



**CANNABIS LEGALISATION
BILL 2021**
DISCUSSION PAPER

**Rethink
Reform**

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This is a discussion paper on Greens MP Cate Faehrmann's Cannabis Legalisation Bill 2021 which seeks to establish a regulatory framework to legalise the production, possession and use of cannabis in New South Wales (NSW) for people 18 years old and over.

In February 2021, Greens MP and drug law reform and harm reduction spokesperson Cate Faehrmann introduced her Cannabis Legalisation Bill. It is expected that this bill will be debated in the Legislative Council this year.

Cannabis in Australia

The use, possession and supply of cannabis is illegal in NSW. [Section 10 of the Drug Misuse and Trafficking Act 1985 \(NSW\)](#) prescribes a penalty of up to 2-years gaol and/or \$2,200 fine for possessing a prohibited drug.¹

Despite this, cannabis remains the most widely used illicit substance in Australia, with the latest National Drug Strategy Household survey finding that 36% of adults have used cannabis in their lifetime with 11.6% having used cannabis recently.²

Cannabis users are more likely to use regularly, with 37% using as often as weekly. The average age of people who use cannabis is also increasing. The median age increased from 26 in 2001 to 31 in 2019, while 9.2% of 50 - 59 year olds recently used cannabis in 2019 compared to just 3.3% in 2001. The 50 - 59 year age group is also the most likely to have used cannabis regularly.

The reform of cannabis prohibition has become increasingly common in Australia and around the world. Recreational cannabis use was decriminalised in South Australia in 1987 and in the ACT in 1992. In 2000, NSW introduced the cannabis cautioning scheme, allowing police to issue a cannabis caution to adults found with less than 15 grams in their possession.³

In 2016, the Federal Government passed legislation allowing for the cultivation of cannabis for medicinal and research purposes. Medicinal cannabis products are now available in NSW, though it is difficult and expensive to obtain, and many patients struggle to gain access to the medicine they require.

In January 2020, the ACT government introduced new cannabis legislation that was touted as 'legalisation'. In effect, this allowed for the cultivation of two plants per person (or four per household) and the possession of up to 50 grams of cannabis per individual. However, these laws do not establish a regulatory framework for the commercial cultivation and sale of cannabis. It also remains illegal to provide seeds or plants to another individual. Additionally, cannabis use or possession is still illegal under federal law, and a person growing cannabis or found in possession of an amount of up to 50 grams may still be prosecuted under Commonwealth law.

At a federal level, a bill introduced into the Senate by Senator David Leyonhjelm sparked an inquiry into ending the prohibition of cannabis in the Commonwealth and permitting States and Territory governments to develop their own legislative frameworks. The inquiry's report, dated 14 September 2018, recommended that the bill should not be passed.⁴

¹ <https://www.criminaldefencelawyers.com.au/blog/law-on-possessing-cannabis-in-nsw/>

² <https://www.aihw.gov.au/getmedia/9569b88d-3326-46e2-8df8-bf88a93e2d22/aihw-phe-270-Chapter4-Illicit-drugs.pdf.aspx>

³ <https://www.sydneycriminallawyers.com.au/blog/the-history-of-recreational-cannabis-in-australia/>

⁴ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/CannabisBill/Report

Cannabis Drug Law Reform Internationally

Countries around the world are moving towards a legal regulatory framework for recreational cannabis. Here's a snapshot of how it works elsewhere:

Netherlands⁵

- Cannabis has been available for recreational use since 1976, with the consumption and sale of cannabis tolerated in licensed coffee shops⁴¹
- The sale of cannabis is “illegal, but not punishable”
- Possession of up to 5 grams is decriminalised
- Cultivation of up to 5 plants is unenforced for non-commercial use (unless grown in a professional setup)

Uruguay⁶

- The first nation-state to establish a legally regulated cannabis market
- Adults can buy up to 40 grams every month from approved pharmacies
- Users must register with authorities and have their purchases tracked
- Registered users can set up smoking clubs of anywhere from 15 to 45 people to grow marijuana and can cultivate up to 99 plants in the same space

Canada⁷

- The second nation to establish a legally regulated cannabis market
- Adults can buy from government, private or online retailers
- In some jurisdictions, use is permitted in private residences and in public spaces where tobacco is permitted
- In some jurisdictions, users can grow plants at home

Spain⁸

- Shared consumption allowed via cannabis social clubs, which are not-for-profit associations democratically operated by their members
- Members of the club collectively grow and distribute cannabis amongst other club members⁹

