



**SUBMISSION TO THE INQUIRY INTO THE DRUGS, POISONS
AND CONTROLLED SUBSTANCES AMENDMENT
(REGULATION OF PERSONAL ADULT USE OF CANNABIS) BILL
2023**

Legislative Council Legal and Social Issues Committee, Parliament of Victoria

**Living Positive Victoria and the National Association of People with HIV
Australia**

11 December 2024

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About us

Living Positive Victoria

Living Positive Victoria (LPV) is a not for profit, community-based organisation representing all people living with HIV in Victoria since 1988 and is committed to the advancement of human rights and wellbeing of all people living with HIV (PLHIV).

In response to the HIV/AIDS epidemic in the 1980s, LPV was created as a safe place to provide support and advocate for PLHIV. The demand for services increased over the years and the organisation has now grown to a team of 16 individuals. LPV provides workshops, peer-support and activities that increase the mental, emotional and social wellbeing of those living with, or affected by HIV. LPV also works closely in partnership with a range of HIV-sector and other organisations to deliver a comprehensive and coordinated response to the needs of PLHIV in Victoria, nationally and internationally.

<https://lpv.org.au>

National Association of People with HIV Australia

Founded in 1989, The National Association of People with HIV Australia (NAPWHA) is Australia's peak non-government organisation representing community-based groups of people living with HIV. NAPWHA's membership of national networks and state-based organisations reflects the diverse make-up of the communities of PLHIV and enables NAPWHA to confidently represent the positive voice in Australia.

NAPWHA provides advocacy, policy, health promotion, effective representation, and outreach on a national level. Its work includes a range of health and education initiatives that promote the highest quality standard of care for HIV-positive people. NAPWHA also contributes to clinical and social research into the incidence, impact and management of HIV.

NAPWHA has an impressive record in treatments advocacy for HIV drug access and clinical trials. However, in recognising that health is more than merely HIV treatment, NAPWHA works in partnership with healthcare professionals, researchers, government and the pharmaceutical industry to ensure that a broad view of health and wellbeing is reflected at all levels of service delivery.

<https://napwha.org.au>



Acronyms

EDDI	Early Drug Diversion Initiative (NSW)
HIV	human immunodeficiency virus
LPV	Living Positive Victoria
MDMA	3,4-methylenedioxymethamphetamine
NAPWHA	National Association of People with HIV Australia
NRTIs	nucleoside reverse transcriptase inhibitors
PLHIV	person/people living with HIV
TGA	Therapeutic Goods Administration
THC	tetrahydrocannabinol



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Introduction

1. Living Positive Victoria (LPV) and the National Association of People with HIV Australia (NAPWHA) are submitting this response to the *Drugs, Poisons and Controlled Substances Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023*. We represent people living with HIV (PLHIV), and our submission reflects their experiences, health concerns, and perspectives on the proposed cannabis regulatory reform.
2. While LPV and NAPWHA support many aspects of the bill, we highlight several key points where adjustments can further improve the overall impact of cannabis regulation, particularly in relation to public health, social equity, and economic outcomes. We also address the alignment of this bill with previous recommendations of the Social and Legal Affairs Committee, including the expungement of prior cannabis convictions.

Consumer Involvement in Regulatory Processes

3. NAPWHA and LPV have a long history of involvement in drug policy reform, including providing input into the establishment of the medicinal cannabis scheme through the Therapeutic Goods Administration (TGA) and contributing to inquiries at both state and federal levels.
4. We have consistently advocated for the inclusion of health consumers, particularly those with chronic conditions like HIV, in discussions about drug regulation and policy. Our involvement ensures that the voices of PLHIV are heard, and that their health and wellbeing are central to any legislative reforms.

Cannabis Use Among People Living with HIV

5. Since the beginning of the HIV epidemic, communities of PLHIV have used cannabis to address a range of health challenges.
 - 5.1. Before effective treatments were available, cannabis was often used to stimulate appetite in individuals experiencing rapid weight loss due to advanced HIV.¹
 - 5.2. Many of the early treatments trialled by PLHIV had severe side effects, including debilitating nausea, for which cannabis proved effective.²
 - 5.3. Additionally, an entire class of antiretroviral treatments (nucleoside reverse transcriptase inhibitors or NERIs) caused myopathy and neuropathy—conditions and their associated symptoms for which cannabis has provided relief.³

1 Mark A Ware et al, 'Cannabis Use by Persons Living with HIV/AIDS: Patterns and Prevalence of Use' (2003) 3(2) *Journal of Cannabis Therapeutics* 3 <https://doi.org/10.1300/J1175v03n02_02>.

