

TRANSCRIPT

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

Melbourne – Friday 14 February 2025

MEMBERS

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WITNESSES

Lee Carnie, Director, Policy and Advocacy, Federation of Community Legal Centres;

Sam Coleman, Senior Criminal Lawyer, Youthlaw, and Federation of Community Legal Centres; and

Greg Barns (*via videoconference*), Australian Lawyers Alliance.

The CHAIR: Welcome back to the Inquiry into the Drugs, Poisons and Controlled Substances Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023. Welcome back to members of the public watching via the broadcast. Joining us for this session are members from the Federation of Community Legal Centres and also the Australian Lawyers Alliance, on Zoom. From the Federation of Community Legal Centres we have got Lee Carnie and Mr Sam Coleman. Also joining us from the Australian Lawyers Alliance is Mr Greg Barns on Zoom. Welcome.

Just before I proceed I will quickly read some information to you. Regarding evidence being given today, all evidence taken is protected by parliamentary privilege as provided by the *Constitution Act 1975* and further subject to the provisions of the Legislative Council standing orders. Therefore the information you provide during this hearing is protected by law. You are protected against any action for what you say during this hearing, but if you go elsewhere and repeat the same thing, those comments may not be protected by this privilege. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

All evidence is being recorded. You will be provided with a proof version of the transcript following the hearing. The transcript will ultimately be made public and posted on the committee website.

For recording purposes, could you please state your full name and the organisation you are representing. Could I start with Lee.

Lee CARNIE: Lee Carnie. I use they/them pronouns, and I am the Director of Policy and Advocacy at the Federation of Community Legal Centres.

Sam COLEMAN: My name is Sam Coleman. I use he/him pronouns. I am a lawyer from an individual community legal centre called Youthlaw.

The CHAIR: Thank you, Sam. Greg?

Greg BARNES: Sure. It is Greg Barns SC. I am from the Australian Lawyers Alliance.

The CHAIR: Thank you. Welcome. I understand you have made submissions. I invite you to make an opening statement before I open to the committee for questions. If you would like to start, Lee.

Lee CARNIE: Thank you. I know that we have already acknowledged that we are meeting today on Aboriginal land, but I would like to pay my respects to elders past and present and recognise the significant and disproportionate impact of laws which have criminalised cannabis use on generations of Aboriginal people in this state.

The Federation of Community Legal Centres is the peak body for Victoria's 50 community legal centres, who have been at the forefront of helping community members experiencing financial hardship, injustice and mistreatment with free, high-quality legal help for over 50 years. Community legal centres see firsthand the longstanding and significant human impacts of current laws which criminalise people for minor possession and use of cannabis. I will briefly outline five reasons why we support the Bill and three amendments to strengthen the Bill.

Firstly, minor cannabis offences are disproportionately enforced against people experiencing poverty, structural oppression and overpolicing. As the Victorian Aboriginal Legal Service will highlight later today, Aboriginal people in Victoria are significantly over-represented in police and sentencing statistics for minor cannabis offences. Aboriginal people are more likely to be arrested, less likely to receive a caution from police and more likely to be required to attend court and to receive a punitive sentence. Children and young people, particularly

children in out-of-home care, are also disproportionately arrested and criminalised for minor cannabis offences. The Fitzroy Legal Service will give evidence later today about the disproportionate impacts on people evicted into homelessness and people experiencing family violence.

Secondly, criminalisation for minor cannabis use causes real and profound harm to thousands of Victorians every year and is not an effective deterrent. Being arrested, interrogated and charged by police, dragged through the courts and dealing with the long-term consequences of a criminal record for drug-related offences has serious negative consequences on individuals, their families and communities. Negative experiences with police and courts often result in people being reluctant to later seek help if they are a victim of crime or experience family violence and is a major obstacle to people accessing health care or treatment if they are experiencing drug abuse or addiction issues.

Thirdly, criminal records for drug-related offences create longstanding stigma, discrimination and consequences out of proportion to people's behaviour. Having a criminal record that says 'possession or use of a drug of dependence' reduces people's employment opportunities and access to housing and social services; makes it almost impossible to volunteer in your local community, particularly with children; and denies Victorians opportunities to travel to many countries overseas, such as the US. While the Victorian *Equal Opportunity Act* has been amended recently to provide protection against discrimination for people with spent convictions, it does not protect people with irrelevant criminal records from discrimination.

