PRESENT

Mr Jeremy Buckingham (Chair)

The Hon. Dr Sarah Kaine
The Hon. Stephen Lawrence
The Hon. Natasha Maclaren-Jones
The Hon. Jacqui Munro
The Hon. John Ruddick

PRESENT VIA VIDEOCAMERA

The Hon. Cameron Murphy

* Please note:
[inaudible] is used when audio words cannot be deciphered.
[audio malfunction] is used when words are lost due to a technical malfunction.
[disorder] is used when members or witnesses speak over one another.

UNCORRECTED

The CHAIR: Welcome to the first hearing of the impact of the regulatory framework for cannabis in New South Wales inquiry. I begin by acknowledging the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respects to any Aboriginal and Torres Strait Islander people joining us here today.

My name is Jeremy Buckingham and I am the Chair of the Committee. I ask everyone in the room to please turn their mobile phones to silent. Parliamentary privilege applies to witnesses in relation to the evidence they give today. However, it does not apply to what witnesses say outside of the hearing. I urge witnesses to be careful about making comments to the media or to others after completing their evidence. In addition, the Legislative Council has adopted rules to provide procedural fairness to inquiry participants. I encourage Committee members and witnesses to be mindful of these procedures.

Mr NICHOLAS COWDERY, AO, KC, Past President, NSW Council for Civil Liberties, affirmed and examined

The CHAIR: Welcome, Mr Cowdery. I thank you for coming along and taking the time to give evidence. Would you like to make a short introductory statement before we turn to questions from the Committee members?

NICHOLAS COWDERY: Thank you, Chair. I would like to make a short statement. The NSW Council for Civil Liberties thanks the Committee for the invitation to make this appearance today and for accepting our submission, which we rely upon today. The council apologises that the president, who had been arranged to appear today, is unable to be here. She's a practising lawyer and a hearing that was expected to finish yesterday didn't, so she's caught up in a continuation of a hearing today. So I'm afraid all you've got is me.

I am an adjunct professor of law at the University of Sydney Law School, among other things. It may be known I am a past director of public prosecutions for New South Wales. I've been involved in criminal justice for about 55 years as a prosecutor, a defence lawyer, a judge, and a teacher and academic in the field. I've also been involved in the protection of human rights for about 45 years, holding various positions in Australia and internationally. I'm particularly interested in the intersection of the operation of the criminal law and the protection of human rights. I'm a past president of the Council for Civil Liberties, which I'll call the CCL from here on, and I am a member of the committee at present. I'm representing the council in the evidence that I give here today.

The council supports the decriminalisation of cannabis and draws the Committee's attention to the extent of the availability and use of cannabis in Australia. The Australian Institute of Health and Welfare national household drug surveys provide that evidence very clearly. In the last year for which a report was put in, there was something like 11½ per cent of Australians had used cannabis in the previous 12 months; that's about 2½ million people. We support decriminalisation for a number of reasons, which are included in our submission, but I will just mention two particularly. One is that it would enable better government oversight of the operation of the cannabis market and cannabis use in the community, enabling a greater focus to be turned on the health and social determinants of that use, rather than concentrating on the criminalisation of it. The second thing that follows from the first is that that would free up law enforcement resources to be applied to other, far more important areas of criminal conduct, which can produce harm to the community, whereas cannabis use does not.

We've focused in the submission on a number of matters, and I'm not going to read all that to you. But I do just highlight at this point the unfair targeting of First Nations people in relation to cannabis use. First Nations people are greatly over-represented in our criminal justice system at present, and those statistics from BOCSAR, for instance, are quite staggering. A population of about 3 per cent of New South Wales has a prison adult population over 30 per cent. That is a situation that really should not be allowed to continue. In relation to cannabis, in 2023, the statistics show that police were less likely to give cautions and more likely to pursue charges for minor cannabis offences against First Nations people. There were about 44 per cent of non-First Nations people who were cautioned but only about 12 per cent of First Nations people. That's quite a significant distinction. The CCL maintains that this comes from over-policing of First Nations people and particularly First Nations young people. Those are the main points that I'd like to highlight at this stage but, of course, I'm open to any questions from the Committee.

The Hon. JACQUI MUNRO: Thank you so much for coming today and for the submission as well. This is maybe a little bit personal but I'm wondering if you could explain if you have had a change of perspective, yourself, in this issue over time.

NICHOLAS COWDERY: My present attitude began to be formed when I was first working in criminal justice in 1968. I was working as an undergraduate—a professional assistant—in the office of the Commonwealth Deputy Crown Solicitor in Sydney. At that stage the Vietnam War was underway, and we were having US servicemen coming to Australia on rest and recreation leave. They began to bring heroin in with them. So our job was to prosecute these people for illegal importation and possession of heroin. That was my first exposure to the question of drug use and drug distribution in our community and more broadly. I maintained an interest in that. I spent about 4½ years as a public defender in Papua New Guinea. That was before cannabis became an issue there. We had very little trouble with it.

When I came back to Australia in 1975 and went into private practice as a barrister, I began to be briefed by the Commonwealth in a lot of drug importation cases, including some very large ones. At that stage it was mostly cannabis, sometimes heroin. For example, I prosecuted in the Anoa case, where a yacht full of cannabis was brought in from Thailand. As a private barrister I also appeared on the defence side in relation to drug cases as well as other criminal cases. That enabled me to gain some insight into the motivations for drug use, the way in which people approached it and the effects that it had on individuals. That's an interest that has continued,

perhaps becoming stronger in more recent years. But as Director of Public Prosecutions, I held these views that I hold today. Of course we were dealing with drug cases under New South Wales law during those 16½ years that I was DPP, and I had to make high-level decisions in relation to a number of drug cases as well as a general run of criminal cases.

But, again, my exposure to the other side, the personal side of drug use, what I learnt about who was using drugs, how they were using them, why they were using them, what effect it was having on them, I gathered that information in the course of my work. My attitude is a longstanding attitude. As DPP, of course, my duty was to apply the law, and I did, regardless of my personal views in this area and in other areas too. But that was my duty and I did it. But I'm very happy to lend my experience to the Council for Civil Liberties, for instance, and to the other human rights bodies with which I'm involved.

The Hon. JACQUI MUNRO: How do you think the drug summit that the Government has announced for the end of the year will be different to the ice inquiry and what lessons do you think can be learnt from some of the policies that weren't implemented that were recommended and will probably be recommended again, let's be honest? What will be the difference? What is the point of this drug summit?

NICHOLAS COWDERY: I was a member of the expert advisory panel to the ice inquiry, and I gave evidence to it. The ice inquiry made 109 recommendations, five of which were dismissed out of hand and probably before anybody had an opportunity to read the report. The remaining recommendations remained unaddressed for over three years. I hope that the drug summit will not suffer a similar fate. It was disgraceful. There are a couple of recommendations that have been sort of working their way through the morass, but the council welcomes the announcement of the drug summit. We think that things have moved on since 1999 in relation to the use and acceptance of drug use in the community, in our community and in other communities from which we can learn, and we expect that evidence of that sort of development will be before the summit.

The Hon. JACQUI MUNRO: Do you have an idea of an outcome?

NICHOLAS COWDERY: We would hope that considered recommendations carefully reached by the discussion in the drug summit will be implemented because the Government is seeking advice from that body on the policies that should be adopted in the future. We would hope that it certainly won't suffer the same fate that the ice inquiry report did. Millions of our taxpayer dollars were spent on that inquiry. There were extremely competent and well-informed people involved in the making of those recommendations and they were ignored, and I think that's a disgrace.

The Hon. NATASHA MACLAREN-JONES: Thank you for appearing today. I just have a question in relation to the cannabis caution scheme and whether you have any knowledge of that and whether or not that has been successful in any way.

NICHOLAS COWDERY: I don't have deep knowledge of it. I'm not a practising lawyer anymore, but I try to keep up to date with what's happening. I think it's a good move. I think it's a good step in the right direction and I think it is having some success. That kind of decriminalisation initiative has been adopted in other jurisdictions too, particularly in the ACT in relation to nine drugs, I think it is, that they've nominated. In South Australia, it has been running for some time. I think in the Northern Territory too.

The idea of removing a criminal penalty is what we should be aiming for, and what the cautioning scheme does. It still enables, as I understand it, a fine to be levied, an infringement penalty, but it gives an opportunity for people to be supported and assisted to seek advice, to seek assistance, if they're having difficulty with drug use. Instead of the directly confrontational criminal process, which has the effect of alienating the people who are subject to it, it provides an entree into the person's use and general situation. The Portuguese model is the world example of what we should all be doing, in my view.

The Hon. NATASHA MACLAREN-JONES: Could you outline what that model is?

NICHOLAS COWDERY: Yes. In Portugal, in 2001, the Prime Minister, António Guterres, now the UN Secretary-General, managed to get through his government—and it took him a lot of work—a system whereby for quantities consistent with personal use of drugs, all drugs, people who were caught in possession or using or small-scale trafficking would not be charged with criminal offences but would be brought before a committee. There is a Portuguese name for the committee, which I have forgotten. It's a "Committee for the Dissuasion of People from Drug Use", or something like that, in Portuguese. These committees are comprised of people from the medical profession, the legal profession, counselling, government. They bring these people up before them and have hearings and discussions with them, exploring their drug use, exploring their backgrounds, their 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.

It has been enormously successful. It's resulted, obviously, in fewer people burdening the criminal justice system, fewer people going to prison. It has not led to increased drug use in Portugal; in fact, it's reduced it. It has not had a honey pot effect, drawing people in from other countries to take advantage of the regime. Those were fears that were held at the beginning, but it hasn't happened. The scheme 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. There have been a couple that have been mildly critical of some aspects of it. I think that is a much better way of dealing with people who feel the need to take mood-altering substances. Rather than make criminals out of them, why don't we try to make better and more balanced and more competent citizens out of them?

The Hon. JACQUI MUNRO: I was just going to pick up on that because there have been recent media reports that overdose rates are increasing. Sewage samples are suggesting that certain drug use has increased, particularly on weekends, and is at the highest rates in Europe for some substances, and that some of the evidence brought forward previously is now being challenged. Perhaps it's not all good news. Do you know anything about that?

NICHOLAS COWDERY: No, you have the advantage of me. I haven't seen recent reports on that. I didn't come expecting to be talking about Portugal, although I did raise it. If those are the sorts of reports that are now coming, then we need to look carefully at those. We need to look at the data which is being produced and the way in which it is being interpreted, because very often there can be false results drawn from surveys and so forth. We just need to be careful that it is evidence based and not distorted. But if there are some problems that have been identified after, what, 23 years, then no doubt those problems should be and can be addressed.

My issue, really, is that the criminal justice system is an inappropriate part of our governance for dealing with drug use. As I said, I've been involved in criminal law for 55 years. I've seen it from inside as a practitioner and I've seen it from outside as an academic and a teacher in criminal justice subjects. It makes me ask the question: What is the purpose of the criminal law? I think the purpose of the criminal law, we always say, is to make the community safe. Alright. How does it do that? It makes the community safe by deterring, to some extent, conduct by people that would be harmful to the community or to members of the community, and it does it by dealing with those who go ahead with that conduct anyway.

When you look at the way in which the court system is able to do that, you find that it is just totally unsuited for dealing with somebody who chooses to use a mood-altering substance for one of any number of reasons that might apply. When you look at the purposes of punishment which are set out in legislation and when you look at all the factors that need to be taken into account by a judge or magistrate when sentencing somebody for any offence, all those issues just really don't apply to somebody who took some cannabis. I ask this question too: By what right does the State tell somebody that they cannot take a mood-altering substance? By what right could the State tell me that I can't have a glass of wine with dinner? Alcohol and nicotine are far more harmful than cannabis. I have seen in my career the effects of alcohol time and time and time again, and I've seen the statistics on a number of people who die from nicotine use. Cannabis doesn't do that to people.

The CHAIR: You've touched on the disproportionate impact that the current regulatory regime for cannabis has on marginalised and lower socio-economic groups, and we've seen recently that in New South Wales and around Australia we're failing to meet our Closing the Gap targets in terms of incarceration rates for First Nations people; they continue to rise, alarmingly and disproportionately. Do you think that cannabis laws as they are now in New South Wales and across Australia are a significant factor in those incarceration rates and in the contact that First Nations people are having with the criminal justice system?

NICHOLAS COWDERY: Yes, I do. I refer to the ice inquiry report in relation to that. They took extensive evidence from rural and regional areas of New South Wales and from First Nations organisations. That is all documented in that report. As I said, we have referred to statistics that show that a higher proportion of First Nations people are charged rather than cautioned in relation to cannabis use. It comes from, I think, the fact that First Nations people are distinctive and are overpoliced in relation to this and in relation to some other matters. There are all kinds of reasons why that might be happening. But the result is, as you say, Chair, that the over-representation of First Nations people in relation to crime generally, but also in relation to cannabis particularly, is getting out of hand. Well, it is out of hand and it's getting worse. Yes.

The CHAIR: You touched on, previously, in your introductory comments, the impact that the current regime for cannabis has on law enforcement resources and priorities. Again, do you think that is significant and that the resources we are putting into cannabis law enforcement and prohibition are significant and would be better used in other areas?

NICHOLAS COWDERY: Yes, I do. We look to the police to protect the community, to keep it safe from harm. The Police Force is large, but its resources are limited, and it must prioritise the work that it does on

our behalf. Time spent issuing notices or issuing charges to people who are detected with cannabis can be much better spent, in my view, in giving attention to conduct that is likely to cause harm to the community and keep us safer in that way. I don't have figures on how the proportion devoted to cannabis law enforcement adds up, but no doubt those figures could be obtained somewhere. I suspect they are significant, having regard to the number of charges and the number of cautions that are issued. I believe those resources would be better spent on other activity.

The CHAIR: The CCL's submission is that we would best be served by moving to a decriminalisation model for personal use. How do we deal with the issue of supply, then? Because the drugs have to come from somewhere, either Thailand or someone's backyard. Why not a legalised, regulatory regime where the issue of supply is addressed?

NICHOLAS COWDERY: Well, now I'm going to split myself into two. The CCL submission is as I have given it: decriminalisation of cannabis. That is as far as the council has gone as a council, at the moment. But if you'll permit me to give my own view—

The CHAIR: Please do.

NICHOLAS COWDERY: I'm never going to live to see it happen, but it's my strongly held and reasoned view about drugs that all the currently illicit drugs—all of them—should be legalised, regulated, licensed, controlled and taxed, and that there should be regimes in place for each drug. The regimes for each drug would be different. But it would enable drugs to be grown or manufactured under licences that would be difficult to get and easy to lose. The distribution chain would be licensed, with a similar caveat. There would be taxation revenue able to be taken from the supply of drugs. There would need to be controls in place for the protection of children and other vulnerable people. But we do that in relation to alcohol. We do that in relation to nicotine. It's not beyond the wit of people, I don't think, to devise regimes that would be effective.

In the case of heroin, for example, it might be dispensable on prescription, which would enable medical supervision of the use of that drug to continue, as happens in some other countries. In relation to cannabis, we can learn from the countries that have legalised cannabis, sometimes with some unfortunate effects—maybe over-corporatisation of supply in some instances and that sort of thing—but we can learn from the experience of other places that have done it. I've forgotten the number of the United States of America where it's legalised. Something like 30—around about 30 States I think, or something like that.

The CHAIR: Thirty-eight.

NICHOLAS COWDERY: Thirty-eight, is it? Thank you. Canada, a society not unlike ours, and, of course, a number of other countries around the world—but we can learn. We're in the wonderful position of being able to learn from the experience of other people. We don't have to reinvent the wheel; the wheel is out there rolling around. It may wobble a bit sometimes, but we can learn from that and we can make sure that our wheel doesn't wobble as much as that.

The CHAIR: At the moment in New South Wales, in the Drug Misuse and Trafficking Act, the criminal penalties for just possession of any amount of cannabis is quite significant: thousands of penalty units and many, many years in jail for simple possession. As a first step, should the New South Wales Government consider at least reducing some of those penalties for possession of cannabis?

NICHOLAS COWDERY: I agree entirely. The penalty for—if I remember it correctly—attempted self-administration of a drug is two years imprisonment or a number of penalty units, whatever it happens to be. That, I think, is just nuts. The penalties that you've referred to, Chair—yes. For a start, there should be non-custodial penalties if there are going to be penalties at all. It is just totally counterproductive to send a low-level drug user to prison, but it does happen. There's a very high proportion of our prison population which is in there for drug offences of one sort or another—and I'm not talking about major trafficking. Major trafficking remains, under my scheme, part of the criminal law. People who seek to profit by operating outside a legislated regime would still be subject to the criminal law in its full force, but hopefully there wouldn't be too much of that that needed to be prosecuted.

The CHAIR: Lawyers are expensive and the court's time is an enormous expense. Is the prosecution of cannabis offences a significant waste of resources for the State, in your opinion?

NICHOLAS COWDERY: Yes, it is, particularly in the Local Court in relation to cannabis. The Local Court is our busiest court in the State in terms of the number of cases that are processed. You only have to go into a local court on a Monday morning to see the sorts of pressures that magistrates are under. If the cannabis workload could be taken away, for a start, by the institution of diversionary programs of one sort or another, that would free up the resources of the Local Court enormously, I think.

The Hon. STEPHEN LAWRENCE: Thank you, Mr Cowdery, for your submission. In terms of the harms being inflicted on people by the operation of the criminal justice system, which obviously includes the criminalisation of cannabis, would you agree that one issue that perhaps is not that obvious is that prior cannabis convictions are taken into account when people are sentenced for other offences?

NICHOLAS COWDERY: Yes, once you get into the system once you have a conviction, unless you make very strong efforts to avoid any criminal conduct in the future, you are going to get caught up on the treadmill, and one thing leads to another. 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.

Programs like the Just Reinvest programs that have been instituted around New South Wales—in Bourke, Moree, Mount Druitt and Kempsey—are enormously successful in identifying youth who are at risk of going into the criminal justice system, whether it be through drug use, through unlicensed driving of motor cars, through assaults, through theft—whatever it might be. If they can be identified and diverted away from that conduct—by encouragement to continue to go to school, by looking at their family relationships, by looking at their social relationships et cetera—then we can be very successful in diverting them and getting them off that treadmill or out of that revolving door, if you want to use that one.

A criminal conviction has a number of consequences, which we have included in our submission. It becomes a matter of public record. Even a conviction for a minor cannabis offence can have impacts on employment, education, service in voluntary institutions, and travel, where obtaining visas to some countries might become difficult, if not impossible. Particularly with disadvantaged people, once they see the imposition that a conviction imposes upon them, they may very often become dispirited and disheartened and continue on the same level of conduct, if they don't have the support to get themselves off that treadmill. I think what you have to say is right.

The Hon. STEPHEN LAWRENCE: In terms of the human rights analysis, I was wondering if you could explain to us why you see the criminalisation of cannabis as a human rights issue. For example, is it because you see it as a law that is inherently arbitrary or do you see it as a law that potentially invades the right to privacy, in the sense that it's arguably a non-harmful thing that people do at home in the privacy of their own home, or is it also perhaps about the way that the law is implemented, in terms of searches and so forth? I was wondering if you could talk to us about a human rights analysis, which is bit of a lawyer's way of looking at it, I suppose, but I think important.

NICHOLAS COWDERY: There are impacts on all those three areas that you've mentioned. We all have a number of human rights, most of which are prescribed in instruments of one sort or another, internationally and domestically. A person's choice to use an easily available, mood-altering substance, without any harm to any other individual, I think has to be respected as a human right. It's not spelt out in those terms in any covenant or declaration from the United Nations, for example, but I think it follows from things that you mentioned, such as the right to privacy and the right to bodily integrity, and all that sort of thing.

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. Freedom of choice, I guess, is also what it comes down to. Again, if I choose to have a glass of wine with dinner, why should anybody, any official, have any right to impact that? If somebody chooses to smoke some cannabis to relax, why should any official have the right to say, "No. Furthermore, come with me because you're under arrest"? I just don't see how it can be supported.

The Hon. Dr SARAH KAINE: Thank you for your answers and for appearing. I wondered if I might ask a follow-up question on that human rights angle. One of the things that struck me reading through the submissions is the application of the law depending on certain characteristics, including geography. I wondered, in terms of human rights consideration, if that's something that we should be thinking about as well. It seems to be if you're in a particular postcode, then the likelihood that you get the more extreme version of enforcement appears to be the case. I wondered if you had any comments about that.

NICHOLAS COWDERY: Yes, you're going back to Tony Vinson's postcode justice idea, which was very valid. The issue, I suppose, looking at it from a human rights perspective, is this: Every human has human rights that we have identified, defined and we protect. It doesn't matter where you live. It doesn't matter what your occupation is. It doesn't matter what colour your skin is or whether your hair sticks out of your head or is curly. You have those rights, and they should be equally enforced and protected, to come back to your question, wherever you are. That then becomes a question of resources. It becomes a question of priorities. I think governments have

to recognise that people who live in Bourke or Brewarrina or Cooma, or whatever it happens to be, all have the same rights as people who live in Sydney, and those rights need to be observed and protected.

The Hon. STEPHEN LAWRENCE: You spoke in your answer to an earlier question about having a personal view in favour not just of decriminalisation but the introduction of a regulated market for all drugs. I'm wondering whether you think that there is a stronger case in respect of cannabis for such a regulated market than in respect of, for example, other drugs. Further on that, do you think it might be the case that there might be policy merit in exploring and implementing a regulated market for cannabis first to see how it works, rather than first in respect of drugs like heroin and ecstasy and methamphetamine and so forth?

NICHOLAS COWDERY: I'm a realist as well as a part-time idealist. I agree that what sometimes is called the low-hanging fruit is what we should start with. The additional reason for answering that yes is that we have these examples and models from other countries that we can learn from, where this kind of regime has already been introduced and has been running now for some time. So we can learn and we can pick the best and give it a run and see how it goes. I think, politically, that's obviously the most achievable course. But I still have a hope in the back of my head that one day the rest will follow.

The Hon. STEPHEN LAWRENCE: There's a reference in your submission to the desirability of moving to a situation where it would only be a criminal offence to drive with THC in one's system if it was at a level that impaired driving. I've heard it put against that proposition that such a system would encourage people to make their own estimates of their impairment in circumstances where, with cannabis particularly, I suppose, with an unregulated market, it's simply impossible to do that and that we shouldn't be encouraging people to do that. That rationale, I think, would also flow to suggest that you need to have other current criminal offences to deter people flat out from driving in any conceivable situation where they could have THC in their system. I was just interested in your response to that argument.

NICHOLAS COWDERY: In relation to alcohol, we have the advantage of evidence of the degree to which driving is impaired by the consumption of different levels of alcohol. It's all been tested, experimented with, calibrated, and our breath-testing and blood-testing regime has been introduced as a consequence. I think that's terrific and it seems to be working pretty well, and we shouldn't change anything there. In relation to cannabis, the problem with the cannabis driving offence is that at the moment it does not target driver impairment. It's another extension of the prohibition regime to, in effect, pretty random testing of people who happen to be behind the steering wheel of a car to see whether or not they have used cannabis. It's a real issue, as we mention in our submission, in relation to people who are on medically prescribed cannabis dosages.

The problem, as I understand it, is that if you have cannabis, it can hang around in your system for days or sometimes even longer, during which there is no impairment of your driving ability or effect on your psyche generally after the initial effects—so I understand. I'm not a medico. It seems to me that the regime that we presently have is unfairly targeting people who do not present a risk on the roads and who then are obliged to suffer the consequences of being detected, being convicted and having their licences taken from them et cetera. Particularly in country areas, that can be a major issue where public transport is not so easily available for people to get about their business.

