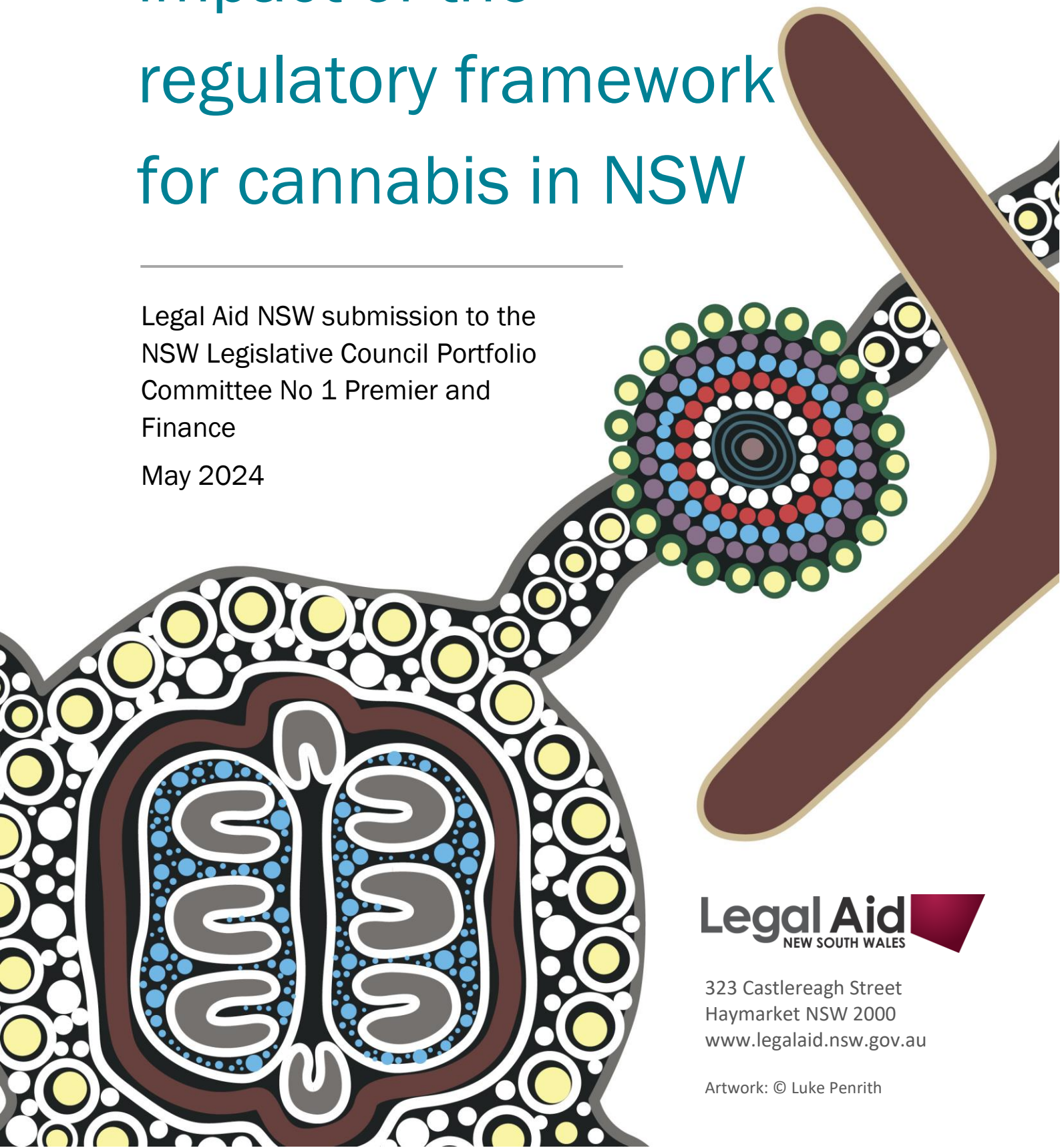


Inquiry into the impact of the regulatory framework for cannabis in NSW

Legal Aid NSW submission to the
NSW Legislative Council Portfolio
Committee No 1 Premier and
Finance

May 2024



Legal Aid
NEW SOUTH WALES

323 Castlereagh Street
Haymarket NSW 2000
www.legalaid.nsw.gov.au

Artwork: © Luke Penrith

Acknowledgement	3
1. About Legal Aid NSW	4
2. Executive summary	5
Recommendations	6
3. Decriminalising the use and possession of prohibited drugs for personal use	7
4. The historical development and impact of the regulatory framework for cannabis in NSW	9
4.1 Medicinal cannabis	9
4.2 The Cannabis Cautioning Scheme and the Early Drug Diversion Initiative	11
4.3 The <i>Young Offenders Act 1997</i>	13
4.4 The criminal offence of 'presence of prescribed illicit drug in person's oral fluid, blood or urine' pursuant to section 111 of the <i>Road Transport Act 2013</i> (NSW) ...	14
6. The impact of prohibition	16
5.1 Criminal records	16
5.2 Health	16
5.3 Aboriginal communities	18
5.4 Lower socioeconomic communities	19
5.5 The criminal justice system	Error! Bookmark not defined.
5.6 Policing practices	Error! Bookmark not defined.
Annexure A- The timeline of the development of the regulatory framework for cannabis in NSW	23

Acknowledgement

We acknowledge the traditional owners of the land we live and work on within New South Wales. We recognise continuing connection to land, water and community.

We pay our respects to Elders both past and present and extend that respect to all Aboriginal and Torres Strait Islander people.

Legal Aid NSW is committed to working in partnership with community and providing culturally competent services to Aboriginal and Torres Strait Islander people.

1. About Legal Aid NSW

The Legal Aid Commission of New South Wales (**Legal Aid NSW**) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW). We provide legal services across New South Wales through a state-wide network of 25 offices and 243 regular outreach locations, with a particular focus on the needs of people who are socially and economically disadvantaged. We offer telephone advice through our free legal helpline LawAccess NSW.

We assist with legal problems through a comprehensive suite of services across criminal, family and civil law. Our services range from legal information, education, advice, minor assistance, dispute resolution and duty services, through to an extensive litigation practice. We work in partnership with private lawyers who receive funding from Legal Aid NSW to represent legally aided clients.

We also work in close partnership with community legal centres, the Aboriginal Legal Service (NSW/ACT) Limited and pro bono legal services. Our community partnerships include 27 Women's Domestic Violence Court Advocacy Services, and health services with a range of Health Justice Partnerships.