Fourth, the Bill is a clear step towards a harm reduction approach that will create better public health outcomes. I think you have already heard that in detail today, but we agree with the public health experts that it will reduce health risks associated with unregulated cannabis use and reduce negative health impacts of contamination or harmful substances being included in cannabis obtained on the black market.

Finally, the framework proposed in the Bill is safe and low risk. We have seen this from the implementation of the ACT model and how reforms in many parts of North America, Europe and parts of South America which replaced prohibitionist policies with decriminalisation and increasingly legalisation supported by health-based responses are effective at improving health outcomes and community safety while reducing the very real harms caused by criminalisation, the long-term impact of criminal record stigma and discrimination and organised criminal activity related to black market sales.

In terms of amendment, the Bill could be strengthened by, firstly, decriminalising personal possession, use and cultivation for adults and children – and I will hand over to Sam shortly to speak to that; secondly, automatically expunging minor cannabis charges from people's criminal records – I think that other people have already given evidence to this, but we would support adding a provision that directs relevant Victorian government agencies to permanently remove minor cannabis charges from people's criminal records post decriminalisation to ensure discrimination does not persist after the reforms come into effect; and finally, clarifying and authorising conduct consistent with the purposes of the Bill – again, this has been covered this morning, but we would also support amendments making clear that authorisation should apply for marijuana seeds in the same way as plants, that sharing a joint or edible with another adult should not carry criminal consequences, that principal place of residence requirements should not disadvantage people experiencing homelessness and commonsense guidelines for growing marijuana plants in backyards in very rainy Victoria, such as in greenhouses.

I have listened to the committee's questions this morning and could provide additional information on the negative impacts of transferring current criminal offences to the infringement system and learnings from the practical administration of other application-based expungement schemes in Victoria. I will now hand over to Sam.

Sam COLEMAN: Thanks, Lee. I would just also like to acknowledge the traditional owners of the land and pay my respects to elders past and present and affirm that sovereignty was never ceded. I am a lawyer at a specialist community legal centre called Youthlaw. We assist vulnerable young people under 25 in Victoria, so young adults and children. I welcome the opportunity to address the committee and strongly support the federation's recommendation that this Bill be amended to extend decriminalisation to children as well as adults.

The Bill rightly recognises that personal cannabis use and possession is a health issue and that its criminalisation does more harm than good. It acknowledges that cannabis-related offences are

disproportionately enforced against Aboriginal and Torres Strait Islander people, young people and those generally experiencing disadvantage. However, by maintaining criminalisation for those under 18, the Bill does not address the entrenchment of disadvantage experienced in childhood. Kids use cannabis for the same reasons that young adults do, often in response to trauma, family violence, homelessness or mental health challenges. Criminalisation does not deter young people – young adults and children – from cannabis any more than it resolves their trauma or disadvantage. Instead it pushes them further into the justice system, creating lasting consequences that extend well beyond adolescence. Research consistently shows that early interaction with the criminal justice system increases the likelihood of reoffending. It disrupts access to education, employment and housing, and compounds disadvantage rather than addressing the underlying issues that lead young people to use cannabis in the first place.

A childhood drug possession charge, use charge or cultivation charge can have severe and long-term effects that are entirely disproportionate to the offence. Even a spent conviction can still be disclosed in several contexts, such as a police check for certain kinds of jobs; working with children checks, which are very common; or travel applications. Having a prior offence as a child, even a police caution, can disqualify an adult from diversion programs. For kids, being labelled a criminal both by the system and by themselves entrenches disadvantage and stigma, making it harder for young people to access support and turn their lives around.

As the second-reading speech highlighted and has been already addressed this morning, over 1100 Victorians were jailed for cannabis possession in the last three years. Whilst this Bill addresses this issue for adults, it leaves children behind. The disproportionate policing of Aboriginal and Torres Strait Islander children and children in out-of-home care means that they will continue to bear the brunt of a system that this Bill is designed to fix. Victoria has an opportunity to do even better than the ACT here by extending decriminalisation to children, and I urge the committee to do so by strengthening the Bill. Thanks.

The CHAIR: Greg, would you like to make an opening statement?

Greg BARNES: Yes, thanks, Chair. We, firstly, acknowledge that we meet on Aboriginal land and pay our respects to elders past, present and emerging.

