

Inquiry into the use of Cannabis in Victoria

Submission to the Cannabis Use Inquiry Dan Nicholson

Organisation Name: Victoria Legal Aid

Your position or role: Executive Director, Criminal Law

SURVEY QUESTIONS

Drag the statements below to reorder them. In order of priority, please rank the themes you believe are most important for this Inquiry into the use of Cannabis in Victoria to consider::

Mental health, Social impacts, Accessing and using cannabis, Public health, Criminal activity, Young people and children, Education, Public safety

What best describes your interest in our Inquiry? (select all that apply) :

Working in the criminal or social justice sector

Are there any additional themes we should consider?

Impacts of criminalising use and possession

Select all that apply. Do you think there should be restrictions on the use of cannabis? :

Personal use of cannabis should be decriminalised.

(Decriminalised: there are no criminal or civil penalties instead a person is referred to a drug diversion program or other health/ treatment service), Personal use of cannabis should be legal. , Cultivation of cannabis for personal use should be legal.

YOUR SUBMISSION

Submission:

Do you have any additional comments or suggestions?:

FILE ATTACHMENTS

File1: [5f4cbdbd7cfef-VLA letter attaching submission - Cannabis Use Inquiry - 31 Aug 2020.pdf](#)

File2: [5f4cbdbd7d3a1-VLA Submission - Cannabis Use Inquiry - 31 Aug 2020.pdf](#)

File3:

Signature:

Prita Jobling-Baker

email: prita.joblingbaker@vla.vic.gov.au

31 August 2020

Fiona Patten MLC

Chair, Legal and Social Issues Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Melbourne Office

Level 9, 570 Bourke Street
Melbourne VIC 3000

GPO Box 4380
Melbourne VIC 3001

DX 210646 Melbourne VIC

t: 03 9269 0234

www.legalaid.vic.gov.au

ABN 42 335 622 126

Submitted online: <https://parliament.vic.gov.au/cannabisinquiry>

Dear Ms Patten

Submission to the Inquiry into the Use of Cannabis in Victoria

Thank you for your letter of 18 May 2020, inviting a submission to the Inquiry into the Use of Cannabis in Victoria (the Inquiry).

Victoria Legal Aid's (VLA's) state-wide criminal practice provides legal advice and representation to children and adult clients charged with use and possession of small amounts of cannabis, including a specialist Drug Court team. Our lawyers work to address the impacts of drug addiction for clients in many areas of law, including child protection, family violence and mental health advocacy.

Our submission to this Inquiry into the Use of Cannabis in Victoria is based on our lawyers' practice experience and our clients' experiences of criminal justice responses to their cannabis use. Our clients' stories illustrate the harms of criminalising cannabis use and personal possession. These harms include: the disproportionate criminalisation of people struggling with poverty, mental health issues and dependence; spending time in custody for cannabis possession, which can be traumatic as well as disruptive to employment, education, families and relationships; and receiving a criminal conviction with its barriers to employment and housing.

VLA sees cannabis abuse as a health issue which should not be criminalised; health and welfare responses are most effective at addressing people's underlying needs.

Please contact Prita Jobling-Baker, Strategic Policy Manager Criminal Law on

 if you would like any further information.

Yours faithfully



DAN NICHOLSON

Executive Director, Criminal Law

Executive Director for the Western Suburbs



Submission to the Inquiry into the Use of Cannabis in Victoria

31 August 2020

© 2020 Victoria Legal Aid. Reproduction without express written permission is prohibited.

Written requests should be directed to Victoria Legal Aid, Strategic Communications, 570 Bourke St Melbourne VIC 3000

www.legalaid.vic.gov.au

Connect with Victoria Legal Aid  



Acknowledgement of country

Victoria Legal Aid operates on Aboriginal country throughout Victoria.

We acknowledge the traditional custodians of the land and respect their continuing connections to land, sea and community.

About Victoria Legal Aid and our clients

Victoria Legal Aid (**VLA**) is a Victorian statutory agency responsible for providing information, advice and assistance in response to a broad range of legal problems. VLA assists people with legal problems such as criminal matters, mental health, family separation, child protection, family violence, discrimination, fines, social security and tenancy.

