

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

Organisation: Unharm
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Unharm submission

Inquiry into the impact of the regulatory framework for cannabis in New South Wales

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About Unharm

Unharm is a health promotion charity. We are at the heart of a diverse movement of people with a shared belief that we're at our best when everyone is supported to live full and happy lives. Together, we're dismantling outdated and cruel drug laws that drive discrimination and harm. Our goal is to make our drug laws fair, for health and happiness.

This submission

This submission focuses on the following terms of reference for this inquiry:

- (a) the historical development and implementation of the regulatory framework for cannabis;
- (d) the impact of the current regulatory framework for cannabis on young people, the health system, personal health, employment, road safety, crime and the criminal justice system;
- (e) the impact of the regulatory framework for cannabis on Aboriginal, LGBTIQA+, regional, multicultural and lower socioeconomic communities; and
- (g) the provisions of the Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023.

Introduction

Every year in NSW over 700,000 people from all walks of life use cannabis.¹ Despite this, NSW lacks an effective regulatory system that could eliminate contaminants from non-medical cannabis products, ensure accurate labelling, and prevent people from selling cannabis to underage people. Meanwhile, NSW has among the highest rates of cannabis-related arrests in Australia, and the overwhelming majority of these arrests are for minor 'consumer' offences.² There is also a massive disparity in the rates at which NSW Police criminalise Aboriginal and Torres Strait Islander people for cannabis use in comparison with non-Indigenous people. The effects of being charged with a cannabis offence can be devastating and permanently alter someone's ability to live a full and happy life. These effects include barriers to housing, education, and employment, and trapping people in a cycle of contact with the criminal justice system.³

¹ Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2022-2023*.

² Australian Criminal Intelligence Commission, *Illicit Drug Data Report 2020-21*.

³ Legislative Council Legal and Social Issues Committee (Victoria), *Inquiry into the use of cannabis in Victoria*.

Around the world, jurisdictions are moving away from cannabis prohibition and towards regulating cannabis in a broadly similar way to alcohol, tobacco or pharmaceuticals. NSW has the opportunity to draw on these reforms to design an effective regulatory framework that is appropriate for local conditions, fairer and better able to achieve public health objectives. Unharm commends this inquiry as a timely opportunity to begin that work.

The historical development and implementation of the regulatory framework for cannabis

The current regulatory framework for cannabis in Australia has been developed piecemeal. The prohibition of cannabis came at a time when cannabis use was little known in Australia. The Commonwealth moved to control cannabis importation under the Customs Act 1901, in 1926, and introduced absolute prohibition in the 1950s. Queensland had banned cannabis cultivation in 1937, but the first case of an illegal cannabis crop in Australia, found in Queensland, came only in 1957.⁴ Recreational drugs mattered very little to Australian legislators, due to low levels of use in Australia, but the country's international standing mattered a great deal and this drove Australian acquiescence to international pressure to prohibit cannabis.⁵ Driven by the United States, that pressure had racist origins in that 'marijuana' use had been represented in the USA as a drug that incited Mexicans and black people to anti-white violence.⁶

Internationally, arbitrary classification of substances including cannabis has been a consistent feature of the United Nations Drug Conventions. The 1961 Convention, for example, 'asserts that 'narcotic drugs,' including cannabis, have no place in society and must be restricted to medical and scientific purposes, but ... offers no scientific definition to determine a 'narcotic' drug.'⁷ Similarly, the Australian Standard for the uniform scheduling of medicines and poisons has two arbitrarily defined categories for prohibited drugs - Schedule nine for 'Substances which may be abused or misused' and Schedule 10 'Substances of such danger to health as to warrant prohibition of sale, supply and use'. Cannabis (excepting cannabis for 'therapeutic use') is included in Schedule nine. There is no publicly available criteria or documentation underpinning the inclusion of cannabis in Schedule nine, and conversely the exclusion of other substances, like alcohol, with potential for abuse or misuse is not explained.

Impacts of the current regulatory framework for cannabis

According to the most recent government statistics, NSW police recorded 14,664 incidents of possess/use cannabis in 2023.⁸ That's an average of 40 people arrested every day in NSW for cannabis use - far more than for any other substance. And in 3980 cases where the principal offence was

⁴ Desmond Manderson, 1993, *From Mr Sin to Mr Big*, Oxford University Press.

⁵ *ibid.*

⁶ *ibid.*

⁷ Taylor, Stuart, et al., 2016, 'Prohibition, privilege and the drug apartheid: The failure of drug policy reform to address the underlying fallacies of drug prohibition,' in *Criminology and Criminal Justice*, pp1-18.