Can I just indicate the alliance endorses the views that have just been put, so I might try and take it in a different direction for you. The purpose of the criminal law, as we all know, is to deter people from committing or undertaking antisocial conduct or conduct which society deems to be criminal. The purpose is both general deterrence and specific deterrence, and if the law does not deter people, then it has no utility.

In relation to drugs generally – and I will come to cannabis – as we all know, there is zero evidence that drug laws have any deterrent effect. As the *Economist* newspaper has said on a number of occasions, there are no wins in the war on drugs, only Pyrrhic victories. In relation to cannabis, the reason we support this Bill, alongside the reasons outlined by my friends, is that this is evidence-based policy. We know, and no-one could argue to the contrary sensibly, that there is no deterrent effect. We know that – and I can indicate this – lawyers use cannabis. People from all walks of life – doctors, police officers – all use cannabis or have used cannabis at some point in their lives, knowing of course that it is formally illegal. So you have got to ask yourself this question: why would you continue a policy which is such an abject failure in terms of deterrence? Now, it is said, ‘Oh, well, you are giving a green light to drug use.’ I mean, there is, again, no evidence that people suddenly start using cannabis because ‘Oh, good, it’s no longer illegal, I can do it.’ They do it anyway, those who want to do it.

It is important to note also, as has already been said, the disproportionate impact of cannabis. Magistrates have to sit there every day and deal with cannabis cases, and I think if you surveyed magistrates, they would say it is a waste of time. I talk to police officers about it, and they say it is a waste of time. Lawyers talk about it and say it is a waste of time. I remember talking to someone from a Drug Court here in Tasmania, where I am – this was a judicial officer – who once said to me, ‘Workers come along to the Drug Court, and they say, “Oh well, he hasn’t given up drugs. But he’s no longer using ice, he’s using cannabis,” and you have to sit there and give these people a lecture.’ He said, ‘It’s often occurred to me that I would rather them be using cannabis than speed. People do not commit offences, generally speaking, while they are using cannabis.’

To wrap it up, this is not a left–right issue, and I think it is important to note that. For example, the law and economics movement at the University of Chicago, which is very much oriented towards free markets, would

argue that good public policy focuses on harm reduction because that is more cost effective for governments. Secondly, those who are on the left in relation to law reform debates would say that there is a disproportionately adverse impact on certain elements in the community and a disproportionately adverse impact in having a cannabis conviction, particularly for young people. So it is not a left-right issue; it is smart policy and smart justice that we are talking about here. You should not let the *Herald Sun* or any other news outlets deter you from good policy, because the winners are those you represent. Thank you.

The CHAIR: Thanks, Greg. Thanks, Lee and Sam. Thank you all for your opening statements. I will quickly ask a few questions and then I will open up to the committee. In relation to your comment that the law has no deterrent effect, I think there are different points of view from various parties. But I will focus on your recommendation 2. Our inquiry has had submissions with evidence that children under 18 should not access cannabis, that it has a harmful effect down the track for their growth, up to the age of 25. Now, I understand your work, having a legal point of view, that when it is criminalised there are offences and a number of people are subject to being charged or incarcerated. I am just wanting your point of view on a health aspect – so not a legal aspect – in relation to those who are under 18. Why is your recommendation to open up and amend the decriminalisation of personal possession, use and cultivation of a small quantity for children as well as adults? I understand the adult part, but for children under 18, how does that benefit those who are under age healthwise? It is not the legal part – why they are getting charged; I understand that situation. But in relation to their health, can you expand on that in terms of how you balance a person being charged with the health aspect growing up? And in relation to having this opened up, would there be more accessibility for those who are under age to access cannabis?

Lee CARNIE: I am happy to go first. The first point I would make is that we do not dispute the public health evidence about the health impacts on children. We trust the evidence and doctors around some of the challenges around people who are under-age using cannabis, particularly in relation to particular mental health issues and their brain development. However, what we recommend is a decriminalisation approach for children. We are not recommending an authorisation approach, as is the case with adults, but rather that children should not be criminalised when they do possess, use or cultivate cannabis. The reason for that is because we think that the most effective way to support children, particularly children from disadvantaged and marginalised backgrounds who are experiencing problematic drug use – the best way for them to get the help that they need to address the underlying issues that are often leading to them deciding to use cannabis, such as childhood trauma, mental health issues – is to facilitate them to get the best help and support that they can.