The Legal Aid NSW Family Law Division provides services in Commonwealth family law and state child protection law. Specialist services focus on the provision of family dispute resolution services, family violence services, services to Aboriginal families and the early triaging of clients with legal problems through the Family Law Early Intervention Unit. Legal Aid NSW provides duty services at all Family and Federal Circuit Court registries and circuit locations through the Family

Advocacy and Support Service, all six specialist Children's Courts, and in some Local Courts alongside the Apprehended Domestic Violence Order lists. Legal Aid NSW also provides specialist representation for children in both the family law and care and protection jurisdictions.

The Civil Law Division provides advice, minor assistance, duty and casework services from the Central Sydney office and most regional offices. The purpose of the Civil Law Division is to improve the lives of people experiencing deep and persistent disadvantage or dislocation by using civil law to meet their fundamental needs. Our civil lawyers focus on legal problems that impact on the everyday lives of disadvantaged clients and communities in areas such as housing, social security, financial hardship, consumer protection, employment, immigration, mental health, discrimination and fines. The Civil Law practice includes dedicated services for Aboriginal communities, children, refugees, prisoners and older people experiencing elder abuse.

The Criminal Law Division assists people charged with criminal offences appearing before the Local Court, Children's Court, District Court, Supreme Court, Court of Criminal Appeal and the High Court. The Criminal Law Division also provides advice and representation in specialist jurisdictions including the State Parole Authority and Drug Court.

Should you require any further information, please contact:
Ruth Carty
Senior Law Reform Officer, Strategic Law Reform Unit
Ruth.Carty@legalaid.nsw.gov.au

2. Executive summary

Legal Aid NSW assists many clients with matters associated with drug use before the NSW criminal courts. A significant portion of these drug related charges involve conduct that does not put the general public at risk (i.e. drug possession).

Legal Aid NSW has previously made detailed submissions on the legal and social issues arising out of the criminalisation of the personal possession and use of drugs (**criminalisation**), including to the Special Commission of Inquiry into the Drug 'Ice' (Ice Inquiry) in May 2019¹, and to the Legislative Council Inquiry into the provision of drug rehabilitation services in regional, rural and remote NSW in December 2017.² In these submissions we supported decriminalising the possession of drugs for personal use and dealing with problematic drug use as a social and health issue, rather than a criminal justice issue.

Legal Aid NSW continues to support decriminalising the possession of drugs for personal use (**decriminalisation**) and argues decriminalisation will reduce discrimination of vulnerable communities and result in measurable savings in health costs, social costs and costs to the justice system.³

We consider the current regulatory framework for cannabis in NSW is not an appropriate alternative to decriminalisation. Specifically we have observed:

- the current regulatory framework results in disproportionate harms to Aboriginal people, people from low socioeconomic backgrounds and people from regional areas
- obtaining medicinal cannabis is cost prohibitive for many Legal Aid NSW clients
- criminalisation leads to stigma which acts as a barrier to accessing treatment
- the negative consequences of having a criminal record for drug possession for personal use ("**simple possession**") are disproportionate to the harms caused by the conduct
- the criminal offence of driving with the presence of an illicit drug present⁴ disproportionately impacts on people from rural and remote areas and targets recreational drug users as traffic offenders without the sufficient evidence that it improves road safety, and
- the Cannabis Cautioning Scheme (**CCS**) eligibility criteria is too narrow and affords NSW Police Force (**NSWPF**) too much discretion resulting in unequal application.

Legal Aid NSW recommends NSW Government legislate to decriminalise the possession of prohibited drugs for personal use. In the alternative, we make several recommendations to improve the current regulatory framework for cannabis in NSW.

¹ Legal Aid NSW, submission to the Special Commission of Inquiry into the Drug 'Ice', Issues Paper 2 – Justice, (May 2019).

² Legal Aid NSW, submission to NSW Parliament Legislative Council, Inquiry into the provision of drug rehabilitation services in regional, rural and remote NSW, (December 2017).

³ Ritter, Decriminalisation or legalisation: injecting evidence in the drug law reform debate, National Drug and Alcohol Research Centre (NDARC), 22 April 2016.

⁴ Pursuant to the *Road Transport Act 2013* (NSW) s 11.

Recommendation

Recommendation 1

NSW Government should adopt recommendation 11 of the Ice Inquiry:

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

Recommendation 2

NSW Government should enact legislation to decriminalise:

- possession of a small amount of cannabis for personal use
- cultivation of a small amount of cannabis plants for personal use, and
- supply of a small amount of cannabis, provided it is by way of a gift.

Recommendation 3

As an alternative to recommendation 2, the Therapeutic Goods Administration should review and potentially increase the number of approved medicinal cannabis products on the Pharmaceutical Benefits Scheme to ensure medicinal cannabis is not cost prohibitive.

Recommendation 4

As an alternative to recommendation 1, NSW Government should amend section 8 of the *Young Offenders Act 1997* (NSW) to allow diversion of all possess prohibited drug offences that involve cannabis

Recommendation 5

NSW Government should repeal section 111 of the *Road Transport Act 2013*.

Recommendation 6

As an alternative to recommendation 5, NSW Government should enact legislation to create a legislated defence to an offence under to section 111 of the *Road Transport Act 2013*, if the illicit drug detected is cannabis and the person has a valid prescription for medicinal cannabis.⁵

Recommendation 7

If recommendation 1 is not implemented, NSW Government should amend the *Criminal Records Act 1991* to reduce the period of time before which a conviction for use or possession of a prohibited drug may be spent from 10 years to two years, and in the case of a child or young person, from three years to one year.

Recommendation 8

NSW Government should evaluate the costs to the criminal justice system associated with criminalising cannabis use and compare these costs against resources allocated to detoxification and rehabilitation services, with the view to diverting some of those costs from the criminal justice system to preventative measures.

⁵ For example, the proposed amendment to the *Road Transport Act 2013* (NSW), as set out in the *Road Transport Amendment (Medicinal Cannabis - Exemptions from Offences) Bill 2021*.

3. Decriminalising the use and possession of prohibited drugs for personal use

In NSW, simple possession of prohibited drugs is an offence punishable by imprisonment.⁶ This is intended to reduce the supply and demand for drugs. However, it is increasingly recognised that criminalisation of simple possession does not achieve this goal.⁷ The Ice Inquiry recently commented:

At least 26 countries, including Switzerland, Denmark, Brazil, France, Germany, Portugal and 11 states in the United States have decriminalised simple possession of drugs in some form...

Global attitudes to drug use are changing. There is growing recognition that punitive approaches to drug use are counterproductive. International health and human rights organisations, as well as those in the drug and alcohol sector, advocate for a more humanitarian, health-based approach to drug use.⁸

Legal Aid NSW continues to support decriminalisation.⁹ We consider decriminalisation would reduce harm to individuals and communities, reduce the barriers to accessing treatment, and allow drug use to be treated primarily as a health issue with complex social determinants rather than as a criminal justice issue.

