



Community
driven justice.

**FITZROY LEGAL SERVICE SUBMISSION TO INQUIRY INTO
the Drugs, Poisons and Controlled Substances
Amendment (Regulation of Personal Adult Use of
Cannabis) Bill 2023**

**For all enquiries related to this
submission:**

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About Fitzroy Legal Service

Established in 1972, Fitzroy Legal Service ('FLS') is Victoria's longest standing community legal centre championing justice for members of our community facing economic, cultural or social oppression. With a deep commitment to community-driven change, we provide individuals and communities with access to justice when they need it most and boldly agitate for high-impact policy and legislative reforms.

Our flagship Drug Outreach Program has operated for over 20 years, providing specialist legal services to people whose engagement with the justice system is underpinned by drug use and the over-policing of their communities. Our practice operates through a harm reduction framework in partnership with health services such as the Medically Supervised Injecting Room, Uniting Care Regen, Living Room, Odyssey House, CoHealth, Quinn House, and Youth Support and Advocacy Services. Together we provide health, social and legal wraparound supports to assist people in accessing rehabilitation processes and reducing the negative impacts of their engagement with the justice system. To this day our Drug Outreach Program remains the biggest dedicated legal service of its kind in Victoria.

Introduction

FLS commends the Victorian parliament for considering the proposed changes in the *Drugs, Poisons and Controlled Substances Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023* ('the Bill') and its referral to the Legislative Council Legal and Social Issues Committee for a public inquiry.

We are supportive of the Bill as a whole, regard it as a step forward in supporting rehabilitative and health-based approaches to drug use, and would commend its passage through parliament. However, we also believe there are further steps Parliament should be taking to ensure harm-reduction principles are at the core of all policy responses to the use of drugs.

We are grateful to our clients for trusting us with their stories and we acknowledge the people who use drugs that we work closely with, whose voices and experiences inform our advocacy for law reform. The case studies in this submission are drawn from our legal practice. All identifying details have been changed or omitted, including by not using their real names.

Personal possession and use of cannabis must be decriminalised

12,610 people were charged with 14,391 charges of cannabis use and possession offences in the Victorian Magistrates' Court between 1 July 2020 and 30 June 2023.¹ Despite the Victoria Police's drug response strategy directing officers to divert people into support services and focus police efforts on organised crime syndicates and the large-scale trafficking of drugs of dependence,² people who use and possess cannabis continue to be over-policed and forced to face the profound consequences of being dragged into the criminal justice system. Indeed, across Australia between 2010-2022, more than 90% of cannabis related arrests were for personal use or possession, and in 2019-2020 nearly half of all drug-

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 'Prevent, Disrupt, Connect, Care: Drug Strategy 2020-2025', Victoria Police, 2020.

related arrests were for cannabis.³ This is despite 80% of people in Australia now believing that cannabis possession should not be a criminal offence.⁴

While diversion and caution processes do exist to redirect people out of the criminal justice system and into community support programs, police hold decision making power as to whether a person is offered a caution or diversion, and it is our experience that these decisions are inconsistent, opaque, subject to personal and institutional biases, and lacking in accountability processes. Our experiences are in line with those in NSW, with a recent study by the Bureau of Crime Statistics and Research finding that only 12% of Aboriginal and Torres Strait Islander people were given a caution for cannabis possession compared to 44% of the general population, and, among those eligible for diversion, 40% of Aboriginal and Torres Strait Islander people were diverted compared to 74% for the general population.⁵

The number of people charged for personal use or possession of cannabis between 2020-2023 highlights the failures in the diversion and caution system to adequately protect people against being dragged into the criminal justice system for low level cannabis offences. The cost of this criminalisation is high, both economically and socially.

In 2017, the estimated average public cost per person for charging and prosecuting a cannabis offence was \$1,918.⁶ It is likely this cost has only risen in the intervening years. This means that, over 2020-23 Victoria is estimated to have spent over \$24 million in charging and prosecuting cannabis use and possession alone. In fact, across Australia, the cost of enforcing the criminalisation of cannabis for one year is reported to be \$1.7 billion.⁷ This is broken down into:

- \$1.1 billion on imprisonment
- \$475 million on policing;
- \$62 million on courts;
- \$52 million on legal aid and prosecution; and
- \$25 million on community corrections orders.

This is despite the fact that there remains no credible longitudinal evidence locally or internationally that surveillance, law enforcement and imprisonment lead to lower levels of drug use or drug related harms. Yet it is the social cost of the criminalisation of cannabis that is most concerning, with individuals and communities experiencing immense harm from their forced engagement with the justice system.