Possessing, using or cultivating cannabis is a criminal offence. What that means is that children are not going to go to a family friend or a parent or a teacher or a sports coach and say, ‘Actually I’ve been having a bit of a problem with this. I’ve been using this. I’ve been feeling a bit sick.’ What it means in practice is that they will be less likely to seek help, to seek treatment, to talk to others so that they can safely use cannabis, they can moderate their cannabis use, so that they can learn and educate themselves around what the impact of using cannabis is on their lives and their development. As I said before, we also see how children from marginalised communities are disproportionately affected and they will continue to be further marginalised and deterred from seeking support.

I think Sam might elaborate on this more, but we know that harmful use of alcohol and drugs by children and young people is often a form of self-medication. But what we do support is, similar to age-based prohibitions around vaping or cigarettes or tattoos or 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. I can expand on this more, but as an example, buying cigarettes: it is not unlawful or a criminal offence for a child under 18 to buy cigarettes, but it is unlawful for an adult to sell cigarettes to a child, and there are current provisions in the Act that is being amended by the Bill that will continue to make it a criminal offence for an adult to sell cannabis to a child under 18.

I would also say that there was a 2021 youth forum where young people had the opportunity to share their views on this issue and where they shared how criminalising cannabis creates perceptions that young people are unfairly targeted by police because of their age. It is more likely to foster distrust of police and the justice system. It does not actually affect rates of cannabis use among young people, and it forces young people to access the unregulated illicit market, where products are much more likely to be unsafe.

The CHAIR: Any comment, Greg?

Greg BARNES: Well, no. I would agree with that. Again, it is not about a free-for-all; it is not about sending a signal. But the current structures do not work, and they do mean that cannabis use is much more hidden by young people than it would otherwise be because of fear of police or being reported to police, particularly by teachers and others. Again, I cannot understand any argument about this. Why wouldn't you focus on harm reduction and keep young people out of the justice system as much as you can?

The CHAIR: Thank you. Ryan.

Ryan BATCHELOR: Thanks, Chair. Lee, I might just continue on this theme, just to clarify. So you are in favour of provisions that would retain penalties for the supply of cannabis to those under the age of 18, including gifting?

Lee CARNIE: Yes.

Ryan BATCHELOR: Okay. I just wanted to be clear on that.

Lee CARNIE: I just wanted to make sure.

Ryan BATCHELOR: Yes. That is fine.

Lee CARNIE: Yes. That is right.

Ryan BATCHELOR: We were in the ACT on Tuesday and had a really long session with ACT Policing, and one of the things they talked about was the way that the simple cannabis offence notices evolved into the drug offence notice with respect to everyone, but also with respect to children. Simple cannabis offence notices effectively still operate for children; there is a kind of nominal fine, but also there is essentially a confiscation of product. Would you support the ability for products to be removed – confiscated – from those under the age of 18 who have it in possession but not have a criminal penalty attached to that?

Lee CARNIE: Yes. We would continue to support the confiscation of cannabis from children.

Ryan BATCHELOR: More broadly, we had evidence particularly from Burnet and the Alcohol and Drug Foundation earlier about this being a step but probably not the step that they would want to fully take. I am wondering if you have a view on whether the step that we should take in Victoria with respect to cannabis regulation should be just this one, which is essentially the decriminalisation of personal possession and cultivation, or whether you would support moving a step further and going to some sort of regulated market approach. I am happy for either of you or both to answer.

Lee CARNIE: In relation to this Bill we agree that it is one step forward. We support authorisation as a step in the right direction. However, our position is that decriminalisation would be a much better approach.

Ryan BATCHELOR: What do you mean by 'decriminalisation'?

Lee CARNIE: In the current Bill the way that it operates is that it is illegal to possess or use cannabis unless you have authorisation, and so the Bill authorises adults to possess or use cannabis. A decriminalisation approach would be to effectively create an exception or a carve-out from the possession-and-use criminal offences, for example, for a small amount of cannabis for personal use.

Ryan BATCHELOR: Greg, you might want to answer this as well. Do you think we should go further and have a regulated market?

