

13 December 2024

Legislative Council Legal and Social Issues Committee
Inquiry into the Drugs, Poisons and Controlled Substances Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023

Dear Committee,

Authorisation of personal use, possession and cultivation of cannabis

Thank you for the opportunity to contribute to the Inquiry into the Drugs, Poisons and Controlled Substances Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023 (**Bill**).

We support the Bill, subject to our recommendations below relating to amendments to prevent criminalisation of children for minor cannabis offences, and adequate community and health sector resourcing to ensure all Victorians can access drug treatment and support when they need it.

About Community Legal Centres

The Federation of Community Legal Centres is the peak body for Victoria's 50 community legal centres. Our members are at the forefront of helping those facing economic, cultural or social disadvantage and whose life circumstances are severely affected by their legal problem. For 50 years, community legal centres have been part of a powerful movement for social change, reshaping how people access justice, creating stronger more equitable laws, and more accountable government and democracy. We want a community that is fair, inclusive and thriving: where every person belongs and can learn, grow, heal, participate and be heard.

Impact of criminalising possession and personal use of cannabis

In the three years to 30 June 2023, more than 12,000 people were charged with cannabis use and possession offences in Victorian Magistrates' Courts, with profound consequences for those entering the criminal legal system.¹

Criminalisation and incarceration negatively impact individuals, families and society and perpetuate cycles of crime, poverty and disadvantage. In 2021, the Legislative Council Legal and Social Issues Committee found that "the harms that arise from the criminalisation of cannabis affect a larger number of people and have a greater negative impact than the mental health and other health harms associated with cannabis use".² The Committee highlighted the ramifications of having a criminal record for a

¹ 11,995 people were charged with 13,758 possession of cannabis charges – see Sentencing Advisory Council, *Magistrates' Court sentencing outcomes - Possess cannabis: Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 73(1)*, (1 July 2020 - 30 June 2023). 615 people were charged with 633 charges of use of cannabis – see Sentencing Advisory Council, *Magistrates' Court sentencing outcomes - Use cannabis: Drugs, Poisons and Controlled Substances Act 1981 (Vic) s 75*, (1 July 2020 - 30 June 2023).

² Legislative Council Legal and Social Issues Committee, *Final Report: Inquiry into the use of cannabis in Victoria* (August 2021) (Inquiry Final Report) Finding 8, p 102.

conviction relating to minor use and possession and the stigma associated with a criminal record, the distinct impact of criminalisation on young people, and Aboriginal and Torres Strait Islander and culturally and linguistically diverse communities.³ A criminal record can adversely rehabilitation and reintegration, cause widespread discrimination from employers, peers and the community, exclude people from employment, education and housing, and create stigma or shame out of proportion to the offending.⁴ These findings are consistent with the views of workers at community legal centres who provide free legal advice, representation and casework to people charged with possession and use of cannabis who are experiencing hardship and disadvantage.

The criminalisation of cannabis is also associated with over-policing in communities, particularly First Nations communities, fostering distrust of the police and the criminal legal system. Aboriginal and Torres Strait Islander communities continue to experience discriminatory policing and continue to be stopped, searched, arrested, charged and imprisoned at higher rates than non-Aboriginal people. This is exacerbated by criminalising personal use of cannabis. Aboriginal and Torres Strait Islander people in Victoria are significantly overrepresented in sentencing statistics for minor cannabis offences, less likely to receive a caution, and more likely to be required to attend court and to receive a punitive sentence.⁵ Dragged into the criminal legal system by the discriminatory enforcement of low-level offences, Aboriginal people are further traumatised by interactions with criminal legal systems.⁶

A criminal record for a minor cannabis possession or use offence creates barriers to housing, education and employment for community legal centre clients, which are counterproductive for rehabilitation and reintegration, and potentially increase risk factors for reoffending.⁷

In addition, there are substantial costs involved in criminalising and policing personal cannabis possession and use, including through police resources, court expenses, imprisonment costs, community corrections and prosecution and legal services.⁸

Evidence for decriminalisation of personal cannabis use

The criminalisation of cannabis has had a limited impact on rates of possession and use of cannabis.⁹ In contrast, it serves as a deterrent to seeking health, mental health, AOD and legal support.

