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## **NSWCCL SUBMISSION**

### **NSW DRUG SUMMIT 2024**

**16 November 2024**

**NSWCCL**

## **Acknowledgment**

In the spirit of reconciliation, the NSW Council for Civil Liberties acknowledges the Traditional Custodians of Country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all First Nations peoples across Australia. We recognise that sovereignty was never ceded.

## **About NSW Council for Civil Liberties**

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts, attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

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The NSW Council for Civil Liberties (**NSWCCL**) welcomes the opportunity to make a submission to the Drug Summit.

## 1. Introduction

- 1.1 The possession, use, cultivation, and supply of drugs are criminalised in New South Wales (NSW). Various substances, including cannabis, methamphetamine, opioids, cocaine, ecstasy, and others, are widely used illicitly in Australia. For instance, in 2022–2023, 11.5% of people in Australia have recently used cannabis,<sup>1</sup> while around 3% recently used other common illicit drugs such as cocaine, hallucinogens and ecstasy.<sup>2</sup>
- 1.2 Decriminalisation typically involves the removal of a criminal penalty for using or possessing small amounts of drugs. While all Australian states and territories have some form of decriminalisation in practice, only three (ACT, SA and the NT) have decriminalised these offences in their laws.
- 1.3 There is public support for moving away from a law enforcement approach to drug use in Australia. The latest national drug strategy household survey indicates growing public support for policy measures aimed at reducing drug-related harm.<sup>3</sup> For example, in the latest survey, support for legalisation of cannabis has increased to 45%, and the proportion of people who believed that possession of cannabis should not be a criminal offence reached an all-time high of 80%.<sup>4</sup> Meanwhile, for other drugs, the most commonly supported action when a person is found in possession of small quantities of illicit drugs is referral to treatment or education programs.<sup>5</sup>
- 1.4 NSWCCL supports decriminalisation, the removal of prison and/or large fines as a sentencing option for drug use or possession in quantities consistent with personal use; the implementation of pill and drug testing and the expansion of drug injection facilities; the expansion of the Magistrates Early Referral into Treatment (MERIT) program, along with programs to assist Indigenous offenders like Circle Sentencing and the Youth Koori Court; and an end to the punitive approach to policing at music festivals and other venues, including an end to the use of drug detection dogs and the practice of strip searches; and an end to discriminatory, inequitable and out of date presence-based drug driving practices targeting medical cannabis patients. Patients in Australia who are legally prescribed medicinal cannabis should be exempted from prosecution for driving with THC in their system, unless there is clear evidence of impairment.
- 1.5 There is consistent evidence that decriminalisation doesn't encourage drug use or increase drug taking in the community.<sup>6</sup> In fact, decriminalisation may have the opposite effect, as more people are able to access advice, support and treatment for any problematic health issue resulting from drug use.<sup>7</sup>

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<sup>1</sup> Australian Institute of Health and Welfare [AIHW] 2023, <https://www.aihw.gov.au/reports/illicit-use-of-drugs/cannabis-ndshs>.

<sup>2</sup> *ibid.*

<sup>3</sup> Australian Institute of Health and Welfare, *Support for alcohol and other drug-related policies*, 2024, <https://www.aihw.gov.au/reports/illicit-use-of-drugs/alcohol-drug-policy-support>.

<sup>4</sup> Australian Institute of Health and Welfare, *ibid* 1.

<sup>5</sup> Australian Institute of Health and Welfare, *ibid* 3.

<sup>6</sup> Scheim AI, Maghsoudi N, Marshall Z, Churchill S, Ziegler C, Werb D. [Impact evaluations of drug decriminalisation and legal regulation on drug use, health and social harms: a systematic review](#). *BMJ Open* [Internet]. 2020; 10(9).