I wouldn't be in favour of leaving the assessment of impairment to the individual. We don't have that with alcohol. We have an objective breath test, which is followed up by a blood test, and that can be measured scientifically. We would need to have, if we're going to stick with this, some kind of broad measure of impairment that would need to be applied. In the old days, before the blood alcohol and breath-testing regime came in, it used to be the case that the police would pull up somebody who was driving erratically, get them out of the car, have them perform a few actions—you know, walking a straight line or balancing on one leg or whatever it happened to be. If they failed that, then they went for driving under the influence. There was the test that police administered. Maybe there is some kind of a test that can be devised to see whether or not, where somebody is detected with a level of cannabis in their system, that is likely to impair their driving, but that's for other experts.

The Hon. STEPHEN LAWRENCE: I am interested in your thoughts, Mr Cowdery, on the extent to which in your career you've observed that, because of the very large-scale use of cannabis across Australia, criminal gangs involved in cultivation and distribution have been able to use the proceeds of the cannabis market to engage in other harmful activity.

NICHOLAS COWDERY: If they've made a profit, I'm sure they have. It certainly happens in relation to methamphetamine. It happens in relation to the importation of heroin and cocaine.

The CHAIR: Sorry, Mr Cowdery. To be clear, you think that the profits from cannabis have facilitated those other activities?

NICHOLAS COWDERY: I can't identify where that has happened, but if people are growing and distributing cannabis for profit, then I think it's highly likely that those profits would be diverted into other unlawful activity.

The Hon. STEPHEN LAWRENCE: That would be something that would be avoided, presumably, by a regulated market.

NICHOLAS COWDERY: Indeed, yes.

The Hon. CAMERON MURPHY: Mr Cowdery, earlier you spoke of the incompatibility of the prosecution of cannabis offences with the objects of the criminal justice system in terms of community safety and it largely being a personal choice of an individual that doesn't harm others. But there's also another level of inappropriateness to it, in the sense of it not providing a vehicle for reform for the individual or access to health or other assistance. Isn't that correct?

NICHOLAS COWDERY: Yes, indeed, and we've included that in our submission—to provide a pathway for assistance for those who require assistance rather than simply confront them with a criminal charge.

The CHAIR: Thank you, Mr Cowdery. We very much appreciate your acute and pithy evidence today at the hearing. Unfortunately, our time has concluded. Again, thank you to the CCL for its submission and thank you again for your evidence. The secretariat will contact you if there were any questions taken on notice.

(The witness withdrew.)

Mr JONATHON PAFF, Criminal Solicitor and Coffs Harbour Summary Courts Manager, Legal Aid NSW, affirmed and examined

Mr GREG BARNS, SC, Spokesperson on Criminal Justice and Human Rights, Australian Lawyers Alliance, before the Committee via videoconference, affirmed and examined

The CHAIR: I welcome Mr Paff and Mr Barns to the hearing relating to the inquiry into the impact of the regulatory framework for cannabis in New South Wales. We're affording all witnesses the opportunity to make an opening statement. Mr Paff, do you have an opening statement you would like to make?

JONATHON PAFF: No, Chair. I just rely on the written submission that was prepared by Legal Aid earlier.

GREG BARNS: Just very briefly, Chair. The thrust of our submission is essentially twofold. One is the fiscal impact of the current policy settings. We have made a point here about the way in which law enforcement tends to focus on particular areas. We haven't really included it here but we'd also draw on international evidence, particularly from the United States, Canada and other jurisdictions, where cannabis has either been decriminalised or legalised. Otherwise, we rely on our written submission.

The Hon. JACQUI MUNRO: Thank you so much for appearing and for your submissions. I have concerns about how the international effects of decriminalisation in the US, Portugal and Canada have impacted on individuals. I'm wondering if in your work you're doing comparisons with international jurisdictions and finding any trends that are relating to an Australian or New South Wales experience in terms of the demographics of people who are seeking help or no longer seeking help, perhaps, in other jurisdictions, or if there are changes in the ways that—when I say seeking help, I mean legal representation and interacting with the law.

JONATHON PAFF: I can't necessarily speak for people in other jurisdictions or countries, but our submission speaks to, particularly for Legal Aid, that a large percentage of people, in particular in relation to cannabis, are Indigenous, rurally based people. From a New South Wales perspective, that is the clientele that we see coming before the courts for drug-related matters. I was recently looking at the statistics. Overwhelmingly, that is a rural problem, in terms of the percentages are significantly higher in a rural setting. I obviously could not speak for rural Indigenous people in other jurisdictions.

GREG BARNS: It's a good question. Portugal, of course, has had a decriminalisation approach now for around 25 years and generally records lower than average—in terms of the EU—drug usage. In relation to the United States and Canada, there are a range of models. In the United States, I think the vast majority of states now have at least medicinal cannabis. I think probably around 15 states have decriminalised the use of cannabis or, in fact, legalised recreational cannabis. In Canada, the Federal Government, the Trudeau Government, legalised cannabis some years ago. A person who is really good on this is Michael White from the University of Adelaide, who collects a lot of data in this area and would be worth speaking with.

I think the preponderance of the data shows that it takes a lot of pressure off the courts because it's dealt with as a health issue, in the same way that alcohol is dealt with as a health issue, or the use of opioids et cetera. There's also no correlation between increased crime, for example, and use of cannabis, but data does differ from jurisdiction to jurisdiction, as one might expect. Generally speaking, there has been no huge increase in the number of people using cannabis. I might say that it's slightly complicated because a lot of people use cannabis for pain relief. In the United States, I think there are some issues around access to medicinal cannabis. It's not as bad as we have here, but it's certainly similar in some [audio malfunction]. There's certainly no move in the United States back to criminalising.

The Biden administration has talked about decriminalising because, at the moment, it's a scheduled drug that is prohibited. I don't know whether that's happened or where it's at. I would have thought that if Kamala Harris was elected President, it probably would be on the agenda. The last point I'd make to you is that it's not a party political issue in the United States. In fact, some of the leaders in this area have been Republican states. One example where the critics point to is Oregon. Oregon moved to decriminalise or legalise all drugs in a referendum—or the equivalent to a referendum—some years ago and it hasn't worked. The reason it hasn't worked is because they failed to establish at the same time the important health and welfare facilities. They just said overnight, "We're going to legalise," but they didn't set up the infrastructure, which, of course, creates real problems.

The Hon. JACQUI MUNRO: There was some media reporting on that recently.

GREG BARNS: Yes.

The Hon. JACQUI MUNRO: In terms of Portugal, I mentioned earlier to Mr Cowdery that it seems like there is some more recent research that might suggest that changes to patterns of drug use have increased quite substantially. That is in relation to the rest of Europe. The research that you referred to, do you know when that was conducted?

GREG BARNS: I think it's ongoing. We'd be happy to take on notice, if it would assist you, data in relation to Portugal. I've seen the same reports that you refer to. I think, though, it's in relation to particular drugs. As I understand it, it's not across the board. It's also driven by a range of other social factors. But we'd be happy to give you some material on that.

The Hon. JACQUI MUNRO: That would be helpful.

GREG BARNS: Yes. There was a lot of work done by the Cato Institute, which, of course, is a republican, large, essentially libertarian institute in the United States. It produces quite interesting material around a range of issues. They've been very supportive of legalisation, mainly from a law and economics perspective. But, anyway, that's a long way of saying that we'll certainly dig up some material and get it to you.

The Hon. JACQUI MUNRO: Thank you. You also mentioned the health aspect. When we're comparing alcohol, for example—obviously, alcohol is legal for most people, and yet alcohol is involved in lots of different types of crime. It has a pretty high prevalence amongst domestic violence incidents. I understand that cannabis use and alcohol have different effects on the brain. But do you see that there would be downsides in terms of the effects on individuals that would perhaps cause them to interact with the law in other ways, if they were using cannabis regularly, for example, without some sort of legal barrier, if I could put it that way.

The CHAIR: I'll get Mr Paff to respond to that and then we'll come to you, Mr Barns.

JONATHON PAFF: Perhaps I'd answer that question by saying the concern that we would have at the moment is that with cannabis being decriminalised, the only avenue for people that we represent to obtain that is via illegal means. That means they are associating with people who are often supplying other drugs which are far more harmful than cannabis, from our understanding. If cannabis remains illegal, it would be my view that it is more likely that people who are seeking cannabis will come into interaction with people who are able to provide other drugs.

Further to that, there are the flow-on effects of criminalisation. If ultimately you enter custody, we know that you're more likely to commit offences. You're more likely to commit more serious offences and, again, you'll be with a cohort of people who may well be significantly more criminalised than you were at the beginning. Generally, part of the reason of supporting the decriminalisation of cannabis is to allow the diversion into the health. There have been little steps towards that in terms of cannabis cautioning and the very recent early diversion scheme. But, again, we know that homeless and Indigenous people from disadvantaged backgrounds will struggle without significant support in the health sphere. But from my point of view, if it does remain that way, there's always the risk that someone is interacting with rather serious criminals.

The Hon. JACQUI MUNRO: Just to drill down on that a little more, do you think that people who are experiencing other issues like, say, homelessness are receiving other services while they're also going to Legal Aid and getting help from your service?

JONATHON PAFF: Yes. It's definitely often the case that there's a wide range of both government and non-government organisations that are involved in those services.

The Hon. JACQUI MUNRO: But Legal Aid hasn't been the first touchpoint; it has been a later touchpoint, for example?

JONATHON PAFF: Legal Aid, by its very nature, is often a crisis-driven service in terms of someone's coming before a court, having been arrested. If we're involved, it's often because those services have unfortunately not been able to assist that person. But it is often the case that they've definitely been involved in a number of services. The court itself has a very limited amount of services in relation to drug use. There's the MERIT program, which is a very good program. That is not available in every court and has different criteria depending on where you live and what court you're coming before. Obviously, Legal Aid is a very large organisation and has a number of differing services that we refer to. But it's definitely the case that they're often involved in other organisations.

The CHAIR: Mr Barns, would you like to respond to that previous question?

GREG BARNS: Yes, and I agree with everything that my colleague said. I think the other issue is this: The purpose of penalising and criminalising activity is to deter, both specifically and generally—general deterrence and specific deterrence. There is zero evidence—and I mean zero evidence—that the law has any

impact on the usage of cannabis, and most drugs, for that matter. It does not deter. The reason it doesn't deter is because it's a widely available drug.

The Hon. JACQUI MUNRO: So you're saying that if it was more available, more people wouldn't use it?

GREG BARNS: No. It is available.

The Hon. JACQUI MUNRO: When you say that it doesn't deter people, yes, there are people who use it despite it being illegal, obviously. But what about the people who aren't using cannabis at the moment because there is a social framework or signal around it not being a desirable activity to engage in?

GREG BARNS: It's totally ineffective. I don't know anyone who says, "I'm not going to take cannabis and use cannabis because I might run afoul of the criminal law." A judge once said to me, very wisely, "Every time I sentence someone for drugs, particularly for selling, all I'm doing is creating a vacancy in the market." *The Economist* newspaper said, "In the war on drugs there are no wins, only Pyrrhic victories." And it's so true. Can I also say this: I have never acted for a person who commits assaults or family violence as a result of using cannabis. They do in relation to speed and various other drugs. As a magistrate who runs a drug court once said to me, he'd rather people be on cannabis and get off ice, because they're much less likely to commit an offence.

The Hon. JACQUI MUNRO: Obviously they have different effects on the brain, yes. There's no doubt about that.

GREG BARNS: Yes, but the point is why would you criminalise it? Because it has zero deterrent effect. Now, if you're saying that if you decriminalise, it's an invitation for more people to use it, the evidence doesn't bear that out, because cannabis is readily available. You walk out of that room where you are today and it won't take you long to find some cannabis. There might be some in your building

The CHAIR: Oh, well. Who have you been talking to? There might be some in my back pocket.

The Hon. JACQUI MUNRO: But is there literally research or evidence amongst a wider population of drug users and non-drug users that explores the reasons that non-cannabis users are not using cannabis?

GREG BARNS: Yes. There would be a few people who say, "I'm not going to use because it's illegal," of course. For the vast majority of people who don't use it, it is because they don't want to use it. Let me give you an example of the absurdity of the current laws.

The Hon. JACQUI MUNRO: But, just quickly, is there any research that you're aware of that does point to that specifically? I'd be very curious to read it if there is.

GREG BARNS: Let me tell you, there's no deterrent effect—zero deterrent effect—because the rates of cannabis use don't go down. To have a deterrent effect in the criminal law, you have to see that there's a shift downward. But let me finish on this note: The absurdity of the current laws are these. I once sat in the Hobart Magistrates Court. A man came in charged with drug driving. He had been using cannabis. He told the magistrate that the reason he was using cannabis was because he was addicted to opioids and he wanted to get off them. His doctor had—

The Hon. JACQUI MUNRO: Sorry, Mr Barns, the microphone's a little bit soft.

GREG BARNS: Sorry. Very quickly—because I don't want to dominate this—this person came into court. They'd been done for drug driving. They'd had some THC in their system. They said the reason they were using cannabis was because they were addicted to opioids, and they were a mess. They've now got their job back. Their doctor said, "This is much better for this person than using opioids." If that person had been using opioids, he wouldn't have lost his licence. But he lost his licence because he was using cannabis. That's the absurdity and the injustice of the current regulatory system.

The Hon. JOHN RUDDICK: I have a question for Mr Paff. I understand that you're professionally involved as a lawyer with the Coffs Harbour summary court. What percentage of the time, roughly, of that court would be taken up with cannabis-related matters and is that trend line going up, steady or down?

JONATHON PAFF: I couldn't give an exact percentage. Every week we have an RMS list, or a traffic list we call it. So there is a significant amount of drive illicit substance offences that are before the court that take up a significant amount of time. Perhaps the flow-on effect of what we see in terms of possession of cannabis is that it leads to someone having more interactions with police and often being searched more. Initially it may be a small offence that's dealt with quite quickly in court, but that often leads to more interactions with police due to the police forming reasonable suspicions based on the basis of their previous convictions.

I couldn't give an exact percentage. The majority of cannabis matters before courts are dealt with by fines, so there is no supervision by community corrections. There's no diversion into health matters. It is my professional experience that I'm unaware of anyone that has ever been sentenced to jail solely for the offence of possession of cannabis. They may well have breached other bonds or other suspended sentences and other forms of sentencing due to that offence. In terms of the time, those matters are relatively short but the exact amount I don't have to hand. But it isn't matters that are often dealt with quickly by way of fines without supervision.

The Hon. JOHN RUDDICK: I have one question for Mr Barnes. Thank you for your submission. I can see you're openly pro-decriminalisation and, from your comments today, you sound like you're quite sympathetic to legalisation. You also say that if we got to that point, that there would be regulation around the cannabis industry. I'm keen to know, what level of regulation would be the ideal? It might be simpler for us to understand your position if we compare it to, say, alcohol. Alcohol is lightly regulated; you have to be over the age of 18 and you can only buy it from registered premises. But yourself, and Nicholas Cowdery earlier today, pretty much said you think that there is a good chance that alcohol is more dangerous than cannabis use. If we don't talk about what's politically possible but if we talk about what's the ideal, do you think cannabis should be more heavily regulated than alcohol or less heavily regulated than alcohol?

GREG BARNS: That is a very good question. I think I'd answer it by saying that one should look at the various US models, because each State in the United States regulates differently and in Canada. I think in Canada—but I might be wrong about this—most provinces have government-approved dispensaries, so there's quality control. The problem with a black market—and it was with alcohol and moonshine—is that you get all sorts of terrible stuff going into cannabis in a black market. What you've got to do is—the first thing is quality control. Then you would potentially have product control in terms of how much people can buy at any one time, which is different to alcohol. But I'd probably take that on notice because I think there are various models. There is some work being done on the optimal model, and we'd be happy to look at that and get you some material.

The CHAIR: Mr Paff, on page 11 of your submission you use the case study of Joe, a 37-year-old single father with a long history of back pain, and although prescribed medicinal cannabis, he's on an opiate treatment program. Can you talk about how poverty is impacting people's capacity to access legally prescribed medicinal cannabis as opposed to the illicit black market, and do you think that's significant?

JONATHON PAFF: I was speaking with my colleague on the way in about this exact sort of circumstance. For Legal Aid, I would suggest the majority of clients we see for low-level drive illicit with cannabis, or a small level of cultivating plants, is often related to chronic pain or other disabilities. Those people are often on the Disability Support Pension. It's my understanding and my experience that the current framework for medicinal cannabis is most doctors do not bulk bill for that service and that the cannabis itself is quite expensive, or more expensive than the cannabis they can buy illicitly.

The case study of Joe is something that is repeated across the State, and particularly across the board in relation to low-level offending. The majority of people are people who are coming on a government benefit. They're often treating some kind of pain or other issue with the cannabis. Those people are coming before the courts. We touch on our support that if medicinal cannabis laws are to remain similar, making it at least more accessible for people who are on government support to be able to engage in that. That would take, obviously, a wideranging approach in terms of being able to access affordable health care and affordable prescriptions in terms of medicinal cannabis.

The CHAIR: Do you have a response to that, Mr Barns?

GREG BARNS: No, other than to say I agree. I do some work in New South Wales, but primarily Tasmania and Victoria, and I can say the position is exactly the same.

The CHAIR: Mr Paff, you talk about issues with the New South Wales Cannabis Cautioning Scheme in your submission and, in particular, the discretion given to police that has resulted in Aboriginal and regional cannabis users being much more likely to face court. In the interim before any legalisation, would you recommend changes to the Cannabis Cautioning Scheme in that regard?

JONATHON PAFF: There is some quite in-depth information provided in our submission in terms of empirical evidence about the fact that the review of the Cannabis Cautioning Scheme by the Bureau of Crime Statistics found that police were four times less likely to issue cautions to Aboriginal people. Additionally, 82 per cent of all Aboriginal people caught with a non-indictable amount of cannabis were pursued through the court system. So Legal Aid's position is we would support the widening of the Cannabis Cautioning Scheme, but perhaps particularly in terms of it remaining as it is, further education or encouragement for police to be able to exercise that in a way that doesn't result in impacts that are leading to the gap widening for Indigenous people

coming before the courts. We're aware 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.

The CHAIR: Mr Barns, the ALA has a similar position, on page 7. Could you expand on that?

GREG BARNS: It really speaks for itself, Chair. I agree with Mr Paff. Our concern is the over-policing in particular communities. Of course that then leads to people going underground. In other words, they're not going to stop using cannabis but they may, as Mr Paff rightly said earlier, then start associating with individuals and groups that are antisocial. That's the problem with over-policing.

The CHAIR: Mr Paff, you recommend the repeal of our drug driving laws. You say, on page 15, that cannabis can be detected up to nine days later and, therefore, outside any possible impairment. Could you expand on that?

JONATHON PAFF: The position, I believe, is really based on the fact that—and I think this has been touched on by Mr Cowdery earlier—a person who is driving who has no impairment is brought before the courts. The current concern is also in relation to there is an exemption in that section for prescribed morphine, and there is not for prescribed cannabis. I heard the comments earlier about the difficulty in assessing impairment for cannabis, but it is the case that there is a criminal offence of driving under the influence of a drug, and that often is the basis of a blood test and expert evidence about a level of impairment that someone is having and/or observations of a police officer in terms of the driving. The flow-on effect that we see and why we would seek it to be repealed if possible is that a person comes to court, it is a fine-only offence, it doesn't carry jail as a maximum penalty but it has a disqualification. Particularly for, again, rural and disadvantaged communities, the loss of a licence is an incredible imposition on people that may have to drive hours to access services or drive hours to even get groceries. The impact of that offence is particularly felt in regional and rural communities. That would be my submission.

The Hon. STEPHEN LAWRENCE: Thank you, Mr Paff, for the Legal Aid submission. I wanted to ask you, firstly, about the Cannabis Cautioning Scheme. In your evidence, you've referred to something that has been referred to in earlier evidence, which is the disparity in terms of obtaining cautions between Aboriginal and non-Aboriginal people. I note that, in a BOCSAR publication on why Aboriginal adults are less likely to receive cannabis cautions, it is concluded that almost all of the disparity is explained by different factors, including, very significantly, prior offending conduct and prior prison having been imposed. I'm interested in your view about whether the Cannabis Cautioning Scheme should be amended in respect of cannabis to ensure that police aren't able to consider a prior criminal record or the prior imposition of a prison sentence.

Now, I accept that that probably sounds like a counterintuitive proposition at first, but I'm interested in, I suppose, your general observations about whether, in the criminal justice system, cannabis is playing a role in the ratcheting up of punishment, where the prior imposition of a cannabis conviction or a fine for cannabis or something of that nature then is used down the track, perhaps in a non-legitimate way, to justify much harsher sentences. For example, a magistrate might look at a person's record being sentenced for a relatively minor offence and say, "Well, you've been a thorough recidivist. You've appeared in court five times for cannabis." I'm interested in your thoughts as to whether the cautioning scheme should actually exclude consideration of prior record. Is that what's necessary to ensure that Aboriginal people aren't put further into the treadmill by that scheme?

JONATHON PAFF: That would be something, I think, that Legal Aid would definitely welcome in terms of increasing the access for those people. There were two parts to that question in terms of the impact of the convictions for cannabis further down. I think you would be well aware that the impact of someone being placed on a bond and then breaching that bond—then often it's the next step of the court to impose a more serious sentence. 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. Any ability for police to be able to divert someone, despite them having a criminal history for cannabis, which avoids them having to come before the court would be welcome.

The Hon. STEPHEN LAWRENCE: There has been a lot of attention lately on this issue of proactive policing and, for example, the use of certain criminal laws to justify policing patterns—for example, using traffic laws to justify stops, using drug laws to justify searches in order to prevent other sorts of offending. So you have this system where a particular criminal offence is, I suppose, used as a means to an end. I'm interested in your thoughts on the role cannabis is playing in the execution of proactive policing in terms of the ability of police to stop and search juveniles, in particular maybe Aboriginal kids, in regional towns.

JONATHON PAFF: Police obviously for a number of reasons have very broad powers to stop and search individuals in a number of circumstances. It's my experience that it is often the case that a significant basis for an officer's reasonable suspicion will be based on prior convictions that a person can have. That can obviously include the possession of cannabis or other illicit substances. That is often used as, more or less, the core reason for forming that reasonable suspicion, provided with some other circumstances. That is often referred to by police as intelligence that they have on the person. We're aware from the issues with the STMP list and other findings in relation to how that can impact again on Indigenous people, youth, and disadvantaged people that it's more likely that those people are going to be coming into contact with the police and, if they have low-level offences, that can then justify, or be used to justify, stop and search.

The Hon. STEPHEN LAWRENCE: Mr Barns, you were asked some questions earlier by my colleague Ms Munro about some suggested increase in drug use in Portugal, I suppose, under the Portuguese model. I'm interested in your thoughts on whether we should focus, in our consideration, on what may or may not increase use, per se, or should we focus more on what increases harm or not?

GREG BARNS: I think you've got to look at harm. As I said earlier, there is no deterrent effect in the current legal setting. Just none. So the issue is harm. The reason it's harm is because you have a black market, and the product is under the counter. It's not regulated, and it's not taxed. I think most economists would tell you the current expenditure on law enforcement as opposed to reducing harm is a case of where you get very little value for money in relation to the former but you would get a lot of value for money in relation to the latter. Portugal is a model that has, generally speaking, worked. Ms Munro asked me some questions about it which I'll get back to her on, but it's not just Portugal.

