



Submission to the Social and Legal Issues Standing Committee

*Review of the *Drugs, Poisons and Controlled
Substances Amendment (Regulation of
Personal Adult Use of Cannabis) Bill 2023**

13 December 2024

Contact

James Petty

Senior Policy and Research Officer

jpetty@vaada.org.au

Victorian Alcohol & Drug Association
Level 6, 222 Hoddle Street
Abbotsford VIC 3067
p. 03 9412 5600
vaada@vaada.org.au
www.vaada.org.au

Acknowledgement of Country

VAADA acknowledges the Traditional Owners of the land on which our work is undertaken. Our office stands on the country of the Wurundjeri people of the Kulin Nation. We pay our respects to all Elders past and present and acknowledge their continuing and ongoing connection to land, waters and sky.



About VAADA

The Victorian Alcohol & Drug Association (VAADA) is a member-based peak body and health promotion charity representing organisations and individuals involved in prevention, treatment, rehabilitation, harm reduction or research related to alcohol or drugs. VAADA aims to support and promote strategies that prevent and reduce the harms associated with alcohol and other drug (AOD) use across the Victorian community. Our vision is a Victorian community in which AOD-related harms are reduced and well-being is promoted to support people to reach their potential. VAADA seeks to achieve this through:

- Engaging in policy development
- Advocating for systemic change
- Representing issues our members identify
- Providing leadership on priority issues
- Creating a space for collaboration within the AOD sector
- Keeping our members and stakeholders informed about issues relevant to the sector
- Supporting evidence-based practice that maintains the dignity of those who use alcohol and other drugs and related services

VAADA acknowledges and celebrates people and their families and supporters who have a lived and living experience of alcohol, medication and other drug use. We value your courage, wisdom and experience, and recognise the important contribution that you make to the AOD sector in Victoria.

Recommendations

1. That the Legal and Social Issues Standing Committee endorse the Bill.
2. That the Bill and Explanatory Memorandum be revised to provide clearer guidance on Section 69ZE, specifically regarding the granting of permission to cultivate cannabis to ensure clarity for landowners, landlords, tenants, and real estate agents.
3. That the Committee clarify where the burden of proof lies in relation to the gifting of cannabis.
4. That the Bill be amended to include a requirement for the government to evaluate decriminalisation, including the potential to expand decriminalisation to other cohorts of illicit substances.
5. That the government develop a peer-led public awareness and education campaign (including youth-focused content) to ensure the public are well-informed about cannabis decriminalisation.
6. That the government introduce a budget measure for AOD services to be funded to support the implementation of decriminalisation of cannabis in Victoria.
7. That the Bill be amended to expunge prior criminal convictions for personal possession and use of cannabis.

Review of the Drugs, Poisons and Controlled Substances Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023.

The Victorian Drug and Alcohol Association (VAADA) welcomes the opportunity to provide a written submission to the Legislative Council Legal and Social Issues Committee's review of the *Drugs, Poisons and Controlled Substances Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023* (the Bill).

VAADA is a member-based peak body and health promotion charity representing organisations and individuals involved in prevention, treatment, rehabilitation, harm reduction or research relating to Alcohol and Other Drugs (AOD). VAADA aims to promote and support strategies that prevent and reduce the harms associated with AOD use across the Victorian community. Our vision is a Victorian community in which AOD-related harms are reduced and wellbeing is promoted to support people reach their potential.

VAADA works across health and community sector engagement and collaboration, AOD workforce development, evidence-based policy, legal reform, research, and advocating to governments on behalf of alcohol and other drug services and people who rely on them. Drawing on our five decades of experience, VAADA supports the Bill's proposed amendments to the *Drugs, Poisons and Controlled Substances Act 1981*.

Public support for decriminalising cannabis has grown significantly in recent years, with an overwhelming majority of Australians now in favour. Since becoming available in 2016, the use and acceptance of medicinal cannabis in Victoria has grown exponentially. This Bill presents an opportunity to align Victoria's drug laws with the values and realities of society today.

VAADA has long supported and advocated for the development and implementation of evidence-based drug laws that both reduce drug-related harms and represent an efficient use of public resources. The criminalisation of the personal use of cannabis for adults fails on both these metrics.