Our clients are diverse and experience high levels of social and economic disadvantage. In 2018–19, VLA provided assistance to over 100,000 unique clients from our 14 offices. Almost half of those clients were receiving social security, one in three had no income at all and seven per cent were at risk of homelessness. A quarter disclosed having a disability or experiencing mental health issues, a quarter were from culturally and linguistically diverse backgrounds, five percent identified as Aboriginal or Torres Strait Islander, and a third lived in regional Victoria.

VLA's state-wide criminal practice provides legal advice and representation to children and adult clients charged with use and possession of small amounts of cannabis, including a specialist Drug Court team. Our lawyers work to address the impacts of drug addiction for clients in many areas of law, including child protection, family violence and mental health advocacy.

The *Legal Aid Act 1978* (Vic) requires us to take steps to reduce the need for individual legal services. One way we achieve this is by pursuing improvements in law and policy that result in better outcomes for our clients and the community.

This submission is based on our lawyers' practice experience and seven of our clients' experiences of criminal justice responses to their use and possession of cannabis. All of our clients' names have been changed to protect their identities.

Summary of recommendations

Recommendation 1: Cannabis use, and possession of small quantities for personal use, should be decriminalised to reduce the disproportionate impact of arrest, remand, and conviction.

Recommendation 2: If not decriminalised, the indictable offence of cannabis possession should be reclassified as a summary offence, to avoid the situation where people are remanded for possession of small quantities of cannabis.

Recommendation 3: The use of cautions and diversions for cannabis possession and use should be increased through:

- a) Legislating a caution scheme for children and adults.
- b) Reviewing the police cautioning policy to reduce barriers to granting cautions.
- c) Removing the requirement for police to consent to diversion.
- d) Providing diversion training and support to police officers and reducing workload disincentives.

Recommendation 4: Therapeutic programs should be resourced and available statewide, including the Court Integrated Services Program, Therapeutic Courts, effective and culturally appropriate diversion programs, and integrated services which can address intersecting issues in a person's life. These programs can provide the supports people need to stay in the community rather than spending time in prison for cannabis possession.

1. Criminal justice responses to cannabis use and possession

The disproportionate impact of criminalising cannabis

Victoria Legal Aid (VLA) lawyers see too many people facing a criminal conviction and even being remanded into custody for personal possession and use of cannabis. We want to see cannabis use treated as a health and social issue and not a criminal matter, reducing contact with the criminal justice system and its associated harms, and removing the ongoing consequences of a criminal conviction.

Charles' experience illustrates how criminalising cannabis possession results in people being remanded and brought to court even where there is not a clear risk to the public.

Charles is 50 years old and on a disability support pension. He also experiences mental health issues. He was placed into custody and brought to court on charges of cultivate and possession of cannabis. Upon his arrest, police accepted that the cannabis was for Charles' personal use, to manage his mental health and other health issues. Despite these mitigating circumstances, Charles was refused bail by police and held in custody because he could not articulate reasons for bail - due to his disability and mental health issues. When he was brought to the Magistrates' Court, Charles was released onto a diversion plan with a condition to pay a \$100 donation to charity.

The maximum penalty for a small quantity of cannabis is 5 penalty units; if the amount is more than a small quantity but not for trafficking, the maximum penalty is 1 year imprisonment and/or 30 penalty units.¹ Approximately 8000-9000 cannabis possession offences are recorded each year in Victoria.² Approximately 27 per cent of people sentenced for cannabis possession in Victoria receive a term of imprisonment, 23 per cent receive a Community Correction Order, 32 per cent a fine and 18 per cent an adjourned undertaking or a discharge/dismissal.³ Cannabis offences account for about half of all drug arrests across Australia, more than any other drug.⁴

Criminalising cannabis use and personal possession results in unnecessary contact with the criminal justice system – unnecessary because there is minimal risk to public safety. Contact with the criminal justice system has several negative consequences:

- a) Entry to the criminal justice system has been demonstrated to make it more likely that a person will commit further offences.
- b) Remand, even for short periods, can be traumatic and is disruptive to a person's employment, education, family and relationships as well as pro-social supports.
- c) For Aboriginal and Torres Strait Islander people and people from culturally and linguistically diverse communities, who are overrepresented in the justice system, contact with the criminal justice system for even minor offending can cause cascading harms,

¹ *Drugs, Poisons and Controlled Substances Act 1981 (Vic)* s73(1)(a)(i).