Recommendation 1

NSW Government should adopt Recommendation 11 of the Ice Inquiry:

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

The provisions of the Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023

Legal Aid NSW considers the harms associated with cannabis use are often less than those associated with other illicit drug use. We therefore support the *Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023 (the Bill)* which is currently before the NSW Parliament and consider the provisions of the Bill are appropriate.

The Bill would amend the *Drug Misuse and Trafficking Act 1985 (DMTA)* to make it lawful for:

⁶ *Drug Misuse and Trafficking Act 1985* (NSW) s 10

⁷ D Howard, *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants* (Final Report, 2020) Vol 1a.

⁸ *Ibid* Vol 1a, p XXXi

⁹ Decriminalisation is not the same as legalisation. In the case of legalisation, it is lawful to manufacture, produce and trade drugs in a legitimate market. In contrast, decriminalisation of simple possession does not involve the decriminalisation of other drug offences such as supply for monetary gain and manufacture.

1. an adult to possess small quantities (up to 50 grams) of cannabis for personal use
2. an adult to cultivate not more than 6 cannabis plants for personal use, and
3. an adult lawfully in possession of cannabis to give the cannabis, by way of a gift, to another adult.

Similar measures relating to possession and cultivation have been operating in the ACT since 2020¹⁰ and in Canada since 2018.¹¹ However we note neither jurisdiction has decriminalised the gifting of cannabis to others.

The results of the National Drug Strategy Household Survey 2022–2023 indicate that the ACT reforms are working well. This study showed:

- the use of cannabis in the ACT remained stable¹²
- the use of cannabis in the ACT was lower than the rest of Australia, and
- people in ACT were much less likely to obtain cannabis from other people.¹³

Recommendation 2

- NSW Government should enact legislation to decriminalise:
 - possession of a small amount of cannabis for personal use
 - cultivation of a small amount of cannabis plants for personal use, and
 - supply of a small amount of cannabis, provided it is by way of a gift.

¹⁰ *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018* (ACT)

¹¹ *Cannabis Act* (S.C. 2018, c. 16)

¹² In 2022–2023, 8.7 percent of people reported using cannabis in the previous 12 months, consistent with use since 2007 which has ranged between 8.4 percent and 10.5 percent.

¹³ The proportion sourcing from friends was 48 percent, down from 68 percent in 2019, and the proportion of people sourcing cannabis from a dealer was 18.8 percent, from 18.3 percent in 2019.

4. The historical development and impact of the regulatory framework for cannabis

This section discusses the development and implementation of:

- the regulations around the use of medicinal cannabis
- the CCS and the newly established Early Drug Diversion Initiative
- the *Young Offenders Act 1997*, and
- the criminal offence of 'presence of prescribed illicit drug in person's oral fluid, blood or urine' pursuant to section 111 of the *Road Transport Act 2013* (NSW).

A timeline of the development of the regulatory framework for cannabis in NSW is set out at **Annexure A**.

4.1 Medicinal cannabis

In 2016 the Australian Government amended the *Narcotic Drugs Act 1967* (Cth)¹⁴ to allow the supply of medicinal cannabis products for the management of patients with certain medical conditions.¹⁵

In NSW medicinal cannabis can be prescribed by specialist and GPs with specialist support, through the Therapeutic Goods Administration's (TGA's) Special Access Scheme Application.¹⁶

At present, only one medicinal cannabis product is approved by the TGA, and therefore only one medicinal cannabis product is listed on the Therapeutic Benefits Scheme (PBS).¹⁷ However there are mechanisms that allow access to unapproved medicines in certain situations and the TGA currently offers guidance for the use of medical cannabis in the treatment of epilepsy, multiple sclerosis, chronic non-cancer pain, chemotherapy-induced nausea and vomiting in cancer, and palliative care.¹⁸

Because most medicinal cannabis is not subsidised by the PBS the cost of it is prohibitive for many of our clients.

¹⁴ *Narcotic Drugs Legislation Amendment Act 2016* (Cth).

¹⁵ In NSW, access to medicinal cannabis is also governed by the following legislation:

- *Poisons and Therapeutic Goods Act 1966* (NSW)
- *Drug Misuse and Trafficking Act 1985* (NSW)
- *Children and Young Persons (Care and Protection) Act 1998* (NSW)¹⁵
- *Guardianship Act 1987* (NSW), and
- *Poisons and Therapeutic Goods Regulation*.

¹⁶ In general, GPs can only gain access to medicinal cannabis products through the Special Access Scheme (SAS), often with the support of a specialist treating the medical condition. GPs making an application through the SAS must be able to demonstrate evidence of the benefits of the proposed treatment with a medicinal cannabis product, and that all other treatment options have failed. A treatment plan and ongoing monitoring plan must also accompany the application. SAS approvals are generally valid for 12 months, after which the application process must be repeated for treatment continuity- Therapeutic Goods Administration. [Access to medicinal cannabis products](#). Canberra: TGA, 2017. [Accessed 5 March 2018].¹⁶

¹⁷ This medicine is nabiximols, a treatment of spasticity in multiple sclerosis.

¹⁸ The Australian Government Department of Health, Therapeutic Goods Administration, '*Guidance for the use of medicinal cannabis in Australia: Patient information*', (Brochure, December 2017).

Purchasing medicinal cannabis is often more expensive than purchasing a similar product illegally. Our clients from low-socioeconomic backgrounds who suffer from neurological pain, epilepsy, PTSD, anxiety and a wide range of other chronic conditions, cannot afford the hundreds of dollars needed for a medicinal cannabis prescription. In practice, this means that despite having a valid prescription, some obtain cannabis illegally. The below case study provides an example of this.

Case Study: Joe's story

Legal Aid NSW represents Joe, a 37-year-old single father. Joe works part time as a gardener.

Joe was diagnosed with spondylolisthesis in his teens and has struggled with severe back pain ever since. Joe has been prescribed opioid pain medication since his late teens, which has led to an increase in his tolerance, requiring stronger doses. Joe develops a prescription opioid addiction.

Due to these concerns Joe books an appointment with the only doctor in his regional area who can prescribe medicinal cannabis. The appointment is not bulk billed. The doctor provides Joe with a prescription for medicinal cannabis for pain relief.

Unfortunately the cost of the medicinal cannabis is more than the PBS subsidised opioids and Joe cannot afford to get the prescription filled.

Despite having a prescription Joe begins to grow his own cannabis illegally.

Joe is eventually raided by NSWPF who locate ten cannabis plants. Joe is arrested, charged with cultivating a prohibited plant, and placed on bail.