The changes proposed within the Bill are modest, supported by evidence, and align with best practice regarding the regulation of the personal use of cannabis. This Bill will enact modest changes to reduce harms associated with coercive and harsh criminalisation, while allowing law enforcement authorities to use resources to better prioritise serious crime.

In short, the Bill represents an important yet modest step in the right direction for Victoria's drug laws.

The problem with criminalisation

The criminalisation of drugs, in particular cannabis, has been one of the biggest failures of public policy in Australia. Despite a century of criminalisation, cannabis remains the most commonly used illicit drug in Australia (as it is globally).¹

A recent Penington Institute report estimates the value of Australia's cannabis black market at approximately \$5 billion annually, with the majority of this flowing to organised crime networks.² The social costs of cannabis have been estimated at \$4.5 billion per year, with more than half (54%) of this related to the criminal justice system.³

Annual surveys of people who use drugs conducted since 2000 as part of the Illicit Drugs Reporting System have consistently shown that cannabis is readily available, easy to access, and its price stable.^{4 5} These findings remain consistent in Victoria and nationally today.

Currently in Victoria, possession and/or use of cannabis can result in a criminal conviction for drug possession. This charge can follow people through life and negatively impact their prospects in employment, education, housing and other important domains. The criminalisation of cannabis also exacerbates social inequities by exposing people who use cannabis to the criminal justice system. Unsurprisingly, First Nations people, people from migrant or refugee backgrounds, people with cognitive disabilities, and those experiencing poverty, mental health issues, substance dependence and homelessness are more likely to be arrested for drug use or possession.⁶

It is important to note that the maximum criminal penalty for cannabis use/possession in Victoria does not include imprisonment. There is also a police diversion program for minor drug possession designed to divert people from entering the criminal justice system. While VAADA supports the diversion program, Australian research has shown that these are often unevenly applied, disadvantaging those belonging to minorities, in particular Aboriginal and Torres Strait Islander youth.⁷

Despite the diversion program, Victoria recorded a total of 11,855 cannabis arrests in the 2020-21 financial year (data for later years is not yet available from ACIC).⁸ Of these, 95% involved a consumer (as opposed to a trafficker).⁹ This represents a significant amount of public resources that could be better spent on more effective interventions with stronger evidentiary basis, such as prevention and early intervention, treatment and harm reduction.

¹ AIHW (2024) *Alcohol, tobacco & other drugs in Australia*, Australian Institute of Health and Welfare, Australian Government.

² Penington Institute (2024) *Cannabis in Australia: 2024*, Penington Institute.

³ AIHW (2024) 'Alcohol, tobacco and other drugs in Australia: Social costs of alcohol and other drugs', Australian Institute of Health and Welfare, Australian Government.

⁴ NDARC (2024) *Australian Drug Trends 2024: Key findings from the national Illicit Drug Reporting System (IDRS) Interviews*, National Drug and Alcohol Research Centre, University of New South Wales.

⁵ Burnet Institute and NDRI (2024) *Victorian Drug Trends 2024: Key findings from the Victorian Illicit Drug Reporting System (IDRS) Interviews*, Burnet Institute and National Drug Research Institute, Curtin University.

⁶ McCausland and Baldry (2023) 'Who does Australia Lock Up? The Social Determinants of Justice', *International Journal for Crime, Justice and Social Democracy*, vol. 12(3).

⁷ DPMP (2019) *Monograph 27: Criminal justice responses relating to personal use and possession of illicit drugs: The reach of Australian drug diversion programs and barriers and facilitators to expansion*, Drug Policy Modelling Program, UNSW.

⁸ ACIC (2023) *Illicit Drug Data Report: 20-21*, Australian Criminal Intelligence Commission, Australian Government.

⁹ Penington Institute (2024) *Cannabis Regulation in Australia: Putting community safety first*, Penington Institute.

Furthermore, research has consistently shown that the decriminalisation of personal possession and use of cannabis does not increase consumption.¹⁰ While there are health concerns relating to the use of cannabis, particularly for young people, these risks are not mitigated by criminalisation and can be better managed through supports and interventions delivered via social and health services.