² Between 2015-2020: Crime Statistics Agency data, Recorded Drug Offences by Drug Type, <https://www.crimestatistics.vic.gov.au/crime-statistics/latest-crime-data/recorded-offences>.

³ Sentencing Advisory Council, SACStat Magistrates' Court Data, Possess Cannabis 1 July 2016 to 30 June 2019, https://www.sentencingcouncil.vic.gov.au/sacstat/magistrates_court/9719_73_1.7.html.

⁴ This includes action by way of arrest and charge, summons, diversion, infringement and caution: Australian Criminal Intelligence Commission, *Illicit Drug Data Report 2017-18* https://www.acic.gov.au/sites/default/files/illicit_drug_data_report_2017-18.pdf?v=1564727746.

increasing the likelihood of ongoing interaction with the criminal justice system and deaths in custody.

- d) Mainstream criminal justice mechanisms rarely lead to meaningful recovery and rehabilitation, and entering the system disrupts community supports such as rehabilitation and mental health programs.
- e) Bringing people to court for cannabis use and possession contributes to unnecessary court congestion and delays.
- f) Having a conviction reduces job prospects and makes it more difficult to secure housing.

In our practice, we also see that criminalising cannabis creates relationships with drug dealers, who sell multiple illicit substances and have an incentive to introduce people to more addictive substances. The experience of our Drug Court lawyers, whose clients have overwhelmingly committed serious offences to support their addiction, is that cannabis use alone does not result in entry to the Drug Court. However, some clients report that their spiral into dependence and criminal behaviours started when they sought to buy cannabis from dealers, who subsequently introduced them to immediately addictive substances such as ice, with devastating consequences.

This is illustrated by Alfi's experience.

Alfi is around 25 years old. He has ADHD and had been using cannabis for some years before he was introduced to ice through his cannabis dealer. It had a catastrophic impact on his life as he became addicted to it and began offending while under the influence of ice. Alfi has told his VLA lawyer that he would not have tried ice if his dealer hadn't provided it to him. Alfi was accepted into the Assessment and Referral Program at the Magistrates' Court and he is now receiving treatment and mental health management. He has not re-offended again and says that he will not take ice again due to the damaging impact it had on his life and his family.

Recommendation 1: Cannabis use, and possession of small quantities for personal use, should be decriminalised to reduce the disproportionate impact of arrest, remand and conviction.

Bail reforms and the increase in remands

Our lawyers see clients remanded in custody for possession of small quantities of cannabis even in circumstances where they cannot receive a term of imprisonment. This is because cannabis is classified as an indictable offence, despite this low maximum penalty, and the intersection with the *Bail Act 1977* (Vic).⁵ An unintended consequence of the 2018 bail reforms has been to increase the likelihood that people are remanded for low-level offences, particularly those who struggle with substance dependence, mental health issues and homelessness.

Chris' story illustrates how criminalising cannabis possession escalates people's contact with the criminal justice system and can result in being put in custody.

⁵ The bail reforms widened the range of offences that reverse the onus of proof onto an accused to demonstrate either exceptional circumstances or compelling reasons why their detention is unjustified, categories previously reserved for the most serious crimes.

Chris is in his thirties, he suffers from depression and anxiety following separation from his wife and the accompanying loss of contact with his children. He was seeing a psychologist once a week to address his mental health issues and taking prescribed sleeping medication when he turned to illicit substances. Police officers visited Chris' home in relation to a possible breach of COVID-19 Directions and were invited into his house. Police found a small quantity of cannabis in the living room.

Chris has no prior convictions, but he was already on bail for driving offences and drug possession. Chris was arrested and charged with cannabis possession and with committing an offence while on bail (i.e. cannabis possession). Chris was refused bail and spent the night in custody as a result of that cannabis charge. This was Chris' first time in custody. Chris pleaded guilty to the charge of possess cannabis and received a fine without a conviction.

The consequences of periods on remand include:

- a) Short periods on remand are particularly harmful for vulnerable people: long enough to disrupt existing supports, such as mental health treatment, training, employment and housing; but not long enough to get access to any meaningful support while in custody.
- b) Remand rates are indirectly affecting sentencing outcomes, because time spent on remand increases the likelihood that a court will ultimately impose a sentence of imprisonment, which has flow-on consequences.⁶
- c) Remand rates may be contributing to the recidivism rate, because time in custody is criminogenic - people are much more likely to go back to prison once they have been there, even for short periods.⁷
- d) Remand rates increase the risk of accused persons pleading guilty to offences where the evidence may not have sustained a finding of guilt. Our practice experience accords with recent research which found that accused people who have limited prospects of bail may plead guilty in order to be released from custody, even if they have a legitimate challenge to some or all of the prosecution case.⁸

In addition to these detrimental consequences, even short periods of remand can be traumatic, as illustrated by Katie's story.