Every day we see firsthand from our clients how being criminalised can impact a person on multiple levels and perpetuate cycles of poverty and disadvantage. Criminal charges can trigger the involvement of child protection services and cause people to lose access to their children; paying for a lawyer, missing out on

³ Pennington Institute, 'Cannabis in Australia 2022: Technical Report' (Report, 2022) 1. <www.penington.org.au/wp-content/uploads/2022/12/Cannabis-in-Australia-2022-Technical-Report.pdf>.

⁴ Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2022-2023: Cannabis in the NDSHS* (Report and Web article, 29 February 2024), figure 5 <<https://www.aihw.gov.au/reports/illicit-use-of-drugs/cannabis-ndshs>>.

⁵ Adam Teperski and Sara Rahman, 'Why are Aboriginal adults less likely to receive cannabis cautions?' *NSW Bureau of Crime Statistics and Research* (Report, June 2023) <<https://bocsar.nsw.gov.au/content/dam/dcj/bocsar/documents/publications/cjb/cjb251-300/cjb258-report-cannabis-cautioning-2023.pdf>>. There does not appear to be a comparable report in Victoria.

⁶ Marian Shanahan, Caitlin Hughes and Tim McSweeney, 'Australian police diversion for cannabis offences: Assessing program outcomes and cost-effectiveness' *Australian Institute of Criminology* (June 2017).

⁷ Steve Whetton al, 'Quantifying the social costs of cannabis use to Australia in 2015/16' *National Drug Research Institute* (June 2020).

work, and paying fines can decimate people's finances or put them into years of debt; having a criminal record significantly limits employment as well as volunteering and study opportunities; criminal convictions for the growing of cannabis plants can cause a person to be removed from public housing;⁸ and any drug related offence on their record can impact their ability to obtain a private rental.

Far too often we see how a low-level cannabis charge can trap our clients in these cycles of hardship. Indeed, this very committee found in 2021 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".⁹

These harms are particularly damaging as, for many of our clients, cannabis use occurs against a backdrop of overlapping marginalisations including mental ill-health, historic and intergenerational trauma, family violence, economic hardship, and homelessness. They are frequently brought into contact with police for non-drug related matters, during mental health or family violence call outs, or simply because they are more visible to police than the general public. The criminalisation of cannabis use and possession erroneously and dangerously places primary focus on the comparatively low risk of harm from cannabis at the expense of ignoring these deeper and more harmful issues that the person is dealing with. The two case studies below illustrate the ways in which people experiencing other marginalisations are dragged into the criminal justice system through the criminalisation of personal cannabis use.

Nesh's story – criminalisation risks locking in a cycle of disadvantage

Nesh came to Australia as a refugee when he was a young child and experienced physical abuse at the hands of his parents. Due to this childhood trauma, Nesh had learning difficulties and dropped out of high school. He then spent years experiencing periods of homelessness as both a teenager and adult. During one of these periods of homelessness, Nesh began to use alcohol and cannabis to help him cope.

Nesh is now in his mid-30s and has been diagnosed with multiple health conditions including schizophrenia and cognitive impairment. He uses cannabis in part to help manage his symptoms.

Late one night, Nesh was driving home when he was stopped by the police. On questioning police perceived him to be nervous, which was likely a result of his multiple health conditions, and to smell of cannabis. The police did not deem it necessary to conduct a roadside drug test but made the decision to search Nesh and his car.

The police found less than 1g of cannabis in Nesh's jacket, and nothing in his car.

Despite the extremely small amount of cannabis found in his possession, that they had no evidence to suggest he had used any cannabis, and his multiple health conditions, the police charged Nesh with possession of cannabis.

Nesh was extremely distressed that if found guilty he will have a criminal record that will make it impossible for him to find employment and risks throwing him back into homelessness, which in turn would affect his ability to continue accessing medical support services for his health conditions.

Grace's story – victim-survivor arrested for possession during family violence call out

⁸ Residential Tenancies Act 1997, s 91ZR(1)(g).

⁹ 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.

Grace had experienced family violence at the hands of her ex-partner Sebastian for many years. One morning a neighbour overheard a heated argument at Grace's house and, anticipating that family violence may be occurring and out of concern for Grace's safety, called the police to check in on her.

