

TRANSCRIPT

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into the Use of Cannabis in Victoria

Melbourne—Wednesday, 19 May 2021

MEMBERS

Ms Fiona Patten—Chair

Dr Tien Kieu—Deputy Chair

Ms Jane Garrett

Ms Wendy Lovell

Ms Tania Maxwell

Mr Craig Ondarchie

Ms Kaushaliya Vaghela

PARTICIPATING MEMBERS

Dr Matthew Bach

Ms Melina Bath

Mr Rodney Barton

Ms Georgie Crozier

Dr Catherine Cumming

Mr Enver Erdogan

Mr Stuart Grimley

Mr David Limbrick

Mr Edward O'Donohue

Mr Tim Quilty

Dr Samantha Ratnam

Ms Harriet Shing

Mr Lee Tarlamis

Ms Sheena Watt

**Necessary corrections to be notified to
executive officer of committee**

WITNESSES

Mr Dan Nicholson, Executive Director, Criminal Law Services, and

Ms Sharon Keith, Managing Lawyer, Summary Crime, Victoria Legal Aid.

The CHAIR: Good morning, everyone. I declare open the Legislative Council Legal and Social Issues Committee's public hearing for the Inquiry into the Use of Cannabis in Victoria. If I can ask committee members and everyone just to make sure their phones are on silent.

Can I begin this hearing by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the various lands that we are gathered on today, and pay my respects to ancestors, elders and families. I particularly want to welcome any elders and families that are joining us via Zoom today and also those that may be imparting their knowledge to this committee today. We are always very conscious that when we talk about the justice system we know of the exponential impacts on our Aboriginal brothers and sisters.

Today we are joined by Matthew Bach via Zoom. We have David Limbrick here, Ms Georgie Crozier here, and I am Fiona Patten, the Chair.

All evidence taken is protected by parliamentary privilege, and that is provided by our *Constitution Act* but also the standing orders of the Legislative Council. Therefore any information that you provide to us today is protected against any action; however, if you were to go elsewhere and repeat the same things, those comments may not have the same protection. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

As you can see, we are recording today. We are also broadcasting live. You will receive a transcript of today, and I would encourage you to have a look at it and make sure that we have not misrepresented you in any way or misunderstood what you were saying. Ultimately that transcript will form part of our report and will go up onto our website.

We would really welcome some opening remarks from you, and then we will open it up to a broader committee discussion. But again, thank you.

Mr NICHOLSON: Thanks very much. I will also begin by acknowledging the traditional owners of the land and pay my respect to elders past and present and to Aboriginal and Torres Strait Islander colleagues here.

Thank you for inviting Victoria Legal Aid to contribute our experience to the committee. My name is Dan Nicholson. I am the Executive Director of Criminal Law, and as the title suggests, I am responsible for all of Legal Aid's criminal law services across the state.

Ms KEITH: My name is Sharon Keith. I am the Managing Lawyer of Summary Crime and the Bail and Remand Court. Prior to this for 10 years I was the senior lawyer in the Dandenong and Melbourne Drug Courts.

Mr NICHOLSON: As I am sure you are aware, VLA is a statutory agency that is responsible for providing assistance to Victorians in response to a broad range of legal problems. We help with criminal law matters but also legal issues associated with mental health, family separation, child protection, family violence, discrimination, fines, and social security and tenancy, among others. Our clients are very diverse and have a high level of disadvantage. If you look at our last pre-COVID year, 2018–19, we helped about 100 000 clients from our 14 offices. About half of those were on social security, a third had no income, 7 per cent were homeless or at risk of homelessness, a quarter disclosed a disability or a mental health issue, a quarter were from culturally and linguistically diverse backgrounds, 5 per cent were Aboriginal or Torres Strait Islander and a third were in regional Victoria. Half of our clients get a criminal law service each year, and our statewide criminal law practice provides representation all the way across the state, including of course people charged with cannabis and a whole range of drug offences. As Sharon mentioned, we have a specialist Drug Court team as well.