⁵<https://www.government.nl/topics/drugs/toleration-policy-regarding-soft-drugs-and-coffee-shops>

⁶<https://www.brookings.edu/wp-content/uploads/2016/07/Walsh-Uruguay-final.pdf>

⁷<https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/laws-regulations.html>

⁸ <https://www.qmul.ac.uk/law/media/law/docs/research/148791.pdf>

⁹ <https://enews.liquorandgaming.nsw.gov.au/24hreconomyconsultation2020>

Mexico¹⁰

- In October 2018 Mexico's Supreme Court declared cannabis prohibition unconstitutional and set a deadline of December 15 2020 for the introduction of a cannabis legalisation bill.
- Mexico's congress is set to debate the bill and is required to pass legislation by 30 April 2021.

Israel¹¹

- In November 2020 Avi Nissenkorn, Israel's justice minister, stated his intention to present a legal memo laying out the framework for legalization.
- The laws are expected to be debated and passed this year.

United States

- On November 4 2020 another four states (Arizona, New Jersey, Montana and South Dakota) voted to legalise recreational cannabis use in the United States, bringing the total to 15 states.¹²
- Democrats are signalling their intent to legalise cannabis at a federal level and US Democratic senators have released a joint statement condemning cannabis prohibition.¹³

Various other countries are also reforming their laws when it comes to cannabis. For a comprehensive list [see here](#).

¹⁰ [Mexico is moving to legalize cannabis in 2021. What does that mean for the US? | Leafly](#)

¹¹ [Nissenkorn publishes draft cannabis legalization bill for public comments - The Jerusalem Post \(jpost.com\)](#)

¹² [15 States, D.C. Legalized Weed U.S. - Where Is Marijuana Legal 2020? \(esquire.com\)](#)

¹³ [Booker, Wyden, Schumer Joint Statement on Cannabis Reform Legislation \(senate.gov\)](#)

The Case for Cannabis Legalisation

It's time to acknowledge that the 'war on drugs' has been a colossal failure and that the social and economic costs of cannabis prohibition far outweigh the potential effects of legalisation. Over many decades, successive governments have poured billions of dollars of public money into expanding the police force to senselessly harass and arrest tens of thousands of people, clogging up our courts and giving people a criminal record for engaging in an activity that causes no harm to others and, much more often than not, no harm to themselves.

Restrict Contact with Black Market and Reduce Drug-Related Crime

A significant proportion of the harms associated with cannabis stem directly from the fact it is illegal.

Currently, much of the cannabis in circulation in Australia is manufactured and distributed by criminal organisations including drug syndicates and outlaw motorcycle gangs. This forces many people to interact with the black market and put themselves at risk of criminal prosecution. A cannabis conviction can have lifelong impacts on a person's future employment, housing and travel options.

Over a third of Australians have consumed cannabis at least once. This means that the prohibition of cannabis criminalises a significant portion of Australian society.

Illicit drug charges make up a large proportion of the work of our criminal justice system. In Australia, cannabis arrests account for the largest proportion of illicit drug arrests. Between 2015 and 2016 there were almost 80,000 cannabis arrests and of these arrests, 90% were consumers.¹⁴ In the year leading up to July 2020, NSW tallied just over 21,000 cannabis-related arrests, 89% of which were for use or possession.¹⁵

In particular LGAs with low socio-economic ratings, drug arrests for use or possession have increased by rates of between rising by 44.4% in Fairfield, by 36% in Liverpool and 30.5% in Cumberland¹⁶. Despite the increased law enforcement activities, overall trends in cannabis use in NSW are stable¹⁷, indicating ineffective and unbalanced targeting by police. This data is supported by a statement from former AFP Commissioner Mick Palmer, who conceded that "drug law enforcement has had little impact on the Australian drug market".

The legalisation of cannabis would also reduce law enforcement spending. Each year, \$78.1 million is spent in NSW on dealing with cannabis via our police, courts and prisons. This has a negative social impact on those passed through the criminal justice system for personal drug use and diverts police and court resources from life and death matters such as domestic violence.