⁸ NSW Bureau of Crime Statistics and Research, *NSW Criminal Court Statistics 2014 to 2023*.

cannabis possession/use, The NSW Police Force (NSWPF) took the case to court.⁹ This is a huge and harmful misuse of government resources by police.

The NSWPF is also much more likely to pursue legal action for cannabis possession or use against Aboriginal or Torres Strait Islander people than it is against non-Indigenous people. This huge disparity in rates of criminal proceedings for possession/use cannot be simply attributed to differences in rates of cannabis use, which are relatively small. The National Drug Strategy Household Survey 2022-23 found that Aboriginal and Torres Strait Islander people were only about 1.5 times more likely than non-Indigenous people to have used cannabis in the previous 12 months (17.0% vs 11.4%).¹⁰

Police perceptions of high rates of cannabis use by Aboriginal people may be contributing to the disparity in criminal proceedings. A 2013 survey of police in Australia, on their attitudes and beliefs about alcohol and other drug use by Aboriginal people, found that 84% of respondents said they thought cannabis was 'widely used' (34%) or 'very widely used' (50%) by Indigenous people in their area.¹¹ In comparison, the 2013 National Drug Strategy Household Survey found that just one in five (19.0%) Aboriginal and Torres Strait Islander people reported recent cannabis use that year.¹²

The evidence for the appalling disparity in rates of legal action in NSW comes from data collected by the NSWPF, and obtained by Unharm under the Government Information (Public Access) Act 2009 (NSW) (GIPA Act). The data covers the 12 month period, 1 February 2022 to January 31 2023.

As shown in Figure 1 below, across this 12 month period NSWPF pursued legal action against 8 of every 1000 Aboriginal and Torres Strait Islander people, and 1.6 of every 1000 non-Indigenous people, for cannabis possession or use. That means the NSWPF were five times more likely to pursue legal action for cannabis possession or use against Aboriginal and Torres Strait Islander people than against non-Indigenous people.

The greatest disparity was in the Central Metropolitan Region, where police pursued legal action against 21.8 of every 1000 Aboriginal and Torres Strait Islander people, and 1.8 of every 1000 non-Indigenous people.

⁹ *ibid.*

¹⁰ Australian Institute of Health and Welfare, 2024, 'Data tables: National Drug Strategy Household Survey 2022-2023- 10 Priority population groups.'

¹¹ Tracey Cussen, Jason Payne, and David Marks, 2013, *Policing alcohol and illicit drug use among Aboriginal and Torres Strait Islander people in metropolitan environments*. (Monograph Series No. 48). National Drug Law Enforcement Research Fund.

¹² Australian Institute of Health and Welfare, 2020, 'Data tables: National Drug Strategy Household Survey 2019 - 8 Priority population groups supplementary tables.'

Figure 1 - Rate of legal action NSWPF commenced against Aboriginal and Torres Strait Islander people and against non-Indigenous people for possession/use of cannabis, standardised per 1000 people, February 2022 - January 2023.

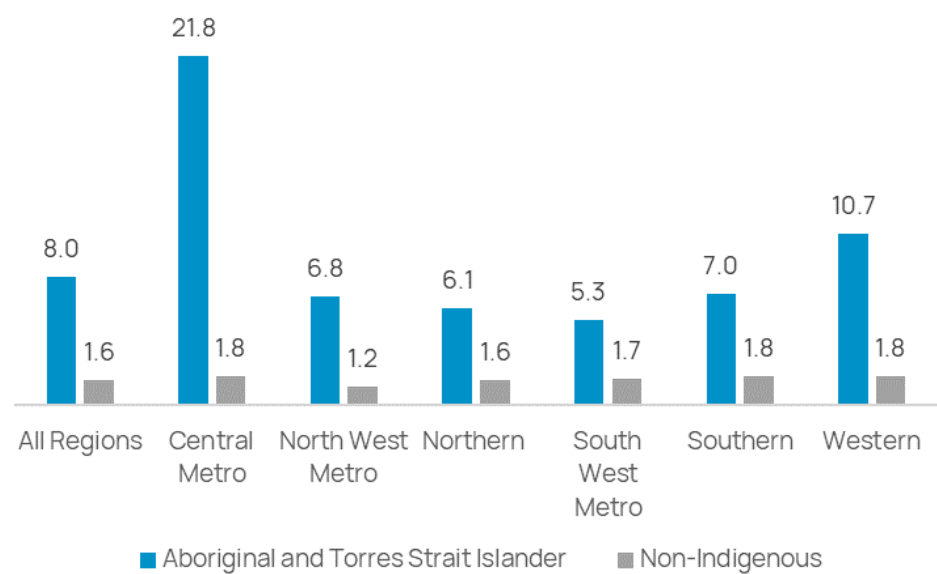
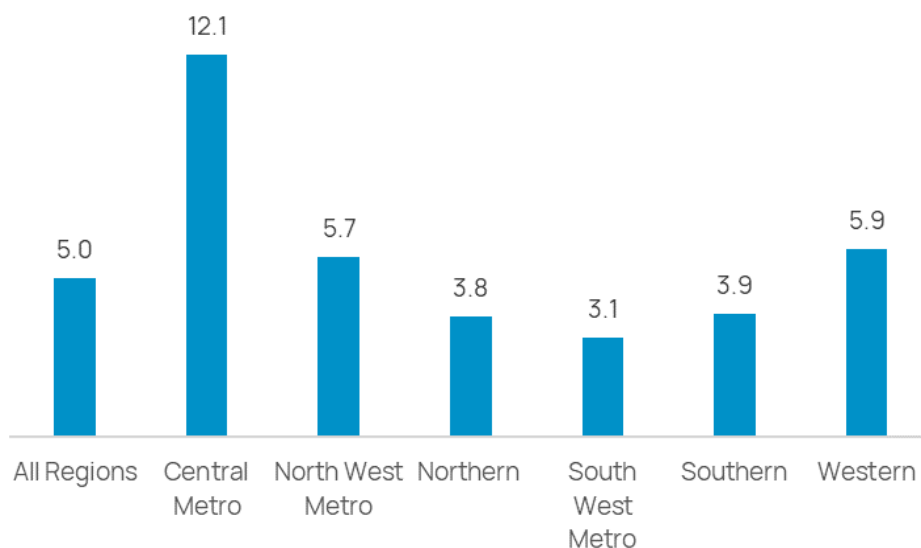