Joe ultimately pleads guilty and receives a community corrections order and a conviction.

The above case study also highlights that only a small number of doctors can prescribe medicinal cannabis. Many of them do not bulk bill. People in rural and regional areas often have to travel significant distances to consult with a prescribing doctor. The cost and practical difficulties involved with obtaining a prescription unfortunately place medicinal cannabis beyond the reach of many vulnerable people with chronic conditions. This in turn leaves vulnerable people at greater risk of criminalisation.

The decriminalisation of the cultivation of a small number of cannabis plants for personal use (as proposed in recommendation 2 and by the *Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023*) would largely address the issue of access and inequality. As an alternative, we recommend the TGA consider increasing the number of approved medicinal cannabis products on the PBS.

Recommendation 3

- As an alternative to recommendation 2, the Therapeutic Goods Administration should review and potentially increase the number of approved medicinal cannabis products on the Pharmaceutical Benefits Scheme to ensure medicinal cannabis is not cost prohibitive.

4.2 The Cannabis Cautioning Scheme and the Early Drug Diversion Initiative

The CCS was developed following the 1999 NSW Drug Summit. It commenced in 2000 and is operated by the NSWPF. It allows NSWPF to exercise their discretion and issue a caution if certain criteria are met.

The governing legislation does not set out an eligibility criteria other than that the offence involves the possession of no more than 30 grams of cannabis for personal use.¹⁹ However, the eligibility criteria for the CCS is restricted by an internal NSWPF document titled *Cannabis cautioning scheme: Guidelines for police (NSWPF Guidelines)*.²⁰ The NSWPF Guidelines eligibility criteria provides:

1. the offender used or possessed not more than 30 grams of dried cannabis and/or possessed equipment for the use of cannabis²¹
2. the offender is an adult²²
3. the cannabis was for personal use
4. no other offence was detected for which a brief of evidence is required, and
5. the offender has no prior convictions of serious drug offences²³ unless the prior conviction is spent.²⁴

The NSWPF Guidelines allows NSWPF to issue two cautions to an offender. After the cautions have been exhausted, NSWPF are required to formally charge and prosecute the individual if they are caught with cannabis again.

The CCS is discretionary and NSWPF are still able to formally charge an offender, even if they fit within the above criteria.

¹⁹ The legislative basis for the CCS is:

1. Schedule 4 of the *Criminal Procedure Regulations 2017* (NSW) makes possession of a small quantity (up to 30 grams) of cannabis leaf (and possession of equipment for the use of cannabis) an offence for which a penalty notice can be issued.¹⁹
2. Section 19A of the *Fines Act 1996* (NSW) allows official an official caution to be given instead of a penalty notice.

²⁰ NSW Police Force, State Crime Command, *Cannabis Cautioning Scheme Guidelines for Police* (Guidelines, April 2024).

²¹ In February 2024 Cannabis Cautioning Scheme Guidelines were amended to increase of the maximum cannabis threshold eligible for a caution from 15 grams to 30 grams: the CCS was updated in order to operate alongside the Early Drug Diversion Initiative. The previous eligibility criteria for a caution (including the quantity threshold) were updated and streamlined for consistency between the two Schemes. D/2023/668701

²² When dealing with people under 18 years the *Young Offenders Act 1997* (NSW) is applied, instead of the CCS.

²³ "Serious drug offences" include prior convictions (unless spent) for offences in relation to prohibited drugs or controlled substances, such as: • Supply, manufacture, or production • Cultivate or supply a prohibited plant • Possession in whole or in part of manufacture apparatus including a tablet press or drug encapsulator • Import and/or export or conspiracy to • It also includes the possession of prescribed amounts of a precursor chemical and permitting serious drug offending to occur on a premise- NSW Police Force, State Crime Command, *Cannabis Cautioning Scheme Guidelines for Police* (Guidelines, April 2024).

²⁴ After a crime free period of 10 years, most minor offences will be treated as spent- *Criminal Records Act 1991* (NSW)

Legal Aid NSW is generally supportive of the CCS. In 2011, the NSW Auditor General conducted a 10 year review of the scheme.²⁵ It found that over the previous ten years, NSWPF had issued over 39,000 cautions to minor cannabis offenders, saving at least \$20 million in court costs. The review also found that people cautioned for minor cannabis offences were less likely to reoffend than those dealt with by the courts.

However, the level of police discretion currently allowed for in the CCS has been shown to be problematic. In 2020, the NSW Bureau of Crime Statistics and Research found that during a five-year period between 2013 and 2017, NSWPF were four times less likely to issue cautions to Aboriginal people caught with cannabis than their non-Aboriginal counterparts. Additionally, 82 percent of all Aboriginal people caught with a non-indictable amount of cannabis were pursued through the court system, compared to 52 percent of non-Aboriginal people in the same situation.²⁶

A more recent 2023 study completed by BOCSAR also found Aboriginal adults were less likely to receive cannabis cautions than their non-Aboriginal peers.²⁷ While eligibility was a major source of this disparity, an unexplained gap of 2.9 percentage points remained after eligibility criteria was accounted for, with BOCSAR commenting the gap “may arise either because of a difference in how Aboriginal offenders are treated or in other unobserved factors not included in the model”.²⁸

The amount of discretion allowed for in the CCS means there is a risk of inequality in NSWPF practice, leading to certain minorities or regions experiencing greater criminalisation and less diversion. For these reasons, we consider that the CCS is not an appropriate alternative to decriminalisation.

[A note about the Early Drug Diversion Initiative](#)

In 2020 the Ice Inquiry recommended the NSW Government introduce a legislated diversion scheme for lower-level offending, as an alternative to decriminalising the use and possession of prohibited drugs for personal use.²⁹ As a result, in February 2024 the NSW Government established the Early Drug Diversion Initiative (**EDDI**).³⁰ The EDDI enables NSWPF to issue penalty notices for drug possession in a broader range of circumstances³¹ and provides that the penalty notice is taken to be paid if the recipient

²⁵ NSW Auditor-Generals Report, *The Effectiveness of Cautioning for Minor Cannabis Offences*, The Audit Office NSW, (Performance Audit, 2011). This confirmed findings of an evaluation in 2004: Baker, J, and Goh, D, *The Cannabis Cautioning Scheme Three years on: An implementation and outcome evaluation*, (NSW Bureau of Crime Statistics and Research, 2004).

²⁶ Michael McGowan and Christopher Knaus, *NSW police pursue 80% of Indigenous people caught with cannabis through courts* (News article, 10 June 2020).

²⁷ 11.7 percent of Aboriginal people received a caution vs 43.9 percent of non-Aboriginal people- NSW Bureau of Crime Statistics and Research, *Why are Aboriginal adults less likely to receive cannabis cautions?* (Crime and Justice Bulletin: Number 258, June 2023).