Greg BARNES: Yes, I do. The reason I say that is because if you regulate a market you do two things. Firstly, you take it out of the black market. People are less likely to access products in the black market, because there is no product control. That is the first one. We know that from prohibition. Prohibition does not work, because all it does, as you are seeing in Victoria with tobacco, is increase the opportunity for what we call super profits, and people will, in terms of a rational actor, take the risk of selling cannabis on the black market because the chances of being caught are, in their mind, less than the chances of making a super profit. So I think what we would say is that at the end of the day there ought to be a market-based approach taken, as there is increasingly around the world. But the first step of decriminalisation will at least I think get the community more relaxed about the issue of cannabis. The thing about cannabis is it is less harmful than alcohol

and tobacco, and that is what the science tells us. So why are they legal and cannabis is not legal? You have got to ask yourself that question. This is an area where there is a completely irrational policy – there is prejudice but no rational policy – and the only winners are drug sellers.

Ryan BATCHELOR: That is all for now.

The CHAIR: Thank you, Ryan. Ms Payne.

Rachel PAYNE: Thank you for your submissions to this inquiry. I really appreciate you presenting before us today as well. You talk in your respective submissions around a health-led approach, noting that decriminalising cannabis will allow public resources to focus on health, rehabilitation and underlying causes for substance use. Can you speak more about the effectiveness of these alternate approaches and the burden that they could lift off the legal system more broadly?

Greg BARNES: Perhaps I will quickly go first. I do not know if you have been down to a Magistrates' Court or a local court, as it is called in some jurisdictions. The number of possession of cannabis cases that are in the system every day is extraordinary, and it is a waste of court's time – a complete waste of court's time – because, as I said, there is no evidence of any deterrent effect. So why would you waste the court's time?

Lee CARNIE: Maybe as an example I can talk to the Planet Youth school-based drug prevention approach, which 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. The Planet Youth approach builds on evidence that children are less likely to use substances when they have strong relationships with their parents, a positive school environment and a supportive community environment and when you roll out protective factors such as parent education, peer groups and health community prevention approaches – so embedding the health-based response in places where children meet and congregate, like schools, local social groups and sports clubs. I would also note that the previous Victorian parliamentary inquiry into cannabis use did recommend that the Department of Education and Training facilitate a trial of the Planet Youth program in Victoria. We strongly support resourcing the health sector to be able to support the implementation of this Bill by implementing similar programs across the state.

Sam COLEMAN: I might give a little case study, if that is okay.

Rachel PAYNE: That would be great. Yes, please. Thanks, Sam.

Sam COLEMAN: This is about a young woman who I will call Kayla. Kayla is a young woman with very complex mental health needs and mental health issues. She was homeless, a long-term victim of family violence and sexual violence. She was engaged with housing services and engaging well at this time but unfortunately was one of those young people where there was just no solution at the time so she was sleeping rough and she was caught smoking marijuana, or cannabis. We know that cannabis is disproportionately smoked by people sleeping rough. She was searched under the *Drugs, Poisons and Controlled Substances Act*, which is a specific trigger for her, and it caused a mental health event. She was charged with four counts of indictable assault of police in the course of a breakdown and was sent to Dame Phyllis Frost for a number of months in the Marmak Unit, the mental health unit.

She was sleeping rough, but she had escaped a family violence situation and was doing relatively well in terms of her engagement with supports. She had a really, really fantastic AOD worker and because of, I think, general underfunding that AOD worker was functioning well outside of her PD essentially as an outreach worker when she was not supposed to be. Having been sent back to custody was a tremendous setback. She ceased her involvement with her local area mental health services. She stopped taking her depo injections, and when she was finally released we essentially lost her again and she fell back into negative peer networks and incredibly unsafe situations. I just wanted to address both the health aspect and the burden on the state as well. Many, many court hearings were precipitated by this event, with a long stint in custody, the work of lawyers and other services.

Rachel PAYNE: Thank you. I might just quickly throw to what happens with young people or children if they are picked up for cannabis. On diversion programs, and just more broadly, are they effective and what improvements would you make in reflecting on this Bill that is before you today?

Sam COLEMAN: Can you say that again, sorry, Rachel?

Rachel PAYNE: Just reflecting on diversion programs or what is currently happening for children that are picked up with cannabis possession currently, or what may be a consequence of this Bill that is before you today, how would you reflect on the efficacy of diversion programs or what is currently happening with young people today?