Other benefits of decriminalisation for people who use cannabis include reduced interaction with black markets, avoidance of adulterants, and that homegrown cannabis products tend to be milder, with lower levels of THC.¹¹

Local lessons: Cannabis decriminalisation in ACT

The Australian Capital Territory (ACT) formally decriminalised cannabis for personal recreational use in 2019, with the laws coming into effect in 2020. Prior to this, there had been a level of unofficial decriminalisation in effect since 1989 with the Simple Cannabis Offence Notice (SCON), which provided a fine with no criminal conviction for those found in possession of personal quantities of cannabis.¹²

The 2020 laws largely mirror the conditions of the SCON – allowing those over the age of 18 to possess 50g dried, 150g fresh or two plants per person (or up to four if there are more than two adults in the home).

The commercial sale or possession of traffickable quantities of cannabis remains illegal.

Additional restrictions apply to the cultivation of cannabis: the personal sale, swap, gifting or sharing of cannabis plants, products or seeds remained illegal, and restrictions on plant size and ‘artificial cultivation’ (use of lamps or heated pads) were introduced.

The ACT government evaluated the decriminalisation of cannabis in 2024.¹³ Key findings include:

- Rates of cannabis use remained largely stable.
- The ACT continues to record the lowest levels of cannabis use in Australia.
- Charges for cannabis offences and diversions have declined significantly since decriminalisation.
- There has been no increase in charges for trafficking or cultivation offences.
- There is no evidence of increase or decrease of cannabis-related presentations to Emergency Departments.
- There is no evidence of a change in price for cannabis.

¹⁰ Schiem et al (2020) ‘Impact evaluations on drug decriminalisation and legal regulation on drug use, health and social harms: a systematic review’, *BMJ Open*, vol. 10(9).

¹¹ Beloackova et al (2020) “More than just counting the plants” – different home cannabis cultivation policies, cannabis supply contexts and approaches to their evaluation’ in Decorte, Lenton & Wilkins (eds), *Legalising Cannabis: Experiences, Lessons and Scenarios*: Routledge.

¹² The *Drugs of Dependence Act (1989)* defined personal use quantities as 50 grams or less of dried herb or 150 grams or less of fresh herb, or two plants). However, an evaluation found that only 25% of people stopped for cannabis were issued with a SCON, with the remaining 75% being charged with a criminal offence.

¹³ ACT Government (2024) *Review of the Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019 (Cannabis Act) 2019 pursuant to the Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019*, Canberra: ACT Government.

- Community support for decriminalisation of cannabis has remained high.

Qualitative interviews with stakeholders also reported an increased willingness to seek support for cannabis use, and better relationships between people who use cannabis and police. The report concluded that cannabis decriminalisation reforms are operating as intended.

Research conducted by the Drug Policy Modelling program at UNSW investigated the experiences of those using or growing cannabis in the ACT in the wake of decriminalisation.¹⁴ Multiple legal 'grey areas' and contradictions were identified. These included: how to obtain plants or seeds given gifting, sharing and selling of these remained illegal; plants growing larger than allowed; what to do with excess product/prunings (i.e. garbage bin, green bin?); what counted as artificial cultivation (i.e. do normal houselights count if you bring your potted plants indoors during a storm?); and the conflict between federal and territory legislation.

The investigators found that the additional conditions and limitations on personal cannabis possession and cultivation created confusion, anxiety and made the new laws difficult to navigate.

The Bill the Standing Committee is reviewing sensibly avoids introducing arbitrary conditions and limitations that people may find difficult to comply with. For example, in the Victorian Bill, seeds would be classified as cannabis, and it will therefore be legal for people to obtain seeds (via gifting). This neatly avoids the contradiction in the ACT where, a person is forced to break the law (obtaining seeds) in order to legally cultivate cannabis.

VAADA's View

VAADA welcomes the provisions in the *Drugs, Poisons and Controlled Substances Amendment (Regulation of Personal Adult Use of Cannabis) Bill 2023*.

The Bill is a sensible, modest and evidence-based step in the right direction for Victoria. Decriminalisation will remove a significant source of stigma attached to cannabis use and possession, which will reduce barriers for those seeking to engage in AOD treatment and reduce the resource burden on the police and courts in pursuing, arresting and prosecuting people for possessing small quantities of cannabis. This will allow police to better prioritise resourcing to respond to serious offending.

The Bill places appropriate limitations on where cannabis can be used (i.e. not in public space), quantities that can be possessed, and how it can be exchanged (i.e. as a gift but not via sale).¹⁵

However, VAADA does have some concerns regarding the Bill.