Nobody was home by the time the police arrived at Grace's house but, despite not having any lawful power to enter the property, the police jumped the side fence and walked around the back yard where they found two cannabis plants that had been left by Grace's ex-partner Sebastian.

When Grace returned home later that day, she was immediately arrested. Although she was calm and compliant, the police handcuffed Grace and held her for two hours out the front of her property in full view of her neighbors and passersby.

The police took these actions before any enquiries into Grace's welfare and whether she had been the victim of family violence that morning.

Grace was then charged with cultivation of a narcotic plant and possession of cannabis.

It took almost 18 months for the charges against Grace to be dropped, due to the police unlawfully entering her property. By that time Grace had accumulated almost \$1,000 in legal fees that she now had to pay.

The whole experience was extremely distressing for Grace and had severe negative impacts on her mental health. She reported she was much less likely to ever seek support from the police if she was to experience further instances of family violence.

Grace and Nesh's stories highlight how the criminalisation of cannabis further entrenches experiences of marginalisation and make it harder for people to access support services or break cycles of poverty and disadvantage. This is particularly the case for people dealing with mental ill-health, due to the frequent co-occurrence of drug use and mental ill-health. It is our experience that people's medical support needs are often ignored in favor of criminalised responses to their drug use. The case study below is illustrative of how many of our clients are charged with drug possession offences in circumstances of easily perceivable mental ill-health.

Milly's story – a mental health episode resulting in serious criminal charges

Milly had significant mental ill-health including bipolar affective disorder, extreme anxiety and paranoia. One morning, while a tradesperson was at her house, Milly became very scared and began to believe that the tradesperson was not who they said they were.

In this terrified and paranoid state of mind, Milly took a tool from the tradesperson's bag and locked herself inside her house with it. The tradesperson contacted the police who then attended Milly's home.

When they arrived, Milly led the police to a shed in the backyard where the tool was. Upon entering the shed the police observed a couple of cannabis seedlings and immediately arrested Milly for cannabis possession and cultivation.

In her state of mental ill-health, Milly did not passively comply with her arrest. While screaming and yelling in fear and anger, Milly made grasping motions with her hands that were handcuffed behind her back. Some of these motions made slight physical contact with the police handling her and for that Milly was charged with assaulting a police officer. Back at the police station, she was also criminally charged for not unlocking her phone for the police and for behaviour that disturbed the good order of the police goal.

Milly was ultimately charged with 8 serious criminal charges which they prosecuted all the way through to contest mention. It took almost 3 years for the matter to resolve with the charges for assaulting a police officer, cannabis cultivation and the charges at the police station ultimately being withdrawn. Milly plead guilty to and was given no conviction for the theft of the drill, possession of cannabis and resisting arrest charges.

The result of the charges speak to the absurdity of Milly's arrest to begin with, but do not take away from the significant stress and drain on Milly's resources they caused. Time and resources that could otherwise have gone to supporting her underlying conditions.

When she needed mental health assistance and support, Milly was instead met with criminal punishment.

Milly's story demonstrates how the criminalisation of cannabis creates the conditions for a response to mental health episodes that is more focused on charging someone with criminal offences rather than addressing their psychological and medical needs and connecting them to appropriate, ongoing therapeutic support.

Furthermore, while the criminalisation of cannabis has had limited impact on the rates of possession and use of cannabis,¹⁰ it is our practice experience that criminalisation serves as a significant barrier to people accessing health, mental health, AOD supports. As the case studies below demonstrates, criminalisation can disrupt people's rehabilitative and recovery journeys and risk perpetuating offending behaviours including drug-related offending.

Arjun's story – a welfare check ends up putting rehabilitation at risk

Arjun has an acquired brain injury, significant mental health challenges, and has previously suffered from a stroke. Due to his previous drug use and offending history, Arjun no longer has custody of his child.

Over the past year Arjun has been engaging with AOD support services to facilitate his rehabilitation and support access to supervised visits with his child.

One day, police attended Arjun's house on a welfare check. While there the police search his person and his house and find a small quantity of cannabis. They charge him with personal possession of cannabis.

Due to his prior offending, Arjun is not diverted out of the criminal justice system. His rehabilitative progress is severely damaged by the stress and burden of dealing with these charges, and the risk that he might lose access to his child once again.

Pat's story – possession charge puts nine months of rehabilitation work in jeopardy

Pat is an Aboriginal man who was forced to leave school at 13 and live on the streets to escape a violent family home. It was during this period of homelessness that Pat developed substance use issues with heroin, and he was then in and out of prison from the age of 14. Most of Pat's adult life has involved imprisonment for low level offending linked to his drug use issues and homelessness.