I mean, there is a global trend now towards legalising cannabis, from countries like South Africa to Canada, the United States and parts of Europe. Even Thailand, of course. The reason it is happening is because people use it. A law is only valued if it's complied with by most in the community, and jurisprudence tells us that's why you have laws. If the law is essentially ignored by most people, then it's not a law that serves any useful purpose. The issue here is this is a substance that people ingest. The issue is harm. How do you best address harm? You best address harm by either legalising or decriminalising, so that you can regulate a market and you can focus on the health outcomes.

The Hon. STEPHEN LAWRENCE: In terms of use, have you given any thought under a future regulated scheme for cannabis as to how the advertising of the product might be regulated and how the place of sale might be regulated? I ask that question because I've read some stuff in the submissions about some places overseas where there's many, many places selling cannabis, particularly in particular areas. If you are walking down the street in some areas you can always smell it. It's said, I suppose, that form of regulation that allows that might lead to increased usage. I suppose there is ultimately a correlation between use and some harms. I'm not 100 per cent sure about that, but I suspect that might be the case. I'm just interested in your thoughts on that.

GREG BARNS: Again, what I'd say, Mr Lawrence, is there are many regulatory models. I think what you are talking about is I think in some parts of California this has proved to be a problem, and also in Colorado. You can regulate to the extent that—so long as it's not anti-competitive and doesn't fall afoul of Australian consumer and competition laws. Although, of course, you can carve things out. You can regulate to ensure or minimise the prospect of that happening—and in relation to advertising, similarly.

My understanding of cannabis, though, in Canada is that it's pretty heavily regulated. It might be a model worth looking at it. I may be wrong about that, but certainly the Trudeau Government was not keen to head down the path of some American states, which is sort of a free-for-all, in true American style. There are various models. Canada, I think, is worth looking at because it's a federal system but also—I think what happens is that the national government sets the framework and then it's up to each province to adopt the regulatory model that they want. I think quite a lot of them have gone to, essentially, a government-provider model.

The CHAIR: Thank you, Mr Barns. That concludes this session and your evidence, Mr Paff and Mr Barns. We thank you very much for taking the time to make submissions and to appear here, and generally for the work you do. I think there was a question taken on notice, Mr Barns. In due course, the secretariat will be in contact with you regarding that question on notice.

(The witnesses withdrew.)

(Short adjournment)

Professor NICHOLAS LINTZERIS, Conjoint Professor in Addiction Medicine, Faculty of Medicine and Health, University of Sydney, sworn and examined

Dr BEN MOSTYN, Academic Fellow, Sydney Law School, University of Sydney, affirmed and examined

NICHOLAS LINTZERIS: I am also employed as a senior staff specialist at South Eastern Sydney Local Health District, in drug and alcohol services. I hold a number of other non-paid positions, board positions and so forth.

The CHAIR: Thank you for your attendance. Do either or both of you have a short opening statement you would like to give?

BEN MOSTYN: I do. I note that the first term of reference is the historical development and implementation of the regulatory framework for cannabis. I have recently completed my PhD dissertation on 1980s drug policy and one of the points I would like to focus on—or for the Committee to focus on—is the United Nations Convention. My dissertation looked into why Australia signed the 1989 United Nations drug convention. I found that Australia was actually very influential and had quite a bit of influence on the 1988 convention. I think this was a mistake, in my opinion. That convention criminalised hundreds of millions of people.

My dissertation found there was a lot of social solidarity around the global war on drugs. So one of the reasons it's been so hard to reform drug laws is that there is a lot of global social solidarity against international drug traffickers. Since that convention was signed, millions of people have died in the global war on drugs in places like Mexico, Afghanistan, Burma, Colombia and even the United States. I would call upon this Parliament and this Committee that Australia was once a leader in drug policy and hopefully we can be a leader again in drug policy.

The Hon. JACQUI MUNRO: Thank you so much for your submissions and for coming in today. I wanted to start with Professor Lintzeris. I really appreciate the work that you've done. I think some of that specifically relates to the questions that I've been asking of some of the earlier witnesses around the comparison between different jurisdictions and the effect of legalisation or decriminalisation. You have set out a very helpful table, which is excellent. I'm wondering if you could delve into that a little bit more and help me understand if there are differences between jurisdictions, or nuances in those differences, that we should be picking up on that would help us construct legislation that's actually going to help people and, as much as possible, protect from the harms that may result from decriminalisation.

NICHOLAS LINTZERIS: The table in which I've summarised the existing evidence comes from a lengthy report that the German Government commissioned when they were considering issues around legalisation of cannabis. It's important that we actually look at systematic reviews as opposed to the cherrypicking of evidence. Anyone can come in and point to a study which showed either end of the spectrum—where it either demonstrated how the sky fell in on the one hand or, alternatively, everything is rosy and everything's been a land of milk and honey ever since we made these changes. A systematic review allows us to pool all the different experiences together and then try to make some sense of what's the consensus or general outcome. The authors of that report really highlight that, for many of the issues we're interested in—issues around health, crime and other social outcomes—some of it does very much depend on the regulatory framework which has been implemented.

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—it's now a well-cited framework—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. We also have natural experiments underway in the US.

The CHAIR: With that open market and unregulated experience, what are the key harms that have been identified?

NICHOLAS LINTZERIS: The Thai experience actually wasn't well reflected in the German systematic review, and that's largely because there hasn't been much published evidence coming out of Thailand, and also a relatively recent set of changes. The Thai Government doesn't appear to have invested a lot into research. Much of this is anecdote. But, again, things such as widespread use and a lot of marketing direct to consumers. That marketing then, there's the risk that it is targeting populations in their society which you really don't want to be targeting—young people and certain vulnerable people. Thailand appears to have been a model of a very low level of regulation, and then we have other examples coming from—really, North America has probably had the most experience, plus also Uruguay as well, and their experience.

We've had regulatory change there now—in Canada, Uruguay and parts of America—for long enough for us to now start to see what the impacts are. Even there—and this is highlighted in the report—for many of the outcomes, there are discrepancies between studies. Some of that might reflect the methodologies of the different study designs, but some of it also probably reflects the differences in regulation. In that regard, it is possible to try to draw analogies. Let's look at one state in the US, which might have had a very controlled, regulated market, and then compare that to other states in the US with less regulation. There have been attempts at trying to do this in the literature. It gets difficult, though, because often what you see is not just one factor which is different between these jurisdictions. It's not always possible to ascribe any benefits or harms necessarily alone to that particular model of regulation.

In that regard, when we look at countries such as Canada, which has a far more consistent model across Canada, because it's a national framework, there is variation from state to state. That does allow some comparisons, but overall it's a national framework. I think when we look at places such as Canada, we've got a lot more to learn, I think, from Canada than trying to pick winners and losers in different regulated markets. But we need to be aware, in many respects, that different models of regulation are likely to achieve different outcomes and that we need to be clear about what outcomes we want to achieve in the first place and then design a model of regulation around it, rather than the other way round—rather than what could we do politically, implement that and see that it's not achieving the outcomes that we wanted.

The Hon. JACQUI MUNRO: What kind of data is being used to come up with the results in these types of studies? What do we need to be thinking about in terms of the information we should be seeking to, first, find out what the current state of play is and where we might want to get to? Obviously, Indigenous incarceration is a big one.

NICHOLAS LINTZERIS: Excellent question. Much of the data comes from population datasets. If you want to look at the impact of crime and health outcomes, most countries, especially countries such as Canada and Australia, we actually have quite robust data collection systems around a lot of crime data, a lot of health data. We do have the opportunity—and this hasn't been done, I believe, adequately to date—to come together and identify what are the likely harms or benefits of different approaches to regulating cannabis. Some of these we know quite well. We know what the potential harms are from a health perspective, from a crime perspective and from other social indicators. We can identify what are the possible harms and the possible benefits of changing our approach to regulation, and then identify what is the baseline and establish what we are seeing at the moment.

Here are some examples. I work in health, so I could give you some health indicators. I would suggest that there are other people who are better placed to understand crime indicators and other kinds of social policy indicators. In the health space, we could identify things such as cannabis-related hospitalisations. Now, that is already collected. We can also learn from that currently, and this is all available in the AIHW data. This is data that is collected across Australia. We can look at drug-related hospitalisations, and it has been collected over a long period of time. When we look at what has happened with cannabinoids and cannabinoid hospitalisations—and this should get us thinking about some of the implications of this expanded access through medicalised cannabis—the peak cannabinoid hospitalisations in Australia peaked in 2019. You could almost say there was a spike in 2019. It increased—it sort of doubled or tripled over a two- or three-year period and since then has reverted back to the levels that we were seeing in 2015.

The Hon. JACQUI MUNRO: You're saying that that's a response to medical marijuana becoming available?

NICHOLAS LINTZERIS: No. It's interesting, because what we have seen is increasing levels of medical cannabis being prescribed and accessed by patients since 2019. When we look at what happened in 2019, there was actually very little medical cannabis being prescribed. The systems had just been set up. Doctors didn't know what they were doing. The cannabis industry was wasn't well established. There wasn't much consumer understanding of the new framework. When we look at 2019, that was in the early days of the new system, with relatively small numbers of patients. Since then, there's been almost a five- to tenfold increase in the number of patients being prescribed medicinal cannabis, much of which is THC based—over 80 per cent is THC-based medicines—and there's been a reduction in hospitalisation since 2019, so that is an example.

We see this reported in the media by medical experts. Recently the ABC was running a story about this, that with the expansion of medicinal cannabis there's been an explosion in health harms: psychotic presentations to hospitals, and so forth. The data does not support that at a national level. I'm sure that there have been individual cases. What would you expect when you see probably over half a million Australians have been prescribed THC? Of course there's going to be some patients with adverse events. That's what we expect in medicine. If you double the amount of medications being prescribed, you will see double the rate of adverse events. That's what you would expect.

The Hon. JACQUI MUNRO: It's about proportion.

NICHOLAS LINTZERIS: Yes. Within health, for example, hospitalisations: We drill down to see what kinds of hospitalisations and how much of those could be toxicity related, which could be sort of a sense of poisoning-related data, and which would be linked to things such as the potency of cannabinoid products. The US experience tells us there's access to very high potency cannabinoid products. Some of these things are 80 per cent THC products. Nature never created a cannabis plant with 80 per cent THC. These are very much synthesised products. An 80 per cent THC product is much more likely to result in an accidental poisoning than when you have standardised products which are more like 20 per cent or so forth. According to the harm, mental health presentations, obviously—we should be drilling down and looking at those, because that's one of the concerns.

The Hon. JACQUI MUNRO: You would say that there hasn't been proof either way, whether there is no change or whether there's big change?

NICHOLAS LINTZERIS: The Canadian experience and the US experience, where we have the better data, suggest that there has not been any marked increase in psychosis-related presentations to hospitals in their data. In our data here in Australia, we haven't drilled down adequately to look at the nature of the hospitalisations. However, we're talking in the hundreds of cases a year in Australia. It's not thousands and thousands of cases. But that's the kind of data we should be looking at. We can look at the potential harms associated with cannabis. They're not just mental health. There's cardiotoxicity, especially when we start looking at older people using cannabis THC products, so we can track all that. We've got data systems, and we should be thinking about creating that so-called data laboratory so that we can identify what's the baseline.

In my belief, it's not a case of if we regulate cannabis differently in the future; it's going to be a case of how we regulate cannabis differently in the future. We're likely to see different models in different jurisdictions, unless there is national blanket Commonwealth legislation. Even then, there may be jurisdictional differences. It depends how it works. If the Commonwealth created a legal framework that allowed States to do their own thing, we would most likely see some different models in different jurisdictions, which creates a natural laboratory for us to be able to look at different regulatory models. For example, the ACT model, which is a grow-your-own model, I believe is a very limited approach to regulating cannabis with an example of a model which was politically attainable but unlikely to achieve the outcomes that society expects or wants. Anyway, we can talk about that. But, for example, you could compare an ACT model to another jurisdiction that went down a more regulated market model. That would allow you then the opportunity to undertake that as a natural experiment.

It does also set up the interesting premise of setting these up under trial conditions or interim periods whereby, rather than saying, "We're going to set up a legal framework and a model and we have the confidence that we're going to get it right first time round,"—these are complicated issues and it's unlikely that anyone's going to get it right first time round. The idea of possibly looking at trial periods of different models in different jurisdictions, would allow us then a period of—you would probably need three to five years to allow things to settle. That then creates that ability for us to be able to have an evidence-informed approach, rather than simply who's yelling the loudest.

The CHAIR: I am just mindful of time.

The Hon. JACQUI MUNRO: Sorry, Dr Mostyn, I did have questions. Could you please provide to us that report that Germany did?

NICHOLAS LINTZERIS: I've referenced it with an internet link. It's a public document and is in the references of my submission.

The Hon. JOHN RUDDICK: Professor Lintzeris, when you were talking to Ms Munro you referred to poisonings of people who have taken high-potency cannabis and ended up in hospital. I'm guessing—correct me if I'm wrong—that not one person died from that so-called poisoning and they were out of hospital 12 hours later. They may not have used much cannabis before; they've had an overdose and freaked out, but 12 hours later they are back to normal. Am I right or wrong on that?

NICHOLAS LINTZERIS: Largely correct. The time frame can vary. The challenge there, again, really highlights the importance of regulating products. If you had a toxic event, an overdose on an oral product, there's a good chance you're going to be in hospital for two to three days but then you will emerge without any long-term consequences. You are correct.

The Hon. JOHN RUDDICK: Not one person has died, as far as you know, in Australia from a cannabis overdose.

NICHOLAS LINTZERIS: Cannabis on its own will not cause an overdose death. It's difficult, though. Most overdoses happen as a poly-drug overdose, but it's almost always the opioids, the alcohol, the

benzodiazepines, the antidepressants, the antipsychotics which are more at risk and, dare I say, more at fault than cannabis, which does not reduce your respiratory drive, which is the underlying mechanism for overdose.

The Hon. JOHN RUDDICK: In your experience as a professor of addictions, would you say, generally speaking, if we had one individual who for 10 years excessively consumed alcohol every day and another person over who for 10 years excessively used cannabis every day—my guess would be that the person who's an alcoholic is going to be in a worse health condition and is also going to be more likely a problem for society through crime or just antisocial behaviour.

NICHOLAS LINTZERIS: That is definitely our experience from providing treatment to many people with long-term alcohol and cannabis use.

The Hon. JOHN RUDDICK: You're the expert, and I'm liking what I hear. You're saying that, generally speaking, alcohol can be more dangerous. A lot more people consume alcohol than they consume cannabis in Australia.

NICHOLAS LINTZERIS: Yes.

The Hon. JOHN RUDDICK: That being the case, can I ask have you ever called for increased regulation around the alcohol industry?

NICHOLAS LINTZERIS: Absolutely. There are lots of issues and concerns around the way we regulate alcohol. A lot of the marketing of alcohol really should not be allowed. There are loopholes everywhere. When my children are watching the Test cricket, up pops lots of not just alcohol but gambling ads—the whole range of things. There are so many things we can talk about on the need for tighter regulation of alcohol—the way we sell it, the way we market it, the way we normalise it in our society.

The Hon. JOHN RUDDICK: In your ideal world where you could regulate alcohol as much as you thought was optimal, would you think in that also ideal world that cannabis—which we've agreed is less harmful, generally speaking—should be more heavily regulated than alcohol or less heavily regulated than alcohol?

NICHOLAS LINTZERIS: I think we've got an opportunity with cannabis to get it right from the beginning, whereas with alcohol we have been chasing our tail from the beginning. Alcohol was largely introduced in Australian society and culture going back now over 200 years in these places here—things such as the rum rebellion and so forth. We have longstanding cultural biases around alcohol that we have been basically playing catch-up with alcohol. If we got a group of experts together and said, "Let's sit down and design how we should best regulate alcohol," we would not design the current Australian system. We do have that opportunity, though, with cannabis.

It's not so much a case of more or less regulation; we should be thinking about cleverer regulation. In some instances, that may appear less regulated. In other instances, it may appear more regulated. There are different potential risks with cannabis than alcohol. We need to be thinking about things such as passive smoking. There's a range of different issues, but there's also some very similar issues. We've got a lot to learn about how we have regulated alcohol and some of the negative consequences that arise from that—in particular, things such as our approach to marketing, licensing and so forth.

The Canadians have got a historically culturally different approach to the way they think about and regulate alcohol. For example, in many parts of Canada, there are no commercial bottle shops. If you want to buy alcohol, you must go to a government-run store that sells alcohol. We, in Australia, would find that somewhat odd, but the Canadians accept it because that's the way their society is run. When they came up with a very similar model for cannabis in Canada, it wasn't that much of a cultural jump for them to think, "To buy alcohol, you've got to go to one of these government centres where you buy alcohol. Could we do the same thing with cannabis?" That's what they've done. It has actually resulted in a very clever model, and I think we've got a lot to learn from the Canadian experience.

The Hon. JOHN RUDDICK: That's very interesting. Thank you.

The CHAIR: Dr Mostyn, in your introductory remarks you touched on the UN conventions and treaties that we are signatories to. A lot of those conventions have been championed by the US in the global war on drugs, as it's called, but there is a significant shift in US drug policy occurring right now. In effect, the US has led us into the war on drugs, but the US is rapidly moving us—especially in cannabis—out of that war on drugs. Can you reflect on that and what being signatories to these treaties means for cannabis and drug law reform in this country generally?

BEN MOSTYN: That's quite a complex question. My research suggests that in the late 1980s, the US was actually less influential than people often think. By the mid to late 1980s, pretty much all countries were on

board with the global war on drugs—countries like China, the Soviet Union, Malaysia, Singapore and Australia. I think we often tend to overstate the role of the US in the global war on drugs. I think it has been very popular with a lot of governments all around the world, especially since the 1980s. It is very interesting that the United States is now the country leading the way on cannabis regulation. I think the treaties or the conventions are problematic in this area. The UN is very prohibitionist. Indeed, when this Parliament introduced the safe injection centres, the supervised injection centres, in the late '90s and early 2000s, the United Nations and America put a lot of pressure on New South Wales to not have that law reform.

It is interesting to now hypothesise how America and the UN would respond if New South Wales chose to regulate cannabis. From an international relations perspective, America can do these things because it is a very powerful country. They are clearly in breach of the UN conventions with their cannabis regulation. My understanding is that the UN hasn't stood up to them too much. It is, of course, controversial when you have voters vote on a referendum for particular law reforms. As pretty much every cannabis law reform in America has been through the voter referendum process, it would be controversial for the UN to come in and say, "No, you can't do this, even though the voters have voted for it." I think America has probably been a little bit hypocritical because they are still funding the global war on drugs as much as ever, even though they allow their own jurisdictions to grow, sell and consume cannabis.

Internationally, this is a complicated area. Of course, Australia is not technically bound to the conventions in the sense that we can breach conventions without any serious consequences, as we did to a certain extent with the supervised injection centre, although, as a scientific trial, it was not in breach of the conventions. Once the trial was successful and it was made permanent, I think it did become in breach of the conventions. It is absurd that a successful scientific trial, once it's proven to be successful, then becomes in breach of the convention. I think there would be some pressure from the UN on New South Wales if we chose to regulate cannabis, but it would be significantly less than it would have been 10 years ago when there also would have been the force of America behind it.

The CHAIR: But you would describe it as a rapidly changing space?

BEN MOSTYN: It is a rapidly changing space. Unfortunately, United Nations conventions are not rapidly changing. It's really hard to reform UN conventions. Another possibility is that Australia could register a reservation and say, "We're not bound to article 3 of the '88 convention in terms of cannabis." That, of course, would require the Commonwealth Government, I think. It is obviously very rapidly changing. As has been mentioned, Germany, Thailand, Canada and lots of countries are moving in this area. Canada really grappled with this problem, because Canada really views itself as a very good global citizen, and Canada did not want to be in breach of the conventions. They really grappled with that issue. I don't think they came up with a satisfactory answer, and I think they are currently in breach of the conventions. But, yes, it is rapidly changing. I think the United Nations can see the way the tide is turning and is probably not going to die on this hill.

The CHAIR: In your submission, Professor, you referred to the report that guided the Germans in their decision-making. But also, in your evidence just then, I think you were intimating there were limitations to their homegrown model—that is, essentially that adults can grow and share a number of plants, which is a slight extension on the ACT model that you can grow and share. Could I ask both of you to reflect on what you think of that model and what you think its pros and cons are?

NICHOLAS LINTZERIS: I think a grow-your-own model, which is restricted to a grow-your-own model, meets the desires of a certain part of the community. The challenge with those models is that most people who consume cannabis aren't growing cannabis plants and, if they are, they're not going to be growing high-quality cannabis plants. If they are, chances are they're probably going to be doing things like hydroponically growing them, which introduces risks and challenges its own right. Ultimately, the biggest challenge is that a grow-your-own model is limited in that the vast majority of people are not growing their own. So the vast majority of people are still reliant on an illicit cannabis market and still have to go out and break the law. They still have to buy poor-quality or unknown-quality cannabis from criminal gangs, essentially.

I liken it, in my submission, to being a little bit like homegrown beer. There's no law against brewing your own beer. You can make it in your bathtub. My uncle used to make his own wine in the bathtub. It was perfectly legal—undrinkable, but legal. There's nothing stopping me making my own wine in my bathtub or brewing my own beer. I can actually buy kits from Coles that will allow me to make my own beer. There's nothing stopping me from giving it to my next-door neighbour. What I'm not allowed to do is go and sell the beer that I've brewed myself, because I don't have the necessary standards of production. No-one has come and reviewed what I'm doing. How does the person know what I've put in that beer? That's the value of regulation, of a regulated market.

The CHAIR: But do you see any value in that as a first step towards a regulated market?

NICHOLAS LINTZERIS: Not really, in the sense that it doesn't address the challenges that we need to put in place to create a regulated market. We still have to understand issues around production, distribution, how we regulate who can access and under what conditions, and the issue of taxation. Those are all fundamental principles for a robust and regulated market that will undermine the illicit cannabis market.

The CHAIR: Dr Mostyn?

BEN MOSTYN: I generally agree with Professor Lintzeris. I think we need to think about what are the benefits of regulation, what is the purpose of regulation. Some of the benefits and purposes of regulation, of course, are to hopefully really reduce the black market. Also people will know what they are getting. People can say, "I want 5 per cent THC," or "I want 10 per cent THC." That is one of the real benefits of regulation. However, the counterargument to that is that there will be an interregnum period. This is almost a matter of legal philosophy. Once Parliament announces that we are going to regulate cannabis in the future, it creates this really sort of blurry period where people don't know what the law is. Can you continue to prosecute people for behaviour that is going to be legal next year or whenever?

We are seeing that some jurisdictions have real troubles with this interregnum period. New York City has really handled it quite badly. I think even strong supporters agree that New York is a unique place. I was in Manhattan last year and you can buy cannabis on every block from a corner store. None of that is regulated in New York. I think most of it comes from regulated California and places like that. They are not prosecuting those offences, so people know they can smoke it on the street and the police are going to leave them alone, which I think overall is a good thing, but it creates a murky area.

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.

Once the announcement is made that we are going to regulate cannabis, a lot of research will need to be done into that process. I see possibly a role there in that interregnum period for home-grown cannabis where the Government says, "We're going to stop prosecuting cannabis users, and we maybe would allow people to grow five plants on their own, and possibly even sharing cannabis with your friends would not be a criminal offence in that period." I think there is a role for it. I think growing cannabis is probably easier than making home-grown beer.

The CHAIR: Oh, definitely.