<sup>7</sup> Benfer I, Zahnnow R, Barratt MJ, Maier L, Winstock A, Ferris J. [The impact of drug policy liberalisation on willingness to seek help for problem drug use: A comparison of 20 countries](#). *International Journal of Drug Policy* [Internet]. 2018; 56:[162-75 pp.].

## 2. Socio-economic impacts

- 2.1 The dominant 'prohibition' model of legislation in this field has failed in its goal of preventing widespread drug use, and consequent or coexisting vulnerabilities. Criminal sanctions have not proved to be an effective deterrent. The current legal framework is ineffective in curbing the supply and availability of illicit substances which have become more readily available. In 2022-23, based on wastewater sampling, consumption of methamphetamine, cocaine, MDMA and heroin increased an estimated 17%.<sup>8</sup> Police resources are being wasted and diverted from other more important policing activities which minimise harm rather than target drug users, many of whom cause no harm to society at all.
- 2.3 Criminalisation, which targets all levels of drug use, is not the best way to prevent problematic drug use. The NSWCCCL submits that the criminalisation of possession and use causes greater harm to already vulnerable groups in society than the use itself. For example, the Australian national drug strategy household survey found that:
- trans and gender diverse people were 1.6 times as likely to have used any illicit drug in the previous 12 months.
  - First Nations people were 1.4 times as likely as non-Indigenous people to have used any illicit drug in the previous 12 months.<sup>9</sup>
- 2.4 The prohibition on the sale and use of drugs has created a thriving black market. Organised crime gangs make large sums of money as a result, and the resulting gang wars over territory include murders.

## 3. Impact on Vulnerable groups

### *First Nations people*

- 3.1 The issue of the over-policing and over-incarceration of First Nations peoples in Australia is well documented. While First Nations people accounted for more than 35% of all interactions over the three years, only approximately 3% of the NSW population is Aboriginal.<sup>10</sup>
- 3.2 The current Early Drug Diversion Initiative does not adequately overcome these inequities, as the program maintains full police discretion as to whether the inclusion in the program is available, and people with two prior drug possession fines are ineligible. Finally, reliance on fines is inherently inequitable and disproportionately impacts lower socio-economic people.
- 3.3 Evidence from cannabis diversion is illustrative. Over the five-year period between 2013 and 2017, 82.6% of all Aboriginal people found in NSW with a non-indictable quantity of cannabis were pursued through the courts, compared with only 52.3% for the non-Aboriginal population; and over the same five-year period, only 11.4% of Aboriginal people caught with small amounts of cannabis were issued cautions compared to 40.0%

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<sup>8</sup> Australian Criminal Intelligence Commission, National Wastewater Drug Monitoring Program, Report 23, <https://www.acic.gov.au/sites/default/files/2024-03/Wastewater%2021%20FOR%20WEB2.PDF>.

<sup>9</sup> Benfer, Zahnow, Barratt, Maier, Winstock, Ferris, ibid 7.

<sup>10</sup> The Guardian (29.11. 2023) NSW drug law overhaul would allow six marijuana plants for personal use <https://www.theguardian.com/australia-news/2023/nov/29/nsw-drug-law-overhaul-would-allow-six-marijuana-plants-for-personal-use>

of non-Aboriginal offenders.<sup>11</sup> This clear bias starkly illustrates how the current criminalisation of cannabis disadvantages Aboriginal people in NSW.

- 3.4 The NSW Bureau of Crime Statistics and Research data shows that in 2023-24, only 15% of Aboriginal alleged offenders with possession and/or use of ecstasy were diverted from court for the incident, with the other 85% being proceeded against at court. In comparison, 59% of non-Aboriginal alleged offenders were diverted from court.<sup>12</sup>