After his latest imprisonment, Pat made the decision to break the cycle of drug use and prison. He began to address a 30-year relationship to drugs through AOD rehabilitation counselling, successfully finishing a voluntary program of rehabilitation and stabilising on opiate replacement

¹⁰ Inquiry Final Report, Finding 18, p 183.

therapy. During this time Pat was able to reconnect with family for the first time in many years and was looking at renting his own house.

After nine months of progress, Pat had a lapse and is found by police with a small portion of cannabis. Pat faces criminal charges and the progress that has been made in the past nine months to break the cycle of imprisonment and drug use is put in jeopardy.

Even when criminal responses do not immediately disrupt rehabilitation and access to support services, the mere fact that cannabis is criminalised serves as a deterrent to people seeking support due to the stigma and discrimination it creates.¹¹ The fear or anticipation of stigma can prevent a person from seeking help and medical care, stigma inherent in policies and practices can bar someone from accessing help, and individual stigmatising attitudes can result in substandard care being provided.¹² The decriminalisation of cannabis is a critical and necessary step in addressing and reversing the prevalence and harms of these stigmas.

The ACT Health Directorate's review of the operation of the *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019* ('the ACT review report') provides a comparable jurisdictional example of the benefits of decriminalisation. The ACT decriminalised certain offences related to personal cannabis use in 2020 by amending the *Drugs of Dependence Act 1989* (ACT) to allow adults to possess up to 50g of dried cannabis or 150g of wet cannabis; grow up to 2 cannabis plants per adult, with a limit on 4 plants per premises; and to use cannabis at home.

Importantly, the ACT review report found that decriminalisation did not increase cannabis use, did not affect cannabis related ambulance presentations or hospital admissions, did not increase trafficking or cultivation charges, and had no effect on the availability of cannabis.

Furthermore, the report included several pieces of anecdotal evidence from stakeholders that believed the decriminalisation of cannabis was having a positive effect on people seeking help. Canberra Alliance for Harm Minimisation and Advocacy reported to the reviewers that the service saw a fourfold increase in people seeking information and support for cannabis use immediately following the commencement of the changes to the *Drugs of Dependence Act* – this was attributed to a reduction in stigma and discrimination rather than an increase in use:

"[The legislative changes] made a profound difference in the stigma and discrimination that we see within the community and I think that is having an effect on people seeking treatment or feeling, if they are having issues with their cannabis use, feeling like they're able to come and talk about that... It has a profound effect on a person's agency and empowerment to be able to change that behaviour, talk about it, talk about it without stigma, change the behaviour [...] seek support if you need to. I mean, it's just been a night and day change [...] we have a lot of conversations about cannabis [with] people coming into the drop in centre and that's been really positive [...] We certainly haven't seen an increase [in cannabis use...] Where we've seen

¹¹ Caitlin Douglass et al, 'Stigma Associated with Alcohol and Other Drug Use Among People from Migrant and Ethnic Minority Groups: Results from a Systematic Review of Qualitative Studies' (2023) 25(6) *Journal of Immigrant and Minority Health* 1402, 1421.

¹² Loren Brener et al, 'Predictors of health care workers' support for discriminatory treatment and care of people who inject drugs' (2019) 24(4) *Psychology, Health and Medicine* 439.

changes is in terms of people's education and information-seeking around cannabis; really informing themselves and informing their families."¹³

The Alcohol, Tobacco and Other Drug Association similarly reported that "people were 'more forthcoming about their cannabis use and more forthcoming about seeking assistance', including seeking information and education through services regarding cannabis." And the Alcohol and Drug Service Diversion Service reported that "*individuals who use cannabis recreationally may feel less stigmatised and more comfortable seeking help or support if needed for their cannabis use.*"¹⁴

The example of the ACT demonstrates the effectiveness of decriminalisation and treating cannabis use and related harms as public health issues rather than criminal ones. As we have demonstrated, the criminal justice system is an inappropriate and injurious mechanism for responding to cannabis use. We urge the Victorian Parliament to take this important step to approaching cannabis use through a harm reduction framework by passing this Bill.

Recommendation One

- **That the Drugs, Poisons and Controlled Substances Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023 be passed.**

Decriminalisation must come with the expungement of records

The impacts of criminalisation can endure for many years after a matter is finalised by the court. Even with the introduction of the *Spent Convictions Act*, the weight of a criminal record continues to be an incredible barrier for many people who are trying to rebuild their lives, access stable employment and housing.

