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Telephone
Facsimile



Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Email: legcon.sen@aph.gov.au

Dear Committee Secretary

Senate Legal and Constitutional Affairs Committee - Legalising Cannabis Bill 2023

South Australia Police (SAPOL) provides this submission addressing the following provisions of the Legalising Cannabis Bill 2023 (the Bill). Reference to the Second Reading Speech delivered by Senator Shoebridge on 10 August 2023 is also included.

- ***Provision for a 15% Cannabis Sales Tax, legalisation of cannabis would generate \$28 billion in public revenue (in the first 9 years of operation) and thousands of new jobs***

The forecast governmental revenue needs to be balanced against the harms that are likely to be experienced in the Australian community. Evidence regarding the experience of other jurisdictions like Colorado and Washington in the United States (US), indicates the legalisation of cannabis will place further strain on an already strained health system, impact the life outcomes of younger people and contribute to fatal and serious injury road crashes. These will have both human and economic impacts.

Traffic deaths in Colorado involving drivers who tested positive to cannabis more than doubled from 2013 to 2020. In addition, past-month use of cannabis for people aged 12 years and over increased by 26% and was 61% higher than the national US average. The number of suicides, where toxicology results revealed cannabis was in the deceased's system, increased from 14% in 2013 to 29% in 2020. Notwithstanding these harms, cannabis tax revenue in Colorado only accounted for 0.98% of the State's budget in 2020.¹

The Bill overlooks the potential harms which may be caused from increased cannabis users and drug driving.

¹ Rocky Mountain High Density Drug Trafficking Area (HIDTA) Investigative Support Center. (2021). *The legalization of marijuana in Colorado: The impact*, Vol 8, September 2021, p.2.

- **Explanatory Memorandum: “*Human Rights to Equality and Non-discrimination, and to Work, as it addresses, to the extent possible provided by its content, historical and ongoing injustices towards Indigenous peoples*”**

Legalising cannabis is likely to have negative impacts and do harm in Indigenous communities, in other vulnerable communities, and in remote communities. The Australian Bureau of Statistics reported for the financial year 2018-19 that the most commonly reported substance used by Indigenous people (over the age of 15 years) in Australia was cannabis. The report advised that 24% of Indigenous people had used cannabis; an increase from the previous study undertaken in 2012-13 (20%). This is likely to increase with the legalisation of cannabis with a rise in the number of Indigenous people coming into contact with the criminal justice and health systems.²

Research results show that partner violence and domestic/family violence are likely to increase. The Norwegian Institute for Alcohol and Drug Research, SIRUS, has shown a link between chronic cannabis use, withdrawal and violent aggression, reporting cannabis withdrawal is linked with 60% more relationship violence among people with a history of aggressive behaviour. The prevailing concept is that heavy cannabis use causes several behavioural changes that can precipitate aggressive or violent outbursts.³ These observations are supported by longitudinal research that has identified a correlation between cannabis use/withdrawal and interpersonal (including intimate partner) violence.⁴

Research in the US has established a relationship between cannabis use and homicide. Interviews with 268 individuals incarcerated in New York State correctional facilities for homicide found that one third of respondents had used cannabis in the 24 hour period before the homicide. Almost three quarters of the respondents admitted to experiencing some type of effect from the drug when the homicide was committed.⁵

Other studies in the US have found that cannabis is a major risk factor for victims of serious assaults and murder. Toxicological analysis in homicide victims from nine US States between 2004 and 2016 found 31% tested positive for cannabis. The research concluded that cannabis was increasingly detected in homicide victims irrespective of demographic characteristics.⁶

Medicinal cannabis commenced in Australia in 2016 and has the advantage of registered practitioners with medical knowledge prescribing the cannabis to patients. A concern with the 2023 Bill is that it may result in individuals circumventing the safeguards of the medicinal cannabis regime, including medical supervision. As at 17 October 2023 SA Health advises that clinical trials concerning the benefits of medicinal cannabis are still

² Australian Bureau of Statistics. [Population: Census, 2021 | Australian Bureau of Statistics \(abs.gov.au\)](https://abs.gov.au/population/census2021).

³ Ineborg Rossow (2020) Norwegian Institute for Alcohol and Drug Research (SIRUS). Marijuana and violence: the connection you didn't know about. Marijuana and Violence: The Connection You Didn't Know about | Teensavers – Accessed 25 October 2023.

⁴ Todd Moore, Gregory Stuart. (2003). A review of the literature on marijuana and interpersonal violence. Elsevier: Aggression and Violent Behaviour 10 (2005) pp. 171-192.

⁵ Barry Spunt, Paul Goldstein, Henry Brownstein & Michael Fendrich. (2009). The role of Marijuana in Homicide. *International Journal of Addiction*, vol 29, issue 2, pp195-213. [http://doi.org/10.3109/10826089409047377](https://doi.org/10.3109/10826089409047377) – Accessed 25 October 2023.