¹⁴https://acic.govcms.gov.au/sites/g/files/net1491/f/2017/06/iddr_2015-16_cannabis.pdf?v=1498020153

¹⁵ <http://crimetool.bocsar.nsw.gov.au/bocsar/>

¹⁶ <http://crimetool.bocsar.nsw.gov.au/bocsar/>

¹⁷<https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/interactive-data/illicit-drugs>

In Uruguay, early data shows that drug-related crime has dropped 20% since cannabis became legal in that country in July 2017.¹⁸ Early evidence from the US appears to point to a reduction in alcohol consumption, violent crime and prescription opiate overdoses,¹⁹ while in Canada, evidence suggests that use of cannabis has not increased following legalisation.²⁰

Over a year after the Australian Capital Territory decriminalised the personal use and possession of Cannabis both stakeholders and police say they have seen no evidence that cannabis use has increased.²¹

There have also been no increase in hospital presentations related to cannabis or drug driving offences. Cannabis offences however have dropped by 90% in 12 months,

The legalisation of cannabis would also divert income from criminal organisations. A US study found that Mexican cartel profitability was reduced following the legalisation of recreational and medicinal cannabis, which in turn significantly reduced rates of violent crime. Legalisation in Australia would reduce spend in law enforcement while simultaneously defunding criminal activity, increasing police resources to be concentrated elsewhere.

Protect Young People and Marginalised Communities

Prohibition has failed at restricting young people's access to cannabis. It goes without saying that black market cannabis dealers do not check I.D. and are under no obligation to restrict access to their product to people under 18.

Legalised cannabis would only be available to people over 18. A healthier and more educated culture of cannabis use would restrict young people from using cannabis and limit their interactions with criminal or risky consumptive behaviours.

A regulated cannabis market would also reduce the negative impacts of prohibition on other vulnerable groups. The drug war is often used as a tool to stigmatise and harass those who use drugs including the poor, women, young people and First Nations people.

Between 2013 and 2017, 82.55 per cent of Indigenous people found with a non-indictable quantity of cannabis were pursued through the courts. This is compared to 52.29 percent of non-indigenous people. Similarly, Bocsar data from 2013 to 2017 found that Aboriginal women received triple the rate of prison sentences for drug possession compared to non-Aboriginal women.

The legalisation of cannabis in NSW is an important step towards ending the discrimination and harassment experienced by First Nations peoples in the hands of the criminal justice system.

¹⁸https://acic.govcms.gov.au/sites/g/files/net1491/f/2017/06/iddr_2015-16_cannabis.pdf?v=1498020153

¹⁹ Journal of Economic Behavior & Organization, 'Crime and the legalization of recreational, 20 Feb 2018

²⁰<https://www.canada.ca/en/services/health/publications/drugs-health-products/canadian-cannabis-survey-2018-summary.html>

²¹[What has changed in the year since cannabis possession was legalised in the ACT? - ABC News](#)

Improve Health Outcomes

A legal, regulated cannabis market would ensure that users of cannabis had access to unadulterated and regulated cannabis products. Consumers would be informed of the strength and characteristics of the cannabis product along with any potential impacts on their physical and mental health.

This is in stark contrast to unregulated cannabis markets, where users are purchasing products without information as to the conditions under which the cannabis has been grown, if or how it has been adulterated, its potency or potential adverse characteristics.

A regulated cannabis market would also end the demand for dangerous 'synthetic' cannabis alternatives, which have been linked to psychosis, seizures, strokes and even death.²²

In a legal cannabis market, products would be required to be packaged with health messages in the same way as tobacco products. This would build greater awareness and educate cannabis users on harm minimisation, particularly on risks including smoking while pregnant and contraindications.

Increased tax revenue and decreased police spending would also allow resources to be diverted to health and other social services to reduce the harms associated with cannabis and other drugs and alcohol.

Provide Economic Benefits

A regulated cannabis market in NSW could play an invaluable role in the economic recovery from COVID-19. Already, the top 20 cannabis companies in Australia have a combined value of \$1.58 billion.²³ The establishment of a regulatory framework for a regulated cannabis market would generate a new industry sector and trigger small business and job growth.

The federal parliamentary budget office found that legalising cannabis could provide \$2 billion to the Australian economy annually, potentially adding \$660 million per year to NSW.²⁴

In Canada, the legal cannabis market contributed \$8.26 billion to the country's GDP as of July 2019. The legal market for cannabis grew by an incredible 185% in the ten months following legalisation, while illegal markets decreased by 21%.²⁵

The legalisation of cannabis in parts of the United States has contributed to a total economic growth of \$38 - \$46 billion in 2019 and \$54.6 - \$66.9 billion in 2020. It is predicted to contribute \$106.4 to \$130.2 billion by 2024.²⁶

²² <https://adf.org.au/drug-facts/synthetic-cannabis/>

²³ <https://www.businessnewsaus.com.au/articles/australia-s-top-20-cannabis-companies.html>

²⁴ <https://www.theguardian.com/business/2018/apr/23/legalising-cannabis-adds-36bn-to-australian-economy-budget-office-says>

²⁵ <https://www150.statcan.gc.ca/n1/daily-quotidien/191001/dq191001a-eng.htm?HPA=1>

²⁶ <https://mjbizdaily.com/chart-us-cannabis-industrys-economic-impact-could-hit-130-billion-by-2024/>

Cannabis Legalisation Bill 2021

The *Cannabis Legalisation Bill 2021* would legalise the personal possession and use of cannabis for individuals 18 years and over and create a regulated cannabis market in NSW. It will do this through the establishment of a NSW Cannabis Authority (the Authority) which will act as a wholesaler between producers and retailers of cannabis products.

