



Victorian
Aboriginal
Legal Service



South Eastern Australian
Aboriginal Justice Services
Limited

ABN: 45 926 675 900

20 December 2024

Legislative Council Legal and Social Issues Committee

By email: cannabisbillinquiry@parliament.vic.gov.au

Dear Legislative Council Legal and Social Issues Committee

Re: Submission to the Inquiry into the Drugs, Poisons and Controlled Substances Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023

We are writing to provide our submission to the Inquiry into the Drugs, Poisons and Controlled Substances Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023.

VALS supports the passage of this Bill, with some amendments. At its core, drug use is a public health problem and not a criminal justice problem. The Victorian Government's current drug policy subjects people dealing with addiction to intrusive policing and excessive punishment, instead of giving them the support they need. Aboriginal people are no more likely to use illicit drugs than non-Aboriginal people, but they are charged with drug offences far more often – and in Victoria, that disparity has been worsening in the past decade, not improving.

This submission builds on VALS' existing policy work on decriminalisation and recommends brief amendments to the Bill to ensure these reforms promote equitable and community-focused outcomes, particularly for Aboriginal communities disproportionately impacted by criminalisation.

Decriminalising cannabis in Victoria

VALS supports the decriminalisation of cannabis due to the disproportionate and harmful impacts of criminalisation, particularly on Aboriginal communities. Criminalising cannabis for personal use, a low-risk activity, unnecessarily exposes

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individuals to the criminal justice system, leading to life-altering consequences such as imprisonment, stigma, and systemic discrimination. For Aboriginal communities, these impacts are compounded by intergenerational trauma, systemic racism, and overrepresentation in the criminal legal system. Decriminalisation offers a pathway to prioritise community health, reduce criminal legal system interactions, and improve social and health outcomes for Aboriginal people and their families.

Reforms must be accompanied by resourcing culturally appropriate education and health-based supports and for Aboriginal communities. We refer the Legal and Social Issues Committee to VALS' *Submission to the Inquiry into the Use of Cannabis in Victoria* for a detailed overview of these issues.¹

Expungement of Records for Decriminalised Offences

When decriminalising reforms are passed, they leave large numbers of people still struggling with criminal records from the previous drug law regime. The effects of criminal records are a profoundly harmful part of criminalisation. It is important that these harms are not allowed to persist when drug laws are amended.

Clearing criminal records is an important measure to reduce the lingering consequences of criminalisation. Decriminalisation amendments in Trinidad and Tobago, Bermuda² and Jamaica³ have allowed people to have historic cannabis offences expunged from their criminal record.

However, in most cases, expungements and pardons have required the person affected to make an application, which reduces the effectiveness of the measure.⁴

VALS has made extensive recommendations on the operation of Victoria's Spent Convictions Scheme, which allows convictions to be removed from a person's criminal record after a certain period of time, and these recommendations should be considered in the design of any drug law reform.⁵ We also refer the Legal and Social

¹ VALS, Submission to the inquiry into the use of cannabis in Victoria (2020)

² Expungement of Convictions Act 2020 (Bermuda); Ministry of Legal Affairs and Constitutional Reform, 'Cannabis Conviction Expungement Application', Government of Bermuda

³ Associated Press, 16 July 2015, 'Jamaica law to purge minor pot convictions goes into effect'.

⁴ A Klein and VJ Hanson, "Ganja Licensing in Jamaica: Learning lessons and setting standards" (Interdisciplinary Centre for Cannabis Research and University of West Indies, 2020) p 14

⁵ VALS (2021), Submission to the Legal and Social Issues Committee Inquiry into a Legislated Spent Convictions Scheme.

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Issues Committee to VALS' policy paper on [Harm Reduction Not Harm Maximisation: An alternative Approach to Drug Possession](#) for further detail.

VALS recommends amending the Bill to automatically expunge decriminalised offences from people's criminal history, including for children.

VALS feedback on the Bill

New section 69Y, which authorises the limited manufacture of cannabis or THC for personal use, is a reasonable inclusion. However, it is crucial for the provision to explicitly outline what actions are permitted and what are prohibited. Without clear guidance, there is a risk of misinterpretation by the public, which could disproportionately affect Aboriginal people through discriminatory enforcement. There is a greater need for clarity in this section.

New section 69ZA authorises individuals aged 18 years or older to use cannabis and tetrahydrocannabinol, provided the use does not occur in a public place. While this provision is practical in principle, it presents challenges for VALS clients who may cultivate cannabis for personal use but have no private space to consume it. Public order offences have historically had a disproportionate impact on unhoused clients, and this new provision risks further marginalising Aboriginal people already struggling with systemic disadvantages. In VALS view, new section 69ZA is not in line with a decriminalised approach to cannabis use. We recommend the Inquiry amend to this section to ensure the use of cannabis in public places does not attract a criminal response.

New section 69ZB permits individuals aged 18 or over to gift a small quantity of cannabis or THC to another adult, as long as the gift is not made for payment, barter, exchange, or other compensation. While the intention behind this provision is clear, it is essential that the legislation defines "small quantity" in a manner that is simple to understand and enforce. Without such clarity, there is a significant risk that enforcement practices will disproportionately target Aboriginal people.