²⁸ NSW Bureau of Crime Statistics and Research, *Why are Aboriginal adults less likely to receive cannabis cautions?* (Crime and Justice Bulletin: Number 258, June 2023).

²⁹ D Howard, *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants* (Final Report, 2020) vol 1a, recommendation 12.

³⁰ The EDDI is enabled by the enactment of the *Justice Legislation Amendment (Penalty Notices) Regulation 2024*, which commenced on 29 February 2024.

³¹ Including possess prohibited drug under section 10 of the DMTA of small quantities of illicit drugs other than cannabis leaf, and less than a traffickable quantity of MDMA in tablet form. We note section 10 of the DMTA was prescribed as a penalty notice offence prior to the EDDI commencing, however the EDDI amendment alters the circumstances in which a penalty notice may be issued to an individual in possession of 3,4-Methylenedioxymethylamphetamine (commonly known as MDMA) in certain forms and quantities. The effect of the change is to lower the maximum quantity for which a penalty notice may be issued for possession of MDMA in any form other than capsule or tablet form.

completes a drug health intervention. The EDDI does not apply to cannabis and is intended to operate alongside the CCS.

A person who receives a fine for a low-level drug offence, can either pay the fine, or speak to a nominated health professional over the phone.

Like the CCS, EDDI is not decriminalisation. It is still an offence to possess and use illicit drugs in NSW and NSWPF still retain discretion to proceed by way of a charge. Additionally, the EDDI does not apply to:

- people detected with more than small quantities of illicit drugs
- people detected with more than one type of drug
- people who have already received two fines under the EDDI
- people with prior convictions for serious drug offences
- offences related to cannabis (the CCS applies)
- drug driving offences.

For similar reasons as those expressed in relation to the CCS, we do not view the EDDI as an appropriate alternative to decriminalisation.

4.3 The Young Offenders Act 1997

The CCS is only available to adults. When a person under the age of 18 years is found in possession of cannabis, they can be dealt with under the *Young Offenders Act 1997* (NSW) (YOA), instead of the CCS. The YOA allows a young person charged with certain offences³² to be diverted away from the criminal justice system and instead receive a warning, caution or youth justice conference.

However there is a discrepancy between the eligibility criteria for diversion with respect to a cannabis possession offence under the YOA and the CCS. Whilst the CCS allows for cautions for the possession of an amount of cannabis that does not exceed 30 grams, the YOA only allows for cautions and youth justice conferences if the amount of cannabis does not exceed 15 grams, unless exceptional circumstances exist.³³ The eligibility for diversion for children found in possession of small quantities of prohibited drugs is therefore stricter than it is for adults.

Legal Aid NSW recommends the YOA be amended to expand the eligibility criteria in relation to the possession of cannabis to ensure it encourages diversion in situations where an adult would be eligible for diversion.

Recommendation 4

- As an alternative to recommendation 1, the NSW Government should amend section 8 of the *Young Offenders Act 1997* (NSW) to allow diversion of all possess prohibited drug offences that relate to cannabis.

³² *Young Offenders Act 1997* (NSW), s 8.

³³ *Ibid* s 8(2)(e1) and 8(2A)(b)

4.4 The criminal offence of ‘presence of prescribed illicit drug in person’s oral fluid, blood or urine’ pursuant to section 111 of the *Road Transport Act 2013* (NSW)

Since the introduction of the offence of driving with the presence of prescribed illicit drug in person’s oral fluid, blood or urine³⁴ (**drive with illicit drug present**) Legal Aid NSW has seen a significant number of these offences in the Local Court of NSW, with a disproportionate impact on people from regional and rural areas where access to public transport is severely restricted.

The offence is based on the mere presence of a drug in a person’s saliva and does not require the accused’s ability to drive to be impaired. The current roadside testing devices do not ascertain the level of drug present in a person’s body and a positive reading can be registered if tiny traces of the substance are detected. The offence carries substantial penalties including heavy fines and loss of driver licence.³⁵

In 2016 the Local Court at Lismore found an accused had not consumed cannabis for ‘at least nine days prior’ to testing positive for driving with an illicit drug (cannabis) present.³⁶ In that same case, a NSWPF officer gave evidence that he ‘believed the equipment detected cannabis three to four days after use’.³⁷ Whether cannabis can be detected for as long as nine days after use, or as little as three days after use, it is concerning that random detection, days later and in the absence of any evidence of intoxication or impaired driving, still gives rise to absolute liability and potential loss of driver licence.

Legal Aid NSW is not aware of any evidence that suggests roadside testing has made NSW roads safer. Without that evidence and having regard to the negative impact loss of licence can have on people, especially those unable to access other means of transportation, Legal Aid NSW considers that this offence should be repealed. We note that the repeal of this offence would not impact the ability to prosecute conduct that involves driving while impaired by a drug. Section 112 of the *Road Transport Act 2013* (NSW) contains the offence of driving under the influence of alcohol or any other drug, which relies on the perceived impairment of a driver. This offence captures all drugs listed under schedule 1 of the DMTA, including cannabis, methamphetamine, cocaine and methylenedioxymethamphetamine (**MDMA**).

Recommendation 5

- NSW Government should repeal section 111 of the *Road Transport Act 2013* (NSW).

An alternative to repeal: an exception for medicinal cannabis

In the alternative, we suggest that section 111 be amended to create a defence to an offence of drive with illicit drug present if the only drug detected is cannabis and the

³⁴ Pursuant to the *Road Transport Act 2013* (NSW), s 111.

³⁵ A first-time offence can result in a 3-month driver licence disqualification and an on-the-spot fine of \$572. This means an offender avoids going to court. However, if a first-time offender decides to challenge the matter in court, it can result in a fine of \$2,200 and a 6-month driver licence disqualification period. A second or subsequent offence carries a \$3,300 fine with a 12-month disqualification period.

³⁶ Unreported, Lismore Local Court of New South Wales, Heilpern Mag, (1 February 2016)

³⁷ Ibid [15].

cannabis is medically prescribed,³⁸ similar to the defence which already exists with respect to morphine which is consumed for “medicinal purposes”.³⁹ This would enable individuals who consume medicinal cannabis on a regular basis to continue to drive without committing an offence.

We note that there is currently a private members bill before NSW Parliament titled the *Road Transport Amendment (Medicinal Cannabis) Bill 2023* which proposes to enact such a defence.⁴⁰ Legal Aid NSW supports this Bill.