2 Ibid.

3 Marinos C Dalakas, 'Peripheral Neuropathy and Antiretroviral Drugs' (2001) 6(1) *Journal of the Peripheral Nervous System* 14 <<https://doi.org/10.1046/j.1529-8027.2001.006001014.x>>; Ronald J Ellis et al, 'Smoked Medicinal Cannabis for Neuropathic Pain in HIV: A Randomized, Crossover Clinical Trial' (2009) 34(3) *Neuropsychopharmacology* 672 <<https://www.ncbi.nlm.nih.gov/pubmed/18688212>>; DI Abrams et al, 'Cannabis in Painful HIV-Associated Sensory Neuropathy' (2007) 68(7) *Neurology* 515.



- 5.4. Even today, some PLHIV consider cannabis to be a complementary medicine to ART and continue to use it regularly, citing benefits to their health and quality of life. Research suggests benefits like reducing HIV-related inflammation and reduced negative symptoms from HIV-Associated Neurocognitive Disorder.⁴
6. According to *HIV Futures 10*, a comprehensive national survey of PLHIV in Australia, 16.4% of respondents reported occasional cannabis use for recreational purposes, while 3.2% used cannabis once per month, and 13.8% reported using cannabis at least once per week. Whereas 66.5% of respondents reported never using cannabis.⁵ *HIV Futures 10* collected data between May 2021 and July 2022 from 816 participants.⁶
7. It is imperative that any cannabis regulation in Victoria considers the unique needs of people PLHIV, including their access to cannabis for therapeutic purposes. This regulation should prioritise harm reduction and ensure that PLHIV have safe (decriminalised) equitable access to cannabis as a complement to HIV treatments.

Economic Benefits of a Regulated Market

8. Legalising and regulating cannabis in Victoria has the potential to yield significant economic benefits. A well-regulated cannabis market could generate substantial revenue through fees licensing fees and fees for service, which could then be reinvested into health, education, and harm reduction programs.⁷
 - 8.1. A well-regulated cannabis market would create a new sector in Victoria's economy, generating employment opportunities, fostering small businesses, and enabling existing "mum-and-dad" growers to establish micro-businesses to better support their families.

4 Cecilia T Costiniuk et al, 'Cannabis Consumption in People Living with HIV: Reasons for Use, Secondary Effects, and Opportunities for Health Education' (2019) 4(3) *Cannabis and Cannabinoid Research* 204 <<https://doi.org/10.1089/can.2018.0068>>; Guy A Cabral, Thomas J Rogers and Aron H Lichtman, 'Turning Over a New Leaf: Cannabinoid and Endocannabinoid Modulation of Immune Function' (2015) 10(2) *Journal of Neuroimmune Pharmacology* 193 <<https://www.ncbi.nlm.nih.gov/pubmed/26054900>>; Giulia Donvito et al, 'The Endogenous Cannabinoid System: A Budding Source of Targets for Treating Inflammatory and Neuropathic Pain' (2018) 43(1) *Neuropsychopharmacology* 52 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5719110/>>; Ronald J Ellis et al, 'Beneficial Effects of Cannabis on Blood-Brain Barrier and Inflammation in HIV' in *Neuroimaging and Associated Biomarkers* (2019) <<https://www.croiconference.org/abstract/beneficial-effects-cannabis-blood-brain-barrier-and-inflammation-hiv/>>; Caitlin Wei-Ming Watson et al, 'Cannabis Exposure Is Associated With a Lower Likelihood of Neurocognitive Impairment in People Living With HIV' (2020) 83(1) *JAIDS Journal of Acquired Immune Deficiency Syndromes* <https://journals.lww.com/jaids/Fulltext/2020/01010/Cannabis_Exposure_is_Associated_With_a_Lower.8.aspx>.