Sam COLEMAN: Diversion is obviously a far preferable outcome than a formal finding of guilt from the court, but in my view any contact with the system whatsoever is criminalising. Stigma is not just associated with a sentence by a court, but it is any contact with the court – it is coming to the court, it is speaking to the police. And especially for children there is a point which every practitioner I think that works with kids knows: that at some point, if they are being told they are a criminal over and over again, they will start to accept it. This is I think called ‘labelling’ in the literature. But the legislature has known this for a long time. It is provided for in the *Children, Youth and Families Act*. There is a general injunction to avoid stigma, and it is also a part of sentencing. I think on the proposed amendment to the Bill, even though we are certainly in favour of diversion programs and they work well, we are insisting that personal cannabis use is a health issue and that any contact with the system is a risk for criminalisation for young people.

Lee CARNIE: As you are aware, there are *Youth Justice Act* amendments that have recently come in around the sentencing hierarchy and diversion and cautions. It is probably a bit early to tell exactly how they will operate in practice, but under the current system anyway and even in the *Youth Justice Act* there are barriers to children being able to access diversion. For example, the police informant has to consent. I have previously practised as a youth crime lawyer, and what we see is that kids who get picked up for minor possession charges who also might have had negative interactions with adults and authority figures, often because of experiences of childhood trauma and family violence, are more likely to be the ones who might swear and call the police officer names, and in that situation it is really, really difficult for them to get diversions, even for minor offences. So you can see this kind of disproportionate impact of how children from low-income backgrounds with mental health issues are more likely to be criminalised.

Rachel PAYNE: Thank you. Thanks for your response.

The CHAIR: Michael.

Michael GALEA: Thank you, Chair. Thank you all for joining us. Lee, I am going to jump on something that you said in your opening remarks. You flagged that you had some comments you could give about the infringement system which is applied in the ACT and some other jurisdictions. I would be very keen to hear what you have to say about them.

Lee CARNIE: Community legal centres provide legal help and advice and representation in relation to thousands of infringements each year. We would not support moving these criminal offences to the infringement system because of how the infringement system currently operates. Maybe I will just make three points. The first point is that under the current Victorian legislative scheme you can still go to a prison because you are too poor to pay your fines. So if you have fines and you cannot pay them, the sheriff cannot take enforcement action against you because you do not have a property and you do not have an income. What happens at the end is that you go to the Magistrates’ Court and you are placed under what is called an imprisonment in lieu order if you continue to not pay it. By this stage, at every stage at which you do not pay a fine it increases. It can be thousands more than the initial fine, which you are often unable to pay, and then an imprisonment in lieu order effectively becomes a warrant to imprison. Under our current infringement system there is still a risk of imprisonment, but it is unjust in how it applies, because if you were fined for minor possession of cannabis and you had a stable income and a lovely house in Toorak, then it is unlikely that you would end up being imprisoned, but if you were unable to pay your fines and they kept getting bigger, then you would have a higher risk of being imprisoned.

Secondly, we see how engagement with the infringement system, as I have explained, can also lead to people ending up in the court system, and there are the same barriers to seeking treatment. Even if you apply through the court for special consideration for your fines to be withdrawn at later stages, when they have gone to the enforcement stage, they do still appear on your criminal record, even though they are infringements.

Michael GALEA: And that is regardless or if you have gone through the court system?

Lee CARNIE: If you have what are called special circumstances – so if at the time that you were fined you were experiencing homelessness or mental health issues or you had an intellectual disability or exceptional circumstances such as family violence or financial hardship – you can apply to the court for your infringements, for your fines, to be dealt with through the court. But if an order is made by a court, it ends up on your criminal record, on your court record. Does that make sense?

Michael GALEA: It does, yes. Again it is affecting the people who would be most vulnerable and more likely to have a criminal record as a result.

Lee CARNIE: That is right.

Michael GALEA: Thank you. That is very, very helpful information. You also touched on Planet Youth, the Icelandic model. I am curious if there is anything that you could maybe provide to us on notice with some pointers and some resources or, if you have them yourself, if you can provide them to us. It would be terrific for us to have a look at them, because I think we can all agree: whatever the model, the less young people using cannabis, the better.

I would also like, if we briefly have time, to put to all of you, whoever feels best qualified to answer: in the FCLC submission you say that more than 12,000 Victorians were charged with cannabis abuse in the three years to June 2023. How many of these, if you know, were in full isolation and not connected with other offences?

Lee CARNIE: I would have to take that question on notice. I do not know off the top of my head. Anecdotally, and I will pass to Sam as well, our experience is that often these offences do come with other offences, but I have definitely seen quite a few where this is the only offence as well, where it is just a possession for minor personal cannabis use. But I do not know off the top of my head. Sam?