I suppose whenever we are asked to give a submission on a policy or law reform issue or speak at a committee like this we look at our practice experience. We are basically in every court across the state every day, when

COVID permits, so what we see through our clients and through our practice and our services is what forms the basis of our submissions and recommendations. I have to say that when we were considering making a submission to this inquiry I actually thought we would not have that much that would be of assistance to the committee. The reason for that is our services are generally aimed at criminal law matters, kind of at the pointy end, with the most serious consequences, like imprisonment. I imagined that most people who are charged with cannabis possession would not really come into our services. They would be getting diversions, cautions, bonds or small fines, not things that we usually help with. That is not to minimise the impact of those interventions on people. Any criminal justice involvement can be harmful. It can hurt your education and housing. For people who are likely to be our clients, who have things like mental health issues, it can compound their dependence on cannabis or other drugs that they use to manage the impacts of those conditions. But actually what we found when we were preparing the submission was that we had clients who were being remanded in custody after being charged with possession of cannabis, and that shocked me. Often these clients—and I think you will see it in the case studies of people like Katie and Anthony in our submission—were people who have had criminal justice involvement in the past, who were actually doing pretty well and recovering and turning their lives around, but then they were getting arrested for possession of cannabis and they ended up remanded in custody even though clearly they did not belong in prison. Even short periods of imprisonment can be pretty harmful. They can be traumatic, particularly at a time when we are understandably imposing a lot of restrictions on people in custody because of COVID, but also disruptive of supports that they have in the community, like housing, work and mental health treatment.

In a moment Sharon will just briefly summarise a couple of the real case studies, and then I will just touch on our recommendations. But I guess in summary we recommend decriminalisation of possession and personal use of marijuana, because we would rather see those cases out of the criminal justice system, because our experience is that the criminal justice system causes harm to our clients who actually need a health response, sometimes to deal with addiction and often to deal with mental health issues. These cases also clog up the courts and corrections system. I think our submission says there were 8000 or 9000 cannabis arrests or offences recorded in Victoria and that half of all drug arrests in Australia are for possession of cannabis. The criminal justice system, the court system, the corrections system and certainly legal aid services are all overburdened and have significant backlogs, particularly because of COVID. It is a good time to get things out if they are not playing a meaningful part in addressing community harm or community safety, and I think that approach would be in line with the approach we are taking in other areas, like public drunkenness or the response to the mental health crisis, where we are trying to move away from a police-first and criminal justice first approach towards more of a health approach.

Sharon, do you want to just touch on a couple of our case studies?

Ms KEITH: Certainly. The first of the case studies is Charles. Charles is 50 years old and is on a disability support pension. He also experiences mental health issues. He was arrested on charges of cultivate and possession of cannabis. Upon his arrest, police accepted that the cannabis was for Charles's personal use to manage his mental health and other health issues. Despite these mitigating circumstances, Charles was refused bail by police as due to his disability and mental health issues he could not articulate reasons for bail. He was remanded in custody and brought to the Magistrates Court. Ultimately Charles was released onto a diversion plan with a condition to pay a \$100 donation to a charity.

Another example of the harmful impact of the enforcement response to cannabis lies within Katie's story. Katie is in her early 40s and struggles with significant mental health issues. She had recently been placed on a compulsory treatment order 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 her mental health issues, she was remanded in custody because she was already subject to a community corrections order for offending, which also linked to her mental health issues. Her arrest was a highly traumatic experience, further exacerbated by COVID-19. She had flu-like symptoms, was strip-searched and placed in an isolation cell. Custody staff refused to move her to a room with an AVL facility due to concerns about specialist cleaning that would be required. This meant that initially the VLA lawyer did not have access to her because of her symptoms. Ultimately the magistrate ordered that Katie be provided a telephone so that she could speak with a lawyer. Our lawyer found her highly distressed, further compounded by her mental illness. Katie pled guilty to the charges and was released with a small fine.