⁶ Oybek Nazarov & Guohua Li, 'Trends in alcohol and marijuana detected in homicide victims in 9 US states: 2004-2016 (2020) [Trends in alcohol and marijuana detected in homicide victims in 9 US states: 2004–2016 | Injury Epidemiology | Full Text \(biomedcentral.com\)](https://doi.org/10.1080/10826089409047377) – Accessed 25 October 2023.

being investigated as there is “little high quality research” in this area.⁷

- **Section 18: Offence - growing cannabis plants (not accessible by the public and no more than 6 plants in the private residence)**

Section 18 has implications on policing illicit cannabis pursuant to the *Controlled Substances Act 1984*. Allowing a maximum of six cannabis plants per private residence impacts on crime, policing resources and has negative implications on expected government revenue. Of note includes the following:

- There will be greater opportunities for the black market to thrive with joint enterprises of cumulative private residents participating in the growing of the maximum number of legal ‘cannabis strains’, or the growing of illicit plants mixed with ‘legal cannabis strains’. International experience has shown black markets have actually thrived following cannabis legalisation;
- It would be difficult, if impossible, to determine that a ‘legal cannabis strain’ previously purchased was the one and the same as that in possession of a person and not a seed or seedling propagated from an original ‘legal cannabis strain’;
- It would be difficult to police the growing of illicit cannabis plants (as opposed to legal cannabis strains) due to the costs and time for forensic analysis to determine which plants were legal and which were illicit, this would also have implications on police resources due to the significant increase in the growing of cannabis plants;
- There is no mention/restriction of the size for which legal cannabis plants may grow. If cared for well, a cannabis plant may achieve a large bush/tree size;
- When grown indoors under ultra-violet light and with regular feeding regimes, the plants may develop increased THC levels than anticipated which may be of greater harm;
- There is likely to be increases in crime levels with increased thefts of plants from private residences, and increased offences against the person, and increased insecurity within the community as a result.

- **Section 20: Offence – selling cannabis products without a licence (where sales exceed \$50 in a 24 hour period).**

It would be difficult, if not impossible, to prove the ‘other’ sales made within the 24 hour period (if made by cash payments) to \$50 or less; this would increase the likelihood of undetectable illicit sales.

The provisions that allow a person to sell up to \$50 worth of cannabis product (or an amount prescribed by regulations) within a 24 hour period, create a potential loophole and opportunity for drug trafficking at a lower level. Under the proposed legislation it is foreseeable that a person could engage in many cannabis transactions within a 24 hour period and stop dealing at the point in which they are detected.

- **Section 22: Offence – allowing minors to have access to cannabis products**

With respect to the Bill’s offence provisions, there are significant differences in the severity of proposed penalties for breaches compared to the CSA. For example, pursuant to section 33F of the CSA a person who sells, supplies or administers a

⁷ SA Health, Frequently asked questions on medicinal cannabis. [Frequently asked questions on medicinal cannabis | SA Health](#) – Accessed 17 October 2023.

controlled drug to a child is guilty of an offence that carries a maximum penalty of \$1,000,000 or life imprisonment, or both. In stark contrast, under the Bill a person who sells or supplies a cannabis product to a minor commits an offence punishable by six months imprisonment or 200 penalty units, or both. Similar disparities exist for trafficking cannabis under the CSA compared to regulatory breaches of selling unlicensed cannabis products within the Bill.

- **Section 25: Possession of cannabis products by minors (person is not criminally responsible; the cannabis product may be seized and destroyed by police)**

There are likely to be implications concerning the current process for youth in South Australia. The current process is that where youth (under 18 years) are found with cannabis in their possession, the cannabis is seized by police and eventually destroyed, and the youth is referred through the Police Drug Diversion Initiative (PDDI) to assessment, education, and/or treatment; there are no restrictions on the number of times a youth may be subsequently referred through the PDDI. This SAPOL Policy process is consistent with the *National Drug Strategy 2017-2026* and the *South Australian Alcohol and Other Drug Strategy 2017-2021* in order to minimise harm to youths consuming drugs, including cannabis.