Katie is in her early forties and experiences significant mental health issues. She had recently been placed on a Compulsory Treatment Order (where mental health treatment was administered without consent) and released from a mental health ward. She committed a minor property damage offence and was found in possession of cannabis. Despite the minor nature of the offending, and an awareness of Katie's mental health

⁶ The Sentencing Advisory Council (**SAC**) found that time served prison sentences nearly tripled in proportion from 11% to 29% of all imprisonment sentences imposed on people who had spent time on remand: *Time Served Prison Sentences* (January 2020).

⁷ Even after controlling for offence, accused demographics, criminal history and legal representation, pre-trial detention was associated with a 30% increase in new serious charges and a 20% increase in new minor charges: Dr M McMahon, Parliament of Victoria Research Paper No. 3, *No bail, more jail? Breaking the nexus between community protection and escalating pre-trial detention*, August 2019, 22; citing P Heaton, S Mayson & M Stevenson (2017) 'The downstream consequences of misdemeanor pretrial detention', *Stanford Law Review*, 69(3) 714-716.

⁸ SAC, above **nError! Bookmark not defined.** at 10; and Dr McMahon, *Ibid*, 7 concludes that "pre-trial detention is associated with an increased likelihood of pleading guilty, being more likely to be found guilty, and being given a custodial sentence. ... there is some evidence that pre-trial detention itself independently contributes to these adverse outcomes—that is, being held on remand itself contributes to the probability that a person will plead guilty, be convicted and be given a sentence of imprisonment."

issues, she was remanded in custody because she was already under a Community Corrections Order for offending (which was also related to her mental health issues).

Katie's arrest was a highly traumatic experience, exacerbated due to COVID-19. She had flu like symptoms, so she was strip searched and placed in an isolated cell. Custody staff refused to move her into a room with audio-visual link (AVL) facilities to speak with a lawyer, because they were concerned that the AVL room would need a specialist deep clean. This meant that initially the VLA lawyer on duty was denied contact with Katie due to her symptoms.

Ultimately, the magistrate ordered that Katie be given a telephone so that she could speak with a lawyer. Our lawyer found Katie highly distressed, compounded by her mental illness. Katie pled guilty to the charges and was released with a small fine.

Recommendation 2: If not decriminalised, the indictable offence of cannabis possession should be reclassified as a summary offence, to avoid the situation where people are remanded for possession of small quantities of cannabis.

2. Police discretionary options

Police have discretion to grant a formal caution rather than charge,⁹ or to charge but recommend a diversion program.¹⁰ Young people who are cautioned are less likely to re-offend than those charged.¹¹ Diversion has been similarly shown to reduce reoffending in young people.¹² This may be because they engage people with therapeutic supports to address the underlying causes of the offending behaviour and reduce the stigma and distress associated with criminal proceedings.

Despite their benefits, the granting of cautioning and consent for diversion is not consistent across Victorian regions and police stations.¹³ Research from NSW shows that Aboriginal people in that state are less likely to receive a caution for cannabis possession, are more likely to be brought to court for that offence, and once in court receive more punitive sentences than non-Aboriginal people.¹⁴ No comparable research exists in Victoria. Nevertheless the evidence takes

⁹ Cautions may be issued where the accused admits the offence and (i) if the accused is under 18 years old, for any offence, or (ii) if the accused is over 18 years old, for minor drug offences (such as use and possession) or shop steal: *Victoria Police Manual* (2019).

¹⁰ Court diversion is available for summary offences which do not have a minimum or fixed sentence and require the accused to take responsibility for the offence. If police consent to a diversion, the Court Diversion Coordinator makes a suitability assessment and recommends conditions and services. A magistrate must approve diversion. A person who successfully completes the conditions and does not commit further offences during the diversion period, will not have the matter recorded as part of their criminal history.