### *LGBTIQ+ and Young People*

- 3.5 Likewise, the over-policing of the queer community in NSW is well documented. There has been concern for some time that the scale of police operations at NSW LGBTIQ+ events is disproportionate to the size and potential risks associated with these events.
- 3.6 This disproportionate level of policing has given rise to perceptions that police target LGBTIQ+ community events in a biased and deliberate way, when there is little evidence to suggest that this level of policing is necessary or required in the interests of the safety of the community overall.<sup>13</sup>
- 3.7 Under NSW law, police can undertake either general or strip-searches if they suspect someone has illicit drugs in their possession. Sniffer dogs are used by police to sense drugs and screen for suspicious behaviour. The use of drug detection dogs has been of serious concern for some time. The 2006 NSW Ombudsman's Review of the Police Powers (Drug Detection Dogs) Act 2001 found that drug detection dogs were costly, harmful to public health and ineffective in achieving their stated aim of reducing drug supply. It found that drug detection dogs make a large number of false indications, and when accurate, most often find minor quantities of drugs (usually cannabis).<sup>14</sup>
- 3.8 One of the 109 recommendations from the 2020 Special Commission of Inquiry into the drug ice and amphetamine-type stimulants was to cease the use of drug detection dogs at music festivals.<sup>15</sup> In 2023, across 663 deployments and 4006 searches, drugs were identified just under 29 per cent of the time. Putting people through a sometimes terrifying encounter with a police dog and subsequent humiliating strip search creates understandable trauma and fear amongst young people and the queer community.

### *Criminalised people*

- 3.9 A criminal conviction is a harsh punishment for people who simply use drugs and rarely pose harm to society. Entry of a conviction or even a bond without conviction goes on a police record with possible drastic long-lasting consequences for personal relationships, future employment, engagement in voluntary service and visas to enter other countries. A conviction carries the stigma of criminality, leaving quite large numbers of people with a criminal record who might never otherwise have trouble with the law.
- 3.10 A criminal conviction against a person's name typically has negative implications for their current and future education, employment, accommodation, or travel. This greatly affects

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<sup>11</sup> Teperski A, Rahman S, *Why are Aboriginal adults less likely to receive a cannabis caution?* Crime and Justice Bulletin, Number 258, (2023) NSW Bureau of Crime Statistics and Research

<sup>12</sup> NSW Bureau of Crime Statistics and Research, Use and Possession Illicit Drug Offences [https://bocsar.nsw.gov.au/content/dam/dcj/bocsar/documents/topic-areas/drug-offences/Use\\_possess\\_illicit\\_drug\\_s.xlsx](https://bocsar.nsw.gov.au/content/dam/dcj/bocsar/documents/topic-areas/drug-offences/Use_possess_illicit_drug_s.xlsx).

<sup>13</sup> Policing at NSW Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ) Events and Venues (2013) ACON

<sup>14</sup> Review of the Police Powers (Drug Detection Dogs) Act 2001 (2006) NSW Ombudsman [http://www.ombo.nsw.gov.au/data/assets/pdf\\_file/0020/4457/Review-of-the-Police-Powers-Drug-Detection-Dogs-Part-1\\_October-2006.pdf](http://www.ombo.nsw.gov.au/data/assets/pdf_file/0020/4457/Review-of-the-Police-Powers-Drug-Detection-Dogs-Part-1_October-2006.pdf)

<sup>15</sup> <https://www.nsw.gov.au/the-cabinet-office/special-commissions-of-inquiry/drug-ice>

socially disadvantaged people because their opportunities are further reduced, increasing their likelihood of recidivism. The enduring harm to a person's reputation and identity caused by a criminal conviction is totally disproportionate to the supposed harm caused by drug use and possession for personal use.