Australia's *National Drug Strategy 2017-2026* lists cannabis as a priority substance, recognising that it is not just prevalent in the community, but also responsible for causing harm to individuals and the wider community. Current priority drug types include alcohol; tobacco; **cannabis**; methamphetamines and other stimulants; new psychoactive substances; opioids including heroin; and the non-medical use of pharmaceuticals. These are the drug types associated with the most harm in Australia.⁸

In 2022, the United Nations found that cannabis use was more prevalent among adolescents (than other age groups) with 5.8% of 15-16 year olds using or having used cannabis.⁹ This is a major health concern as scientific literature indicates early initiation to cannabis negatively impacts the brain, and has a higher likelihood of resulting in regular use in both late adolescence and young adulthood. Early introduction to the drug, with frequent use, is associated with increased likelihood of major depressive disorders as well as suicidal thoughts and behaviours.¹⁰

In 2016, 10.4% of Australians over the age of 14 had used cannabis in the last 12 months and 34.8% had used cannabis in their lifetime. As the most widely used of the illicit drugs in Australia, cannabis carries a significant burden of disease. The use of cannabis can result in various health impacts, including mental illness, respiratory illness, and cognitive defects. In particular, cannabis dependence among young adults is correlated with, and contributes to, mental disorders such as psychosis.¹¹

- **Section 26: Possession of cannabis products by other persons**

This section may have been intended to be limited to legal business partnerships or trade; however, the section has a number of implications for policing in South Australia.

The CSA criminalises the offence of possession of cannabis (less than 25 grams) where

⁸ Commonwealth Department of Health (2017), *National Drug Strategy 2017-2026*, p. 30.

⁹ United Nations Office on Drugs and Crime. (2022). *World Drug Report: Drug market trends cannabis opioids*. Booklet 3. Released in June 2022. p. 16.

¹⁰ Ibid. p. 16.

¹¹ Commonwealth Department of Health (2017), *National Drug Strategy 2017-2026*, p. 33.

the cannabis is not prescribed for medicinal purposes. However, South Australia has decriminalised the possession of cannabis products for the specified amount resulting with issuance of expiation notices. It would be difficult to maintain this process which includes revenue being received by State government.

The introduction of this legislation brings with it an expectation of 'knowing' whether the 'cannabis strain' is included within the legislation. In order to ascertain the particular cannabis strain, the cannabis would require forensic analysis. This would incur significant costs, resources and time.

There are other concerns regarding this section including the difficulty to prove the cannabis strain was actually in the possession of the other person, particularly if the 'other person' makes denials.

The legalisation of the possession of a cannabis product which may include a 'cannabis strain' the subject of a licence creates other issues. This permits a person to have possession of a cannabis product which includes both a legal 'cannabis strain' as well as illicit cannabis. Harms may be exacerbated where a majority of the cannabis product is illicit and only a small percentage contains legal cannabis strain; this is still deemed via the Bill to be a legal product.

This process is in conflict with the *National Drug Strategy 2017-2026* and the *South Australian Alcohol and Other Drug Strategy 2017-2021* concerning harm minimisation, demand minimisation and supply minimisation of cannabis, particularly where the amount is of trafficable or commercial quantities pursuant to the CSA and *the Controlled Substances (Controlled Drugs, Precursors and Plants) Regulations 2014*.

- **Section 30 conditions of licences – operating a cannabis café (sales by cafés online)**

The proposed legislation would permit the issuing of licenses for cannabis sales including through dispensaries or cannabis cafes and may include 'take away' products. Some advertising may occur within section 23 which may influence previous non-users to commence smoking/consuming cannabis; this influence has occurred in the US.

At cannabis cafes any consumption by smoking would have to be outside and subject to applicable local laws around smoking. There is no further information concerning the definition of 'outdoors'. There would be concerns if the 'outdoor' facility was on the footpath where by-passers would be affected by cannabis smoke, particularly children.

Section 10(h)(ii) includes cannabis products "that consist of, or include, registered cannabis strains can be consumed." There is no specific definition of consumption within the Bill but generally consumption includes edibles. Research evidence shows that edibles have the largest increase in emergency department visits for children in Canada.¹² This is likely to be replicated in Australia with the introduction of the Bill. Adults are also harmed due to cannabis edibles with deaths as a result.¹³

¹² Dafna Rubin-Kahana, Jean-Francois Crepault, Justin Matheson and Bernard Le Foll. (2022). The impact of cannabis legalisation for recreational purposes on youth: A narrative review of the Canadian experience. *Frontiers in Psychology* pp. 1-15. 23 September 2022. DOI: 10.3389/fpsy.2022.984485.

¹³ Jessica Hancock-Allen, Lisa Barker, Michael VanDyke & Dawn Holmes. (2015). Death following ingestion of an edible marijuana product – Colorado, March 2014, *Morbidity and Mortality Weekly Report (MMWR)* 24 July 2015; 64(28): pp.771-772. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4584864/> - accessed through National Library of Medicine 23 May 2023

The SAPOL contact person for further enquiries is [REDACTED]
[REDACTED] the Coordinator of the Drug and Alcohol Policy Unit (telephone [REDACTED] or email
[REDACTED]).

Yours sincerely

[REDACTED]

Grant Stevens APM LEM
COMMISSIONER OF POLICE

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South Australia Police, GPO Box 1539, Adelaide SA 5001

ABN 93 799 021 552

www.police.sa.gov.au