¹¹ The Crime Statistics Agency (CSA) found that 26.8 per cent cautioned reoffended compared to 57.6 per cent who were charged; furthermore for those who did reoffend, there was a longer duration between the police contact and the first reoffending incident compared with those charged: CSA, *The Cautious Approach: Police cautions and the impact on youth reoffending*, 13, https://www.crimestatistics.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2017/09/7f1e1e924c80/20170925_in%20brief9%20FINAL.pdf.

¹² A young offender who participates in a diversion program is less likely to reoffend than a young person whose case is determined in court and is subsequently incarcerated, even where the seriousness of the offending is taken into account: Caitlin Grover, 'Youth Justice in Victoria' Victorian Parliamentary Library & Information Service (Research Paper, April 2017) 7.

¹³ There is evidence that cautioning rates in rural and regional Victoria are below that of metropolitan Melbourne and the state average; Kimberley Shirley 'The cautious approach: Police cautions and the impact on youth reoffending' (2017) 9 *Crime Statistics Agency* 3 https://www.crimestatistics.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2017/09/7f1e1e924c80/20170925_in%20brief9%20FINAL.pdf.

¹⁴ Michael McGowan and Christopher Knaus, 'NSW police pursue 80% of Indigenous people caught with cannabis through courts' *The Guardian*, 10 Jun 2020, <https://www.theguardian.com/australia-news/2020/jun/10/nsw-police-pursue-80-of-indigenous-people-caught-with-cannabis-through-courts>.

on greater significance in the context of the continued overrepresentation of Aboriginal people in the criminal justice system and deaths in custody.

Anthony was driving a car with two other young males. Police officers pulled them over on suspicion of a Covid-19 Direction breach. When the car was pulled over, Anthony was found to have possession of a small quantity of cannabis with him. Anthony was on a Community Corrections Order for property offences. The police could have used their discretion to grant a caution or granted Anthony bail, instead he was remanded and brought to court on the possess cannabis charge.

The use of diversions in Victoria has halved over the last 10 years.¹⁵ Data shows that police are increasingly likely to commence court proceedings rather than utilise non-court action including referrals, diversions and cautions.¹⁶ Our practice experience reflects this data, finding that police officers often default to charging people for cannabis possession when a caution would be appropriate, and continue to prosecute where a diversion would be appropriate.

Recent qualitative research with police officers found that heavy workloads and a lack of time were cited as barriers to offering diversion and referral options, as pursuing these options is more time-consuming than simply charging.¹⁷ Furthermore, police officers in the study acknowledged that they were more likely to invest this extra time if they thought a person demonstrated remorse, was not aggressive, or was perceived to have good prospects of rehabilitation.¹⁸ These findings underscore the likely impact of implicit bias on decisions to grant cautions and diversion.

Jessica, a seventeen year old high schooler, was sitting in a car with her boyfriend.¹⁹ The police approached the car to question the couple. The police searched the car and found quantities of cannabis. In order to protect her boyfriend from going into custody, Jessica told the police that the cannabis found was her own. Jessica was arrested and interviewed for charges of possessing and trafficking cannabis.

While Jessica was completely cooperative, it became apparent that she had no role in selling it and the cannabis was her boyfriend's. Jessica's VLA lawyer spent a year arguing to have Jessica's charges downgraded to possession. This ultimately resulted in Jessica being granted diversion for the charge. This means that Jessica does not have a conviction and has been diverted from a criminal penalty. While a good outcome was reached, due to cannabis possession being a criminal offence, a child with no prior criminal history spent over a year in the criminal justice system, creating significant stress to herself and her parents, during her year 12 studies.

¹⁵ From 25.6 per cent of matters receiving diversion in 2008-09 to 12.5 per cent of matters in 2016-17, a drop in real numbers from 22,098 to 18,165 diversions: D Cowan et al, 'Reducing Repeat Offending Through Less Prosecution in Victoria, Australia: Opportunities for Increased Diversion of Offenders' (2019) 3 *Cambridge Journal of Evidence Based Policing* 109.

¹⁶ Australian Bureau of Statistics (ABS) data shows that court actions as a proportion of police proceedings have increased from 52 per cent in 2012-13 to 71 per cent in 2018-19; conversely the proportion of non-court proceedings has decreased from a high of 65 per cent in 2012-13 to 32 per cent in 2018-19. ABS, *4519.0 Recorded Crime – Offenders, 2018-19*, (Catalogue No 4519.0, 6 February 2020) *Police proceedings, selected states and territories - Table 27 Victoria*, <https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4519.02018-19?OpenDocument>.