Mr NICHOLSON: Based on our experience of working with people like Charles and Katie these were the recommendations we made as part of our submission: firstly, we recommend decriminalisation of personal use and possession of cannabis so that people like David would not enter the criminal justice system or get dragged back into it if they are doing well just because of possession of cannabis. Rather, we would like to see them diverted out and get the help they need with the issues in their lives.

Second, if the committee took a different view on the issue of decriminalisation, we recommend reclassification of the offence of possession of marijuana as a summary offence to make sure that the consequences are proportionate to the conduct. That is because there is a particular impact of being charged with an indictable offence while on bail or on a CCO following the bail changes in 2018, and this would mean that people like David do not end up in a prison cell for personal use and possession of cannabis.

Thirdly, again assuming that our recommendations about decriminalisation were not adopted, our recommendation is to strengthen the system of caution and diversion in the criminal justice system to make sure that more people are diverted out of the system rather than caught in the net, and I am happy to talk more about that issue in discussion.

And then lastly, when people do come into contact with the criminal justice system, because of the nature of their offending we recommend increasing our ability to rehabilitate people to help them recover from illness and addiction, and in particular you can see in all of the case studies, really, in our submission there are underlying mental health issues, and so increasing the availability of successful programs like the court integrated services program and therapeutic courts, which help people to deal with the underlying circumstances of offending. That is all we wanted to say in opening, so we are happy to have further discussion.

The CHAIR: Thank you. Thank you very much for your submission and your contributions. I will just kick off. I just had a quick question. There was one case study that you used which was Anthony, who was a young man driving with two males and he was not granted a caution or bail; he was remanded and then brought to court on a possess charge. I am probably asking too much, but would you happen to know how long he was remanded for?

Ms KEITH: I am not aware of the exact period of time, but certainly the way that the bail and remand court works, for example, you might have been arrested after 10 o'clock at night and remanded in custody until the following day. Depending on the list at court you could quite easily have spent the entire day in custody.

Mr NICHOLSON: They are not usually super long periods, but we are talking a couple of days. If something happens or if there are more priors or more different things—

The CHAIR: Where it is more complicated.

Mr NICHOLSON: in the court system, it can go on. But they are not generally particularly long periods of remand.

The CHAIR: Also I think you were saying that the use of diversion has halved over the last 10 years, which was quite surprising. The reason for that was put down as the police workload at the moment. Why is diversion so difficult, or why does it take longer to introduce diversion over an arrest and charge?

Mr NICHOLSON: I think often the systems are set to default to charging rather than defaulting to diversion or caution, and so sometimes the decision-making is driven by what is easiest or hardest. I think one of the things that would help is more training for the police—but also making that process easier, where really you default to a caution or a diversion, particularly for a young person, and you have got to get approval to proceed to charge rather than kind of the reverse.

The CHAIR: So the opposite—at the moment there have to be extraordinary circumstances for diversion or caution, rather than the opposite way. I think you used that case study of David, who was living in regional Victoria. Obviously he is doing well now and he is in the NDIS, but you mentioned in your submission that the police would have had the opportunity to refer him directly to a disability service, but instead they arrested him, remanded him and went through that process. Are there any back-of-the-envelope figures on how much that costs compared to diversion? Are you aware of any work that looks at the different costs?

Mr NICHOLSON: No. I mean, I think it certainly could be done and you could make an estimate, but we do not have that information now. I did see in some other submissions that there are some costs around remand and other things in particular.

The CHAIR: Overall costs, yes.

Mr NICHOLSON: But no, we do not have that.

The CHAIR: For you as an agency, how much would it cost to represent someone on one of these charges?

Mr NICHOLSON: We send three lawyers down to the Bail and Remand Court every day. We are sending one or two lawyers to remand cells in the major Magistrates Courts across the state, so we are talking about a few hundred dollars of work each time. If it goes longer, you know, a grant of aid would be a couple of thousand dollars. But you know, when you have got eight or nine people in the cells on a busy day, every person you are dealing with on a small matter like this means you have less time to deal with the matters that you really should be spending time on, so the cost sort of cumulates if you like.