Recommendation 6

- As an alternative to recommendation 5, NSW Government should enact legislation to create a legislated defence to an offence pursuant to section 111 of the *Road Transport Act 2013* (NSW), if the illicit drug detected is cannabis and that cannabis is medically prescribed.⁴¹

³⁸ We note a similar defence exists in Tasmania, pursuant to the *Road Safety (Alcohol and Drugs) Act 1970* (TAS) s 6A(2).

³⁹ *Road Transport Act 2013* (NSW) s 111(5) and 111(6).

⁴⁰ *Road Transport Amendment (Medicinal Cannabis) Bill 2023* (NSW).

⁴¹ For example, the proposed amendment to the *Road Transport Act 2013* (NSW), as set out in the *Road Transport Amendment (Medicinal Cannabis - Exemptions from Offences) Bill 2021* (NSW).

5. The impact of prohibition

There is increasing recognition that the criminalisation of the possession of drugs for personal use is associated with extensive harms. The Ice Inquiry commented:

Contact with the criminal justice system, including having a criminal conviction for simple possession, is directly associated with adverse impacts on employment, earning prospects, access to housing, access to treatment, relationships and wellbeing. The criminalisation of simple possession is a powerful source of stigma, which has a serious impact on the physical and mental health of people who use drugs, as well as their willingness to seek help.⁴²

Criminalisation also results in considerable costs to law enforcement and the criminal justice system.

5.1 Criminal records

In our experience, most instances of cannabis use that come before the NSW criminal courts are occasional, and pose little harm to offenders and the community. Legal Aid NSW agrees with the Ice Inquiry finding that “the negative consequences of having a criminal record for simple [drug] possession are completely disproportionate to the underlying conduct”.⁴³

A criminal conviction against a person’s name typically has negative implications on their current and future employment, accommodation and international travel.

As an alternative to decriminalisation, we support recommendation 18 of the Ice Inquiry, that the period of time before which a conviction for use or possession of a prohibited drug may be spent is reduced from 10 years to two years, or in the case of a child or young person, from three years to one year. We note that the NSW Government response to the Ice Inquiry supported reducing the period of time before which a conviction for possession of a prohibited drug may be spent, from 10 years to five years for adults, subject to further consultation with stakeholders. As at May 2024 Legal Aid NSW have not been consulted on such a proposal.

Recommendation 7

- If recommendation 1 is not implemented, NSW Government should amend the *Criminal Records Act 1991* (NSW) to reduce the period of time before which a conviction for use or possession of a prohibited drug may be spent from 10 years to two years, and in the case of a child or young person, from three years to one year.

5.2 Health

The reasons for drug use can be multifaceted and complex. We have observed that for many of our clients, drug use is a way to self-medicate to treat underlying mental health conditions. Addressing their drug use often requires medical intervention that also treats their mental health conditions.

⁴² D Howard, *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants* (Final Report, 2020) Vol 1a,p xxxiv.

⁴³ Ibid.

However criminalisation can act as a barrier to accessing treatment.⁴⁴ The Ice Inquiry found:

- the criminalisation of drug use is a major cause of stigma
- stigma prevents many people from accessing the treatment and services they urgently need, and
- stigma can affect the way people are treated in health services and makes them reluctant to seek help.⁴⁵

Legal Aid NSW has observed clients reluctant to attend medical professionals to seek assistance with cessation as they fear stigma, criminalisation or other negative consequences. The same concerns are not present when seeking support to cease alcohol or nicotine use. A reluctance to disclose illicit drug use leads clients to attempt to quit without professional support, reducing their chances of success.⁴⁶

Decriminalisation will remove many of these barriers and assist people to speak openly to health professionals about their cannabis use.

The effect of imprisonment on health

Criminalisation and the resulting imprisonment can also have serious implications for a person's health. Drugs are readily available and widely used in NSW correctional centres.⁴⁷ Legal Aid NSW has observed that clients often become exposed to other substances in custody that they might not have been in contact with in the community.⁴⁸

Drug use in custody, particularly intravenous use, is a risk behaviour in the transmission of blood-borne viruses. In data provided to the Ice Inquiry, Justice Health estimated the prevalence of hepatitis C in NSW custodial settings was 40 percent (compared to 1 percent in the community).⁴⁹ In addition to blood-borne virus transmission, people who inject drugs are at risk of a range of conditions relating to bacterial infections of the heart (endocarditis), lungs (pneumonia), bones (osteomyelitis) and skin (pustules and abscesses).⁵⁰ Decriminalisation would prevent those charged with only drug possession from being exposed to these harms.

We also note prisoners often experience suboptimal care and delay accessing basic medical care. The common concerns raised by our clients include significant delay in:

- accessing appointments with a nurse, GP, psychiatrist or psychologist
- receiving their prescribed medications
- accessing diagnostic tests, facilities or equipment.

⁴⁴ D Howard, *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants* (Final Report, 2020) Vol 1a, p.xxvii.

⁴⁵ Ibid.

⁴⁶ We note the National Cannabis Prevention and Information Centre, *what's the deal on quitting: a do it yourself guide to quitting cannabis* (brochure, undated) (available [here](#)) can be a helpful resource.

⁴⁷ D Howard, *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants* (Final Report, 2020) Vol 1a.

⁴⁸ Including, for example, buprenorphine, amphetamines and methadone.

⁴⁹ D Howard, *Report of the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants* (Final Report, 2020) Vol 1a.

⁵⁰ Ibid Vol 1a, p 202

The below case study highlights some of the impacts of delayed and suboptimal health care in prison.

Case Study: Denni's story

Denni is a 60-year-old European national in custody for serious drug offences. Denni suffers from multiple medical problems including:

- heart disease with severe cardiac dysfunction
- coronary artery disease
- chronic lower back pain (due to a historical spinal injury)
- urinary and bowel incontinence, and
- depression, anxiety and sleeplessness.

After a period on remand Denni was sentenced to a term of imprisonment. Denni received a significant reduction in his head sentence and non-parole period due to evidence of considerable hardship in custody relating to dangerous gaps in medication provision, inadequate pain relief, humiliating and degrading treatment, and delayed pacemaker reviews. In sentencing remarks the court commented Denni had suffered “a very justifiable level of anxiety” due to “a risk of sudden death” and “conditions of custody that have entailed very considerable medical peril to his life.”

The Judge’s concluding remarks were that inadequate treatment “resulted in hardship amounting to punishment over and above what is intended to be inherent in the denial of his liberty and what reasonable people would expect to exist within the required rigours of a prison environment”.

As the Ice Inquiry points out:

“In NSW, less than 2% of people serve life sentences; the balance of the prison population will be released back to the community. The high level of contact between inmates exiting custody and the general community means the health and wellbeing of prisoners is also a measure of the health and wellbeing of the broader community.”⁵¹

We support decriminalisation, along with improved access to health care, drug rehabilitation and psychological services in correctional facilities.