BEN MOSTYN: I think the average person is still not going to be bothered to grow a plant. People live in apartments; people live with their parents. There is still going to be the vast majority of people who just can't be bothered to grow it. I think the benefit of regulation is that we should be trying to shift people to the taxed and regulated white market. A fact of human nature is that people will continue to grow plants, and there are cultures in places like Nimbin and other places, a strong culture of people growing their own cannabis who probably will resist the regulated market. I still think the purpose is to try to get as many people onto the white market as possible.

The Hon. STEPHEN LAWRENCE: Accepting, for the purpose of this question, that we might transition through a decriminalisation period of regulation into a legalisation period, in the decriminalisation period, should it remain a criminal offence to cultivate small quantities?

BEN MOSTYN: My gut instinct would be no. Once again, something that's going to be legal, once you've announced that we're going to allow people to grow plants in the future and sell it in shops, I think it becomes very hard to justify criminal prosecution under those circumstances. I think it confuses the community. We have to understand the average person out there doesn't necessarily understand the law perfectly. The law kind of gets out that we've legalised cannabis. In New York City, for instance, people think cannabis is legalised, which it is to a certain extent, and it is now. I think, yes, at that point, as you say, it would be a decriminalisation phase before full regulation. I think it would be sensible at that point to allow five plants or whatever it is to be grown, and to tell the police to prioritise other areas.

The Hon. STEPHEN LAWRENCE: Have you got any thoughts on that, Professor?

NICHOLAS LINTZERIS: I've been reflecting upon the patients that I have treated over the years, the people we enrol in our studies and what the data tells us about regular cannabis users. The vast majority of cannabis in Australia is actually consumed by a small group of regular cannabis users. So, yes, 12 per cent of Australians

used cannabis in the past 12 months, according to household surveys, but most of those were not using daily. There is a core group of people who are using daily, and they are using one, two, three, four grams of cannabis a day on a daily basis. That's very difficult, almost impossible, to sustain on a grow-your-own model.

Again, as an interim step along the journey to end up with a regulated model of distribution, I see no harm or no barrier, no major obstacle, to putting something like that in place, but it's not going to achieve the objectives and the goals. I'm a strong believer that you identify what your goals are, what are the objectives, what are the outcomes you want and design a program around it, but recognise that there is the reality of policy reform. It's challenging. Sometimes you have to start off with interim steps before you end up where you want to go. But I don't think we should be losing track or sight of where we ultimately want to be.

We will never get rid of an illicit cannabis market, but certainly undermining the cannabis market, allowing consumers options so that they have got access to legal, high-quality products—we have demonstrated here in Australia with the medical cannabis industry that we can be very competitive when it comes to cost. I don't think we've got to worry about that. I don't think we should be overly concerned that if we created a regulated market, the vast majority of Australians will continue to use illicit products. I don't think they would. The quality, the standard of production and the price that Australian licensed growers can produce cannabis in Australia would see the vast majority of people move over, I believe, to a legal framework.

The Hon. STEPHEN LAWRENCE: In a future legalised market, would we be treating cannabis like we do cigarettes, where we preach abstinence but we allow access? Or would we be treating cannabis like alcohol, where we encourage responsible use but don't really preach abstinence? I'm talking there in terms of public health messaging and legal regulation.

NICHOLAS LINTZERIS: That's a really important question, because we've struggled with this with alcohol, haven't we? Over the decades, if you think about where we were 30 years ago in Australian culture, there was very little in terms of a public conversation or even any conversation around what is a safe amount of alcohol to consume. Over the past 30 years, we have seen groups such as the NHMRC release guidelines on what we consider to be safe levels of alcohol consumption. I think that's the kind of framework we should be thinking about. Cannabis is a psychoactive drug, so that's going to impact upon the way you regulate it, which makes it different to tobacco. The harms of tobacco use are going to happen in 10, 20, 30 years time. The harms that can happen with alcohol and cannabis intoxication can actually happen today, so they're far more proximal. We have to be aware that THC does intoxicate and so we need to understand that regulation around a psychoactive substance will necessarily be different to something such as tobacco products.

The Hon. STEPHEN LAWRENCE: I saw in your submission, Professor, that in your survey of the literature there was no increase in schizophrenia presentations or psychosis presentations in jurisdictions where some form of decriminalisation or legalisation had occurred—though those were short-term studies, because of the recency of the reforms.

NICHOLAS LINTZERIS: Yes.

The Hon. STEPHEN LAWRENCE: But, generally, how dangerous is cannabis in terms of psychosis?

NICHOLAS LINTZERIS: Cannabis use definitely increases the risk of psychosis from very low to very low. I think we need to keep that in mind. There is clear evidence that people who are vulnerable to certain kinds of psychotic conditions, usually people with—often they end up with diagnoses of schizophrenia or other functional forms of psychosis, schizoaffective conditions. There is a range of psychiatric conditions that have psychosis as the defining element of that diagnosis. There is no doubt that, if those individuals use cannabis, they have a higher risk of psychosis-related presentations. Having said that, that is still the vast minority of the population. So, yes, there is an increased risk of psychosis in vulnerable individuals.

But we see this with many drugs. There is a different vulnerability, for example, with alcohol. Some people are far more sensitive and vulnerable to the health effects of alcohol than others. But we still accept that at a population level we can still regulate this and regulate for the majority. But it does mean we still need to be careful and think about how we work with those individuals and what kinds of prevention messaging we require and even how we might think about expanded treatment for those individuals who do continue to experience cannabis-related harms, which is another reason I think we need to be prioritising models that will allow a taxation income so that we can also invest in those kinds of prevention programs, treatment programs.

We're not just saying, "We're going to let it rip. We're going to let everyone access this without concerns, without recognition that there may be some harms associated with increased access." But it is also really important that we think about a regulated model which focuses on what we want to regulate. Should young people under the age of 18 be able to access a regulated cannabis market? I think we'd all feel pretty comfortable in saying, "No, that should not be how we regulate cannabis." It would be discriminating to go and say, "If you've got a diagnosis

of psychosis in the past, you're not allowed to access cannabis products." That's very difficult to do. We don't do that with alcohol. Alcohol also increases the risk of mental health problems—far more than cannabis does increase the risks. If we look at the rates of severe depression, suicide, anxiety disorders in Australia—so closely linked to alcohol. Suicide and alcohol consumption can't be separated. Nor can domestic violence and alcohol consumption.

The Hon. STEPHEN LAWRENCE: Lastly, on the psychosis question, in circumstances where the research doesn't show an increase in it, I'm just wondering whether legalisation might increase usage. Are we to assume that that would increase usage among the population that is vulnerable to cannabis-induced psychosis or schizophrenia? Or are those people maybe already seeking it out by and large?

NICHOLAS LINTZERIS: That is what the international experience has been—that, when we look at the expansion of markets, it's important to drill down and see where is the growth. Who are the new consumers that weren't using cannabis before? Interestingly, some of the data is telling us it is actually older groups who are starting to look at increased access. When we look at younger people's use of cannabis in those jurisdictions that have legalised, they're not seeing a huge increase in cannabis use. It tends to be the gen X, the baby boomers who maybe used cannabis in their youth, went off it and now kind of think, "Well, it's legal now and actually, you know, Beryl next door says it helps her with her hip pain. I might give it a go."

The Hon. STEPHEN LAWRENCE: They're a percentage of the population that maybe are more compliant with the law as a norm of behaviour.

NICHOLAS LINTZERIS: Possibly—also much lower risk of experiencing these harms. The people that are vulnerable to psychosis—they're seeing these cannabis-related psychotic incidents happening quite early in life. It tends to be presentations in younger people. You rarely see this coming up in a 55-year-old person using medicinal cannabis. All of a sudden they start becoming psychotic—very unusual.

The CHAIR: Professor and Dr Mostyn, I really appreciate your evidence. We have unfortunately run out of time. But thank you very much for your submission, for appearing and generally for the work you do in this space. I don't think you've taken any questions on notice but, if there are some questions from the Committee, the secretariat will be in contact with you in due course.

(The witnesses withdrew.)

Ms LIZ BARRETT, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, affirmed and examined

Ms KEELIN O'REILLY, Research Officer, Drug Policy Modelling Program, Social Policy Research Centre, UNSW, affirmed and examined

The CHAIR: Thank you very much for your attendance today and taking the time to make your submission and to give evidence. Do either of you have an opening statement you would like to make before we go to questions?

LIZ BARRETT: Thank you all for the opportunity to provide evidence for the inquiry into the impact of the regulatory framework for cannabis in New South Wales. The Drug Policy Modelling Program at UNSW has conducted extensive research in relation to both illicit drug and cannabis regulation, including the impacts, strengths and weaknesses of cannabis regulatory policy options. Both myself and Keelin in our roles as research officers have conducted a range of research into cannabis regulation, including evidence reviews, surveys and indepth research with people who use and grow cannabis in Australia. Based on that evidence and drawing from a wealth of applied research we support the suggested amendments to the drug misuse and trafficking amendment bill 2023.

It is 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. We currently have a system that provides for a non-criminal response to cannabis in New South Wales through the Cannabis Cautioning Scheme. But arrests and prosecutions for personal use and possession continue under this scheme. It is discretionary, and the scheme is currently unevenly applied. The provisions under schedule 1 of the bill are therefore positive because they provide a level playing field in law and remove the discretionary element from the current scheme.

We also support the amendments to allow people to self-supply cannabis through permitting home cultivation of a small number of plants and through social supply. 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. The proposed bill would bring New South Wales more in line with the ACT, where the possession of small quantities of cannabis and home growing a small number of plants is no longer a criminal offence for adults. In finishing, we would like to reiterate our support for the bill. We are happy to answer any questions. Thank you.

The Hon. JACQUI MUNRO: Thank you so much for your submission and for coming today. I wanted to pick up on the plants issue. We literally just heard evidence, I think you were in the room to listen to this, that legalising plants and homegrown plants is not actually going to address the problems that we want to address or produce outcomes that we want to address in terms of reducing the black market for drugs. Did you have a comment on that as a response, because obviously in your submission you say that it would be good to have more plants available for growth in New South Wales than in the ACT?

LIZ BARRETT: I think the issue about what are the harms that we're trying to address is quite an important one. If you're just talking about the harms of the black market, yes, I think providing people the opportunity to home grow will provide people an alternative opportunity to gain plants where they don't have to get it from the black market. We provided a citation—the research on that is fairly limited. I would estimate that the impact on the black market would be very limited, but it does actually provide people with an opportunity to legally gain access to cannabis. There's a range of benefits in terms of avoiding other harms from being able to grow your own.

The Hon. JACQUI MUNRO: The idea is you're giving people a choice, essentially: If they want to abide by a law then they can grow their own but, if it's too difficult or they don't worry about the law, then they've got a different choice. It's solving a different problem, I guess, as you say.

LIZ BARRETT: Yes, that's right. We know what the black market harms are. We know that there are criminal gangs involved in growing cannabis in New South Wales. I did a Factiva search, so it's only what's been published in the newspapers, but I think between 2020 and 2023 there were at least 12 large-scale arrests of people growing cannabis on farms—millions and millions of dollars' worth of cannabis—that were all gang related. We know, if we look at the UK, where there is gang involvement in black market cannabis production, it also involves trafficked labour. So, yes, giving people an option to avoid that, I think, is beneficial.

The Hon. JACQUI MUNRO: Do you see decriminalisation or legalisation being more broad than just owning and growing your own plants? Say you've got a government supply, for example, of some regulated market. Do you see that as a viable way to reduce criminal activity in the market?

LIZ BARRETT: Yes, both of them are. There has been a lot of discussion this morning on legal and other regulatory options. That's not what's being proposed in the bill. I think we need to be quite clear about that.

The Hon. JACQUI MUNRO: I know. I should say this inquiry is broader than the bill.

LIZ BARRETT: Okay. Yes, providing people options to access cannabis through other means other than the black market will reduce the black market. Again, the evidence on that is very, very small, but logic would suggest that if you're purchasing from elsewhere, then that would take money out of the black market. We did conduct interviews with people in the ACT post cannabis reform where people were allowed to grow their own. I did 40 interviews. There was only one person in that 40 who was against the reforms. That was because they sold cannabis for profit, and they saw the regulation that allowed home-grown as a threat to their business model.

The Hon. JACQUI MUNRO: You mentioned in your opening statement that there might be increased consumption and harms associated with legalisation or decriminalisation further than what's proposed in the bill. Could you expand on what you meant by that?

LIZ BARRETT: Yes, and then I might pass to Keelin as well. I think what's been discussed is there are various different models of legalisation. The evidence from the US shows that where you have a market model where there is limited regulation—and from Thailand as well—where there is increased access to a cannabis product but there are very limited safeguards and regulation around that, then consumption increases. That is also the evidence from tobacco and alcohol, as we know all too well around trying to regulate those substances. There's a variety of different ways that a legal and regulatory model can operate. Some provide greater access, and some are better regulated. For instance, the government model is suggested as a model. Government supply, for instance, through chemists and having licences to gain access to cannabis—as in Uruguay—is associated with lower harms in terms of hospital presentations, in terms of prevalence of use and in terms of other alcohol and other drug use, as opposed to having a market with no safeguards where anyone can buy it on the street. Keelin, did you want to add anything?

KEELIN O'REILLY: Yes, I support what Liz said as well. I think it depends greatly on the model you look at, and the evidence can be mixed around use and harms. I think the bill that's proposed here is a great first step. It would avoid any of the issues of a commercial market because, as others have said today, we don't want to see what's happened with alcohol and tobacco happen with cannabis. I think you need to look at the outcomes of interest or what is wanting to be addressed and then design a model around that. The model that's proposed in this bill is unlikely to increase use and may address some parts of the black market as well. I think, too, when you were speaking to harms earlier, one massive harm is the harm of people being criminalised.

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. So allowing self-supply is a great first step to address that, I think, and avoid the harms of criminalisation. As we put in our submission, too, I think it was about half of the drug offences or drug apprehensions by police are for cannabis. That's a huge amount of police resources and harms to people that end up in the criminal justice system.

The Hon. JACQUI MUNRO: I want to drill down a little bit into the bit right at the end of your submission around the cost-benefit analyses that you did and basically how you undertook the analysis. What kind of data or calculation or model were you using to conduct those?

LIZ BARRETT: It was the director of our unit, Professor Alison Ritter, who did the modelling. I would be happy to take that on notice. Unfortunately, I can't speak to that work; I'm not a modeller. But, yes, I'd be happy to take any specific questions you have around that.

The Hon. JACQUI MUNRO: Do we do written supplementaries, or are they questions on notice?

The CHAIR: We can.

The Hon. JACQUI MUNRO: And if it's easier or clearer to go to Professor Ritter on that. In terms of the way that you're modelling drug policy, are you looking for outcomes when you conduct your analysis? Are you starting from what data you're presented with, or are you searching for data? If you're searching for data to analyse particular jurisdictions, what kind of datasets or data points are really valuable for you to come up with a good analysis with modelling?

KEELIN O'REILLY: It depends what sort of modelling you're speaking to. Our program does a number of different types of modelling.

The CHAIR: Those associated with harms in particular.

KEELIN O'REILLY: One example would be—you're probably aware that the ACT are conducting a review into their reforms around illicit drug use and possession, the new diversion program. When you're looking at harms there, you might be looking at injecting drug use or drug overdose rates, hospitalisations—and some of these won't be relevant to cannabis, obviously—and then also looking at rates of drug use. But, as others have said, drug use tells us very little about the actual harms people are experiencing, and they aren't necessarily correlated. Do you have anything to add to that, Liz?

LIZ BARRETT: For people who use drugs and their experiences of legislation, I think it's really important to centre these people. Specifically, I would hope the legislation is all about making sure that people who do use drugs in a way that is harmful to themselves or others are able to get access to treatment. I think making sure that you're doing really solid research with people who use drugs, to find out what their experiences are of the law, is really important.

The Hon. JACQUI MUNRO: If people are having problems with substance abuse, rather than substance use, per se, you would hope that you'd want to pick up that problematic use before it gets to the criminal justice system, for example, if it was under our current regulation. Do you see any jurisdictions that are picking up problematic drug use before people enter the criminal justice system, or in a way that is preventive and mitigates the risks and the harms that have been associated with greater use—like health harms or social harms?

KEELIN O'REILLY: Just to clarify, you're asking if there's a jurisdiction that is addressing that well by implementing early interventions or—

The Hon. JACQUI MUNRO: Yes, and if there are good data points that you can pick up those kinds of problems.

KEELIN O'REILLY: I guess you can look at the Alcohol and Other Drug Treatment Services National Minimum Dataset. They do report what types of treatment people are seeking for which drug types. They don't necessarily report the severity of someone's drug use, but you can look at the number of people that are getting, say, an education and information session, which would be a good indicator of people accessing services before the problem may have progressed. I think that another data point which we don't have great data on is GPs and asking about drug or alcohol use, which is really important for providing a brief intervention or providing education about appropriate levels. Unfortunately we don't have great data on how often GPs ask about that.

The Hon. JACQUI MUNRO: On that, are there data points that you would like to see that you don't have access to at the moment?

KEELIN O'REILLY: I do some modelling around how many people need treatment and how many people receive treatment and looking at gaps there. It would be great to know how often or what proportion of people get asked about their drug and alcohol use in a GP session. That would be fantastic. But something to consider is that some people might not feel safe talking to their GP about their drug use, particularly if it's illegal. The proposed reforms would hopefully go some way in addressing that by making people feel more comfortable reporting their drug use to their GP or practitioner.

The Hon. JACQUI MUNRO: Have you seen any correlation between increase in use of things like rehabilitation services overseas, for example, and decriminalisation or legalisation?

KEELIN O'REILLY: Not that I'm aware of, but I can take that on notice and find some research into that. I do know that for cannabis specifically there used to be quite relatively low rates of people seeking treatment for cannabis, and it has seen increases in that globally. You don't know why that is, but it may be there's greater awareness or people feel more comfortable seeking help for it because it has become more normalised, which is a positive thing, in my opinion—that people are seeking help. In terms of rehabilitation or more extensive treatment services, I'm not aware of the research but I can get back to you about that.

The CHAIR: Thank you very much for your excellent work that you do generally, for the submission and for your support for the bill. In your submission you're saying that there's some concern about moving to a full commercial model, but we've heard from other witnesses that, in a sense, that's inevitable. We can't grow our own and supply all the needs. Have you looked at other models, such as social clubs or, as I was saying, government dispensaries as an intermediate model for wider production and access?

LIZ BARRETT: We have looked at other models, dispensary models—Uruguay, in particular. That's quite specific because people do have to get a licence from the Government. It's not like they can just go and anonymously purchase cannabis. You have to register for the Government under one of three models: cannabis social clubs, a home supplier—so a home grower—or to access it through a chemist. We've looked quite a bit at cannabis social clubs as well. I think all of these things have utility. The issue is, of course, you ask 10 experts and they've got 10 different ideas about what the best kind of model is. They're quite different in different ways.

Cannabis social clubs are interesting because that provides the capacity for people to grow together who might not grow by themselves because they don't have the space. They live in an apartment; they don't have the means. So that does allow a mode of people to collectively cultivate, and then being able to get supply through the social supply model.

In terms of that application, I'm not sure what proportion of the market that might supply, but it is a potential model. The only thing with cannabis social clubs is that, if you regulate them like you have done in Uruguay and in Malta, it does require quite a lot of government oversight. I think in Malta they've gone through a two-year process where they've been looking at the different kind of regulatory options. That's quite different from something like the legislation that we put in a submission about because that's just removing a law and so doesn't need the bureaucracies and expanding of the funding. That's something that can be kind of implemented straightaway. Cannabis social clubs is another alternative option. Was there anything in particular that you were interested in, in terms of cannabis social clubs?

The Hon. JACQUI MUNRO: Can I just clarify? What is that?

The CHAIR: Yes, tell us. I was just about to say—

LIZ BARRETT: Cannabis social clubs—sorry, I should have explained.

The Hon. Dr SARAH KAINE: Good question, Ms Munro.

The Hon. STEPHEN LAWRENCE: Sounds good, but what is it?

LIZ BARRETT: It's come from Spain and in Belgium. It's a model whereby people get together. They form a club. It's a committee. You become a member, so you have a membership. Usually, there's a small fee involved because you've got to pay for the running of the club. Everyone has to vote, so you have to go to the AGM.

The Hon. Dr SARAH KAINE: So it's a bit like a co-op.

LIZ BARRETT: Yes, a bit like a co-op. Then cannabis is grown on one site and so everyone has a plant or two plants. The models are different again, but usually they have a gardener. Sometimes that gardener's paid or there'll be multiple people who come and have working bees at the weekend and help with the cultivation. But it's all grown on one site. There's membership of the group and it's only the members who can get the cannabis that's grown collectively together. There are lots of different rules in terms of how they operate and that's from Spain, Belgium and in Uruguay as well.

The CHAIR: But they're not-for-profits.

LIZ BARRETT: They're not for profit, yes. That's the main thing—they're not for profit. My colleague Vendula Belackova has done a lot of research into cannabis social clubs and some of the harms that can be reduced from being involved in a cannabis social club. That involves things like, you know, knowing more about the produce that you're consuming, especially where there's regulatory rules, and that includes self-regulation of clubs, where there'll be people at the club. How people get the cannabis can vary quite differently, but if people can come every week, they will take note of how much people are using. They've got interventions. They'll sit and they'll talk to people about their cannabis use. They'll have information there to give to people to refer them to specialist services. There's a variety of harm reduction things integrated into some cannabis social clubs as well, or can be.

The CHAIR: The ACT has moved to a decriminalisation model that you've clearly been interrogating. What are some of the limitations you've seen of that, in your opinion, in terms of the practicalities of how it works in terms of actual growing? What are some of the things you would suggest would make that model work better? One of the issues that's been raised with me is that there's no law about where the cannabis comes from. You can't share seeds, plants—the plants essentially just emerge out of nowhere. Further to that, there's the issue around the fact that you're not allowed to grow indoors. The limitation on the number of plants means that it becomes less effective. Could you expand on those points?

LIZ BARRETT: Sure. I will start by prefacing it by saying that the people that we spoke to who were growing under the legislation really supported the legislative changes in the ACT and thought it was great. I just want to couch it by saying, although it might come across as criticism, overall the law was seen as very beneficial for people who use and grow cannabis in Canberra that I spoke to. There are a few things there. My understanding is that seeds are covered by Commonwealth law, so the ACT didn't move on that because they didn't feel that they had the capacity to. So it means that, from the people that we spoke to, people are getting seeds predominantly from overseas. That's illegal.

The CHAIR: That's illegal?

LIZ BARRETT: To purchase seeds from overseas, yes.

The CHAIR: It is illegal.

LIZ BARRETT: Yes. What will happen is quite often the sites where people buy seeds from, if you're buying into Australia they'll have, like, an insurance thing. Seeds will be much more expensive if you're buying from Australia because they'll likely get picked up at the border. Usually, most sites will do something like, you know, "If it gets confiscated twice, we'll just send you out some new seeds; and the third time, bad luck."

Anyway, I digress. When you buy seeds from overseas, though, they will have information about THC and CBD content, about the genesis of the plant and about the effect. That is seen as quite beneficial by people who are growing, because they want to know, really, what they're taking. That's why it's quite attractive to buy the seeds.

Other people are just getting seeds. Maybe it's because there's some in the weed that they've bought or they just know a guy, and then they 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. Even if people are quite sure they know what the plant is and what the effect is, if it gets fertilised by a neighbouring plant, they then have a hybrid and they don't know what the new species is. So that is an issue. I think making seeds available and making that kind of knowledge available would be very beneficial to people.