#### **4. Alternative approaches**

- 4.1 Conversely, redirecting the resources and funding currently used for victimless crime related to drug use in NSW could be put into programs of rehabilitation and treatment centres for seriously affected drug users.
- 4.2 The NSW government's zero-tolerance approach to people in NSW who are found with illicit drugs flies in the face of all the evidence and recommendations from the Special Commission of Inquiry into the drug ice and other amphetamine-type stimulants (ICE Inquiry) and is out of step with other States and Territories.
- 4.3 NSW has previously led the way in treatment and harm minimisation responses and could do so again if the government fully implemented the recommendations of the Special Commission's final report within a comprehensive alcohol and other drugs strategy.
- 4.4 The ICE Inquiry Report delivered a series of compelling recommendations. NSWCCCL advocates the implementation of the ICE Inquiry Report's evidence-based recommendations in regard to its relevance to cannabis use, which included:
  - o greater coordination of alcohol and other drug policy
  - o decriminalisation
  - o a clear focus on priority populations, especially:
    - Aboriginal people who experience disproportionate impacts from ATS
    - rural and regional people
    - people in contact with the criminal justice system.
  - o the removal of prison as a sentencing option for drug use or possession in quantities consistent with personal use.
  - o expansion of the Magistrates Early Referral into Treatment (MERIT) program, along with programs to assist Indigenous offenders like Circle Sentencing and the Youth Koori Court. This is vital to realising the ambitions of the Inquiry.
  - o an end to discriminatory, inequitable and out of date presence-based drug driving practices targeting medical cannabis patients. NSWCCCL agrees that those patients in Australia who are legally prescribed medicinal cannabis should be exempted from prosecution for driving with THC in their system, unless there is clear evidence of impairment, and
  - o an end to the punitive approach to policing at music festivals and other venues, including an end to the use of drug detection dogs and the practice of strip searches.
- 4.5 NSWCCCL further supports the immediate implementation of recommendations made in the interim report in the inquiry into the Impact of the regulatory framework for cannabis in New South Wales. The recommendations in the interim report are a bare minimum step that the NSW government should take in response to cannabis use.

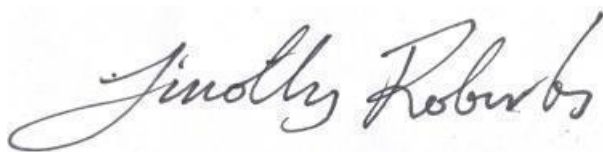
#### *2024 NSW Drug Summit*

- 4.5 Finally, Labor's 1999 Drug Summit remains a significant and defining moment for drug law reform in Australia and the world. The 2024 Drug Summit is an opportunity to recast the problematic use of drugs as a matter of public health policy with whole of government

implications. This shift is an important step in de-stigmatisation, removing barriers for individuals in acute distress or with long-term dependencies to seek help without fear of criminal penalties. It will also provide an opportunity to streamline resources and build on the understanding developed in treating the problematic use and addiction of alcohol and prescription medication.

- 4.6 The Drug Summit, with a whole of government approach, must also be an opportunity to examine the structural reasons driving drug misuse and dependency. The intersections of social, economic, housing and education policy are known contributors to drug misuse and dependency, and it is unfair and illogical to expect the police and justice system to shoulder the burden alone.
- 4.7 The demonisation of drug use and users and the over policing of minority populations is unjust and nonsensical -- when in reality, we know recreational use traverses postcodes. The success of reform depends on changing the way we talk about drugs, and those who use them. NSWCCCL maintains that the criminal law jurisdiction is ill-suited to deal with people who use drugs.
- 4.8 We note the recent NSW parliamentary inquiry recommended a roadmap for reforming cannabis laws. We believe that the submission of the NSWCCCL is consistent with this recommendation.
- 4.9 The committee's interim report advocates for a staged approach to reform, beginning this parliamentary term with a gradual relaxation of cannabis criminalisation, starting with increasing possession limits, reducing penalties for personal use, and reclassifying non-commercial cannabis sharing as possession rather than supply. The report also encourages limiting police search powers, and favours the use of cautions over arrests. We believe that these recommendations should be expanded to other drug types.
- 4.10 As the NSW Drug Summit continues, we urge the government to prioritise decriminalisation and harm reduction, particularly to address over-policing and improve community safety.

Yours sincerely,



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