5.3 Aboriginal communities

The Ice Inquiry found Aboriginal people face additional and specific barriers to seeking and accessing health, treatment and rehabilitation services, including the legacy of the Stolen Generations and fear of child removals, fear and distrust of government services, racism, the lack of culturally safe services and the necessity of separating from Country and family to access treatment services.⁵²

⁵¹ Ibid Vol 1a, p xlix

⁵² Ibid Vol 1a, p xviii.

The Ice Inquiry also observed the criminalisation has a disproportionate impact on Aboriginal people, including through the high prevalence of secondary offending associated with the imposition of fines for low-level drug offences.⁶

Target 11 of the National Agreement on Closing the Gap (**CTG Agreement**) aims to reduce the rate of Aboriginal and Torres Strait Islander adults incarcerated by at least 15 percent by 2031.⁵³ Based on the most recent year of data, this target is not on track to be met in New South Wales.⁵⁴

In fact, as at September 2023, the data shows a 7 percent increase in the percentage of Aboriginal adults in prison when compared to figures from September 2021.⁵⁵ This trend is in contradiction to the commitments made under the CTG agreement. In NSW Aboriginal adults make up 3.5 percent of the general population, however Aboriginal men now account for 29.4 percent of the adult prison population, while Aboriginal women comprise 37.9 percent of the female prison population.⁵⁶

Data cited in the second reading speech for the *Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023* indicates that Aboriginal people are involved in 35 per cent of cannabis interactions with NSWPF.⁵⁷ This is concerning given BOCSAR's findings about NSWPF's use of discretion under CCS in relation to Aboriginal people (discussed above). Decriminalisation would reduce the interaction of Aboriginal people with NSWPF and the criminal justice system, and therefore assist to achieve Target 10 of the CTG agreement.

5.4 Lower socioeconomic communities

The Centre for Policy Development has completed a study on the relationship between disadvantage and the criminal justice system, and concluded that the criminal justice system compounds existing disadvantage, creates additional disadvantage, and traps a growing number of Australians, their families and communities in cycles of disadvantage.⁵⁸ Criminal convictions disproportionately impact on socially disadvantaged individuals as their already limited opportunities are further reduced, increasing their likelihood of recidivism. Any contact with the criminal justice system, even short periods in remand, or contact via a parent, is associated with poorer outcomes for families and communities.⁵⁹

Legal Aid NSW is concerned about the compounding and disproportionate effect of criminalisation on people from low socioeconomic communities, particularly when they

⁵³ Closing the Gap Targets and Outcomes', *Closing the Gap* (Webpage, May 2024) <<https://www.closingthegap.gov.au/national-agreement/targets>>.

⁵⁴ NSW Bureau of Crime Statistics and Research, *New South Wales Criminal Justice Aboriginal overrepresentation: Quarterly update- Aboriginal Adults* (Report, September 2023). See also Productivity Commission, 'Socioeconomic outcome area 10 - Aboriginal and Torres Strait Islander adults are not overrepresented in the criminal justice system', *Closing the Gap Information Repository - Productivity Commission* (Web Page, 29 June 2022) <<https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area10>>.

⁵⁵ NSW Bureau of Crime Statistics and Research, *New South Wales Criminal Justice Aboriginal overrepresentation: Quarterly update- Aboriginal Adults* (Report, September 2023).

⁵⁶ Ibid.

⁵⁷ Legislative Council Hansard, 29 November 2023, Second Reading Speech: *Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023* (NSW).

⁵⁸ Centre for Policy Development, *Partners in Crime: the relationship between disadvantage and Australia's criminal justice systems* (Report, December 2020) 6.

⁵⁹ Ibid.

may be unable to access medicinal cannabis given it is often cost prohibitive (discussed above).

5.5 The criminal justice system

In Legal Aid NSW's experience, drug possession and drug driving matters that relate to cannabis make up a sizeable portion of the Local Court workload. Decriminalisation would result in measurable savings to the criminal justice system⁶⁰ including savings on court and legal resources, and reduction in prison overcrowding.⁶¹

Legal Aid NSW supports a justice reinvestment approach to addressing the impact of drug use in NSW. We recommend that the NSW Government evaluate the costs to the criminal justice system associated with criminalising cannabis use and compare these costs against resources allocated to detoxification and rehabilitation services, with the view to diverting some of those costs from the criminal justice system to preventative measures.

Recommendation 8

- NSW Government should evaluate the costs to the criminal justice system associated with criminalising cannabis use and compare these costs against resources allocated to detoxification and rehabilitation services, with the view to diverting some of those costs from the criminal justice system to preventative measures.

5.6 Policing practices

Enforcement of criminalisation of drug possession results in significant costs to law enforcement.⁶² Decriminalising would reduce law enforcement costs and free up NSWPF time, allowing them to focus on serious crime.⁶³

Legal Aid NSW is also concerned about the policing practices used to detect drug possession, particularly routine searches, systematic searches and strip searches in public.

The power of NSWPF to stop and search people without a warrant is limited by statute and case law.⁶⁴ In short, NSWPF must have a 'reasonable suspicion' before they can stop and search a person.⁶⁵

⁶⁰ Ritter, *Decriminalisation or legalisation: injecting evidence in the drug law reform debate* (National Drug and Alcohol Research Centre research report, 22 April 2016).

⁶¹ Global Commission on Drug Policy, *Advancing Drug Policy Reform: A New Approach to Decriminalisation* (Research 2016), 21.

⁶² We note the Second Reading Speech for the *Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023* (NSW) quoted information that said more than \$1.7 billion was spent on cannabis-related law enforcement in 2015-16.

⁶³ Global Commission on Drug Policy, *Advancing Drug Policy Reform: A New Approach to Decriminalisation* (Research 2016), 21.

⁶⁴ *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) ss 21 and 36. See also *R v Rondo* [2001] NSWCCA 540.

⁶⁵ *R v Rondo* [2001] NSWCCA 540. In this case the court held at [53]:

- A reasonable suspicion involves less than a reasonable belief but more than a possibility.
- Some factual basis for the suspicion must be shown. The suspicion may be based on hearsay material or materials which may be inadmissible in evidence, but the material must have some probative value.