The Authority would regulate the cannabis market in NSW with an aim to reduce the harms from cannabis use to individuals, families and communities, whilst also preventing the over-commercialisation or dominance of the cannabis market by large corporations.

By establishing a regulated cannabis market in this manner, the ultimate goals of the bill are to:

- Protect and improve public health while minimising the potential harms associated with cannabis,
- Reduce the negative impact of the cannabis black market including organised crime, and the impact of illegal crops on environmentally sensitive areas
- Reduce the negative impacts of drug prohibition including the targeting of vulnerable groups and the strain on police and community resources
- Deliver the economic benefits of the cannabis market to NSW

Part 1 of the bill establishes that it is not a criminal offence to cultivate, supply, manufacture, produce, possess cannabis, cannabis products or accessories in NSW.

This section of the bill also establishes that the Act **does not** apply to cannabis that is medical cannabis or low-THC hemp within the meaning of the *Hemp Industry Act 2008*. These are issues that the Greens believe should be dealt with outside of a recreational framework.

Personal use of Cannabis

A household of 2 persons or less may grow up to 6 cannabis plants while a household of more than 2 people can grow up to 12 cannabis plants.

The plants must be grown in a place that is not visible or accessible to the public. Individuals will be able to buy growing stock from a cannabis distributor.

Persons are able to share or gift cannabis to another person over the age of 18 as long as they do not do so for personal gain. It will be a punishable offence for an individual to supply a person under 18 years of age with cannabis or a cannabis product.

A person must not consume cannabis in a public place or in a vehicle that is in a public place with the exception of licenced cannabis consumption premises.

NSW Cannabis Authority

Part 2 of the bill establishes the NSW Cannabis Authority. The Authority will be responsible for regulating the cannabis market in NSW, grant licences for the production and distribution of cannabis products and establish regulations to achieve the stated goals of the Bill.

The objectives of the Authority are to encourage the cultivation of cannabis crops for the retail supply of cannabis and encourage small business by supporting the establishment of small cannabis retail outlets and micro-cultivation of cannabis.

The Authority will act as a wholesaler between cannabis producers and cannabis distributors. Producers are only able to sell cannabis and cannabis products to the Authority and distributors are only able to purchase cannabis and cannabis products from the Authority.

This allows the Authority to exercise a high degree of control over the cannabis market with the ability to set the wholesale and retail price of cannabis and control the size and output of cannabis growers.

The Authority will be the sole wholesale supplier to cannabis retailers as well as supplying to the growing international market for cannabis. This represents a significant source of potential revenue that the cannabis market could provide to the state government

Expert Advisory Panel

The Authority will establish an expert advisory panel drawing from a broad range of experts. The expert advisory panel will

- develop strategies to prevent the over-commercialisation of the cannabis industry, or domination by large-scale business in the cannabis industry,
- review and set THC potency limits to be included as part of the cannabis licensing scheme,
- review the effectiveness of the law and develop new strategies for reducing harms caused by cannabis and cannabis products,
- provide expert advice to the Authority.

Inventory Tracking System

The Authority will establish and maintain an inventory tracking system for cannabis and cannabis products produced under a cannabis or social club licence or distributed under a cannabis distribution licence.

The inventory tracking system will ensure that cannabis and cannabis products produced and distributed in the regulated market are accounted for and do not end up in the black market.

The use of the inventory tracking system is mandatory for cannabis licence holders. It must be used:

- each time cannabis or a cannabis product is received, and
- each time cannabis or a cannabis product is supplied to another cannabis licence holder.

Cannabis Licences

The bill will establish different types of cannabis licences with the Authority responsible for granting licences and enforcing licence conditions.

The Authority would assess all licence applicants by considering their ability to comply with the requirement of a cannabis licence, potential disqualifying factors, and any other factors which may influence the applicant's suitability. Police vetting would be included in this process. A person who has previously been convicted of a serious offence will be unable to hold a cannabis licence. This does not include people who have been found guilty of minor drug offences.