Tenants' cultivation of cannabis

Sensibly, Section 69ZE of the Bill authorises owners of land or premises to permit another person aged 18 years or older to use their land to grow cannabis (restricted to six plants). This allows tenants to seek approval from their landlords to cultivate cannabis and allows people without access

¹⁴ Barrett et al (2022) 'Navigating the grey: Experiences of incremental cannabis reform in Australia, *Drug and Alcohol Review*, vol. 41.

¹⁵ Cerdá et al (2020) 'Association between recreational marijuana legalization in the United States and changes in marijuana use and cannabis use disorder from 2008-2016', *JAMA Psychiatry* vol. 77(2).

to land (i.e. those living in apartments) to access land for cultivation without legal risk to the landowner.

However, VAADA is concerned about a lack of clarity and the potential for unintended consequences to arise from this. Do tenants possess an *a priori* right to cultivate cannabis, or do they require their landlord's permission. If the latter, should this be in writing? Can growing cannabis (with or without express permission from the landlord) be used as grounds for eviction? Will authorisation to grow cannabis be included in a lease agreement?

VAADA is concerned that, for example, a landlord may provide verbal permission to a tenant to cultivate cannabis, then use the cultivation of cannabis on their land as grounds for eviction. Similarly, a landlord may give permission to the tenant but may not inform the real estate agent managing the lease.

Clarifying Section 69ZE will provide clarity for landowners, landlords, tenants and real estate agents regarding a landowner and/or landlord authorising the cultivation of cannabis.

Criminalisation of youth

While VAADA supports the bill restricting lawful possession of cannabis only to adults (those aged 18 years and older), we have longstanding concerns about the effect of criminalisation of cannabis on those aged under 18 years. VAADA's concerns include, for example, that even if this Bill is passed, possessing instructions on how to grow or use cannabis would remain a criminal offence for people under the age of 18.

While it is appropriate for differential regulations to apply to people under the age of 18 years to limit their access to cannabis, this should not result in young people entering the criminal justice system for minor possession and use of cannabis.

Gifts – burden of proof

Regarding the gifting of cannabis, VAADA would like to see it specified that, in cases where this is contested by police, the burden of proof rests with police to prove that an exchange of cannabis wasn't a gift, rather than resting with the individual to prove it was.

Public education and awareness

If the Bill was passed, it would be imperative that the Victorian Government develop a public awareness and education campaign that is accessible to diverse populations and offers clear information on the changes to the law. The campaigns should include peer-led content, and a youth focus (as use of cannabis by those under the age of 18 will remain illegal). VAADA is concerned that some cannabis users may understand decriminalisation to include use in public, which could result in them being arrested.

Guidelines should also be developed for police that should prioritise leniency (i.e. a grace period) when decriminalisation first comes into effect.

Budget measures to support decriminalisation

Consultation with the Alcohol Tobacco and Other Drug Association (ATODA) and the Australian Alcohol and Other Drugs Council (AADC) highlighted that the AOD treatment system played an important role in supporting decriminalisation – both of cannabis and of illicit substances more broadly in the ACT. Treatment agencies are key sources of credible information regarding the legislative changes, particularly with vulnerable and/or under-served groups, which saw increases to AOD treatment demand as barriers to access were reduced. The ACT government introduced budget measures for the AOD sector to support the implementation of decriminalisation.

Recommendations

1. That the Legal and Social Issues Standing Committee endorse the Bill.
2. That the Bill and Explanatory Memorandum be revised to provide clearer guidance on Section 69ZE, specifically regarding the granting of permission to cultivate cannabis to ensure clarity for landowners, landlords, tenants, and real estate agents.
3. That the Committee clarify where the burden of proof lies in relation to the gifting of cannabis.
4. That the Bill be amended to include a requirement for the government to evaluate decriminalisation, including the potential to expand decriminalisation to other cohorts of illicit substances.
5. That the government develop a peer-led public awareness and education campaign (including youth-focused content) to ensure the public are well-informed about cannabis decriminalisation.
6. That the government introduce a budget measure for AOD services to be funded to support the implementation of decriminalisation of cannabis in Victoria.
7. That the Bill be amended to expunge prior criminal convictions for personal possession and use of cannabis.