The indoor growing—the legislation bans cultivation under an artificial source of light or heat. It was interpreted by the people we spoke to as a ban on indoor growing. That is a bit tricky because, in Canberra, it's very cold in winter and very hot in summer, and plants obviously don't really enjoy those extremes of temperature. So people were growing indoors, anyway. There's a big fear about hydroponics, which I feel is quite unwarranted by the evidence. Indoor growing can be a variety of things. It can be people growing hydroponically. Hydroponic is where you're not growing plants in soil; you're growing them in a nutrient-rich solution and with heat lamps. Lots of people are using heat lamps, but lots of people are using heat lamps just at the early stages of growth. Quite often those heat lamps were shared with capsicum plants and tomato plants, so it was a bit of an odd situation where the cannabis plant under the heat lamp was illegal, but the other plants were perfectly fine.

The limitation on plant numbers is two per person, up to four per household. With cannabis it's the female plant that produces the cannabis bud that people use. When you're growing a plant, you don't know what sex it is. You can buy seeds from overseas, though, that are feminised seeds so they kind of guarantee you will have a feminine plant. But cannabis plants are interesting in that they can turn hermaphrodite, so you need to make sure that you look after them in a certain way so they maintain their feminine status, I guess—no gender.

The CHAIR: They're non-binary.

LIZ BARRETT: So the limitations on plants are a bit tricky because if you have two and they're both males, then you don't have anything that you can use. So the plant numbers were quite prohibited. From overseas the suggestion to have five or six plants seems to be the common consensus, from evidence where home growing is allowed, as a more sensible and practical policy option.

The CHAIR: In your submission, you put the social costs associated with cannabis at around $5 billion. That's an enormous number. Could you talk to how you arrive at that figure and what some of the component factors of that are? Or if your modeller is the person who did that, maybe you can take that on notice.

LIZ BARRETT: Yes, that would be the model. I will have to take that on notice.

The Hon. Dr SARAH KAINE: Thank you for your submission and your appearance today. I have a very general question. It goes to policy altogether. In your consideration of other jurisdictions what factors in the policy environment, from what you've looked at, need to be in place for changes in the regulatory regime to be acceptable enough to move towards decriminalisation or legalisation? In that broader policy environment or context, what factors are consistent across jurisdictions that move towards decriminalisation or legalisation?

KEELIN O'REILLY: That's a great question. I think that there are a few things, and Liz might be able to add to this. Public support or public appetite, I guess, or public interest, which we're obviously seeing a lot of at the moment—with cannabis in particular—is definitely one thing. The ACT was obviously a slightly different situation, but we do sort of see this in Australia of one jurisdiction and then other jurisdictions slowly following or doing similar things, which is what we saw with the diversion programs throughout the early 2000s and up until recently. I think that also leads to why now seems to be quite a good time, because Queensland has also expanded their diversion program recently. Other States sort of tend to follow. Liz might be able to add to that.

LIZ BARRETT: I'm trying to think internationally as well. Honestly, I think it's just having the bravery to be able to implement some of these—what I would suggest are quite small changes. For instance, what's being suggested in this legislation is just formalising something that we currently have but under a decriminalised

system. That already exists in terms of we have a policy and we have a system of decriminalisation that is discretionary, and we have a system of medicinal marijuana. Now it's just being able to implement legislation that catches up with evidence and with popular opinion. Sorry, I don't know if that's what you were after. We have everything in place; we just need to go and do the thing.

The Hon. STEPHEN LAWRENCE: There's a bit of a focus in your submission on the pros, if you like, of the home cultivation of cannabis and then the non-commercial supply of that to people. On my understanding, in New South Wales, there's obviously New South Wales law, which defines supply very broadly and, for example, includes, within the concept of "supply", supply to someone not through a commercial process. So to gift marijuana is, under the law—obviously, it would be treated differently in court—in terms of the strict parameters of a criminal offence, the same as if you're selling drugs for money. And then the Commonwealth regime treats supply only as supply in a commercial sense—for example, you're not guilty of commercial trafficking under the Commonwealth scheme if you give marijuana or a drug to someone. Independently of what changes in terms of cannabis regulation in terms of decriminalisation or legalisation models in the future, are you of the view that the Commonwealth model is preferable in terms of only treating dealing as that which is done with a commercial intent, i.e., to make money? Sorry, that's quite a long and complicated question.

KEELIN O'REILLY: I was just going to add that something else to consider—and I'm not completely clear on if this is also in Commonwealth law—is that in most States and Territories in Australia, possession of certain quantities indicates intent to traffic. Even if money wasn't dealt or there was no actual intent to traffic, you can still be liable for trafficking. My understanding was that the Commonwealth law also had that element to it.

The Hon. STEPHEN LAWRENCE: Thresholds.

KEELIN O'REILLY: Yes, the threshold quantities that indicate intent to traffic. My personal opinion, and also the evidence, would be that any changes to the law that would limit the ability to criminalise people for personal possession is positive. If that included gifting or allowing to gift to someone if money wasn't handed over, then, yes, it would be my view to support that.

LIZ BARRETT: I 100 per cent support people not being prosecuted for passing cannabis on in a non-profit way, not for commercial gain. In terms of having criminal prosecution for selling small quantities of cannabis, I would have to take that on notice. Even under the law, the way that supply is dealt with is quite different in terms of quantities and other harms. I don't know that I'd want to qualitatively say one way or the other depending on the circumstances. I'm happy to take that on notice.

The Hon. STEPHEN LAWRENCE: Thank you. Lastly, have you got any thoughts on the international law aspects of all of this, in the sense that there's two UN conventions—I think '67 and '88—that oblige signatory States to criminalise possession, distribution and so forth?

In fact, I think it's the terms of that convention, maybe in part, that have limited the Commonwealth's reach in this area, because that convention is concerned with possession and then commercial distribution. The Commonwealth regime seems to be not just limited to those two concepts, but it separates those two concepts in terms of this non-commercial thing. Have you got any knowledge of anything emerging in international law or trends, or anything that bears upon this question? Because obviously a move in this area is going to have a backlash, and one of the backlashes, no doubt, will call in international law and say that we are breaching our obligations.

KEELIN O'REILLY: Yes, sure. It's a tricky one. I think that, whilst the UN statements still remain that countries must prohibit possession and supply, they have also released statements or have supported the idea of diverting people into health treatment responses or reducing their criminal penalties for possession. I'm not clear on what their stance is on removing the criminal penalties, but obviously the ACT has done that for cannabis, and it has still stood up, which is great. We're seeing so many trends internationally of countries legalising and decriminalising. It's not an unusual occurrence at all, including the signatories. I'm a member of the Civil Society Committee on United Nations Drug Policy and they do some great work in this area as well, working out how to approach these issues as we go on. I can pass on their contacts too, if it would be helpful.

The Hon. STEPHEN LAWRENCE: Sure. Thank you.

The CHAIR: Further to that, how have some of the European nations managed being part of the EU collective and going their own way on cannabis decriminalisation and legalisation? Germany—is Malta in Europe? I think it is. Germany, Malta, Switzerland now, Belgium—how are they managing that?

KEELIN O'REILLY: I'm not completely clear. In Australia and a lot of countries, a lot of the drug laws are dealt with at a local level. In Germany, it's in—I'm not sure what they're called—the different districts. Often the law will remain at a national level and often the national is the signatory to the conventions. That seems

to be a common way that different jurisdictions get around it or allow it to happen. Other than that, I'm not sure but can take that on notice and get back to you, because it is a really interesting area, particularly in Europe.

The CHAIR: Sure.

LIZ BARRETT: Can I add something as well? There are the conventions but then there is a range of statements that have been put out by different UN bodies—the UNODC, the General Assembly. Those statements have been very supportive of a decriminalisation approach.

The CHAIR: Sorry, what's that acronym?

LIZ BARRETT: The UNODC—the United Nations Office on Drugs and Crime. And then there's the General Assembly. I can tell you all of the acronyms and different bodies; there are many. There has been a range statements that have been put out by different United Nations bodies, including, I believe, the General Assembly. Maybe I won't say that officially; I can take that on notice. They have supported a move to decriminalisation because of the harms that are associated with criminalisation and because of how it impacts people's lives if you do have a criminal record that can follow you throughout your life. The United Nations, generally, has been moving away from a prohibition model. Of course, the conventions are still there, but that's in terms of other statements.

The Hon. STEPHEN LAWRENCE: Lastly, I seem to recall that when the ACT moved to decriminalise, there was public discussion about whether the Commonwealth offence of possession would continue to apply. That's obviously Commonwealth law, so it applies in all States and Territories. There was some public discussion around the application of a general defence in the Criminal Code, which excuses conduct—I might not get the word formula right, but it was something like "where the conduct is justified or excused by law". I'm wondering if you're aware of whether anything has developed in the legal space in the ACT about whether you have a defence to the Commonwealth charge on account of your conduct expressly not being criminalised by Territory law?

KEELIN O'REILLY: I'm not aware of the exact provisions around it or how it was dealt with. Possession laws are primarily dealt with by State and Territory governments and prosecuted under State and Territory law, and you can look at the numbers that are prosecuted under Commonwealth law and it's incredibly slim.

The Hon. STEPHEN LAWRENCE: It's still there though, isn't it?

KEELIN O'REILLY: It is still there. I believe that it's mostly for government officials or people that—it usually has to be quite a complicated case I believe that it's trialled under Commonwealth law, but I'm not aware of the exact provisions of how that was dealt with. But it is a really interesting and complicated area how they manage that, and similarly for the diversion program for other illicit drugs. It was raised as an issue and seems to be contributing to why it has been a discretionary model, so that the police don't have to deal with these two different types of laws and applying them. I can also look into that and get back to you.

The Hon. STEPHEN LAWRENCE: Lastly in terms of the Commonwealth offence, to be clear for the record, it is a bare possession offence, isn't it? It's not limited in its terms to officials or anything like that?

KEELIN O'REILLY: No.

The Hon. STEPHEN LAWRENCE: But you were suggesting that in practice that's how the AFP and the Commonwealth DPP use it?

KEELIN O'REILLY: Exactly. Where it is trialled, it's determined on the type of case, what other offences are involved. It might be a possession offence tied to another offence under Commonwealth law, and that's why it is trialled under Commonwealth law. But I can find the source for that and pass it on as well.

The CHAIR: If you could take that on notice, that would be very, very good. Thank you very much for your excellent evidence here today at the hearing, and for the submission and the work you do. We very much appreciate it. The secretariat will be in contact in due course for answers to some of those questions on notice. But, again, thank you very much for appearing here today. We appreciate it.

(The witnesses withdrew.)

Ms TRACEY BROWNE, Manager, National Work Health and Safety and Workers' Compensation, Australian Industry Group, before the Committee via videoconference, affirmed and examined

Mr SCOTT BARKLAMB, Principal Adviser, Workplace Relations Policy, Australian Industry Group, before the Committee via videoconference, affirmed and examined

The CHAIR: Good afternoon. Thank you very much for your attendance to our inquiry into the impact of the regulatory framework for cannabis in New South Wales. We appreciate you making the time to give evidence. Do either of you or both of you want to make an introductory statement before we move to questions?

TRACEY BROWNE: Yes, thank you, Chair. We thank the Committee for the opportunity to assist your considerations following our written submission of May 2024. Before we commence, we would like to associate ourselves with the acknowledgement of country which opened these proceedings. We note that the terms of reference for the Committee are very broad, encompassing a range of topics related to the regulatory framework for cannabis, with reference to employment appearing in term of reference (d). We have previously made a submission to the Victorian inquiry on workplace drug testing and felt it was important that the workplace considerations are brought to the attention of this Committee. As an organisation representing employers, we focused our submission on the areas of relevance to our members that are related to workplace health and safety.

Before we address questions, we'd like to briefly highlight a few key points. The primary concern for employers is ensuring the health and safety of all those that they owe duties to in workplaces. A work health and safety regulatory regime requires employers to take action on known risks to the health and safety of workers and others in the workplace. THC, which is found in both illicit and medicinal cannabis, is acknowledged to be a hazard that can cause worker impairment and create risks of harm to workers and others. Most large employers have policies related to the use of drugs and alcohol, and a subset of these employers include drug and alcohol testing as part of their policy implementation. This generally occurs in high-risk environments and is used as an indicator that a person may be impaired. This enables employers to initiate investigations to identify what action may need to be taken. Where actions are taken, such as counselling or, in the most severe situation, termination of employment, employees have the right to contest the substantive and procedural fairness of how the employer proceeds.

We are aware of the current bill before Parliament which would amend the New South Wales Road Transport Act to create a defence in relation to the presence of certain drugs, if the only prescribed illicit drug present is THC which has been prescribed in accordance with the Poisons and Therapeutic Goods Act or corresponding legislation. We are concerned about how this may impact decisions in workplaces, particularly as it does not directly address the level of impairment associated with the use of THC. Employers are also concerned about the lack of regulation of medicinal cannabis that has led, in some situations, to workers testing positive for THC when they were of the genuine belief that the medicinal cannabis they were prescribed did not contain THC.

Our submission also makes reference to situations in which medicinal and recreational uses are combined, which may also be a live question for consideration of the bill before Parliament. We stress, again, the gravity of our concerns regarding work health and safety. As Judge Colvin of the Federal Court indicated in the Millar case, cited from page 18 of our submission, cannabis-based impairment does create real safety risks which are not negligible and it is important that a precautionary approach be adopted. Managing the intersection of drug use and work, and the risk created by possible impairment, is very difficult for employers; however, it is also essential for avoiding risks of serious injury or fatalities. It is critically important for the safety of workers and the wider community that employers are able to manage all drug- and alcohol-based safety risks, and that they are supported in doing so.

The considerations before the Committee should be approached on the same basis that employers approach this issue in workplaces: driven by safety, particularly in safety-critical activities. Therefore, we ask the Committee to conclude that the presence of THC creates a risk that a person's performance will be impaired for people undertaking safety-critical activities, including those in the workplace. Employers must be able to consider the safety implications of cannabis containing THC and implement policies, supported by testing in appropriate circumstances, to ensure that they can meet their legal obligations to provide a safe workplace. These obligations come with very high potential penalties, particularly given the recently enacted offence of industrial manslaughter in New South Wales. Thank you, again, Chair. We will be pleased to take questions.

The Hon. JACQUI MUNRO: Thank you for coming today and for your very detailed submission. It's very helpful. Do you think there could be a successful system of legalising or decriminalising cannabis in New South Wales and it remaining illegal in the workplace, and for that to be workable for your members?

TRACEY BROWNE: I think, workable for our members, they have found ways to deal with alcohol use in the workplace, and so it would be something that would need to be worked through as far as how that would be addressed. If it was possible to put in place a process which if there was any level of THC in the blood in a workplace that was carved out from a legalisation process, that may be something that could be workable. I think it would need a lot of effort put into nuancing how that could actually be applied in workplaces.

The Hon. JACQUI MUNRO: And that would obviously put a lot of responsibility on employers to administer some test or make some determination about a person's capacity?

TRACEY BROWNE: Yes, it would, which they already have. I suppose as a drug which has predominantly been illicit up until now, other than medicinal cannabis, the approach has been that any THC as part of drug testing would result in some form of action being taken.

The Hon. JACQUI MUNRO: In terms of action that has been taken and has then been disputed, do you have any figures in relation to how many matters have gone to the Fair Work Commission, for example?

TRACEY BROWNE: No, I'm afraid I don't have those at hand. Scott?

SCOTT BARKLAMB: No. It would be possible to have a bit of a look for a search, but what you would find would be disputes regarding drug and alcohol policies or unfair dismissal termination claim type decisions. What you wouldn't see would be the wider set of circumstances which didn't lead to litigation. You would only be having a partial view of how much or how regularly cannabis interacted with work.

The Hon. JACQUI MUNRO: Is there any data around that at the moment in terms of dismissals related to drug and alcohol substances in the system at work?

SCOTT BARKLAMB: May we perhaps put it like this? We might take that one on notice and we'll see if we can have a look, but one mechanism for doing that may be to go back and look at some decisions. I'm not instantly aware of someone else having done that, but we can go and have a look at that. I might pick up your first question very briefly—as I was sitting, letting it sink in a little. You were talking about a successful system of decriminalisation and remaining illegal in the workplace. One thing employers might do in a different legal situation more widely across the State—some employers, I imagine, would want to have a complete prohibition on smoking at work even if it wasn't, per se, part of their safety policies about impairment or heavy machinery. They might even want to insist on a situation where you couldn't have marijuana in your bag, in your locker, onsite at all. But we're thinking through a very different situation were it legal in the wider community.

The Hon. JACQUI MUNRO: In terms of control in the workplace, are there ways that employers already do restrict legal activities—of course there are, related to safety, for example, and how you behave at work. When you're talking to your members, are you finding that this is an issue that is coming up frequently? I'm trying to get some information about the prevalence of—if there is a problem at the moment. We've got a really excellent submission that goes through a lot of the legislation and some fantastic qualitative evidence, but I'm just trying to understand if there is a quantitative piece of information to get some idea of the size of the problem.

TRACEY BROWNE: I see that as two sets of questions. The first one was how are employers dealing with controlling what are currently legal activities onsite. Employers will usually have rules around no alcohol onsite, not coming to work under the influence, all those sorts of things, which have been something that they've been dealing with for a long time. In relation to quantitative evidence around the issues, I think the majority of large employers are very sophisticated in dealing with their drug and alcohol policies and their drug and alcohol issues and can manage those in a way that it is not getting them into a situation where they need advice from Ai Group to get themselves out of the situation which has become problematic.

But where we are seeing a lot more inquiries recently is in relation to people who are using medicinal cannabis, believe that they are THC-free and are coming up as having THC in their drug testing, which is raising a lot of concerns amongst our members that are in that space around how do they actually assess this. Does this mean that the person is using recreational cannabis in addition to what has been prescribed? Or is it that the lack of regulation of medicinal cannabis means that product that has been marketed as THC-free actually does have THC in it?

The Hon. JACQUI MUNRO: That's an interesting problem. In terms of the ways that companies do deal—you said often bigger companies, for example, may not come to you for advice. Do you know what pathways they're taking to manage the issues that might be coming up?

TRACEY BROWNE: They would predominantly be using their internal resources. If they've got a well-structured drug and alcohol policy that has been consulted on and agreed to within the workplace, and they follow that policy, then there shouldn't be many situations where they have disputes because they are just implementing what has been accepted, they do it consistently and they're supported by the union if it's a unionised

workplace. It would be a small number of situations that actually arose. A good drug and alcohol policy means that you're not detecting drugs and alcohol and therefore you're not having to deal with any of the disciplinary issues that may come out of that.

The Hon. JACQUI MUNRO: Is there a standard policy that lots of different companies use, or is there a baseline framework that organisations can build on and amend for their individual context?

TRACEY BROWNE: Definitely. We have a template approach of a policy. We don't just give people the template, though, and say, "Just go and do it." It's really important that people have the right structure, the right consultation around that, and that it is fit for purpose for their business. Each organisation can take the general principles but then work out how it's relevant in their business.

The Hon. JACQUI MUNRO: Do you have any information about how many companies would use that standard template?

TRACEY BROWNE: No, not off the top of my head.

The Hon. JACQUI MUNRO: I'm wondering if there are organisations that are too small, for example, to be able to put in place a policy, and so maybe they're a bit lost in what to do and they're more likely to end up in front of the Fair Work Commission dealing with this issue, or whether it's a policy that has been adopted across lots of different sizes of business?

TRACEY BROWNE: I think it depends on the level of risk and the industry in which some businesses are in, because some are in industries where they're providing staff onto a site where they have to have these policies in place so they will just adopt that. I think, for smaller businesses, a lot of them may not even be addressing the issue unless it becomes very extreme: It's very obvious that someone's coming on site badly impaired. I have seen situations where small businesses have adopted a standard policy without really knowing what they're going to do if they get a positive test and, yes, they certainly find themselves in a difficult position in that scenario.

SCOTT BARKLAMB: If I can just briefly add, I think one of the critical things in there which is worth taking into account for all profiles of business is that the application of these policies is parsed or scrutinised or controlled by contest through the fair work processes, through unfair dismissals and through disputes. So we have a process where there's more and more knowledge and good practice—particularly for medium and larger sized enterprises—which, as Tracey said, means that you're going to see fewer and fewer decisions or disputes because the processes are up to date and employers are acutely conscious from the unfair dismissal system to follow the processes they've committed to. As you point to, smaller businesses—generally, across policies and procedures, that profile of enterprises is less likely to have written policies in place. As Tracey pointed to, even where they are there, they may not have been closely scrutinised for their application to the particular work concerned.

The Hon. JACQUI MUNRO: Is that a problem? Is that something that needs to be addressed, even without the decriminalisation or legalisation of cannabis?

SCOTT BARKLAMB: It's not necessarily a problem because small businesses have a number of inherent strengths as well in the informality and closeness and small number of people with which they deal. For example, in this context, if somebody was perceived as having a problem with excessive cannabis use, that might be quite visible to the people around them who can give them coaching advice counsel. That's very different to following a written policy and procedure. I don't want to acknowledge it is necessarily a problem, because there is an innate nature to smaller businesses and their differing capacities to form written policies and to follow very sophisticated procedures and process. We actually recognise that in the Fair Work system. I would say, perhaps—and I won't go on for too long—that the regulatory trick or sweet spot here is to be able to apply useful tools and guidance or offer that to all profiles of business, appropriate to their needs. That's an area where, as Tracey said, our organisation is very happy to be able to provide that support to those we work with.

The Hon. JACQUI MUNRO: It seems to me that if there were an easy answer to this, I suppose we would have better regulation around driving and the capacity for people to have THC in their system and drive to work a week later. Perhaps if there were guidelines around that kind of impairment test, then it would be useful for employers to use that model.

The CHAIR: I think that's a really interesting point. Does Ai Group know of any larger—I assume larger—workplaces where they routinely do drug testing, where they have set an impairment benchmark for medicinal cannabis or is the approach uniformly a zero tolerance?

TRACEY BROWNE: Historically, it has been a zero tolerance for drugs. When we say "zero tolerance", it doesn't mean one positive reading and you're out, but the measurement for drugs is zero levels. Where it has become particularly difficult in recent times is the medicinal cannabis space. If the worker says,

"That reading would be because I'm on medicinal cannabis," or if they come to the employer and say, "My doctor has suggested that I take medicinal cannabis and I'm worried that that means I'm going to be outside the policy," then the employers are generally asking for medical evidence of the person's capacity. They are getting mixed responses in relation to that.

Some doctors have been quite detailed in what they believe the worker can and can't do, and others are just saying, "I expect that he will probably be okay," which is a bit challenging in that space. It has become a lot more difficult for cannabis now because of that mixed status, and then that balance of—there is so still much evidence out there that is saying that THC is the problem. So if it is THC from medicinal cannabis compared to THC from recreational use, it's still THC and it's still an impairment level that employers need to think about. It has become very complex for them.

The Hon. Dr SARAH KAINE: The Chair's question was about whether there were any employers that had set that testing level; it would probably be with larger employers as well. I wonder whether there had been any particular union positions or claims that you had come across, likewise, that a union is trying to implement across a sector with regard to this issue—whether they have been accepted or not?

TRACEY BROWNE: Can I clarify that question? You are asking whether unions are trying to implement something or whether unions are responding to employers?

The Hon. Dr SARAH KAINE: Yes, whether unions are putting a particular position on this, and the testing and the levels, to employers?

TRACEY BROWNE: Yes. If it's a unionised workplace, the union will generally be involved in the discussion around implementing the process. Different unions have different approaches and some of that comes down to the industry area that the focus is as well.