¹⁷ Rachel Green, Rebecca Gray, Joanne Bryant, Jake Rance, Sarah MacLean, 'Police decision-making with young offenders: Examining barriers to the use of diversion options' (2020) 53(1) *ANZ Journal of Criminology* 137–154 at 143.

¹⁸ *Ibid*, 145-146.

¹⁹ This story started in 2019, before there were restrictions on time spent outside the home.

We support increased and consistent use of cautions and diversions for cannabis use and possession. Measures to improve the use of these options include:

- a) Introducing a legislated cautioning scheme for children and adults in Victoria, as well as empowering the Children’s Court to issue cautions on the same terms as police.²⁰
- b) Reducing barriers in the police cautioning policy, including removing the requirement that the person have no prior criminal history and the limit on the number of cautions a person can receive.²¹ The threshold requirement to admit the offence could also be amended to a requirement that the offence not be denied.
- c) Removing the requirement for police to consent to diversion, ensuring that the magistrate can consider granting diversion to every person who is charged with an offence, and reducing the impact of police workload and implicit bias on diversion outcomes.
- d) Providing additional training to Victoria Police to increase the use and consistency of cautions and diversion, and reducing workload disincentives to pursuing those options.

Recommendation 3: The use of cautions and diversions for cannabis possession and use should be increased through:

- a) Legislating a caution scheme for children and adults.
- b) Reviewing the police cautioning policy to reduce barriers to granting cautions.
- c) Removing the requirement for police to consent to diversion.
- d) Providing diversion training and support to police officers and reducing workload disincentives.

3. Therapeutic support programs

Where people do come into contact with the criminal justice system, it should be an opportunity to link them with supports to address their underlying and intersecting issues. Victoria has excellent therapeutic programs with demonstrated improvements for client outcomes, however these unfortunately not available statewide and often suffer from resource deficiencies.

David is in his early 30s, has an intellectual disability and lives in regional Victoria. He has a history of childhood trauma and neglect, and years of unstable housing.

“I was kicked out of home at 14 and became basically homeless, going in out of friend’s homes. I started smoking around that time. Smoking marijuana levels me out and keeps me mellowed out through the day”, he said.

David uses cannabis to help with his mental health issues, *“It feels like a medication. The doctor said I have a dopamine block out in my brain so this helps me feel steady and relax. I don’t get high to where I can’t get up and wash the dishes and vacuum the house, I try not to let it affect what need to do through the day. I have tried ice in the past but it sends me off the wall, so I don’t use any of that or even drink alcohol anymore. I don’t like how it makes me feel. If I drink alcohol it affects me badly and it affects the people around me who I care about. I just smoke some pot and I’m straighty 180”.*

²⁰ In NSW, the Children’s Court can issue cautions on the same terms as police - *Young Offenders Act 1997 (NSW)* s 31.

²¹ Only for the first two offences - Victoria Police (2019) *‘Procedures and Guidelines: Disposition of Offenders’, ‘Policy Rules.*

For years, David had no family or community support and has difficulties with working memory, often forgetting appointments. David has only ever held a Learners driver's licence (now lapsed). He was pulled over by police for driving an unregistered motor vehicle without a licence. A month later, police pulled him over for unlicensed driving and conducted a search of his car – they found cannabis. He was charged with unlicensed driving and cannabis possession and placed on bail.

"I feel like I'm almost targeted now because police know I smoke pot. Obviously I have a history of possession charges. The last time I got pulled over by the police they asked for my friend's licence because she was driving and then they did checks on both of us and it felt like they just wanted an excuse to search the car. There was no smell or anything, they knew who I was, knew I smoked pot and that was their excuse to look through the car."

The cannabis charge escalated David's circumstances from minor driving offences to indictable offending. After missing his court date, a warrant was issued and David was charged with failing to appear on bail. David was then arrested by police for further unlicensed driving, possession of cannabis and committing an indictable offence on bail (cannabis possession was the indictable offence).