The CHAIR: Yes.

Mr NICHOLSON: The reality is if there are eight or nine in the cells or—I know what the numbers are like in BARC, and they can be higher.

Ms KEITH: Much higher.

Mr NICHOLSON: Do you know if there are 15 or 20 in BARC?

Ms KEITH: Yes. Sometimes on the Saturday day and night shift we can have up to 40 people that we are seeing throughout that shift. If you are diverting somebody out of the system and if the police would make a referral to an agency, for example, compared to the cost of arresting somebody, the police members that would deal with that arrest and the cost of transportation to a courtroom—and you have then got the custody staff that need to supervise and move that client, the court staff that need to process the paperwork and then the legal aid that comes in at the end of that process—the number of people and the associated costs of that are enormous, particularly when the likely outcome for somebody who would be arrested would be release and a fine, without any sort of interaction with support services or treatment options, compared to somebody who would be immediately linked into that support service from the first interaction. It does not make sense.

The CHAIR: No. I might have time to come back, but I will go to David, then Georgie and then Matthew.

Mr LIMBRICK: Thank you very much for appearing today and for your excellent submission. You touched on a few issues that I have been paying close attention to. Now, your first recommendation was to decriminalise, and I guess the goal of that is to keep people out of the justice system that are carrying small personal quantities. But then you made another interesting recommendation. Recommendation 3 was around diversion. I would like to ask the question: if police discretion was taken away—so at the moment the police have discretion on whether they divert, caution or charge someone—and they could only divert or caution, would that effectively achieve the same result in keeping these people out of the justice system?

Mr NICHOLSON: So you mean if the offence sort of stayed in the books but you had to divert or caution?

Mr LIMBRICK: But they had to divert or caution—they could not charge—and the barriers to diversion were as low as possible.

Mr NICHOLSON: I mean, it would achieve some of the same goals, I think. I guess the concern for us is there are always going to be limits around diversion and caution.

Mr LIMBRICK: You mean like system capacity limits.

Mr NICHOLSON: Yes, but also the number of times you get it or if you are charged with other things. I suppose it is dependent on how you formulated the recommendation or the legislation. But there will be carve-outs, and so you still risk people getting sort of sucked back into the system.

Mr LIMBRICK: Another point that you made which is very interesting was where you said that:

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.

So this is sort of making the very clear point that when you buy cannabis through the black market they have got other products for sale and you may get introduced to these other products. So I suppose my question here is: would legalisation of cannabis take away that?

Mr NICHOLSON: Yes, I think—and Sharon can talk about the Drug Court experience more than me—when we have people in Drug Court that are doing the more high-harm offending, it is not just because of cannabis use. It is other drugs—heroin and ice in particular. And I think as we said in the case study, we have seen client examples where they have been buying off their dealer and been introduced to more serious things. So I suppose, logically in that situation, if a person were able to obtain it in a different way, in a regulated way, then that risk of being upsold to drugs that are more addictive and that are associated with more high-harm offending, like ice and heroin, would be removed or significantly reduced.

Mr LIMBRICK: I know Fiona was talking about it as well—the reasons for this drop in diversions and cautions. We saw it in some data that we got in a question on notice as well. What sort of things could happen to reverse that so that more people were getting diverted and cautioned? Now, I know that there was some talk about police workload and this sort of thing. Is that really the driving factor here that is causing that? Why would it have dropped is my question, because it has halved over the last decade, I think.

Mr NICHOLSON: I think there is probably a factor of workload. There is a factor of culture as well. So I guess some of the things that we could see is you could have a legislated caution scheme rather than it just being a product of the police. I think under the youth justice Act in New South Wales the court can caution as well as police, and what that did is that provided a bit of court oversight. So if police are unreasonably withholding a caution, the court can do it, and that probably helps to have a bit more accountability in that system. Likewise, with diversion there is a police veto on diversion, and we think a court should be able to make a decision on diversion in the same way that it can with any other disposition. So there are some legislative things you could do to remove the police discretion or veto element, and I think that would help to drive better standards and then police decision-making, because they know that if they unreasonably withhold a diversion it will be ordered anyway, so what is the point? Does that make sense?