The Hon. Dr SARAH KAINE: But you don't have any that you could cite as an example?

TRACEY BROWNE: Not at this point, but we could take that on notice because it's a big thing that has been in place, really, for most workplaces—most larger workplaces have probably had drug and alcohol policies in place now for over 20 years.

The Hon. Dr SARAH KAINE: Sorry, I don't mean to interrupt, and I know it's hard when we're virtual. I'm just trying to get quite specific about the questions that preceded mine about levels of testing and those kinds of things, to make sure you don't have to go and provide lots of information. Just on that particular issue would be great.

SCOTT BARKLAMB: One interesting thing would be whether union claims are about process, about how you test and where you test, and then how the employer addresses, in shorthand, a failed test or a level of THC that's contrary to policy. Whether that is more likely in union claims than a particular level in the bloodstream—Tracey, if that's all right with you, unless you want to add anything—I think that's worth us just briefly having a look at.

The Hon. Dr SARAH KAINE: That would be great. Thank you.

The CHAIR: That would be appreciated. Has the Ai Group done any analysis of how other jurisdictions are managing the issue of THC and workplace drug testing and impairment? Have you done any analysis of that issue in other jurisdictions—in the context of the USA moving to full legalisation in some of the larger states or Canada? How are employers managing the issue in those places? Have you done any analysis of that?

TRACEY BROWNE: It's not something that we have looked at closely. I suppose, particularly in the THC level, it's a very recent development amongst getting that feedback from our membership. We've obviously been involved in the inquiry in Victoria, but, no, we haven't looked at those overseas situations at this point in time.

The CHAIR: We very much appreciate the submission from Ai Group. It's very informative. It provides an excellent perspective that will inform the inquiry. I think there was a question or two taken on notice, and the secretariat will be in contact with you in due course regarding that. Thank you very much, Ms Browne and Mr Barklamb, for your submission and for your attendance at this hearing. That concludes the morning session.

(The witnesses withdrew.)

(Luncheon adjournment)

Dr WILL TREGONING, Chief Executive Officer, Unharm, affirmed and examined

Mr ANDREW HESLOP, Senior Health Promotion and Peer Navigation Manager, Positive Life NSW, affirmed and examined

Dr MARY ELLEN HARROD, Chief Executive Officer, NSW Users and AIDS Association, affirmed and examined

Ms ALICE PIERCE, Director of Programs, NSW Users and AIDS Association, affirmed and examined

The CHAIR: Good afternoon, everyone. Welcome to the Portfolio Committee No. 1 inquiry into the impact of the regulatory framework for cannabis in New South Wales. Thank you very much to our witnesses for appearing. We very much appreciate you making submissions and making yourself available for this hearing. Do any or all of you have any introductory remarks you would like to give before we move to questions?

ANDREW HESLOP: I do, yes. I would like just to make a short statement. Positive Life NSW thanks the Committee for the invitation to make the appearance today and for accepting our submission, which we'll be relying upon today. I have been in my current role for about three years. Prior to that I worked at the NSW Users and AIDS Association and I'm now the volunteer community organisation board member and chairperson of NUAA. Positive Life NSW is particularly interested in legislation that is related to people living with HIV in New South Wales and notes that there are laws that cause harm to people living with HIV in New South Wales.

We believe the criminalisation of cannabis causes harm to people living with HIV in New South Wales. Cannabis is already widely available in New South Wales, as noted by the most recent household drug surveys. We believe that it is time to refocus our efforts away from criminalisation of cannabis and instead look at better supporting the use of cannabis in the community. We support the legalisation of cannabis so as to assist the lives and experiences of people living with HIV who access cannabis and cannabinoid products in order to alleviate the distress that living with HIV can cause for both social and medical reasons, as well as to reduce and alleviate the onward medical and social impacts that people who have been living with HIV face, particularly our long-term survivors.

As access to life-saving treatment was made available in 1996, there is still a large number of people living with HIV in New South Wales who survived through lack of treatment and then toxic treatment choices that have caused additional multi-morbidities and other side effects in later life. The NSW Health strategies place an emphasis on quality of life for health consumers. I believe, in working with Positive Life and our strong affirmation of building the quality of life of our community, that by reducing the harms associated with the criminalisation of cannabis we will be able to move forward.

The CHAIR: Dr Tregoning, do you want to make an opening statement?

WILL TREGONING: Sure, I would. I'll start with a personal anecdote. I think it's important to do that. I had a privileged kind of upbringing here in Sydney and was educated the expensive way. I mention that because when I was in my late teens and early twenties, socialising with people that I went to school with, cannabis use was almost ubiquitous, and this was different from the expectations that I'd had. I thought that cannabis was a fringe social phenomenon, but here were the sons of major financial figures, wealthy rural families and major media personalities using cannabis. I thought, "Wow! All these rich kids smoke weed."

Later on, I became a researcher and consultant to government departments and agencies. A lot of that work was on alcohol and other drugs. I would work, for example, with the New South Wales Department of Health. Sitting in meetings with bureaucrats, I was often struck by how they talked about cannabis use as if it was something that just went on out there in society, not like any of us would do that. Now, I'd seen the data by this stage. I was a researcher, and I knew that a tertiary education and employment was associated with an increased prevalence of cannabis use. I knew that it was more likely than not that most people in the room had used cannabis. In fact, over 700,000 people in New South Wales do every year. I'd look around and think, "I'm pretty sure some of you are bullshitting." It struck me that, where policies and programs were being designed and evaluated, there was a culture of dishonesty around cannabis use.

Later I moved to Kings Cross here in Sydney. Living in the Cross you see how unfair the enforcement of personal drug laws is. People like me are almost invisible to the police, but I'd constantly walk past police stopping and searching Aboriginal people, people experiencing homelessness and people exhibiting signs of poverty or mental illness. I thought, "I cannot walk past this anymore." We've got an opportunity to do better, to develop a wiser and more considered way of managing the reality of cannabis use—a way that's both fairer and better able to support public health.

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.

Police are much more likely to arrest and charge people for cannabis use if they're Aboriginal. Being charged with a cannabis offence creates barriers to employment, education and housing. It can lock people in a cycle of continual engagement with the criminal justice system. Around the world, as you've no doubt heard, jurisdictions are moving away from the prohibition of cannabis, towards regulating it much like alcohol, tobacco and pharmaceuticals. We've got the opportunity to draw on those reforms to develop an effective regulatory framework that's appropriate for local conditions that's fairer and better able to support public health objectives.

In my work, I've talked to and surveyed a broad cross-section of the New South Wales community, and I'm not just talking about the cannabis movement; I mean the general public here in New South Wales. People understand the benefit of a better regulatory system. The features that they most engage with are about the capacity to eliminate contaminants from cannabis supply, accurate labelling of products and the capacity to prevent sales to underage people.

The proposed bill considered by this inquiry would eliminate thousands of harmful cannabis arrests in New South Wales each year. It would prevent commercial production and supply which allows time to develop a regulatory framework for that which is consistent with public health objectives and Commonwealth laws. It draws on and improves on a similar bill already operational in the ACT, as recommended by NUAA, including a provision to expunge criminal records which would further improve this bill. This is the right way to start, and I commend the bill.

MARY ELLEN HARROD: I've been inspired by Will. I'm going to talk about my personal experience as a carer of a person that uses cannabis, or used cannabis, and the very real way having that on medical records diminished his experience of health care. The judgement that he faced in seeking help for his cannabis use was a very large hurdle for him to overcome. He was self-medicating for anxiety, as many young people do. The overall system that we have, where cannabis is criminalised and stigmatised, is something that was a genuine barrier to getting help for cannabis use and getting treatment for other conditions as well. The prescription cannabis actually, once he found an appropriate prescriber, allowed him to get into a track which has, at this point, allowed him to meet his goal of ceasing cannabis use.

One experience I had with him was going to an emergency department with something that's not that well known—cannabis hyperemesis, which is a vomiting caused by cannabis use. It's extremely distressing for the person who has it. It's very, very painful. He was treated with complete disdain by a doctor and accused of seeking opioid drugs when, in fact, he had no record of that. He only had a record of cannabis use. It's that differential treatment of people within the health system that is causing a lot of harm. I think Will spoke very eloquently about the differential treatment of Aboriginal people in the system. That's a major concern for us. Cannabis is known to be a much less harmful substance than alcohol. There's research and evidence supporting that. It's a historical artefact of the war on drugs that cannabis is treated the way it is by the legal system. Personally, I would prefer my child to use cannabis than alcohol, as a parent. I think it's less harmful for them. I don't have too much to add to what Andy and Will have already said, so I'll leave it there.

The CHAIR: Thank you. Ms Pierce, do you have anything to add?

ALICE PIERCE: No.

The CHAIR: Thank you very much. I really appreciate those comments. We'll now turn to questions from the Opposition.

The Hon. NATASHA MACLAREN-JONES: Thank you very much, everyone, for appearing. I've got a couple of questions. I might start with questions to Dr Harrod in relation to your submission, particularly around young people. You advocate in support of a regulatory framework, but only for over the age of 18. I'm interested to hear your views in relation to why it shouldn't include under 18. More importantly, what do you think needs to be considered by government if changes were to be made to ensure that we're engaging with young people—and you referred to prevention and early intervention—particularly around mental health? What needs to be done?

MARY ELLEN HARROD: That's a really good question. I think that we have to balance the regulated supply of cannabis with the uptake of cannabis and delaying the uptake of cannabis use. It can be harmful. Setting an age of 18 would support that. It's a little bit of a conventional age to pick, I agree with you. In terms of the education aspect of that, we would, in general, support improved drug education, not just in schools. If you look at the online resources available about cannabis, there's very little information about withdrawal. There is very

little information about cannabis hyperemesis, for example. There could be better information available but also better school education, like taking a harm minimisation approach to drug education in school and actually teaching school-aged children that these are the effects of the drugs, these are the possible harms and this is how you reduce harm if you choose to use it, not just a blanket, "Don't use this." We know that people will. Do you have anything to add, Alice?

ALICE PIERCE: I don't think anyone disagrees with the fact that young people are still growing and that it's important to have an age limit, 18 or other, on the use of cannabis. As per our submission, it's really important that, regardless of what the changes are to any regulation, there's a significant investment in the development of evidence-based harm reduction both in public campaigns and within schools, as Mary said. I think the education received so far—I know from my experience—was not only prohibitionist; it was often incorrect and sometimes even harmful in the information that was provided, with stigmatising as well. It's really important that any sort of regulation framework does have that significant increase in the investment in education around cannabis use.

The Hon. NATASHA MACLAREN-JONES: My question is we have a situation where there are the same rules around tobacco use and alcohol—obviously not under the age of 18. How will making changes to the laws around cannabis use make a difference for young people? Will you still see young people reaching out to cannabis and other drugs?

MARY ELLEN HARROD: I'm not 100 per cent sure what you're asking.

The Hon. NATASHA MACLAREN-JONES: Basically, I'm saying that you've currently got legalised alcohol and tobacco. We see alcohol-fuelled violence and millions being spent each year on trying to prevent young people from smoking or vaping. How will a change around cannabis laws prevent young people taking up cannabis or other drugs?

MARY ELLEN HARROD: I don't genuinely think we can prevent young people from taking up cannabis or other drugs. Alcohol and smoking are good examples. I think we have effective public health campaigns around smoking, and there are controls in place for alcohol as well. But I'm not sure that we can wholly prevent young people from taking it up. What I would argue for is giving them the information they need for a realistic drug education: "Here are the things that can help" or "Here are the things that can happen if you use cannabis." So instead of finding out from their friends, they're finding out from their schools, their parents or their teachers. Today most of the education we get is from our peers rather than evidence-based education. I'm all for pure education, but you need it from multiple sources. The other thing that we could do, for all these things, is invest in youth mental health and substance use services. I don't think we have sufficient investment in appropriate services for young people who do encounter problems. If you have private health insurance, you can get into a pretty decent service but, if not, then you're often left high and dry.

The Hon. JACQUI MUNRO: Thank you all for coming and for your submissions. Dr Tregoning, are there examples internationally of cannabis being decriminalised or legalised and avoiding the problems that we hear a lot about, especially anecdotally, around pretty ubiquitous use, particularly in public places? We heard about New York earlier. I think Australia has gone down this road of a public health campaign for smoking and restricting pretty significantly where people can smoke cigarettes. How do you envisage the smoking of cannabis being regulated effectively so that it doesn't have a second-hand user effect in public?

WILL TREGONING: Thanks for the question. I think the simplest answer to that is this: Just like we regulate tobacco smoking in public places. We have, right here, an effective regulatory system to manage that problem. People might be aware of some other jurisdictions where there have been problems or perceived problems around cannabis consumption in public. The one that is most often mentioned to me is New York State and, in particular, New York City. We're very unlikely—in fact, there's no chance that we're going to end up with a situation like that because of two things. One is that what has happened in New York is a product of the police unwillingness to enforce cannabis laws because they don't support the shifts in legislation, and so they are essentially withdrawing support for the regulatory system. The second one is that we already have a system in place, like I mentioned before, around managing smoking in public places that is effective. I would assume that similar laws would apply to cannabis.

The Hon. JACQUI MUNRO: I'm curious about, with Positive Life, the peer support element of your programs and how effective that is in helping people manage their substance use and, essentially, that framework. Can it be replicated in a broader social sense to help people deal with issues perhaps that they're experiencing through substance use?

ANDREW HESLOP: Absolutely. We have a very strong evidence base for the value and meaningfulness of the work that peers do around peer navigation, around peer work, around brief interventions,

around the ability to work with individuals, both one on one and collectively within groups, in order to support both behavioural change but then also to support their aspirational goals that they may have in life around a better quality of life or a better relationship with their S100, their HIV doctor or with their social goals around socialisation and with getting out there and about.

HIV is a very isolating and lonely condition to have. As someone living with HIV, I have that experience here in this room as well. But the value of peer work—we probably place less of an emphasis, I'd have to say, on AAD work because we have such great partnerships. One of the great successes of the approach that New South Wales has had overall to bloodborne viruses and also in the AAD space has been the partnership approaches that we've had between policymakers, regulators, changemakers and the community who are able to get into the community and to effect behavioural change.

The greatest example of this, aside from the example of NSPs, I suppose, is condoms and how condoms were rolled out. Communities embraced the use of condoms as a safe sex measure back in the '80s and '90s and during the HIV epidemic. I think scalable harm reduction, peer workers within the bloodborne viruses space and also peer workers who are able to talk about cannabis use as part of this inquiry is very easily done and the framework and the model, and the sustainability and the maintenance of that model, is already well established—30 years of well-established practice.

The Hon. JACQUI MUNRO: On to NUAA, in terms of your submission, it was good to read that you made a contribution about employment. We just heard from Ai Group about the way that their members are trying to navigate this issue as well. I'm curious about what kind of feedback you're getting from your members about what they would like to see in their workplaces that would help them manage their own either legal or illegal substance use?

MARY ELLEN HARROD: We have a great number of inquiries around workplace drug testing and it's a major concern for a lot of people. I think, as with the road laws, workplace drug testing will test for use and not impairment, and cannabis use, if you're using it for pain or recreationally, isn't necessarily going to impair your work performance and shouldn't necessarily be treated as a condition for dismissal like it is in some workplaces.

The Hon. JACQUI MUNRO: How are your members managing that?

MARY ELLEN HARROD: There are ways you can try and avoid detection in tests, either driving or in the workplace. It is of major concern to a lot of people. I think some people may self-test, but I think it's something that people are quite anxious about in general and so they live in a state of anxiety because of testing regimes.

The Hon. JACQUI MUNRO: That self-testing, they're buying kits somewhere and utilising them. Are they just kits that are available over the counter?

MARY ELLEN HARROD: Yes.

The Hon. JACQUI MUNRO: Do you know if they are useful? Are they reliable kits?

MARY ELLEN HARROD: I think that they are somewhat reliable. They're not as reliable as some—some testing methods, as we know from roadside drug testing, they'll do an initial saliva test and then a confirmation test, so they're an indication. But I've heard you can drink lemon juice and it will mask cannabis use, for example. So there are ways to mask cannabis use. Those are probably being employed as well. But I think that, overall, it causes people a great deal of anxiety.

The Hon. JACQUI MUNRO: Are people applying for particular types of jobs so that they don't have the risk involved of being tested, and essentially just self-excluding from certain industries?

MARY ELLEN HARROD: I would imagine that they do, yes. I think the other thing that happens is that in certain professions like the military, for example, people might swap to synthetic substances that aren't detectable, which can be more harmful. I think there was an example of that in Queensland that resulted in somebody passing away. That's something that is another source of harm for people.

The Hon. JACQUI MUNRO: This question is for anybody who would like to answer it. I'm aware that some of those synthetic products are available over the counter. Are they technically illegal or are they legal?

MARY ELLEN HARROD: I think that it's quite hard to keep up with them. There was a recall of some gummies recently—I don't know if you saw that—Uncle Frog's gummies, which were found to contain harmful substances. Those were being sold legally. Clearly, the marketing was about marketing them as a drug, but they were being marketed legally, as far as I know.

ALICE PIERCE: I think there is a grey, unregulated space in which things are promoted as health products, and there may be things such as synthetic cannabinoids. But I haven't particularly heard of synthetic cannabinoids being available over the counter very regularly in Australia, in the local context. Most of them are illicitly purchased.

WILL TREGONING: There is Federal legislation that attempted to deal with the issue of analogs that Mary's described, where you have the emergence of new substances onto the market. There has been legislation that's been introduced that criminalises substances which are analogs of a psychoactive substance or essentially criminalises psychoactivity for things that aren't foods. It appears to have been reasonably effective. I'm not sure about the status of the current availability, but it's also based on some pretty creative legislation. For example, testing psychoactivity is very difficult. It's a complicated area. There is legislation that tries to cover it, but it is flawed in how it has been designed. However, it appears that they're less prevalent than they were prior to that legislation being introduced.

The CHAIR: My first question is to Mr Heslop. In your submission you outline the widespread use of cannabis in the PLHIV community for a range of conditions including nerve pain and other neurological disorders. Is there an acceptance in that community and among its prescribing doctors that medicinal cannabis or illicitly obtained cannabis is working to deal with a whole range of associated health issues for people living with HIV?

ANDREW HESLOP: That's a very good question. I think there are two parts to that, and that's around also the acceptability of being prescribed that medication or how easily accessible it is and whether or not doctors want to do that. I'm not really qualified, I suppose, to really answer that question, but I would note that in general we have seen the availability of medicinal cannabis use within our community so the availability of it is there, and it's something that can be easily sought after from the right areas and from the right people.

If I can just give a little bit of history—going right, right back there were scoby groups of people living with HIV. Scoby is the bacteria that forms kefir and kombucha and things like that. And there are also cannabis groups of community members, who would illicitly deal—I suppose that would be the correct term, but they never thought of it as much as that. But these were all measures around promoting health, appetite and all of that around what were some pretty terrible drugs that were available for people living with HIV in the form of AZT, ddI and other monotherapies before life-saving HIV medication was made available.

I guess the other part of that question is around the community response to it. I think in general our community has always sought to find whatever is available to assist them and there is good evidence now to suggest—and I think I've provided some of that evidence to you from my agency's former submissions back in 2013 and 2014. There is good research evidence to show that the use of cannabis and cannabinoid products is highly effective at alleviating some of the distress that some of these multimorbidities, in particular peripheral neuropathy and other muscular conditions also such as inflammation, causes. There is good evidence for that.

The CHAIR: Following on from that, would there be people within this cohort of PLHIV who are therefore choosing not to take cannabis and benefit from its health effects because of driving laws?

ANDREW HESLOP: Yes, absolutely. We can get anywhere between two, maybe five calls a week around cannabis in the office, providing support around either an understanding of how to enrol or how to get medical cannabis or whether or not HIV itself is a condition that is listed as—you know what I'm trying to say. Sorry, I've lost my words—whether HIV is one of the conditions for being provided access to medicinal cannabis. But certainly the overarching thing that people speak about is either the fear of being caught with cannabis or whether or not they're perceived to be impaired while driving, noting that, for our community members, especially for community members living with HIV who might live in regional, rural or remote areas, they need to travel vast distances in order to access their HIV medication.

Even though community dispensing is available across New South Wales for HIV medication, they may choose to go to a different pharmacy in a different town that may be some hundreds of kilometres away because they don't want the rest of the town to know that—they don't want to be seen to be going to their pharmacy for some reason regularly. Or the self-stigma and the stigma of the society around HIV is so immense that the shame they feel around that is such that they can't bring themselves to be out in their community as somebody who is living with HIV.

The CHAIR: Dr Tregoning, quite a lengthy part of your submission relates to the impact of current cannabis laws on First Nations people and people of colour, particularly in regional areas. We've heard some of that evidence. Could you expand on that? Why do you think that is? What is the outcome for some of those communities?

WILL TREGONING: Sure, absolutely. The data that we've included in our submission comes from data that we received from New South Wales police under the GIPA Act and have analysed by overlaying

geographic data on the arrest data to understand which local area commands people are coming from. That's how we've been able to create these graphs that show, in different policing districts, the disproportion between arrests between Aboriginal and non-Aboriginal people. You mentioned regional New South Wales. In terms of raw numbers or the proportion of Aboriginal people among all of those arrested for cannabis possession, the numbers are highest in western New South Wales, but the disproportion is highest in the central metropolitan area. We found an approximately 12-times disparity in arrest rates between Aboriginal and non-Aboriginal people in the central metro area—the highest in the State. It's an extraordinary disparity. We expected that there would be a disparity, but the scale is staggering.

Why does it exist? One of the clues I think we have noted in the paper was from a piece of research that was conducted about 10 years ago with police officers around attitudes towards cannabis use among Aboriginal communities. It found that police massively overestimated the prevalence of cannabis use by Aboriginal people. I think that's one factor. Of course, the other factor is that cannabis laws were created on the basis of essentially racist politics, which was exported from the United States here in Australia. It's always been racist in its intent and that continues today. I think the disparity is essentially the prohibition of cannabis continuing to do what it was initially designed to do, which is to criminalise black and brown people.

The CHAIR: Are there other communities that you think these laws prejudice—the LGBTQI+ community as well?

WILL TREGONING: I think we can assume that the same sort of disparity that we're seeing is also experienced by other communities. New South Wales police only recently started collecting data about Aboriginal status—only very recently, a couple of years ago—which is what has enabled this piece of research. In the United States, they would collect data on a number of racial categories and so you can see, for example, profiling of people other than just Indigenous people. It's not possible here but I think, yes, we can assume it's the case. There was data that was released under, I believe, a question on notice some years ago by former member David Shoebridge, which showed that there is a correlation between being a resident of a postcode with a lower socio-economic status and increased prevalence of arrest for cannabis possession.

The CHAIR: I know your organisation, Dr Tregoning, has led the call for drug checking in New South Wales. Most people wouldn't think that's necessary when it comes to cannabis, but do you think that there's an issue with illicit cannabis supply and potential contamination or the fact that, if you allow the market to be controlled by organised crime, there is a potential for cannabis to include other drugs; and that quality control is important and that we should be actually checking what's in the cannabis, or overseeing a quality control regime?

WILL TREGONING: Good question. It's a common feature of illegally produced products that there isn't regulation around the contents. Just as we see substitution or a mis-selling of substances other than cannabis—for example, things sold as MDMA that might contain nitazines or another contaminant—in the illegal cannabis market, there is contamination which more often would be things like moulds, or growth hormones that are used to increase the size of buds, for example. I think that would be the most common form of contamination but, yes, the analogy is there. Without effective regulation, there's no system for actually controlling the contents of cannabis and so ultimately, yes, either the opportunity to be able to legally cultivate your own cannabis as a way of knowing exactly what is in the product or, ultimately, a regulatory system that includes testing and clear labelling of products is necessary to address those problems.