Instead of criminalisation and incarceration, we support rehabilitative and health-based approaches to drug-related offences. Investment in harm-reduction responses to cannabis use would reduce unnecessary criminalisation and incarceration, while decreasing pressure on the criminal legal system. A decriminalisation and regulation approach would improve community safety by improving the health and safety of Victorians who use cannabis (e.g. regulating potency and quality), increasing public awareness of risks, reducing stigma for people who want to seek help for problematic use, and reducing criminal activity related to the illegal / black market sale of cannabis.¹⁰ This approach is in line with the recommendations made by the Royal Commission into Aboriginal Deaths in Custody, and the Yoorrook Justice Commission's recommendation to "decriminalise offences linked with disadvantage

³ Inquiry Final Report, p 154.

⁴ Inquiry Final Report, p 155.

⁵ Inquiry Final Report, Finding 12, p 141.

⁶ See Inquiry Final Report, Finding 16, p 163.

⁷ Inquiry Final Report, Finding 15, p 158.

⁸ Inquiry Final Report, Finding 17, p 169.

⁹ Inquiry Final Report, Finding 18, p 183.

¹⁰ Inquiry Final Report, p 26.

arising from poverty, homelessness, disability, mental ill-health and other forms of social exclusion” where appropriate.¹¹

Personal adult use of cannabis clauses in the Bill

We support prioritising health-based responses to drug use, including the decriminalisation of possession and personal use of cannabis. We see the Drugs, Poisons and Controlled Substances Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023 as a step towards this goal.

Authorising personal use, possession and cultivation of cannabis for adults is an improvement on the existing provisions in the *Drugs, Poisons and Controlled Substances Act 1981* (Vic) (Act). The Bill authorises an adult to possess a small quantity of cannabis or tetrahydrocannabinol (THC) or up to six cannabis plants grown at home. It also authorises preparing edibles for personal use, using cannabis in private, gifting a small quantity to another adult, and other provisions to give effect to these changes.

The Federation supports the Bill, subject to our further recommendations below relating to amendments to prevent further criminalisation of children for minor cannabis offences, and adequate community and health sector resourcing to ensure all Victorians can access drug treatment and support when they need it.

RECOMMENDATION 1

We recommend that the Drugs, Poisons and Controlled Substances Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023 be passed, with amendments.

Decriminalisation and health responses for children

The Bill only authorises personal possession and use of cannabis for adults aged 18 years and old. Under the Bill, children aged 12 to 17 years of age would still be subject to criminal penalties for possessing or owning a small amount of cannabis for personal use.

We recognise the health risks around cannabis use by children and young people.¹² However, the harmful use of alcohol and drugs by children and young people is often a form of self-medication and a result of untreated mental health or unresolved trauma, including caused by discrimination and homelessness.¹³ Further, community legal centres routinely see how children from marginalised communities disproportionately affected by the criminalisation of cannabis are further marginalised and deterred from seeking support.

Criminalisation and incarceration are damaging for children and ineffective at preventing crime. The negative impact on children when they come into contact with the criminal legal system – particularly children locked in youth prisons – as well as their families and society, is profound. Consistent research shows that the earlier a child interacts with the criminal legal system, the more likely they are to reoffend. Having a criminal record for possessing or using a drug of dependence is also a significant barrier to children being able to work, volunteer or travel, creating further levels of disadvantage, stigma

¹¹ Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria’s Child Protection and Criminal Justice Systems* (August 2023) recommendation 39.

¹² Inquiry Final Report, Finding 18, p 27-28.

¹³ Smart Justice for Young People, *Working Together Action Plan to end the Over-Representation of Particular Groups of Young People in the Criminal Justice System* (March 2024) p 51 (Working Together Action Plan).

and marginalisation. This in turn exacerbates children's experiences of poverty and financial stress, social isolation, and ability to access the same opportunities as their peers.