The CHAIR: Yes. That is a very good point.

Mr NICHOLSON: So there are some legislative things that can be done as well as some practical things in police processes and training too, I think.

Mr LIMBRICK: And what—sorry.

Ms KEITH: I was just going to say I think the resourcing around these programs and also the availability of them would be incredibly important. Often there is a significant delay just because there is no availability to be able to access programs like that. If it was decriminalised and people were able to access treatment and health within the wider community and not in a court or police-mandated program, then you have much broader options in order to be able to access that treatment.

Mr NICHOLSON: But also the availability of services has a relationship with diversion, like if you are a police officer and you want to divert someone out there but you are just not confident in this town that there will be a program where they can get help, logically you are less likely to divert, whereas if you have a good relationship with a really good drug and alcohol service that you know has availability, then it stands to reason you will be more confident in diverting someone out rather than taking them to court.

Mr LIMBRICK: And that is an excellent point. So it sort of implies that there are biases here when deciding who gets the caution and the diversion and who gets charged. So one bias might be their perception of availability of these services in the local community. What sort of other biases would feed into that decision-making process of whether someone gets a caution or diversion or gets charged?

Mr NICHOLSON: Look, there is research from New South Wales that says that Aboriginal people are less likely to receive a caution. There is not equivalent research that I am aware of in Victoria. I think that some of

the recent qualitative research with police suggests that they are more likely to invest the time if they think the person demonstrates remorse, and you could see how then implicit biases could play out in that for a good middle-class kid they think has got remorse, you are more likely to go the extra mile. Again, that is not to be too critical of police; it is a difficult job. But I think the research shows that there is a difference in access to diversion and caution depending on who you are—certainly in other jurisdictions. It probably would be something which would be very interesting to dive into more in Victoria too.

Mr LIMBRICK: Thank you.

The CHAIR: Thank you. Georgie.

Ms CROZIER: Thank you very much, Chair. Thank you both very much for appearing before us and for your submission and evidence that you have given us this morning. I am very interested in the mental health impacts and the health impacts to cannabis use. Sharon, you gave some examples of both Charles and Katie, who had mental health issues, in describing their experiences. Just in the overall numbers that you spoke of down when you went back and said there were significant numbers that actually captured what we are trying to understand through the inquiry, what numbers are you talking about from your clients, firstly? That is my question. The next question I have is: how many of those would have issues around mental health? Do you know that offhand?

Mr NICHOLSON: We do not have great data on the number of people particularly caught by cannabis—and that is, to be honest with you, because we record the offence type. So all the drug of dependence ones tend to come in together, so we cannot easily fold out of our data the cannabis cases in particular. So the numbers are difficult to give you. I mean, I think Sharon can probably give anecdotal feedback about how often we see this coming through Bail and Remand Court, for example.

Ms CROZIER: I am trying to understand how many people that you are talking about in this situation have been touched by the legal system in the past. Have all of these ones that you have provided in here been touched by the legal system or the criminal justice system in the past, or is this just a one-off? Like, Katie and Charles, is it their first time that they have come into contact with the criminal justice system?

Ms KEITH: Certainly the experience varies, but without question in the Bail and Remand Court we see people who are arrested on possession of cannabis offences who have no prior criminal history whatsoever.

Ms CROZIER: So do you collect data on that?

Ms KEITH: No. We do not have specific data in terms of what somebody's history is. We would have sentencing dispositions, but in terms of what their prior history is, no.

Ms CROZIER: Okay. Thank you.

Mr NICHOLSON: We could pull data on the number of possession of drugs of dependence people we have coming through, but we could not easily pull out the cannabis-specific ones. But we are happy to provide whatever data would be helpful to the committee on notice.