We are concerned about routine searches at locations NSWPF may designate as connected with drugs (for example a train station or plaza) where the basis for the search is not a reasonable suspicion relating to the particular person, but merely their presence in a certain location.⁶⁶

We are also concerned that people who have prior convictions for low level drug offences are regularly referred to as “known to police”, and that NSWPF regularly seek to use this information against them as grounds for forming a reasonable suspicion. While information about prior convictions is not sufficient ground alone, in our experience this is a typical starting point, with other “surrounding circumstances” added to the picture retrospectively if a search does in fact turn up prohibited drugs.⁶⁷

The use of strip searches, which are most frequently justified as searches for drugs, is particularly concerning. We agree with the Ice Inquiry that use of strip searches is a disproportionate response to determine whether a person is in possession of a prohibited drug for personal use. We consider such searches as overly intrusive and often unnecessary.

There have been a number of instances of large scale NSWPF operations involving drug detection dogs and strip searches at music festivals and train stations.⁶⁸ The Redfern Legal Centre has previously expressed concerns about a 50 percent increase in strip searches and noted ‘a high number of strip searches find nothing illegal, which places serious doubt on whether many of these searches are necessary and justified’.⁶⁹ In 2020 the Law Enforcement Conduct Commission (LECC) published its Inquiry into NSWPF strip search practices. LECC identified real problems with record keeping standards and compliance with the legal thresholds required to justify strip searches.⁷⁰

In response, the NSWPF implemented new mandatory training and record keeping initiatives. However a recent LECC audit assessing the efficacy of the new initiatives found:

- less than half of all officers undertaking strip searches at music festivals had completed the required mandatory training
- records documenting the seriousness and urgency considerations required by the law were only kept in 30 percent of strip searches.⁷¹

-
- The question is whether the information afforded reasonable grounds for the suspicion which the police officer formed. In answering that question regard must be had to the source of the information and its content, seen in the light of the whole surrounding circumstances.

⁶⁶ Police regularly use the fact that an accused is in an area ‘known to police for drug supply’ as the basis for their reasonable suspicion.

⁶⁷ These surrounding circumstances regularly including ‘the smell of cannabis’ and a person having ‘glassy eyes’.

⁶⁸ Redfern Legal Centre, *Redfern Legal Centre concerned about police search operation at a public train station* (Media Release, 14 March 2019).

⁶⁹ Ibid.

⁷⁰ Law Enforcement Conduct Commission, *Inquiry into NSW Police Force strip search practices* (Report, 2020).

⁷¹ Law Enforcement Conduct Commission, *Review of a sample of NSW Police Force strip search records 2021-2022* (Report, September 2023).

We oppose strip searches being conducted in the field,⁷² particularly where the search is either not necessary, and/or not based on a reasonable suspicion, but attached to a specific location (such as a train station or music festival).

We acknowledge that decriminalisation won't stop all unnecessary searches occurring. However we argue it will reduce large scale NSWPF operations aimed at detecting small scale drug offences, including those at music festivals.



© Legal Aid Commission of NSW 2021.

You may copy, print, distribute, download and otherwise freely deal with this work for a non-profit purpose provided that you attribute Legal Aid NSW as the owners. To reproduce or modify the work for any other purpose you need to ask for and be given permission by Legal Aid NSW.

⁷² Meaning anywhere but at a police station.

ANNEXURE A

A timeline of the development of the regulatory framework for cannabis in NSW

Date	Event
1926	The Australian Federal Government prohibit the importation and recreational use of cannabis in Australia. ⁷³
1935	Cannabis is prohibited by state law in NSW. ⁷⁴
1961	Australia signs the Single Convention on Narcotic Drugs, a UN international treaty that classifies cannabis under Schedule IV. This states that cannabis is 'particularly liable to abuse and to produce ill effects' and that 'liability is not offset by substantial therapeutic advantages'. ⁷⁵ This treaty sets the international standard for cannabis to be criminalised for personal use.
1985	Australia and its states adopt a National Drug Strategy which combines prohibitory measures and harm reduction objectives.
1986	The current <i>Drug Misuse and Trafficking Act 1985</i> (NSW) commences.
1996	NSW enacts the <i>Young Offenders Act 1997</i> (NSW). This legislation allows offenders under the age of 18, who are charged with use, possession or cultivation of small amounts of cannabis, to be diverted away from the criminal justice system. ⁷⁶
1999	The NSW Government convene a drug summit with input from drug experts, drug users, community leaders and representatives from various agencies.
2000	The Cannabis Cautioning Scheme commences in response to a recommendation of the NSW drug summit. The scheme allows police to issue cautions for cases involving possession of a small amount of cannabis for personal use.
2006	The National Cannabis Strategy 2006-2009 commences. It aims to educate the community about cannabis, prevent the use of cannabis, assist those who already use cannabis to minimise harm and reduce the individual and societal problems associated with cannabis use. ⁷⁷
2016	Amendments to the <i>Narcotic Drugs Act 1967</i> (Cth) allow the supply of medicinal cannabis products for the management of patients with certain medical conditions. ⁷⁸
August 2023	The <i>Road Transport Amendment (Medicinal Cannabis) Bill 2023</i> (NSW) is introduced into Parliament. It remains before Parliament.
November 2023	The <i>Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023</i> (NSW) is introduced into Parliament. It remains before Parliament.

⁷³ This was done to ratify the International Opium Convention 1925 treaty, which was brought about due to pressure from the USA- see Tadeh Karapetian, *Criminalisation of cannabis in New South Wales: Is harm minimisation going up in smoke?* (Research paper: 6 February 2017) UNSWLJ Studen Series No. 17-01.

⁷⁴ By proclamation per the *Police Offences (Amendment) Act 1908* (NSW).

⁷⁵ *Single Convention on Narcotic Drugs*, signed 30 March 1961, 520 UNTS 151 (entered into force 13 December 1964), Art 3(5).

⁷⁶ *Young Offenders Act 1997* (NSW) s 8.

⁷⁷ Richard P. Mattick et al, *National Cannabis Strategy 2006-2009* (Ministerial Council on Drug Strategy, 15 May 2006)

6.

⁷⁸ *Narcotic Drugs Legislation Amendment Act 2016* (Cth).

February 2024	<p>The <i>Justice Legislation Amendment (Penalty Notices) Regulation 2024</i> (NSW) commences. It supports the Early Drug Diversion Initiative (EDDI). The EDDI enables NSWPF to issue penalty notices for more low level drug offences and provides that a penalty notice is taken to be paid if the person issued with the notice completes a drug health intervention under the EDDI. Police retain discretion to proceed by way of charge in all cases.</p>
February 2024	<p>The NSWPF Cannabis Cautioning Guidelines are updated in order to operate alongside the EDDI. Changes include:</p> <ol style="list-style-type: none"> 1. an increase of the maximum cannabis threshold eligible for a caution from a half-small (15 g) to a small (30 g) quantity, and 2. removal of the requirement for an offender having to admit to the offence, as well as removing the requirement to obtain an offenders consent before giving a caution.