The CHAIR: I'd be interested in all your views on the following question. The bill that we're investigating and other models that have been developed that are similar in the ACT or Germany, for example, are a "home-grown" model, as it were—that individuals or households be able to grow their own. Some of the evidence we have heard is that that's not going to fix the supply issue. Not everyone can do it and not everyone wants to do it. Therefore, what comes next? Presupposing that what we're talking about now became law, what model do you think legislators and policymakers should consider in terms of a commercialisation or social club model to meet the needs, if necessary, of the entire community when it comes to cannabis?

MARY ELLEN HARROD: 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.

WILL TREGONING: I would agree with those comments. In particular, there are some models in Canada that are worth looking at. For example, the model in Quebec is worth some attention. 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.

What I think is beneficial about what's being proposed in this bill is that it moves incrementally toward a legal regulatory system. We need to design a system that is effectively able to meet public health objectives as well as dealing with some of the problems that we've identified, especially the desperate unfairness of the current system in terms of who is criminalised for cannabis use. We also have examples in the way that we regulate other substances in this country, like tobacco and alcohol, and many of the features that we should apply, for example, around age limits. I think, also with alcohol, there are some features that we should certainly avoid, with promotion of products being the major one.

The CHAIR: Mr Heslop or Ms Pierce, do you want to contribute?

ANDREW HESLOP: The only other thing I would add to that—that was excellent; I can't add anything more because they were already excellent statements from Mary and from Will. But I also note the models we have in Australia, and I think the ACT as well, around being able to have a plant or two at home and things like that. They are important to consider within this as well, not just the commercialisation of the availability of cannabis broadly, and the products from marijuana itself as well.

The Hon. STEPHEN LAWRENCE: There are a whole lot of submissions before us that talk about the Cannabis Cautioning Scheme and refer particularly to the fact that Aboriginal people are much less likely to get a caution. I did have a quick look at a BOCSAR study entitled *Why are Aboriginal adults less likely to receive cannabis cautions?* It seems that, very significantly, the disparity is caused by prior criminal records and similar factors—not entirely but largely. My question for each of you is this: Do you think that the cautioning scheme should be amended so that police can't have regard to a prior criminal record? Do you think that in a particular context where it seems to be fairly well accepted that drug possession offences are driven by a range of social and psychological factors, there is a case for not having regard to a prior criminal history in that context?

MARY ELLEN HARROD: Absolutely. To me, it doesn't make a lot of sense that a prior criminal record will disqualify you from a cautioning scheme. I don't see the relationship between the two. We know, absolutely, that the weight of the criminal justice system is much more heavily felt by the Aboriginal community in New South Wales but across Australia. The statistics that Will has in his report are genuinely shocking. The two things with cautioning schemes in general—and you see this with the EDDI scheme, the early diversion scheme that came in about a year ago. The other thing that I think needs to be removed is the police discretion part of it, because we know that police discretion is applied unequally. Those are the two elements. I honestly don't see the logic behind people with prior convictions being not able to access the Cannabis Cautioning Scheme.

WILL TREGONING: I'd strongly agree with that comment. The idea that a prior conviction disqualifies you seems to be intended to compound the criminalisation of particular communities. 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, essentially. I think the Aboriginal Legal Service made a submission that includes points on this topic, pointing out that these kinds of cautioning schemes simply don't work for Aboriginal people.

I think one other point to highlight is that as long as cannabis remains criminal, it remains the ground for a stop and search. If we only focus on arrest and charges, we miss a big part of the problem, which is that if you are—obviously I am a white person; I'm relying on what I've been told by people I've worked with in this space. 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.

The cautioning scheme doesn't address the problem that you identify and also doesn't address the fact that particular communities experience pressure from law enforcement very different from others. That is a problem that needs to be addressed as well. It can only be addressed through the full legalisation of possession and use so that it's no longer grounds for a stop and search, let alone grounds for a caution or a charge.

ANDREW HESLOP: Thanks, Will and Mary. I wouldn't draw any further on their comments. Just to add something else, there's nothing wrong with coming at this from an equitable approach, and there's nothing equitable about the cautioning scheme, as we know, as the evidence shows. But then within that equity itself, people who are Aboriginal or Torres Strait Islander—within the framework of what might go on for them medically—cannot access what could be the evidence base around cannabis and the key use of cannabis to alleviate medical symptoms for a range of morbidities that they may have because of the cost that's associated

with it, but then also because if they were to get it illicitly, they face all of these ranges of issues that have just been brought up and have been highlighted.

The Hon. STEPHEN LAWRENCE: In New South Wales at the moment, the maximum penalty for drug possession is imprisonment for two years. I was involved in a process some time ago in relation to the offence of drive while disqualified, which previously carried two years and was ultimately reduced by the Parliament to, I think, 12 months or 18 months. That had a marked effect on terms of imprisonment being imposed for that and a big ameliorating effect in terms of Aboriginal people. I'm interested in your thoughts on whether, in this day and age, two years as a maximum penalty for drug possession—which obviously sits in a hierarchy of offences under supply, so it should be considered as an offence applicable to a person just in possession of drugs, not for that more serious purpose of intending to supply them, or something like that—is an appropriate maximum penalty for the possession of drugs. Obviously, we've got a range of issues before us. One of them is decriminalisation, one of them is legalisation, but another one perhaps is the appropriateness of the regulatory framework in terms of the maximum penalty. Is that a draconian maximum penalty, or is that an appropriate maximum penalty?

WILL TREGONING: From my perspective, it's certainly a draconian maximum penalty. It's rarely applied in practice. My only knowledge of the extent to which it's applied comes from Victoria. Custodial sentences for cannabis possession are only applied to highly disadvantaged Aboriginal people, in my observation. The data is quite difficult to access, but there are people incarcerated in Victoria right now for cannabis possession. In New South Wales I would suspect that there are, but the number will be relatively small. But, nevertheless, yes, it's a ridiculous penalty for what is currently an offence here.

The CHAIR: Can I just jump in there? One thing that hasn't been spoken about and interrogated in this hearing so far, or much in the evidence, but I think, Dr Harrod, you mentioned, is that ultimately if we move to a legalised regime of some form, how important would it be to have the expungement of records as part of that potential regime—say, just for people who only have a cannabis conviction—and also, potentially, a release from incarceration?

MARY ELLEN HARROD: I think there are two questions and I'll go to the Chair's first, and that's incredibly important. Now we're in the kind of odd situation where somebody can have a conviction for cannabis on their record and not be allowed to go to the US, where cannabis is legal in many places. Those convictions can follow you around for a long time. As we know, they can affect your employment record. We are in the business of getting peers work in health services, for example, and it can be an incredibly gruelling process because of criminal record checks. This is preventing people who would otherwise be gainfully employed doing something that they feel quite passionately about from accessing work in those settings. That's a very big issue for the people who are our members and people we represent.

In terms of the two years, yes, it's completely disproportionate. Penalty? I think Will's right. I looked this up a couple of years ago and I think there was hardly anyone in prison. You're more likely to be in prison for use in Queensland, I think, from memory. But having that on your criminal record, you know, you still have a record, and it still can have a significant effect on your life. Yes, we would advocate for decriminalisation, and we will be at the upcoming drug summit. But I think there are other things we can do in the absence of that. What community sentiment tells us is that there's a different appetite for decriminalisation or regulation, depending on the substance. Cannabis is one that I think people feel, quite broadly, that criminal penalties aren't appropriate.

The Hon. STEPHEN LAWRENCE: Further on the convictions point, we heard evidence earlier as to the effect of convictions, which you've spoken to, but also the operative effect of convictions in the criminal justice system. For example, people will be exposed to a higher penalty in a subsequent proceeding, on account of having been convicted. Also, people might be in breach of good behaviour bonds and ultimately receive higher penalties. So this fact of having a conviction, merely, might actually have very serious consequences down the track.

In New South Wales, section 10 of the Crimes (Sentencing Procedure) Act governs whether a person is convicted or not. I am interested in your view as to whether there should be an amendment to section 10, maybe, to provide a default situation where there isn't a conviction for drug possession unless the court orders otherwise, and that could be subject to criteria. Generally, I'm interested in your thoughts on measures that could be undertaken to ensure that less people are convicted for an offence that perhaps is changing, in terms of the view of the community, as to its objective seriousness and also whether long-term consequences should be inflicted upon people for having engaged in the conduct.

MARY ELLEN HARROD: I'm not familiar with section 10, so I can't comment too specifically on that. I think that the other thing that we could do is look at the amounts that constitute supply and base those on realistic what is a supply versus a personal use amount. I think that the harms caused by interactions with the criminal justice system are very well-known. For example, the harms caused by public strip searching have been

very well explored, and the way that we enforce our drug laws has—I think we have a lot of awareness of the harms of how we enforce our drug laws. So I think that a change to them is so important.

WILL TREGONING: I'll just make a quick comment. The community does not want to see people criminalised for cannabis possession. They don't want to see people criminalised for cannabis possession and they want to make sure that children are protected from what they perceive as the mental health harms. Those are very clear factors from our research. In terms of preventing people from being criminalised for cannabis, the ACT did this with a very elegant piece of legislation that essentially inserts an exception into the clause that criminalises cannabis possession and that exception applies to adults in the ACT. That is the most simple and effective way of dealing with the issues that you're raising.

The Hon. STEPHEN LAWRENCE: Lastly, on the question of the detail of the criminal law and those issues, in New South Wales you commit the offence of supply, which obviously includes commercial drug traffickers and the like, if you give an illicit drug to somebody, even if you're not asking for money or something to gain as a consequence of that. I'm interested in whether you think it's preferable, perhaps, that New South Wales has a Commonwealth-type model where there's an offence of commercial drug trafficking, which is committed when you engage in supply-type acts for profit or gain, and then a possession-type offence, rather than involving these examples of gratuitous supply, if you like, in a substantive offence of supply.

WILL TREGONING: In short, yes. Most supply is through social networks. Any situation where people might share a joint, for example, technically constitutes a supply offence. One of the benefits of the bill that's been proposed, that this Committee is considering, is that it 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. It's like a perverse law where, if very many people break that law, in a rare number of cases they're apprehended for breaking that law and then they have a very high penalty applied to them, but, really, it has very little impact on general behaviour. Most supply continues to be through social networks.

The CHAIR: Dr Tregoning, you said that your research showed that people wanted the laws around cannabis changed but they wanted children protected. How do we protect children? If you assume some form of decriminalisation or legalisation, what are some of the measures that we should put in place to protect children?

WILL TREGONING: This goes back to the question that we started with from the Opposition. You can't expect that law reform is going to solve every problem related to cannabis. Protecting the wellbeing of young people also needs to happen through measures other than law reform. They will be, like Mary was talking about, measures that include better education for young people. Ultimately, under a fully legalised commercial supply system, you would also have restrictions on sale so that it becomes more difficult for young people to access cannabis through what would become the main route of supply. Therefore, it would just create an impediment to access. I think it would contribute to reduced use among young people. A lot of it will come through non-legal pathways—through better education, through an increase in the perceived credibility of government sources in the context of law reform that makes laws that are perceived to be more rational, and through the kinds of prevention programs that already operate in schools and have been really effective in, for example, reducing rates of alcohol use and tobacco use, which, just like with drug use, are trending down among young people.

The Hon. JACQUI MUNRO: Can I just ask about the other side of that? Say cannabis use increases with legalisation, and there are already concerns that rehabilitation facilities, for example, are chockers and there are not enough to deal with the problems that already exist. Presumably you would see some sort of commensurate increase in problematic drug use. Do you have any figures or thoughts around what would need to be provided in terms of care for health—either funding amounts or services?

WILL TREGONING: There's even something before that, which is in the design of the regulatory system, which would be to ensure that, like I was saying before, it's not tipped toward commercial interests. For example, the alcohol industry relies on alcohol use disorder for its profitability. You have a small proportion of consumers who consume much more product than most consumers—well above average in terms of how much they consume. The profit margins of those industries are essentially based on promoting and maintaining addiction. We need to have a regulatory system that isn't weighted towards maximising profits for producers and manufacturers. Then, of course, yes, there have been well documented gaps in accessibility of treatment. It's not unique to New South Wales; it includes other States and Territories as well. It has been known for some time, and it is a decision of government not to meet that need for treatment by providing sufficient funding. The solution is, obviously, that government make different decisions about the allocation of funding to ensure that it's funded at a level that can actually meet demand for treatment.

MARY ELLEN HARROD: The other thing is that the balance of funding in harm minimisation—the three pillars of law enforcement, health and education—is vastly tipped towards law enforcement. That consumes 70 per cent or more of the funding, and treatment is only 20 per cent, I think. Reallocating money from

enforcement to treatment could happen. The other thing in a regulated system is that government revenue gained from supply could be, at least in part, earmarked for increased treatment. We do need increased treatment resources.

The CHAIR: Thank you very much, Dr Harrod. Thank you to all of you for your submissions, which were excellent, and for the evidence you've given today, which we very much appreciate. We appreciate the work you do in the community generally. I don't think there were any questions taken on notice. If there were, or if there are any other questions from the Committee, the secretariat will be in contact with you in due course. Again, thank you very much for your work, your attendance and your submissions.

(The witnesses withdrew.)

(Short adjournment)

Mr ROBERT TAYLOR, Manager – Policy and Engagement, Alcohol and Drug Foundation, before the Committee via videoconference, affirmed and examined

The CHAIR: Mr Taylor, other witnesses giving evidence at the hearing have been afforded the opportunity to make a short opening statement. Would you like to do that?

ROBERT TAYLOR: I will, thank you. I'll keep it brief, though, because I am aware that you have had a number of experts in already today—people that the ADF works very closely with, organisations like NUAA, Unharm, the Australian Lawyers Alliance, the National Drug and Alcohol Research Centre and so on—and I know that a lot of their perspectives and opinions on this issue are aligned with ours. I'd just like to make a couple of key points now but then I'm very happy to take questions as I'm sure there have been issues that have come up throughout the day that you might want to speak about further.

The main thing I'd like to say is that we're very supportive of the provisions within the amendment to the Drug Misuse and Trafficking Act. At the time of our written submission, we were doing some work internally, doing a large research piece looking at the outcomes of different models of legal cannabis regulation. At that time we hadn't completed that work but we have now. It is the ADF's position that we support fully decriminalised personal use and possession of cannabis as well as the allowance for individuals to grow cannabis at home within certain limits and gift to friends or people that they know, as this bill allows for.

So that's the first thing that I'd like to say, that we're very supportive of those provisions 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, as I know you've heard. Secondly, we also believe it will contribute to lowering stigma, allowing people better access to services, support when they need it, to be able to talk about it with family and friends. I'll come back to my third point because it has slipped my mind right now because I'm not reading off my notes. I will stop there, actually, and I'll figure out what I was going to say and take questions in the meantime.

The CHAIR: Going forward, can I just ask that you speak directly into your microphone because it's really important we get good audio so we hear what you're saying but also for Hansard here, who are typing away furiously, writing down every single thing you say for the record and for all eternity. We'll now turn to questions from the Opposition.

The Hon. NATASHA MACLAREN-JONES: Thank you very much for appearing today. I have a couple of questions around your submission, page 7. You said that you feel that—and you refer to evidence—regulating cannabis would reduce the availability particularly for minors and young people. How is that and why? Because if you look at something like alcohol, that's still readily available to a young person, and the same with other illicit drugs. If a young person wants to access them, they can. So why would regulating cannabis and legalising cannabis reduce a young person accessing it?

ROBERT TAYLOR: I think the main thing is that currently all access to cannabis or other illicit drugs is done through an unregulated supply or supplier. There is no age verification at all currently if you're buying an illicit drug. You're right that young people do access alcohol, but we have mechanisms in place to try to prevent that, and there are still things that we can try to do as a community around liquor licensing and around raising awareness for parents of the potential harms of alcohol for young people. I have worked with young people directly around potential harms. That can help us decrease the likelihood that young people will access alcohol. Growing up, there is the example of someone handing you a $20 note outside the bottle shop and you go in and buy the sixpack of beer for the underage kids outside. I think there are opportunities to prevent those kinds of things taking place and much more opportunity to do so under probably a regulated framework than under the current totally unregulated framework, where there is not even a single mechanism that we can use to try to prevent young people accessing it.

The Hon. NATASHA MACLAREN-JONES: You believe they would be able to implement harm reduction strategies. What strategies would you say could be implemented? Why are they not being used now?

ROBERT TAYLOR: Would that be under the model within this proposed amendment, sorry?

The Hon. NATASHA MACLAREN-JONES: No. You're saying that if you legalised cannabis then you would have harm reduction strategies for young people accessing cannabis. Why can't those strategies be implemented now?

ROBERT TAYLOR: I'll just say briefly, on the general topic of legalisation, I'm aware this proposal is not to fully legalise cannabis within the bill. It's just to decriminalise possession and use, and allow gifting and growing. It's not actually the ADF's position currently to support explicitly a model of legalisation, but we're

happy to talk about it in the abstract and try to work out what might be a good model in terms of public health. To your question, in terms of what you might do to minimise access, it would be the things that we do with alcohol in terms of regulating who can go into a store; who can access sales; age verification, ensuring that's really thorough; regulating advertising, which we know has a huge impact on people's substance use trajectories—if someone is exposed to alcohol advertising early, they're more likely to experience harm later in life; limiting the potency of products; and so on. There is a range of things you can do in a regulated cannabis market to minimise harm.

The Hon. NATASHA MACLAREN-JONES: I think it's fair to say it hasn't really worked when it comes to alcohol, so there is probably no reason it would work in relation to cannabis either.

ROBERT TAYLOR: We would say there is still a lot in the alcohol space that is not done. I don't want to get too into that, because I know it's a very different topic. But we would say that the alcohol space is probably a little bit unregulated as to where we'd like to see it. We think there is a lot of room on advertising, on the way in which alcohol is made available, online sale and delivery, algorithmic advertising at young people, outlet density, trading hours—these things that are really evidence-based measures to reduce alcohol harm that we could still work on. We do think there are ways to reduce alcohol-related harm, and we think a lot of that translates to cannabis. Evidence suggests it does.

The Hon. NATASHA MACLAREN-JONES: I suppose it goes back to my original question: What can be done with young people to reduce their use of cannabis?

ROBERT TAYLOR: In the short term, under our current model, one of the challenges we have under the current approach, the criminalisation approach, is that there is a lot of stigma around use, and young people don't feel comfortable approaching parents or teachers or trusted adults for advice. It's difficult to have conversations. The Alcohol and Drug Foundation has done some work recently, speaking both to people who have experienced harm from drugs and alcohol and also their family and friends, around the barriers to seeking help and accessing help. Stigma was the number one barrier.

Stigma may seem like an abstract concept, but it is something that materially affects people's health outcomes. It stops people reaching out for help when they need it, because of shame, because of fear of what others might think and so on. And we know that criminalisation drives stigma. I think we can continue to provide evidence-based health information to young people in a way that's age appropriate. We can continue to work with parents in a similar way. But we'd probably say stigma is a big part of it and, also, I'd probably say the unregulated supply right now. As I said, there is nothing stopping someone selling cannabis illicitly to an under-18.

The Hon. JACQUI MUNRO: I was curious about the bit in your submission that speaks about Australia risking developing a quasi-legalised market for non-medical cannabis access through medicinal cannabis and whether that means that there's some inevitability to legalising cannabis—it's sort of almost a held to ransom situation—and also whether, with a more legalised market environment, you think there would be risks of people engaging in self-medication, which is possibly harmful without the assistance of a medical professional.

ROBERT TAYLOR: The interaction of the legal medical market that now exists and what is currently the illicit market and what is a hypothetical legal market is really complicated. There are a few factors going into it. The first thing to say is that we're not necessarily saying that the medical market is necessarily going to lead to the legal market. But what we've seen and what we were calling out particularly within the submission at that point was around the particular practices of certain companies in the medical marijuana space that we think are probably pushing the boundaries of what is appropriate in that space.

We know there has been some court actions by the TGA, for example, against some poor advertising in particular. We absolutely believe people should have a right to their medication and we advocated strongly for medicinal cannabis to be made available. We still advocate to make sure that it's available in an equitable manner because that's not necessarily the case. The concern is that, because of the way it's set up in terms of prescribing and access and so on, people can access it perhaps sometimes in ways that some medical professionals might not see as not fully sound. I'm not a medical professional, so—

The Hon. JACQUI MUNRO: I definitely am aware of anecdotal stories around people using the medical system for recreational purposes.

ROBERT TAYLOR: I think that this gets to your second question, when you asked about the risk of self-medication under a legal model. I think the reality of people's substance use is that it can be mixed. In the same way someone might have a drink at the end of the week, which is quite legal, to relax, which could be considered a form of medication—it's done to change your mental state but also to have fun and done in a recreational way, so I think there are these mixed use cases. I don't think that in and of itself is necessarily a concern. If someone does have a medical condition, obviously we'd encourage them to seek medical supervision

for that if that were to be ongoing. But one of our big concerns is that, under any potential changes to the way cannabis is regulated, we don't want strong commercial actors entrenched because we're worried that they will become hard to disentrench. If we did move to a regulated model, having a big cannabis industry would not be helpful for public health because we fight that fight with big alcohol every day.

The Hon. JACQUI MUNRO: It's about incentives.

The CHAIR: Mr Taylor, in the ADF's submission you talk about three pillars of harm minimisation, which are your guiding values: supply reduction through regulation, demand reduction through education and public health messaging, and harm reduction education advice for those who do choose to use drugs. Can you talk briefly about how you would see these values play out in a regulated, legalised cannabis market?

ROBERT TAYLOR: This big piece of work that I mentioned that we have done recently was a systematic rapid review of the evidence around the public health outcomes of different models of supply particularly. I can speak to that first. When we're looking at supply of a psychoactive substance—whether that's nicotine, alcohol, cannabis, prescription medications—we have a lot of options. We see that internationally for cannabis. Some of the models we've seen for cannabis internationally—we've seen social cooperative models that are completely non-commercialised; there are government monopoly models, where the government is involved in supply; and highly commercialised models. And the outcomes of these tend to differ.

Evidence is still emerging around probably what is the best model for public health but what we did find was that highly commercialised models tend to be associated with higher rates of health harms, so mental and physical health harms. That aligns with what we know from alcohol—that highly commercialised, poorly regulated markets are definitely more harmful. From the supply side, we would want to see a model that was not highly commercialised, basically—whatever that was. We can go into discussing that. On the demand-reduction side, there are a few things, but one of the key things is ensuring that prevention activities are taking place.

We know that harm occurs where people or communities might be experiencing vulnerability. If someone has a history of trauma, if there are other co-occurring issues—mental health issues, family violence, challenges with housing and so on—people can be more at risk of experiencing harm from alcohol and other drugs. That's true for cannabis as well—so ensuring that we're investing in prevention to meet risk factors upstream. We know what the risk factors are for alcohol and other drug harms.

We can address those upstream with primary prevention programs, as well as ensuring that treatment and access is there for those who need it. On the harm-reduction front, there's some really interesting work that's been done in Canada around safer use guidelines. That would align with what we've got for alcohol—the NHMRC drinking guidelines—so that's a good way for supplying factual information to people who are using cannabis about what are safer ways to use.

The CHAIR: What are those guidelines in Canada called?

ROBERT TAYLOR: They're called the cannabis safer use guidelines.