Ms CROZIER: That would be terrific, thank you. Just in relation to your recommendations, which I think are really helpful, in terms of recommendation 2, 'the indictable offence of cannabis possession should be reclassified as a summary offence', when you are speaking to your counterparts in other jurisdictions, what is their experience of going down this line? Have you got any information that you could provide to the committee in relation to that?

Mr NICHOLSON: I am happy to take that on notice, where there have been changes. I do not think other jurisdictions have the particular bail impact that we do of being charged with an indictable offence while on bail or while on a CCO because, as you know, that puts you into a reverse onus position. Often we see people who have got a string of pretty minor things, the last of which might be possession of cannabis, and they are in exceptional circumstances for bail, which of course is the category that used to be reserved for rape, murder or terrorism type charges. So that putting people into a higher onus of bail is a particular feature or, you could probably say, unintended consequence of the bail changes over the past few years. But I do not think that, certainly talking to my counterparts, is the same experience they have of the bail impacts in particular. They do

not have that escalating impact of minor offending in their bail Acts. But certainly on the more general question of what is the difference where offences have been reclassified, we can ask our counterparts and provide some information to you.

Ms CROZIER: That would be helpful. Thank you. And just finally, on the diversion programs, I think there has been significant work done over many years in this, but it is clear from what you are saying that more needs to be done in this area. Is anyone getting it right anywhere around Australia in terms of the diversion programs?

Mr NICHOLSON: Look, I think the legislated cautioning and the court cautioning in New South Wales is quite helpful, but I would say that anecdotally, talking to counterparts around the country, there are some similar issues with police discretion and cautioning in most jurisdictions. But again I am happy to provide that information from other jurisdictions too.

Ms CROZIER: Thank you.

The CHAIR: Great, thank you. Matthew.

Dr BACH: Thanks very much, Chair, and many thanks very much for coming along and providing evidence today in addition to your submission. Like Georgie and others on the committee I was fascinated by the discussion about diversion. Many years ago I had the opportunity to observe the Dandenong Drug Court in operation and think that in many, many respects that model is just fascinating. Following on from the conversation that Ms Crozier just started with you, I wonder, noting this is something you have touched on already and touched on in your submission that we received some time ago, if you would talk to us a little bit about what you feel are some of the key elements of any diversion program that could be effective with the cohort that we are discussing today, noting that there seems to be broad agreement that we need more of these programs. What should we be looking for in terms of the key elements of them?

Mr NICHOLSON: Thanks. That is a good question. I should say, when you were in Dandenong Drug Court years ago, you may well have seen Sharon appearing, because I think she spent about eight years there—didn't you, Sharon, or something?

Ms KEITH: Yes, that is right.

Mr NICHOLSON: Look, I think some of the elements of a really good diversion program—and please, Sharon, jump in with additional things—are quick diversion out of the system, strong referral pathways and incentives to do that, making it as easy as possible, as I touched on before. 'Easier to divert than to charge' should be our aim, right? Because each time we want to drag people further into the criminal justice system, that should be a harder thing to do. So good availability of services and connections with police and other referring agencies and confidence that they will be done. We actually want a pretty light touch, so we do not want diversion systems where there are 48 conditions and you have got to come back to police every three months to report on how you are going. That is what court orders are for. That intensive supervision should be proportionate to what you are doing. When you are talking about a bit of possession and wanting to get people out, it should be a pretty light touch. You want to get away from police as quickly as possible and into a service that you have got confidence in rather than negotiating 20 conditions and coming back every three months to tell them how you are going, because we should have confidence that if you are not going well, you will come back into the criminal justice system another way and there may be escalating consequences, and that is when you will have more intense supervision.

The other thing is I think you want to have a good check on discretion. So the reality of our job is we probably see a lot of the time when police discretion does not work. That is kind of partly why you have legal aid duty lawyer services—so that when something that is not quite right is happening and you exercise a discretion, there is a check on it. So we see a bit of that. We probably do not see as many of the cases where the discretion works really well, so I think a check on discretion, and that is both internally within police—sergeants, senior sergeants, prosecutors picking up their role to really push frontline police—and then also court oversight where it is needed.