Sam COLEMAN: I also do not know, sorry, but I have certainly seen lots of both: in isolation and with a host of other charges.

Michael GALEA: Thank you. Mr Barns, would you have anything to add to that?

Greg BARNES: No, I do not, but my experience over many years is that it is often coupled with other offences. But of course that does not detract from the argument for decriminalisation [Zoom dropout].

Michael GALEA: Thank you. Thanks, Chair.

The CHAIR: Thanks, Michael. David.

David ETTERS HANK: Thank you, Chair. Thank you very much for your very insightful contributions today. It is really appreciated. Could I ask you: in terms of looking at the utility of the Bill that is being considered, have you applied your minds at all to the question of how it might interact with other legislation? For example, when we went to Canberra there was discussion there about the fact that you can decriminalise cannabis but, for example, people on parole are regularly subject to urine checks, and if they test positive, they are pinged. I am wondering: is that a question you have considered in terms of the possible adequacy of the Bill?

Greg BARNES: I might just go first. I think the first thing of course is that you amend the *Drugs, Poisons and Controlled Substances Act*. In relation to parole and parolees, I chair the Prisoners Legal Service Tasmania, and it is exactly the same as Victoria. We have had this battle, because the urine testing is there to pick up illicit substances, and we have had a discussion around the fact that many ex-prisoners use cannabis. They use cannabis as stress release because most of them get very little through-care from the prison system when they come out, and also they would often be on trauma. So they use cannabis, and it is a very unfair use by the parole board of its powers.

I am not sure it would change if you decriminalised cannabis use as opposed to legalising it. I think it would still provide an opportunity for the parole board to adopt some form of policy that says that it regards cannabis as being problematic, and that I think is a problem unless you legalise it.

Lee CARNIE: We have not given it detailed thought, but we can take it as a question on notice. We would support consequential amendments to other pieces of legislation consistent with the purposes of this Bill. Sam has a specific point as well.

Sam COLEMAN: One thing I would like to take on notice is the way it would interact with search powers, specifically the drugs Act search power that I mentioned before in that case study. But, yes, we would have to get back to you.

Lee CARNIE: There have been a number of bills that would interact with it as well. There have been amendments put forward around expungement as well and so there are other pieces of legislation but also various pieces of regulation and government guidelines that would need to be released, for example, like Victoria Police and Australian Federal Police information, policy around what types of offences would be disclosed on a criminal record check or working with children checks. There is quite a wideranging number of pieces of legislation that would need consequential amendment to give effect to the authorisation approach in the Bill.

David ETTERS HANK: I am happy for you to take that on notice; that would be appreciated. In working with some of the community legal services out in the west there has been a lot of discussion about bail going bad, ending in remand. I am just wondering if you could perhaps inform the committee a little bit about the reality on the ground of those problems, particularly for young offenders, and the degree to which the criminalisation of cannabis is a factor in that cesspit.

Lee CARNIE: You are right. While minor possession and use charges remain crimes on the statute books, what it does mean is that a child who is on bail who is picked up by the police for possession of a small amount of cannabis will be returned before a judicial registrar or a judge in the Children's Court and is at risk of having their bail revoked and being sent to a youth prison. There would still obviously have to be a consideration of the factors under the *Bail Act* around unacceptable risk et cetera, but committing a criminal offence on bail is something that has been a matter of debate and has been a criminal offence for adults for some time. There is kind of a discussion about review of bail laws, and I suppose thinking about what the situation might be in the future depending on the bail laws now versus what bail might look like in the future if they are reformed as well. We have serious concerns around any risks around children and young people but also adults having their bail revoked because of breaching an offence of bail, that being reintroduced in the adult system as a charge in and of itself.

David ETTERS HANK: Mr Barns may want to make a comment, Chair.

Greg BARNS: I would agree with that. To trigger detention, loss of liberty, simply because you possess cannabis just seems extraordinary in the 21st century – just extraordinary.

The CHAIR: We might have time for one more.

Aiv PUGLIELLI: Thank you, Chair. Good afternoon. Thank you all for your contributions through this inquiry process. I might start with you, Sam. Are there any other specific examples or case studies that you can give us that highlight how current laws that criminalise minor possession and use is impacting people's lives, particularly children and young people?