5 Thomas Norman et al, *HIV Futures 10: Quality of Life among People Living with HIV in Australia* (Monograph Series No. 134, Australian Research Centre in Sex, Health and Society, La Trobe University, 2022) Table 23, 32 <<https://www.latrobe.edu.au/arcshs/work/hiv-futures-10>>.

6 Ibid 3.

7 Legal and Social Issues Committee, *Inquiry into the Use of Cannabis in Victoria* (Final Report, Parliament of Victoria, 4 August 2022) 23, 44-48.; Patrick Keyzer, 'How Section 90 of the Constitution Makes Cannabis Law Reform Less Likely in Australia' [2020] *Alternative Law Journal* 1037969X20948288, 90. <<https://doi.org/10.1177/1037969X20948288>>; Marian Shanahan and Alison Ritter, 'Cost Benefit Analysis of Two Policy Options for Cannabis: Status Quo and Legalisation' (2014) 9(4) *PLOS ONE* e95569 <<https://doi.org/10.1371/journal.pone.0095569>>.



Support for the Bill's Provisions

9. LPV and NAPWHA strongly support the Bill's objective of regulating cannabis to reduce the harms associated with the black market. We also note that most harms related to cannabis use arise from the unregulated nature of the current system and the criminalisation of adult cannabis use for recreational purposes.
10. The current legal framework creates significant risks for consumers, such as uncertain product quality, inconsistent potency, and exposure to criminal networks. Regulation would address these concerns by ensuring cannabis products meet safety and quality standards.⁸
11. The bill's provisions align with the recommendations from the *Inquiry into the Use of Cannabis in Victoria* (2021), which identified the need for a well-regulated market. The benefits of such a system are clear: reduced criminalisation, improved health outcomes, and a decrease in the social stigma surrounding cannabis use.

Reducing the Harms of Unnecessary Criminalisation

12. The primary goal of the Cannabis Regulation Bill is to reduce the harms associated with unnecessary criminalisation of cannabis. However, as currently framed, the Bill leaves room for the continued targeting and criminalisation of marginalised communities.

Cannabis consumption in public places

13. The prohibition of public cannabis consumption disproportionately affects people experiencing houselessness / sleeping rough and those unable to afford private spaces. Many Strata / Owner's Corporations for apartment buildings ban tobacco use on balconies and inside the building, disadvantaging owners and renters living in apartments.

13.1. Treating public consumption in the same way as tobacco smoking and vaping in public areas—through the *Tobacco Act 1987* rather than criminalisation—would reduce this inequity and LPV and NAPWHA strongly supports this approach instead of a complete ban on public cannabis consumption.

13.2. Maintaining aspects of criminalisation, such as a ban on public consumption, maintains the persistent targeting of enforcement agencies of communities that already experience over-surveillance, over-policing and higher rates of criminalisation despite equivalent rate of criminality to the rest of the population.

"We should never do it: stigma as a behavioural change tool in global health"

14. LPV and NAPWHA strongly caution against the use of social stigmatisation and discrimination in public health policy that aims to reduce the health-related harm associated with cannabis, as is the case for tobacco control policies in Australia.⁹ Criminalisation is already a significant contributor to the stigma and discrimination people who use drugs experience everyday.

⁸ Legal and Social Issues Committee (n 7) 24–34, 181.

⁹ PLHIV have higher rates of tobacco and cannabis use when compared to the general population. See Norman, et al, (n 5).