He says it feels unfair that he is taken to court for small amounts of cannabis for personal use *"I'm not a risk to others, I smoke at home, not in public, it's in my own time at my own house. So all my charges are from car searches."*

He was given a place in the Assessment and Referral Court due to his intellectual disability, and was sentenced to an adjourned undertaking with a condition to engage with disability services. *"Being referred to the National Disability Insurance Scheme has been really good, I think I'm going to see an alcohol and drug counsellor and a doctor who works in community health, but because of COVID-19 I haven't been able to attend any appointments."*

While ultimately David received the services he needed, this was only after spending a year in the court system and being subject to arrest and remand. David found the court process was stressful. *"There were several adjournments, so it dragged on and I've got anxiety, I don't like leaving the house and being in crowds, it made me more anxious."*

Police had the power to refer David directly to disability support services and could have granted David either a caution or an early diversion, keeping him out of the court system and reducing his contact with the criminal justice system.

David says he wishes police would use more discretion rather than charge him every time *"I know they're doing their jobs, but there's got to be some kind of decision making when a person isn't hurting anyone else. It feels unfair being targeted for something that doesn't hurt other people. I don't think it should be legal except to people who need it for a medical condition, but it should be looked upon in a different way, a lesser charge, or not in the criminal system"*.

"A little while ago I bumped into a cop who knew me from when I was a kid and he said 'Hi David, what's in your pockets?' I felt like I was a well-known criminal. I just smoke a bit of pot mate I'm not a criminal."

VLA's practice experience is that the Court Integrated Services Program (**CISP**) and other therapeutic court support programs can be transformative in a client's life, particularly where they also experience other forms of disadvantage, such as poverty, exposure to family violence or mental health concerns. In addition, CISP is often a precondition to helping people with complex health and other issues get bail. However, there is significant geographical disadvantage in

access to court-based services like CISP.²² There are commonly delays of days to weeks for people in custody seeking an assessment as to CISP suitability.²³ Rates of cannabis (and other drug use) is higher in regional areas than in metropolitan areas,²⁴ where correspondingly there is less access to court-based treatment programs such as CISP.

Therapeutic Court programs such as the Assessment and Referral Court are proven to deal more effectively with factors contributing to offending behaviour, such as mental health issues and substance dependence.²⁵ The opportunity to access therapeutic and other court-based support services should be made available to all Victorians, regardless of where they live.

Successful diversionary responses are reliant on funded services which can help people address underlying issues. Access to diversion schemes is often limited, as many jurisdictions only authorise access to programs to offenders without a lengthy criminal history, limiting access by repeat offenders who are affected by relapses of drug dependence. As well as the legislative and operational recommendations we made above, the use of diversion could be increased by resourcing effective and culturally appropriate diversionary programs state-wide. Direct referrals from Victoria Police to health and social services could also be supported and resourced, particularly where a person has complex needs or vulnerable circumstances.

Finally, we highlight that improved integration of social, mental health and legal services is critical to ensuring better outcomes for people in the justice system for drug use, particularly to provide the supports that will help people stay in the community rather than being imprisoned for cannabis possession. Cannabis use is often not a single issue in itself, and holistic services are better placed to provide a combination of education and therapeutic responses. As an example, tailored programs and services such as the Youth Community & Law Program in Sunshine and the Youth Support and Advocacy Service are aimed at managing not only drug issues, but also mental health and other issues which can result in drug use and dependence.

Recommendation 4: Therapeutic programs should be resourced and available statewide, including the Court Integrated Services Program, Therapeutic Courts, effective and culturally appropriate diversion programs, and integrated services which can address intersecting issues in a person's life. These programs can provide the supports people need to stay in the community rather than spending time in prison for cannabis possession.

²² Less than half of all courts in regional Victoria have access, CISP is available in eight of ten metropolitan courts and only 12 of 41 regional courts (Ballarat, Bendigo, Geelong, Korumburra, La Trobe, Mildura, Portland, Shepparton, Warrnambool, Wangaratta, Wodonga and Wonthaggi) <<https://www.mcv.vic.gov.au/find-support/bail-support-cisp>>.

²³ Angelica Panopoulos, *The recent changes to bail laws in Victoria and the consequences for the justice system*, Research Report, Victorian Parliamentary Internship Program, (October 2019) 26.

²⁴ Victorian Parliament, *Inquiry into Drug Law Reform*, March 2018, 139.

²⁵ Koori Court, Drug Court and the Assessment and Referral Courts (ARC) will often address drug use as part of a holistic approach to rehabilitation and recidivist prevention.