Figure 2 below shows the data in Figure 1 as ratios. As shown in Figure 2, the NSWPF were five times more likely to pursue legal action for cannabis possession or use against Aboriginal and Torres Strait Islander people than against non-Indigenous people. In the Central Metropolitan Region, where the disparity was highest, police were 12.1 times more likely to pursue legal action against Aboriginal or Torres Strait Islander people for cannabis possession or use than against non-Indigenous people.

Figure 2 - Ratios between the rate of legal action NSWPF commenced against Aboriginal and Torres Strait Islander people and against non-Indigenous people for possession/use of cannabis, February 2022 - January 2023.



Police actions following detection of small quantities of cannabis also differ substantially for Aboriginal and non-Aboriginal people. Analysis of data from the NSW Bureau of Crime Statistics and Research (BOCSAR) found that in the five-year period across 2013-2017, 82.6% of all Aboriginal people found with a small quantity of cannabis were pursued through the courts, compared with just 52.3% of non-Aboriginal people. Over the same period, an Aboriginal person found with cannabis was about four times more likely to receive a charge than a non-Aboriginal person, who was more likely to be cautioned.¹³

A BOCSAR report from 2023 found that NSW police were less likely to give cautions and more likely to pursue charges for minor cannabis offences if the person was Aboriginal: 43.9% of non-Aboriginal people were cautioned, compared with just 11.7% of Aboriginal people.¹⁴ The report noted that this disparity 'can be explained by differences in observed characteristics of the offenders...[n]otably, prior offending', but that 'since Aboriginal people have higher than average rates of contact with the criminal justice system and therefore longer criminal histories, then this can be seen as a form of indirect bias that limits Aboriginal people's access to this formal diversion pathway.'

¹³ Mark McGowan and Christopher Knaus, 2020, 'NSW police pursue 80% of Indigenous people caught with Cannabis through courts.' *The Guardian: Australia Edition*.

¹⁴ Adam Teperski and Sara Rahman, 2023, *Why are Aboriginal people less likely to receive Cannabis cautions?* (Crime and Justice Bulletin No. 258). NSW Bureau of Crime Statistics and Research.

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

The provisions Drug Misuse and Trafficking Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023 as drafted would:

- eliminate more the 14,000 harmful cannabis arrests in NSW each year;
- move incrementally towards establishing an effective regulatory system for cannabis by precluding commercial production and supply which manages the risk that a commercially-oriented regulatory framework might be inconsistent with public health objectives;
- allow for gifting of cannabis, which would appear to also enable gifting of cannabis seeds and therefore provide legal means of access to seeds;
- distinguish between possession within and outside the person's place of residence, so that possession of cannabis produced by the specified maximum number of plants is legal to possess; and
- enable cannabis cultivation equitably in all climatic regions by not preventing the use of artificial light or heat.

Given the harms of the current legal settings, including the disproportionate harm to Aboriginal and Torres Strait Islander peoples, and the additional benefits that would flow from reforms as outlined above, Unharm supports this Bill.