- 14.1. Public health policy that uses social stigmatisation results in compounded stigma for key populations, making them less susceptible to health promotion and acts as a barrier to healthcare.¹⁰
- 14.2. HIV stigma continues to be a pervasive and harmful barrier faced by communities of PLHIV.¹¹ Stigma often manifests through discrimination, exclusion, and assumptions about individuals based on their HIV status. This has significant impacts on mental health, self-esteem, and access to essential services such as healthcare, housing, and employment.¹² For PLHIV, navigating systems of stigma can result in delayed diagnosis, reduced treatment adherence, and poorer health outcomes. These effects are compounded when HIV stigma intersects with other forms of marginalisation, including racism, homophobia, transphobia, and ableism.
- 14.3. Many PLHIV also belong to communities that face systemic discrimination based on Indigenous status, gender identity, sexual orientation, ethnicity, disability, or socio-economic status, injecting drug use history¹³ and sex work.¹⁴ For these individuals, the compounded experience of multiple stigmas exacerbates barriers to equitable treatment and amplifies social exclusion. Criminalising cannabis, particularly when discretion allows for targeted policing, further entrenches stigma against people from marginalised groups. Policies addressing cannabis regulation should consider these intersecting stigmas and seek to promote equity, reduce harm, and build trust with affected communities.
- 14.4. Using stigma to reduce the social acceptability of cannabis use contradicts the Victorian sexual and reproductive health and viral hepatitis strategy 2022–30, that stigma, racism, and discrimination are not barriers to accessing health care.¹⁵
- 14.5. Further, the National Drug Strategy 2017 – 2026 states that:

“Approaches and policy responses aimed at reducing alcohol, tobacco and other drug harms in priority populations should be informed by evidence... it is important that any responses do not inadvertently or unintentionally further marginalise or stigmatise people who are at higher risk of... harm.”¹⁶

10 Alexandra Brewis and Amber Wutich, ‘Why We Should Never Do It: Stigma as a Behaviour Change Tool in Global Health’ (2019) 4(5) *BMJ Global Health* e001911 <<http://gh.bmj.com/content/4/5/e001911.abstract>>; Mark L Hatzenbuehler, Jo C Phelan and Bruce G Link, ‘Stigma as a Fundamental Cause of Population Health Inequalities’ (2013) 103(5) *American Journal of Public Health* 813 <<https://doi.org/10.2105/AJPH.2012.301069>>; Bruce Link and Mark L Hatzenbuehler, ‘Stigma as an Unrecognized Determinant of Population Health: Research and Policy Implications’ (2016) 41(4) *Journal of Health Politics, Policy and Law* 653 <<https://doi.org/10.1215/03616878-3620869>>.

11 T Broady et al, *Stigma Snapshot: People Living with HIV I* (2022).

12 Valerie A Earnshaw et al, ‘HIV Stigma Mechanisms and Well-Being among PLWH: A Test of the HIV Stigma Framework’ (2013) 17(5) *AIDS and behavior* 1785 <<https://www.ncbi.nlm.nih.gov/pubmed/23456594>>.

13 T Broady et al, *Stigma Snapshot: People Who Inject Drugs 2021* (2022) <http://handle.unsw.edu.au/1959.4/unswworks_80543>.

14 T Broady et al, *Stigma Snapshot: Sex Workers 2022* (2023) <http://handle.unsw.edu.au/1959.4/unswworks_82629>.

15 Victorian Department of Health, *Victorian Hepatitis C Plan 2022-30* (Report, Victorian Government, 2022); Victorian Department of Health, *Victoria HIV Plan 2022-30* (Report, Victorian Government, 2022).

16 Commonwealth of Australia, *National Drug Strategy 2017 - 2026* (Strategy, Department of Health, 2017) 26.



- 14.6. Instead, health promotion should focus on the social determinants of health and the use of social practices rather than individual behaviour change, which results in more equitable health outcomes.¹⁷

Inconsistent quantities

15. The Act defines a “*small quantity*” of cannabis as 50 grams,¹⁸ while the Bill allows for the cultivation of up to six plants per individual.¹⁹ This inconsistency creates a legal paradox: it is highly likely that six plants, when processed, will yield more than 50 grams of cannabis, inadvertently placing lawful growers at risk of criminal charges.
16. Given that the Act’s own matrix in Schedule 11 defines a “*trafficable quantity*” as 10 plants or 250 grams, the “*small quantity*” for six plants should logically be increased to at least 150 grams to align with the calculations.