The CHAIR: Building off that, and your criticism or your concern about a full commercialisation model, Mr Taylor—assuming a bill like the one that we're considering was up, what do you think the next steps should be? There are other models around the world based on social clubs, or there's a bill before the US Congress which would limit the scale of particular operations and would make sure that licences were restricted in scale and went to particular areas—similar to how we limit the numbers of places selling alcohol.

Is that something you envisage as the best potential step? We've heard a lot of evidence today that a home-grown model won't deal with the supply issue and that we're going to actually have to have the supply coming from somewhere. It could come from overseas, I suppose—and that would just externalise it—but, if we were to become domestically self-sufficient, what do you think a potential model or models that have good health outcomes and harm reduction outcomes would look like?

ROBERT TAYLOR: It's a really important question. I'd say the first thing we want to point out is that this bill is what we see from a policy perspective—leave the politics to all of you—as low-hanging fruit. It is decriminalisation. Gifting and growing, the evidence is quite clear that this will not increase use or harm from cannabis. We've got the evidence from Australia—from the ACT—that that's the case, and internationally as well. So we see this as quite low-hanging fruit. You're going to remove the harms of criminalisation that I know you've heard a lot about already today so I won't go over that again. So this is, we see, a really sensible first step.

You're right that the supply of cannabis then remains largely illicit, and that is an issue. Depending on how it's being produced, that may involve organised crime, for example. We know that's one of the harms of criminalisation of illicit substance use as well. If we are moving, therefore, to a commercialised model, asking

about what are those factors that are going to minimise what we call the commercial determinants of health—so minimise the influence of those commercial determinants—there's a few different things I'd probably point to.

I'd also say that we gave evidence to The Greens inquiry that they did around the Legalising Cannabis Bill federally, and we went into this in a bit of detail there too. Firstly, you mentioned co-ops and social supply. That's something that we're quite interested in. There's unfortunately not a strong evidence base at the moment as to the public health outcomes of those models, as they're relatively new or they're under-researched. We know they've been around in Spain, for example, for a while [audio malfunction].

The CHAIR: Mr Taylor, sorry to interrupt you there. You just broke up then. We got up to Spain and there being not a lot of evidence. If you could continue from that point on.

ROBERT TAYLOR: Sure thing. Apologies, again. We don't have a lot of evidence about health outcomes from not-for-profit or social supply models. Based on what we know about alcohol, tobacco and so on, we expect that the health harms will be far lower than under a commercial model because it's the commercial incentives, it's the profit motives that are in conflict with our public health outcomes that we see in those really commercialised models. You mentioned some other regulatory factors: limiting outlet density, limiting trading hours, and limiting product potency is a really key one for cannabis that we found in the literature.

Really high-potency, unregulated products are a really key driver of harm, particularly mental health harms—more associated with psychosis, for example. Edible products are more associated with child poisoning, paediatric emergency presentations—someone accidentally leaves their gummy lollies that are full of cannabis on the bench and a young person might eat them or a child might eat them. Those are things that you can regulate around. We know that Quebec, a province in Canada, has done a relatively—we think—stronger job doing that regulating product and potency, for example.

The CHAIR: Just in terms of the issue you were referring to, the commercial determinants of health, one of the issues and dangers of a commercial model is that the price comes down over time, thus potentially impacting public health. It becomes cheaper and much more affordable. But, in actual fact, one of the issues is that the price has to come down for a regulated market, otherwise the illicit market dominates. Could you speak to that? Is there any guidance you can give us on how policymakers can balance those different issues?

ROBERT TAYLOR: Yes. Great question. It's an inherent tension. We know that pricing is a protective factor. For alcohol, for example, the evidence is very strong that increasing price decreases consumption. That's a really clear relationship that's established. If you have the same set-up, where you had a totally illicit supply, we expect you could do something similar with cannabis—well, it might be a bit different with cannabis. But we have a strong illicit supply. There's evidence that shows the number one thing that helps people go from the illicit to the licit market is price. That is the number one factor that will take people from one market to the other.

For the licit market to displace the existing legal market, it has to be competitive on price, 100 per cent. Once that is the case, and we have more people in the licit market, there may be opportunities to ensure that prices don't drop too far. You could do that through things like setting minimum unit prices per gram of cannabis or per THC volume. We would probably be in favour of taxation that reflects potency. That has a protective effect; people are incentivised towards lower potency products which we know are less harmful. Those would probably be the two suggestions to try to maintain some public health effect of pricing.

The CHAIR: In the ADF submission you point out the injustices—as some have described it—of the roadside drug testing laws for medicinal cannabis patients, where cannabis residue can be present in the blood for weeks after treatment. What's the solution to this? Can you cite an example globally where the road toll has either been impacted by legalisation or not significantly impacted? How are they dealing with this issue in other jurisdictions?

ROBERT TAYLOR: Yes, I can say two things. One is that no-one has a good answer to this issue, unfortunately. It's a really complicated problem. We seem to have struck gold with blood alcohol readings. They are a really convenient proxy for impairment, and they work really well. Unfortunately, we just cannot seem to work out a similar technological solution for cannabis presence versus impairment. As we know, it can stay in the system for many weeks after last use and impairment. From a policy perspective, some jurisdictions in the United States have set a blood THC limit, but they have basically just picked a number. I might be over that number but you might be under that number after both of us smoking the same amount at the same time. That's true, obviously, to some extent, with blood alcohol reading, but the variations are much, much higher, and it leads to much greater injustices with cannabis.

To your second point, the road toll—this is something we need to think about because the evidence is not set in stone, but it does seem to suggest that in jurisdictions, particularly the highly commercialised jurisdictions, there is an impact on the road toll when cannabis is legalised. The evidence is really complicated,

and I don't want that to be taken as gospel because research is a very complex thing and evidence is a very complex thing. There is some evidence to suggest there may be some effect on the road toll, but it may also be things like—it's very hard to prove what caused an accident. If someone has cannabis in their blood, that doesn't mean they're impaired, as we know, and so on. The recording and such of this is quite complicated, but the evidence is pointing to perhaps there being some effect.

The CHAIR: Thank you very much, Mr Taylor. We appreciate the work that the ADF does, the submission you've made and you taking the time to appear at this hearing. Your evidence has been very informative and, as I say, it's very much appreciated. We will be in contact with you if we have any other questions on notice to give to you. Once again, thank you very much and good afternoon.

(The witness withdrew.)

Mr BENN BANASIK, Individual with lived experience, affirmed and examined

The CHAIR: I thank our next witness for attending today. We very much appreciate your submission.

BENN BANASIK: My pleasure.

The CHAIR: It was very heartfelt and compelling. Thank you for taking the time to give evidence. Do you have any opening comments that you would like to make? Just a short one.

BENN BANASIK: A very brief one, yes. I am a former mayor of Wollondilly, and I live in Thirlmere. It's the centre of Wollondilly. A number of you would know the area, representing it in a number of your different capacities through the last period of time when I have known a few of you. It's a population there that travels enormously for work. It doesn't have much public transport at all. Estimates is about 60 per cent to 70 per cent of the population who travels outside of the area work. What happens with that is that we have a lot of tradies in my area. I also rely on travel for work, which means that the driving laws in New South Wales and the legal allowance of myself using cannabis are at odds. I would like to know what the Committee is going to do about that.

I grew up in politics. I never intended to return to politics at all. I actually left to open up a business but, unfortunately, I developed cancer. I know I made a submission, and I know that there are images to it, but I understand that politicians are busy and don't read everything. On my chest, that's my normal side, and this is the other side. I developed a type of cancer in this section called DFSP. It a type of cancer that sort of looks like an octopus. It digs into your skin and your muscles. So I have no muscle tissue at all on that side of my chest. Despite walking around this building and looking normal at all times, I'm in chronic pain constantly, and I'm prescribed a number of different medicines for that.

I have a number of different options. I go to a pain specialist—after I had my cancer removed, unfortunately—and I will be on pain medicine for the remainder of my life. I have a number of different choices. I can take antidepressants, I was told—but I'm not depressed; 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, because the stomach lining and the top of my oesophageal tract wasn't formed properly as a baby onto the stomach, so I have constant acid reflux.

I don't have much choice. If I would like to continue working in this place, as I do for a parliamentarian, I will need to take my medicine, which is medicinal cannabis. It's one of the types. I take seven different types each day. When you see me, all the time, I have taken cannabis within the last 24 hours. 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. I would like to know from the members of the Government and the Opposition as to why I, as a medicinal cannabis user, must be put on opioids. Why is it that your two major parties are in favour of opioids and antidepressants, but not in favour of medicinal cannabis, or are you okay with me breaking the law of New South Wales and driving without those changes taking place? Thank you.

The CHAIR: Thank you very much, Mr Banasik. I will now turn to questions from the Opposition.

The Hon. JACQUI MUNRO: Thank you so much for coming to present your situation. I'm obviously sorry that you experience pain and I'm glad that you have found ways to manage it. I think it is a really difficult issue because we just heard evidence that it's likely that the legalisation of cannabis does impact the road toll, for example. I appreciate that that is extremely frustrating and difficult for you personally. I'm not sure if I really have any questions for you, either, except to say that part of the work of this Committee is to find ways to accommodate effective pain medication, for example, or use, without having an impact on society—like a broader social impact in terms of safety on roads, for example. I think that there are ways that we will look at this in relation to employment as well, which is another aspect of this that has emerged as an area that needs to be addressed. We'll do our best to work through those complicated issues. But I really appreciate you sharing your story.

BENN BANASIK: Can I respond to some of the things that you've raised, Ms Munro?

The Hon. JACQUI MUNRO: Please.

BENN BANASIK: In relation to the driving provisions, I agree with the last speaker who said that, yes, it does lead to a rise. In New South Wales, and in Australia, there has been legalisation of medicinal cannabis. It has not led to any additional road tolls. What we're talking about here are two different things: medicinal use and recreational use. I'm not here advocating for recreational use, a driving provision and a scheme with that relation, but 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? Why are the Australian medical laws different

than the driving laws? In relation to the workplace laws—and I know, and I was listening to the inquiry and Committee all day today—there was Ms Tracey Browne and Mr Scott Barklamb, I think, from the Australian insurance group earlier.

The CHAIR: Industry Group.

BENN BANASIK: The Australian Industry Group. I'm a former employer, actually. I had 17 staff underneath me. One of the people I hired was on medicinal cannabis as well. You can't test for cannabis like that. What they have said here in relation to blood testing people who are in the workplaces is just not factual in relation to medical—

The Hon. JACQUI MUNRO: I think they were talking about swabs.

BENN BANASIK: Yes, so swabs actually stay in your systems as well. There is no proof that it can get out of your system straightaway. I may use cannabis a couple of hours ago and be fine, compared to someone who does not. It's about the amounts of usage that you use and whether you're using it as a medicinal product. 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.

I know that your party is represented by a number of people across the Parliament, but you have spokespeople for my area as well. Ms Maclaren-Jones, I know that you've spoken out for the Macarthur region a number of times. I've met with you out there when you were going for pre-selection a long time ago and we were in different spaces. You know the Macarthur area really well. You know that there is no public transport there. As the spokesperson for the Opposition, I would hope that you are taking that up to the Government and saying that these people out there don't have any choice. Statistically, they are on these products, whereas, medicinally, you have opioids out there as well, which is the same treatment. These people don't deserve to be treated that way.

The CHAIR: Can you tell us a little bit about the process of getting medicinal cannabis? Are you advised by your doctor not to drive? What advice are you given? Feel free not to answer if you don't want to disclose anything.

BENN BANASIK: My doctor openly said, "You should not be driving under the influence of it." That's the statement.

The CHAIR: How is that managed?

BENN BANASIK: That's managed by the patient, or the doctor, in discussing it. I was in a little bit of denial about this. I got cancer. I thought that after the cancer treatment and after I had half of my leg skin cut out and attached onto my chest that I'd be all okay. I was taking a number of different pain medicines. I went to see this doctor and he gave me a very low dose of CBD-THC oil. So it's 10:10 oil, and I was prescribed a couple of drops a day to test to see if it made a difference. The efficacy actually does. I'm on a range of seven different products. It's different sativa and indica products. The purpose of me taking those different products is to push down my usage all the time. So I'm prescribed about five times the amount that I actually take each day because I take lower effects. That is monitored constantly by my doctor, and I'm constantly meeting with him. He's given me a number of different tests that I can do to make sure that I'm not taking too much. It's quite easy and it's quite manageable. It's medicinal. It's to the point where it's measured, as well.

The CHAIR: But does the doctor give you advice around potential impairment and say, for example, "If you have this dose, don't drive for four hours or five hours"?

BENN BANASIK: Yes.

The CHAIR: That happens with other medications.

BENN BANASIK: Absolutely. Indica—you do not drive on, to be simple about it.

The CHAIR: That's the advice from the doctor?

BENN BANASIK: Absolutely that's the advice from the doctor. It's known as the type of cannabis that is that "couch surfing" cannabis that you sit on the couch like. That's the indica strain that most people would commonly—and those people that are watching this, I know that a lot of people don't know what the range of cannabis products are like medicinal cannabis users do, but sativa is a daytime-type of use. Indica is a more dominant strain, which will send a patient to sleep. In saying that, on a recreational front, I would agree with the panel members and agree with the last presenter that it does show a danger to driving. But for medicinal users, it's

different. Statistically, the evidence has shown that, in the last two years, there was no rise in driving accidents because doctors are being sensible out there and giving that advice. That is the advice that I received as well.

The CHAIR: Have you faced any stigma because of your cannabis use? Are you an advocate for cannabis use? Have you spoken publicly about your cannabis use as a former mayor? Have you received any prejudice or stigma because of that?

BENN BANASIK: A little bit. There's the assumption that you don't know what you're talking about as soon as you say that you're on cannabis—that's the first thing—and you're going to be on this trend of having the munchies constantly or whatever. But there's also the stigma of smoking and needing to do so, so I get wrapped up within that. The most recent laws in relation to vaporisers in Australia have meant that medicinal cannabis patients cannot purchase their vaporisers legally in this country anymore until they go to a pharmacist. We were promised—again, by the major parties—that it was vaporisers with an S, not a Z, that were going to get banned, but all of them are banned. Now we have to go to chemists and pay inflated prices for the vaporisers or we have to combust the cannabis, leading to increased potentiality of lung diseases. That is not in the patient's interest. The stigma in relation to it is more in line with the public policy, which is at odds with where the medical professionals are advising in the country.

The CHAIR: As an employee of the Parliament, do you ever consume your medicinal cannabis at Parliament?

BENN BANASIK: Yes.

The CHAIR: Is there a place for you to do that?

BENN BANASIK: No. There are the smoking areas, but that's it.

The CHAIR: In doing so, have you ever had anyone approach you and say, "What are you doing?"

BENN BANASIK: No. I'm more subtle about it. I either go into the smoking areas or I sit away from people. It's medicinal, so it needs to be for 10 minutes. I need to not talk to anyone. I need to concentrate and get back to work. That's how it's taken. It's not taken flippantly and recreationally. It's not like the marijuana that you take as kids or recreationally. It's not much fun waking up at seven o'clock in the morning in acute pain like you've been kicked in the side and having to take that. That's the type of experience it is.

The CHAIR: Thank you very much for sharing that. They're my questions done. Do you have any questions?

The Hon. Dr SARAH KAINE: I do have a question. Excuse me for my ignorance on this, and thank you very much for sharing your experience and being here. You mentioned the two strains—the day and the night—and you said that's very different to those taken for recreation. Is that because they have been prepared in a particular way or the dosage is delivered in a different way? Is that the reason you're saying that it's different?

BENN BANASIK: They're actually different strains and different types of genomes of the plants.

The Hon. Dr SARAH KAINE: So it's not the same. I thought you said these are the same ones and they just have different—

BENN BANASIK: They are treated in different ways. There has been a manufacturing process through the plant horticulturist, if you like. They're breeding plants together to get more efficacy out of the THC- or CBD-dominant strains, and there is a mixing of those two blends as well. What I take is a lot of sativa through the day and indica at night. Typically, what you'll find is that people who are taking it for recreational use want to feel relaxed. That's what they will say to someone that they're seeking it for, and automatically that person will then go to the more dominant strain which is in the marketplace. The black market, I know, is dominated by indica. It's more of the strain which sends you to sleep or relaxes you that way, whereas sativa—and my pain specialist spoke to me about this the first time I saw him. I passed an older guy as I was walking in and he was walking fine. Apparently the guy couldn't get up too much from the couch previously. He takes sativa all the time and now he feels like going and doing gardening. It energises you. It's almost like having a mixture of a Panadol and a coffee together.

The Hon. Dr SARAH KAINE: Just to clarify, it's not actually that the impact is different; it's that people are using different strains for different things?

BENN BANASIK: The impact on the person and the output is different.

The Hon. Dr SARAH KAINE: Of the different strains. But that's because people are using them for different purposes—

BENN BANASIK: As well, yes.

The Hon. Dr SARAH KAINE: —as opposed to, for some reason, people who have it medicinally have it this way. It's more that people are using it for different things.

BENN BANASIK: Yes. But what happens with medicinal use is that the body gets used to it, so the amounts that I would need of this compared to yourself would be very different.

The Hon. Dr SARAH KAINE: Could I just ask you about the pharmacy issue? Again, forgive me. I'm not meaning to seem flippant about it. I understand there might be cost implications, which would be key. Seeking medication or aids for medication from a pharmacy—that doesn't seem an outrageous thing to do.

BENN BANASIK: No.

The Hon. Dr SARAH KAINE: Is your key objection to that that it's a cost thing or is there some other objection to it being—

BENN BANASIK: I would put back to you, would you think it would be fair to buy every measuring cup from the pharmacist because you can measure medicine with it? Because that is what happens. The medicinal vaporiser is not connected to this product. The vaporiser is a combustible thing which heats up cannabis to 240 degrees specifically and doesn't burn it.

The Hon. Dr SARAH KAINE: It would be the equivalent of, and I don't know this, can you buy asthma inhalers from other—is that what we're talking about?

BENN BANASIK: No.

The Hon. Dr SARAH KAINE: It's to administer a drug?

BENN BANASIK: It's to administer an actual product. It's available everywhere on the internet. You can import it everywhere. I used to buy it from the US, because that's where the companies are. None are made in Australia. Now I have to pay four times the value of what it is sold over the counter in Australia, because the pharmacy guilds don't deal with the Labor Party and the Liberal Party.

The Hon. Dr SARAH KAINE: Okay. So it's a cost implication?

BENN BANASIK: Absolutely.

The Hon. Dr SARAH KAINE: The key thing is, just so I understand, it's a cost implication for selling it.

BENN BANASIK: Yes.

The Hon. CAMERON MURPHY: I just wanted to say, first of all, thank you very much for sharing your personal experience and for coming along today to give evidence. One of the issues that's been raised in other evidence but also touched on today in your evidence is the practical difficulty in the workplace and on the roads in determining the difference between the mere presence of cannabis and impairment. I wonder if you can expand on that and if you know of any practical measures that have been utilised anywhere else in the world that's been able to make that an easy determination. You said earlier you talked to the doctor and that people would follow the doctor's advice. I'm just thinking of this from the other perspective, of law enforcement or employers in the workplace. Is there some other way to determine impairment, simply, rather than just the presence in the system?

BENN BANASIK: The only way to do it would be through a sobriety test, and I know that a number of American states have looked at that for their driving laws as they've legalised cannabis. Because there is no other way to measure whether an individual is impaired more so than another. However, I would say that no person is tested whether they are impaired if they are on opioids or on anti-depressants. No person is.

The Hon. CAMERON MURPHY: So you are highlighting that discrimination between people on medication using the roads?

BENN BANASIK: Absolutely. Because I can get both from the same doctor; it's the same pain specialist doctor. Just one is cannabis and it's a class 4 drug, and that's the way it is—it's got a disparity of the treatment of how it is in New South Wales—and one is not. One is represented by big pharma and one is not.

The Hon. CAMERON MURPHY: As a second question, I just wondered whether you could provide us with some evidence about your experience accessing medicinal cannabis. We heard evidence earlier today about, for example, whether there should be cooperatives where people can grow it themselves or changes to regulations to grow it at home, because of some of the difficulties for people in accessing that medicinal cannabis

because of both the cost and the practical impediments in doing so. I just wondered what your experience is like and if you can let us know.

BENN BANASIK: It's very expensive. My wife would be very happy that you've asked that question, because she said the first thing I should bring up is the cost to this panel. I said, "No, that's a Federal thing, sorry. You'll have to go to a Federal panel if you want to do that." She is not interested in me going there, so anyway. It's very expensive. I don't take the full dosage of what I need to because I try and push down the amount that I need to. If I was going to pay the full rate and be on everything that I am prescribed, it would be in excess of about $2,500 per month. I'm currently paying over $900 per month. That's excluding if there is a vaporiser that needs to be replaced. Now I will be looking at more fees because of the Federal laws that have come in.

The restriction on it in that regard is very, very difficult. I still wouldn't go and plant plants. Even if those laws came in place in New South Wales, that wouldn't be for me. I'm not a grower in that regard; I'm not a farmer in that regard. I have a very small block. I have no interest in that. I'm an inside-type person. The costing for what is tantamount to plants for individuals is very, very high. There is no coverage for patients by the Federal Government. It's not covered by anything, regardless of what you are prescribed it for. I have to pay the full rate. So it is very, very restrictive in that regard. I would be very supportive of a model of having cooperatives and seeing it cheaper and then, if there is a legalised framework, having a higher tax. As a patient, I would see that that would be fair, as patients wouldn't be taxed in that regard. But that's not my place to say. I'm here only speaking on the medicinal front.

The Hon. CAMERON MURPHY: Is one of the problems that you have a very small number of large corporate entities that are effectively controlling that legalised market? Is that the issue that's creating that cost?

BENN BANASIK: No. There's a price fixing that's happening. My doctor speaks often about it. He has people that come from a number of different companies to present to him the different types. They're all ranging around the same price. The price was initially based upon what the black market was, which was roughly $25 or $20 per gram. Then it dropped from that when there was a flood into the marketplace of different types of products. The rarer products are not as cheap. For the products that are out there more, with companies competing with each other because it's a plant, we're actually finding a drop in those prices. For some of the high-end oils that I need, those prices are not going down at all. I would imagine that's what the marketplace will do if it is legalised on that front. The reasoning for the high costing, I think, is this arrangement of these companies of having it in that level. Until there is an increase, there won't be a further decrease in price.

The Hon. JACQUI MUNRO: Can I clarify something that you said about antidepressants and the use of cannabis? Are you saying that they have the same mind-altering impact on your state of mind, or impairment or non-impairment?

BENN BANASIK: Yes. For medicinal uses, yes.

The Hon. JACQUI MUNRO: There's no psychoactive ingredient.

BENN BANASIK: No, there is no psychoactive, unfortunately. It is what it is. However, on antidepressants, I can tell you I would not be able to do my job. I have taken antidepressants once in my life, a long, long time ago. I did not like the person that I was for those couple of weeks. I was non-functional. To take opioids as I did for those first months in my recovery was not the right thing to do to someone for the rest of their life. Absolutely, I would say that it's the same effect of the mind. On the same measure, it should be there, and I think a sobriety test should take place for people on opioids too. If you have a sticker like that on your medication, whether it's an opioid or not, it's the same effect.

The CHAIR: Thank you, Mr Banasik, for your submission, your attendance today and your fearless and frank answers to the questions. We very much appreciate it. If there are any other questions, the secretariat will be in contact to provide those to you on notice. Have a great afternoon.

(The witness withdrew.)

The Committee adjourned at 16:30.