Clause 5 amends section 73(1)(a)(i) of the Principal Act to specify that the possession of a small quantity of cannabis or THC is only an offence if committed by a person under the age of 18 years. VALS does not support the approach towards

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criminalising children who use cannabis, and instead recommends an approach that decriminalises cannabis for all people, including children and young people under 18 years. This is not the same as authorising the use of cannabis for young people –the health risks around cannabis use by children and young people are well understood. However cannabis use in young people is often a form of self-medication and can stem from unresolved trauma and untreated mental health issues. Criminalising children and young people for cannabis use only subjects them to harmful aspects of the criminal justice system and does nothing to prevent their use, whilst only serving to stigmatise children, increase social isolation and further deter them from seeking meaningful support. For Aboriginal children and young people, continuing to criminalise cannabis will only continue to subject them to discriminatory policing and higher rates of prosecution than their non-Indigenous peers. Having a criminal record for using or possessing cannabis as a young person will only create more barriers to being able to work, find housing, volunteer and travel, thereby entrenching disadvantage and marginalisation. These continuation of these injustices against Aboriginal children and young people is an unjust outcome should this Bill not only decriminalise cannabis use, but also authorise it, for adults. It is also important for these reforms to be accompanied by wider access to health and other support services for children and young people. For example, Estonia has expanded drug education in schools, but has also seen the value in providing children with more and better-resourced support systems and school activities, to avoid marginalisation which can lead some young people to drug use.⁶

Finally, the Bill fails to address how individuals can lawfully obtain cannabis seeds, which is a significant concern. The absence of lawful pathways for obtaining seeds risks criminalising those seeking to comply with the law. Under current ACT law, purchasing seeds is prohibited, with Commonwealth prohibitions still in place. As a result, many individuals resort to acquiring seeds illegally, often from overseas markets. Without explicit guidance on lawful seed acquisition, there is a heightened risk that Aboriginal people will be disproportionately targeted. Clearer legislative pathways are critical to ensuring these provisions are fair, equitable, and do not exacerbate existing inequalities.

⁶ Estonian Ministry of the Interior (2014), Estonia's drug prevention policy: white paper

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VALS are concerned about the implications of Section 69ZE on people who rent. The explanatory memorandum contemplates that this section can be used to allow renters to cultivate cannabis at their rental property with the permission of their landlord. We do not see the need for this distinction in the memorandum when section 69X already permits a person to cultivate cannabis at a person's principal place of residence. A person's principal place of residence should not be restricted to a residence they own - rather it should be given its usual meaning as per other legislation. The explanatory memorandum suggests that tenants would need explicit permission from landlords to cultivate cannabis. In VALS' view, this could pose challenges for renters, particularly given the high proportion of VALS clients who are renters. If this provision were to be interpreted as requiring tenants to seek permission from their landlords, it could create instability for renters while giving landlords too much power over their tenants. Landlords might use this provision as a reason to refuse lease renewals or to disrupt tenancy agreements, creating additional housing stress for vulnerable populations. This could become a means for landlords to openly discriminate against our clients by refusing their tenancy on the basis of cannabis use, or simply perceived use. To avoid this, VALS recommends that the Bill clarify that renters are included within the broader interpretation of "principal place of residence" (PPR) and that no explicit permission should be required from landlords for cannabis cultivation, as well as removing the section from the explanatory memorandum. By removing any distinction between renters and property owners, this would ensure a fairer approach, reducing unnecessary complications in landlord-tenant relationships and mitigating the potential for housing instability. Revising the Bill in this way would also provide greater consistency in how the law is applied to all occupants, regardless of tenancy status.

Considering negative impacts of legalisation elsewhere

VALS recommends that the Inquiry considers certain negative consequences of cannabis legalisation in other countries, in order to ensure these are not replicated in Victoria. Repeating the mistakes from other jurisdictions would only set back reform. Commercial cannabis markets in North America highlight significant potential pitfalls of legalisation, particularly when large-scale corporations dominate the industry. These entities often produce high-concentration cannabis products, which have been

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associated with negative health and social outcomes.⁷ North American companies appear to be monopolising Australia’s medicinal cannabis market by dumping stock and selling at a loss, threatening local market integrity. Allowing individuals to grow cannabis at home could serve as a safeguard against these issues, as home growers are less likely to produce cannabis with such high potency or create excessively concentrated products.

In the United States, where legalisation has occurred in various states, people of colour have been disproportionately harmed by criminalisation and excluded from benefiting from the legal cannabis market. It is critical to avoid similar inequities in Australia if a legal cannabis framework is adopted.

It is equally important that those who map out the way forward in Victoria do not simply “copy-paste” best practices from other jurisdictions, without properly tailoring those practices to the unique Victorian context, or without a particular focus on the needs and experiences of Aboriginal people in this State.

Recommendations

VALS makes the following recommendations to the Inquiry:

- Recommendation 1: The Bill be passed with amendments recommended in VALS submission to the Inquiry.
- Recommendation 2: The Bill be amended to automatically expunge repealed offences from people’s criminal histories, including children’s criminal histories.
 - Recommendation 3: New section 69Y be amended to explicitly outline what actions are permitted and what are prohibited, in order to provide greater clarity.
 - Recommendation 4: New section 69ZA be amended to ensure the use of cannabis in public places does not attract a criminal response.
 - Recommendation 5: New section 69ZB be amended to define the meaning of “small quantity” in a manner that is simple to understand and enforce.
- Recommendation 6: Clause 5 be amended to decriminalise cannabis possession for all people, including children and young people under 18 years.

⁷ Dafna Sara Rubin-Kahana, The impact of cannabis legalization for recreational purposes on youth: A narrative review of the Canadian experience (2022), *Frontiers in Psychiatry*, p 7.

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- Recommendation 7: The Bill be amended to provide a lawful pathway to seed acquisition.
- Recommendation 8: That “principal place of residence” be given its usual meaning to include rentals in Section 69ZE, and the Explanatory Memorandum be amended to state that no explicit permission should be required from landlords for cannabis cultivation.
- Recommendation 9: That the Inquiry considers certain negative consequences of cannabis legalisation in other countries, in order to ensure these are not replicated for Aboriginal communities in Victoria.

Yours sincerely,

Nerita Waight

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CEO

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