Police Discretion

17. The reliance on police discretion in applying drug related laws has been described as an “*abject failure*”.²⁰ A recently published study of 981 accounts of police stops in Victoria described in a survey conducted in 2018-2019 found there was:

*“strong evidence ... [p=0.001] ... that race is associated with decision-making by police in Victoria about who to subject to high discretion stops and unjustified post-stop conduct and a consistent pattern of unjustified law enforcement attention on and treatment of racialised people compared with white people ... [OR 2.77 (1.53,5.02), p<0.001] ... The unjustified nature of this policing provides evidence that it is racial appearance, not crime, that is triggering police attention and subsequent behaviour”.*²¹

- 17.1. Noting, these data were subjected to a threshold analysis, followed by a multinominal regression controlling for age, gender, LGBTQI status and disability.²²

17 Fran Baum and Matthew Fisher, ‘Why Behavioural Health Promotion Endures despite Its Failure to Reduce Health Inequities’ (2014) 36(2) *Sociology of Health & Illness* 213 <<https://doi.org/10.1111/1467-9566.12112>>; Michael P Kelly and Mary Barker, ‘Why Is Changing Health-Related Behaviour so Difficult?’ (2016) 136 *Public Health* 109 <<https://www.sciencedirect.com/science/article/pii/S0033350616300178>>.

18 *Drugs, Poisons and Controlled Substances Act 1981* (VIC) Schedule 11, Part 2.

19 *Drugs, Poisons and Controlled Substances Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023* (Vic).

20 Paul Gregoire, ‘NSW Government’s Drug Diversion Scheme Is an Abject Failure’, *Sydney Criminal Lawyers* (Web Page, 20 September 2024) <<https://www.sydneycriminallawyers.com.au/blog/nsw-governments-drug-diversion-scheme-is-an-abject-failure/>>.

21 Tamar Hopkins and Gordana Popovic, ‘Do Australian Police Engage in Racial Profiling? A Method for Identifying Racial Profiling in the Absence of Police Data’ [2024] *Current Issues in Criminal Justice* 1, 1,14-15 <<https://doi.org/10.1080/10345329.2024.2326709>>.

22 *Ibid* 14.



18. For example, in New South Wales, the Early Drug Diversion Initiative (EDDI) came into force in February 2024.²³ The Initiative provides police discretion to allow a person caught with a small quantity to pay an on-the-spot fine or speak to a health professional.²⁴

18.1. Non-government organisation, Unharm, under a Freedom of Information request, obtained NSW Police data on cannabis diversions through the EDDI. Since February 2024, 1,749 Aboriginal people were eligible for diversion for cannabis but were criminally charged, and only 46 Aboriginal people received diversions, just 2.6%. For non-Indigenous people, 7,269 were eligible for diversion but were criminally charged, however, 617 non-Indigenous people received diversion, just 7.8% of eligible people. Therefore, Aboriginal people were 4.5 times more likely to be charged for use and possession of a small quantity of cannabis.²⁵ These rates are consistent with previous analysis of data to August 2024.²⁶

18.2. Both MDMA and cocaine were found to have higher rates of diversion (29% and 23% respectively), suggesting that Aboriginality and socioeconomic status may predict whether police discretion is applied, and a diversion is offered.

18.3. LPV and NAPWHA recommend that Victoria Police no longer pursue individuals for personal use and possession of a small quantity of cannabis (and other 'illicit' substances). Reducing policing for personal use and possession would allow valuable police resources to be reprioritised to deliver services and programs that prevent crimes and keep Victorians safe.

Cannabis and Driving

19. The reliance on police discretion to enforce cannabis-related driving offences remains problematic. Historical evidence demonstrates that police discretion is inconsistently applied, with marginalised groups—including Aboriginal and Torres Strait Islander peoples, those sleeping rough, people who inject drugs, people for whom English is not their first language, and people with disabilities—often facing harsher treatment.

20. Current tetrahydrocannabinol tests fail to reliably measure impairment, as THC can remain detectable in a person's system long after its effects have worn off. Studies have shown a weak relationship between THC biomarkers and impairment,²⁷ demonstrating that the cannabis and driving laws are not based on evidence.

²³ Paul Kelaita, *How Is the Early Drug Diversion Initiative Going?* (Report, Drug Policy Modelling Program, UNSW, October 2024).

²⁴ NSW Department of Communities and Justice, 'Early Drug Diversion Initiative', NSW Government (Web Page, 2024) <<https://www.nsw.gov.au/money-and-taxes/fines-and-fees/support-and-community-services/early-drug-diversion-initiative>>.