Sam COLEMAN: Yes, thanks. I will give another case study, if that is okay.

Aiv PUGLIELLI: Yes, go for it.

Sam COLEMAN: This is, to my mind, an interesting one because it has very few variables. This is a guy; I will say Jake. Like a lot of young people or young adults that we work with, Jake was doing VCE when school went remote. In year 11 – we see this a lot – the remote learning was too much and he dropped out of school. That had really significant effects on his mental health, and he started self-medicating with cannabis. He was picked up by the police and given a caution as a 17-year-old. That spurred him to self-refer to YSAS, a youth AOD service, and he was engaging really, really well. He did several stints at detox and rehab, which is where I met him. Then once he was 18 he was picked up again just for possession of cannabis, so I guess this is an example of where it is just cannabis in isolation. Because of the very broad discretionary powers that police at station level and prosecutors at court have with respect to diversion, whether or not they give consent to

diversion, they ultimately did not consent to diversion for an 18-year-old without any priors who had been charged with possession of cannabis. The reason was because he had been given a caution when he was 17 and that the support letter, the AOD support letter that we had provided, said that whilst he was working really, really well on his cannabis use he had not yet ceased use. We do not have a way of reviewing that decision by police that I am aware of, and he had to plead guilty to that charge. What started off as a self-referral to a health service became something ordered by the court as a special condition, and this had really terrible criminalising effects on this young guy.

Aiv PUGLIELLI: Thank you. I might stay on the topic of policing and bring you in, Lee. Where do cannabis-related offences sit in terms of how particular communities are overpoliced or what are we seeing in the data?

Lee CARNIE: As I mentioned earlier, we do see how there are particular communities who are more likely to be criminalised for minor cannabis offences. Aboriginal people, people experiencing poverty, children and young people, particularly children in out-of-home care, children with disability and children from racial minorities are much more likely to be targeted. We also know that there are particular consequences around people experiencing homelessness, who are more likely to be overpoliced and more likely to be charged for possession and use of cannabis where it is really a small personal amount. Fitzroy Legal Service will speak to this more this afternoon; they have a number of case studies they can share. But there is a concerning trend that a number of community legal centres have reported around people who are experiencing family violence in the middle of a family violence incident calling police for assistance and the police attending and then seeing that there is a small amount of marijuana at home and then saying that they have no choice but to charge the person experiencing family violence, who called the police for help, with possession of cannabis charges. So we can see how people who are more likely to be experiencing hardship, injustice, poverty, homelessness and family violence are unfortunately more likely to be affected. In the youth space as well – it is stark, the data around the children in out-of-home care who have been removed from their families and homes because of child abuse and neglect. They are much more likely to have these minor cannabis charges, whereas in comparison, talking to teachers at private schools, they often talk about how in those contexts if a kid is found, it is dealt with within a school and there is discipline provided by the parents at the home. But rarely do we see, anyway, children from affluent backgrounds being charged for these types of criminal offences.

Aiv PUGLIELLI: Thank you.

The CHAIR: Thank you. Thank you, Aiv. I am just mindful of time. I will quickly ask one question on notice before we finish off. In your experience, who is introducing young people to cannabis? And also, should there be a penalty for supplying cannabis to minors rather than charging the young people in possession? I note we are running out of time, but if we can do that on notice, that would be much appreciated – from a legal perspective, those two questions.

Aiv PUGLIELLI: Chair, could I just ask for another one on notice as well? Is that okay?

The CHAIR: Yes.

Aiv PUGLIELLI: Greg, just to bring you in, you spoke about the burden that cannabis-related cases are placing on our courts and our justice system. If at all possible, on notice could you provide some sense of the proportion of what that case load represents? Even a ballpark percentage would be useful.

Greg BARNS: We will try. One of the problems is trying to break it up to individual offences versus, for example, drug driving plus possession. I think the data is difficult to get hold of, so a lot of it is anecdotal, but I think if you talk to magistrates, you will find –

The CHAIR: Greg, if you could come back to us with those answers, it would be much appreciated.

Greg BARNS: I am just contemplating if I can take it on notice and come back with something useful. That is all.

The CHAIR: Okay. Thank you.

Aiv PUGLIELLI: Thank you.

The CHAIR: On behalf of the committee, first of all, thank you very much for your submission, and thank you very much for your time and contributions today. It was a very valuable lesson for us from a legal perspective as well.

Witnesses withdrew.