Only a small number of sentence types are eligible to become immediately spent. For the majority of convictions, people must wait ten years before their conviction will be spent. During this time many work, study or volunteer opportunities are not available to them. Even after becoming spent, there are a raft of industries where spent convictions will be visible on police checks, further disincentivizing people from applying for jobs long after a criminal record no longer reflects the reality of their current lives. The case study below illustrates the practical barriers someone with a drug-related criminal record faces in reskilling and accessing the job market.

Wendy's story – living with a drug-related criminal record

In 2017 Wendy was sentenced to forty days in prison for drug possession offences, theft and possessing a controlled weapon.

¹³ ACT Government Health 'Review of the operation of the Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019' (Report, August 2024), 36-37.

¹⁴ ACT Government Health 'Review of the operation of the Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019' (Report, August 2024), 38.

On paper her charges look a lot more serious than the reality. The controlled weapon, for example, was an arts-and-craft knife that was in her bag and found by a police search as part of her arrest.

Since her short term in prison, Wendy has turned her whole life around and no longer engages in any of the behaviours on her criminal record.

She has undertaken a dual Certificate IV program in Alcohol and Other Drugs and Mental Health. To complete the course, students were required to undergo a practical work placement. After lining up a placement and already beginning some work with an organisation, Wendy was told she wouldn't be able to continue there because of her criminal record. It took an extra 6 months to complete the course due to the hurdles in finding an organisation to accept her placement.

Wendy wanted to keep studying and building her skills, to help her get a job and access stable housing. She enrolled in a child protection course, an area she is deeply passionate in. After already enrolling, Wendy was told she wouldn't be able to work in child protection because of her criminal record.

Wendy was left extremely deflated and frustrated. She was worried she would have no option but to return to some of her previous offending behaviour. She remarked: "I'm doing all the requirements of study but what is the point if I can't get anything out of it."

Wendy's story perfectly encapsulates the way a drug offence on a person's criminal record can prevent them from getting their life back on track and accessing important work and study opportunities. If the Bill were to pass, for many people, this would mean that using cannabis would not run the very real risk that they may be prevented from large sections of the job market for up to a decade.

However, there would still be a large number of people in Victoria currently experiencing such exclusions from employment and housing markets due to previous cannabis charges. Should the Bill be passed, we believe that anyone with a cannabis personal use or possession charge that hasn't yet been spent should have their record expunged.

Recommendation Two

- **That the Bill be amended so that convictions for repealed offences be expunged from people's criminal records.**

Decriminalisation of other drugs should be explored

After initially decriminalising cannabis, the ACT made further changes to their drug possession laws when the *Drugs of Dependence (Personal Use) Amendment Bill 2021* was passed and came into effect on 28 October 2022. Now in the ACT, while it is still an offence to possess other drugs of dependence, when a person is caught with a small quantity of any of them, they are liable to a \$100 fine or they can be diverted to a health education and information session.

A year after these additional changes, the ACT Chief Police Officer has stated that there has been no increase in drug crime and police "haven't seen a significant change in behaviour at all."¹⁵ In the 12 months following the reform, of the 250 people who were picked up by police for small quantity

¹⁵ Monte Bovill, 'It's been 12 months since small amounts of illicit drugs were decriminalised in the ACT' ABC News (online, 28 October 2024) <www.abc.net.au/news/2024-10-28/act-drug-decriminalisation-one-year-on/104523428>.

possession, 237 opted to engage with drug education and assessment programs.¹⁶ There has also been a 50% increase in the number of samples being tested at the Canberra drug-checking service.¹⁷

The harms of the criminalisation of cannabis explored above apply equally, if not more severely, to the criminalisation of other drugs of dependence. In fact, the increased health risks and the development of substance use disorder makes it even more important that responses are health-led and operate through a harm reduction framework. The criminal justice system is unsuitable to deal with the use of other drugs of dependence as well as cannabis.

In addition to passing the Bill, we recommend that an additional parliamentary inquiry be established to explore the possibility of decriminalising low levels of possession for other drugs of dependence, and of the adoption of a model similar to the ACT approach.

Recommendation Three

- **That a Parliamentary Inquiry be established to explore the possible benefits of decriminalising low levels of possession and use for other drugs of dependence.**

¹⁶ Ibid.

¹⁷ Ibid.