An individual is only able to hold one type of licence at a time. This prevents 'vertical integration'; a cannabis business will be unable to both produce cannabis and sell it in a retail setting.

All licence holders will be required to engage with a "seed to sale" inventory tracking scheme to ensure cannabis and cannabis products do not make their way into the black market.

Cannabis Production Licence

A cannabis production licence authorises a licence holder to carry out one or more cannabis production activities depending on the terms of their licence. Licence holders will be able to grow and supply cannabis to another licence holder for further production activities, such as the production of cannabis products, or supply cannabis to the Authority.

A holder of a cannabis production licence is unable to supply cannabis directly to another cannabis distribution licensee.

Nothing in the bill prohibits a cannabis production licence holder from engaging in different cannabis production activities (i.e nursery activities, cultivation activities, processing activities or wholesale distribution activities) within the single commercial operation.

Cannabis Distribution Licence

A Cannabis Distribution Licence authorises a licence holder to purchase cannabis and cannabis products from the Authority and provide them for sale to the public.

Licence holders are also able to provide a public place for the on-site consumption of cannabis and cannabis products, including those obtained elsewhere.

All products must have the endorsement of the Authority indicating that they have been prepared in accordance with the conditions and requirements of a cannabis production licence. Products will be appropriately labelled as having the Authority's endorsement.

Cannabis Social Club Licence

The bill allows for a group of a minimum of 5 individuals to set up a not-for-profit Cannabis Social Clubs which engage in the cultivation and processing of cannabis, supply of cannabis to its members and sale or purchase of cannabis products from the Authority. Social Clubs can grow six plants per member with a maximum of 99 plants.

Packaging, Labeling and Storage

Cannabis and cannabis products must be labelled with the appropriate information, including:

- Authority endorsement
- Recommended storage conditions
- The strain of cannabis plant that the product is derived from
- THC and CBD content of the product
- A warning label that children and pregnant women must not consume the product
- An expiry date where appropriate
- The cannabis licence holders that produced or cultivated the product

Marketing and Advertising

The bill prohibits the advertising or promotion of cannabis or cannabis products in NSW to prevent the over-commercialisation of the cannabis industry and the active encouragement of cannabis consumption.

An exception is made for holders of a cannabis retail licence in order to promote the existence of their retail store. Retailers must not promote a particular type of cannabis, cannabis products, the price of cannabis or any discounts.

Similarly, cannabis licence holders cannot offer prizes, gifts, loyalty programs or free samples or offer a voucher or token that is redeemable for cannabis or a cannabis product.

An individual cannot promote or publicise cannabis or cannabis products as a part of sponsorship by a cannabis producer or retailer.

12 Month 'Grace Period'

Expertise, Infrastructure, seeds and growing stock will all be required at the onset of a regulated market. The bill acknowledges that those best placed to provide these resources will be those engaged in the production of recreational cannabis within the illicit market.

For this reason the bill establishes a 12 month 'grace period' to allow growers to move into the legal market without fear of criminal prosecution.

Section 81 of the bill introduces a defence for cannabis production activities without a licence if an individual can demonstrate they have taken reasonable steps to apply for a licence related to the activity they are undertaking. This defence would remain in effect for the first 12 months after the bill is passed.

Extinguishment of prior Cannabis Offences

If we decide as a society that cannabis is not immoral but simply another drug of choice that the state regulates to reduce harm, then those who have been the victim of a cannabis related offence deserve a clean record, whether it was for using, growing or selling.

The expungement of cannabis related convictions is becoming a central part of the legalisation movement in the United States.²⁷ The Democrat's MORE act which passed the United States

²⁷ [Legalizing marijuana and expunging records across the country \(ccresourcecenter.org\)](https://ccresourcecenter.org)

House of Representatives in 2020 would have legalized cannabis and expunged the criminal records of people convicted of cannabis-related crimes.²⁸

Those who have been charged with use or possession and have faced the lifelong disadvantages that come from having a criminal record have been able to rebuild their lives without the stigma of a drug conviction.

This paper has already noted how criminalisation targets First Nations peoples in Australia and expungement is a critical component in addressing the harms and disadvantages suffered by them at the hands of our criminal justice system.

This bill addresses this need for justice in section 9 (4) by establishing that:

The Authority must, within 12 months of the commencement of this Act, investigate and make recommendations to the Minister about establishing a scheme for the process for persons to have a conviction relating to a cannabis offence extinguished.

²⁸ [Will Democrats keep their promise to decriminalize marijuana? - The Verge](#)