²⁵ Jordyn Beazley, 'More than 90% of People Caught with Small Amounts of Illicit Drugs Criminalised in NSW despite Diversion Reforms', *The Guardian* (Web Page, 4 December 2024) <<https://www.theguardian.com/australia-news/2024/dec/04/more-than-90-of-people-caught-with-small-amounts-of-illicit-drugs-criminalised-in-nsw-despite-diversion-reforms>>.

²⁶ Kelaita (n 23).

²⁷ Danielle McCartney et al, 'Are Blood and Oral Fluid Δ^9 -Tetrahydrocannabinol (THC) and Metabolite Concentrations Related to Impairment? A Meta-Regression Analysis' (2022) 134 *Neuroscience & Biobehavioral Reviews* 104433.



21. LPV and NAPWHA recommend that the Victorian Government in collaboration with the Commonwealth and other states and territories develop the THC equivalent of the Blood Alcohol Content (BAC) measurement.
22. The Bill should address these issues by requiring scientifically valid methods for determining impairment and explicitly curtailing the potential for discriminatory policing. Such measures would help ensure that the Bill's objectives—fairness and harm reduction—are consistently upheld.

Expungement of Previous Cannabis Convictions

23. We also wish to highlight the importance of expunging previous cannabis convictions for minor offences and note this is not included in the bill under review.
 - 23.1. Under the current legal framework, many individuals, particularly from vulnerable communities such as PLHIV, have faced criminal charges for possession of cannabis.
 - 23.2. These criminal records create barriers to housing, employment, and social reintegration, which can contribute to cycles of disadvantage. By expunging such convictions, the bill would align with the broader goal of reducing the harms associated with criminalisation and enabling the rehabilitation of those affected.
 - 23.3. Expungement would offer a valuable opportunity for individuals to move forward without the stigma of a criminal record, providing greater social and economic opportunities.
 - 23.4. This reform is a necessary step in addressing the disproportionate impact of cannabis criminalisation on marginalised groups, including PLHIV, Aboriginal communities, and people from lower socioeconomic backgrounds.

Establishing a Regulated Market

24. The absence of a regulated market in the Bill overlooks a critical opportunity to both reduce harms and deliver significant economic benefits. A well-regulated cannabis market would create a new sector in Victoria's economy, generating employment opportunities, fostering small businesses, and enabling existing "mum-and-dad" growers to establish micro-businesses to support their families.
25. State governments can also leverage licencing fees and fees-for-services, such as quality control measures, to generate revenue without imposing taxes, as upheld in *Harper v Victoria* ("the Egg Case")²⁸ and *Harper v Minister for Sea Fisheries*.²⁹
26. By establishing a regulated market, the Victorian Government can more effectively reduce the harms of criminalisation while simultaneously delivering health, social, and economic benefits for the individual, communities, and State of Victoria. Regulation would also help ensure

²⁸ *Harper v Victoria* [1966] HCA 26 (1966); 114 CLR 361 (3 May 1966).

²⁹ *Harper v Minister for Sea Fisheries* [1989] HCA 47; (1989) 168 CLR 314 (26 October 1989).



product safety and reduce reliance on the illicit market, further advancing public health and justice outcomes.

Conclusion

27. NAPWHA and LPV support the aims of the *Drugs, Poisons and Controlled Substances Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023* and acknowledge the important steps it takes towards improving public health, justice, and social outcomes. We believe that the bill has the potential to deliver significant benefits to both the PLHIV community and society at large.
28. However, we urge the Committee to consider our suggested amendments and to seize this opportunity to further reduce the associated criminal harms currently associated with cannabis use and to enhance the potential to achieve the Bill's objectives.
29. We also encourage the Committee to consider the social and economic benefits of a legal cannabis market, including job creation and revenue generation, which would contribute to Victoria's recovery and future growth.
30. Finally, we reiterate that most harms related to cannabis arise from the criminalised unregulated market, and that regulation can mitigate these risks while ensuring safer products for all users. We trust that the Committee will carefully consider our submission, and the evidence provided from a health consumer perspective.



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