The Australian Human Rights Commission's *Help Way Earlier!* report outlines how particular groups of young people are driven toward justice system contact through systemic factors including 'poverty, intergenerational trauma, violence and abuse, racism, homelessness, and inadequate healthcare.'²⁸ Departmental data confirms that for children in Victoria's youth justice system, almost 90 per cent have a history of substance use, 62 per cent were using mental health support, 28 per cent had a history of self-harm or suicidal ideation, 29 per cent had active cognitive impairment, and 63 per cent had offended while under the influence of drugs and alcohol.¹⁴ Children who are struggling with problematic drug use are less likely to talk to their friends, teachers, parents or health professionals for support when they are afraid of being reported to the police or charged with a criminal offence.

Early intervention, treatment and prevention are the most effective tools to decrease cannabis use by children, not criminalisation. Youthlaw has advocated for the decriminalisation of cannabis use for children and young people to move cannabis use from a criminal to a health response:

*Decriminalisation will help define drug use as a health and social issue, and thereby reduce the damaging stigma attached to people who use drugs. Reducing stigma, while expanding access to treatment services, could significantly improve health outcomes for young people who use drugs. The young person would not have a criminal record for personal use or possession of small quantities of illegal substances, which would improve their ability to gain employment or participate in other community activities.*¹⁵

Young people who participated in the 2021 Youth Forum shared how criminalising cannabis creates perceptions that young people are unfairly targeted by police, fosters distrust of police and the justice system, does not affect rates of cannabis use, and forces young people to access an unregulated illicit market where products may be unsafe.¹⁶

In contrast, the Planet Youth school-based drug prevention approach in Iceland shifted substance use among children from one of the highest rates to the lowest in Europe. This has been piloted in South Australia and New South Wales.¹⁷ The Planet Youth approach builds on evidence that children least likely to use substances had strong relationships with parents, a positive school environment, and supportive community environment, to roll out protective factors such as parent education, peer groups and whole-of community prevention approaches.¹⁸ The previous Victorian parliamentary inquiry into cannabis use recommends that the Department of Education and Training facilitates a trial of the Planet Youth program in Victoria.¹⁹

Similar to age-based prohibitions around vaping, cigarettes, alcohol, tattoos and body piercing, government regulation should focus on adults' behaviour towards children, rather than imposing criminal offences on children for behaviour that is lawful for adults. Provisions in the Act which prohibit the sale of cannabis to children would remain. These provisions act as a deterrent for adults selling cannabis to children, as a more effective method of preventing and reducing cannabis use among

¹⁴ Department of Justice and Community Safety, *Report: Youth Parole Annual Board Report 2021-2022* (September 2022) p 31.

¹⁵ Inquiry Final Report, p 156.

¹⁶ Inquiry Final Report, p 163.

¹⁷ Inquiry Final Report, p 114.

¹⁸ Inquiry Final Report, p 114-115.

¹⁹ Inquiry Final Report, recommendation 6, p 115.

children that recognises the need for harm minimisation and encouraging help-seeking for drug treatment and support.

For these reasons, Smart Justice for Young People's Working Together Action Plan recommends the decriminalisation of cannabis by March 2027.²⁰

RECOMMENDATION 2

We recommend that the Drugs, Poisons and Controlled Substances Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023 be amended to decriminalise personal possession, use and cultivation of a small quantity of cannabis for children as well as adults.

Investment in community and health treatment and supports

Victoria needs a health-based harm minimisation approach that supports children, not over-policing which targets marginalised communities and treats children as criminals. Early intervention, treatment and prevention are the most effective tools to decrease cannabis use by children, not criminalisation. This is because criminalisation deters children from seeking support and imposes barriers to future employment, study, travel and financial security for children with a criminal record for behaviour which would not be unlawful for adults.


For drug reform to be effective, the Victorian Government must invest in community-based outreach programs and rehabilitation as an alternative solution to drug use. We believe that reinvesting resources that would otherwise be spent on law enforcement, prosecution and incarceration into community-based health and treatment services will make communities safer and more equal for all Victorians.

RECOMMENDATION 3

We recommend that implementation of the Drugs, Poisons and Controlled Substances Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023 be accompanied by resourcing community and health programs to support drug treatment and rehabilitation.

We welcome the opportunity to discuss this further or provide any additional information.

Yours sincerely,


Louisa Gibbs
Chief Executive Officer

²⁰ Working Together Action Plan, p 50.