Dr BACH: Thank you very much. It is a very fulsome answer. I appreciate it.

Mr NICHOLSON: Is there anything else you would add to that?

Ms CROZIER: Can I ask a follow-up on that?

The CHAIR: Yes.

Ms CROZIER: I am really interested in that, the diversion programs, but I am also concerned by your descriptions about the numbers that have got mental health issues. They might go into a diversion program, but if they are not getting support for their mental health issues then I am not sure that that is going to be effective enough. Can you comment on any of that? Do you think that there needs to be a dual system in terms of the diversion if people do have a mental illness—how that comes together to support them appropriately and properly so that they are not bouncing in and out?

Mr NICHOLSON: Absolutely. I completely agree, and I think if you look at most of our clients, it kind of went: mental health issues emerged and then cannabis use came in afterwards as a way of dealing with it. That is not the case everywhere, but that tended to be the order in the case studies we used. I think the mental health royal commission probably said quite a lot about that in the sense that we know there was this missing middle between a bit of help from your GP and acute services, and so getting good referrals into community mental health programs that can really help you is absolutely vital. That is really at the heart of a lot of the mental health royal commission recommendations about getting police out of being the first responders and getting a health response in there. So yes, I do agree that it is not just about drug and alcohol treatment; it is about referrals to mental health services.

The CHAIR: And I think that almost goes to the nub also of decriminalisation versus diversion—that for probably the majority of people who are picked up on a possession charge of cannabis it is not problematic that they are using cannabis. Underlying mental health conditions, health issues, may be problematic, but under diversion programs and things like that you are sending them to education or treatment for their drug use, which may actually not be necessary. What might be necessary is employment, maybe some counselling and mental health. So if we take this out of the criminal justice system, does it enable us to actually move people through a mental health program more easily or more fluidly?

Mr NICHOLSON: Sharon has worked with people with addiction much longer than I have, so I will let her comment. But there is no doubt in my mind that the fact that something is illegal can make people less likely to seek help in a timely fashion. Our clients in particular, who are living pretty marginalised lives, might be worried about their education or housing, so I think there is a real risk that it can cause a barrier to seeking help, notwithstanding that you might have the best intention to divert them away from the criminal justice system.

Ms KEITH: I would reiterate that. I think for anybody it takes enormous courage and a vulnerability to share when something is wrong or when you need help with something, and to add the additional barrier, the fear of the criminalisation and the shame that is often attached to it, just means that sometimes you lose that moment when somebody might share that with their GP or somebody else within the community. Unfortunately that does provide a real barrier to them getting that assistance, particularly in the early stages, when they are struggling with mental health issues.

The CHAIR: Thank you. David.

Mr LIMBRICK: Just quickly, I know we have touched on this a few times both in your submission and in your evidence. You spoke about the distress of being put on remand. You spoke just then about the fear of being caught, because it is a criminal offence to hold cannabis. Do you feel that the criminalisation of cannabis is exacerbating people's mental health issues through being exposed to the justice system, through this fear that they are feeling about being caught? Do you think that is exacerbating it?

Ms KEITH: I would certainly think so. I think that at any point if you do not feel safe, if you feel that you are at risk, that you cannot safely tell people that you need to that there are issues and that this is perhaps how you are managing those issues, then I think that it could only help. So it could only exacerbate the conditions that they are already struggling with.

Ms CROZIER: But have you got data on that? That is probably an observation that you have, but I think we need to understand the data. It goes back to probably my first question about what is collected here—you know, what is the history for people that come into the system, how has that impacted—so that we can prevent them

from re-entering. I think that is really a necessary path. I am interested in any data that you have on any of those points that David just raised.

Mr NICHOLSON: There is certainly lots of data out there about the impact of spending time in prison, on reoffending generally and, both from Victoria and overseas, about the impact of short stints of imprisonment on offending. I think to the extent to which you could get that cut by particular types of drugs or particular types of offending, that would be something for the crimes stats agency to probably help us with.

Mr LIMBRICK: The case study you provided of David, when I read that, it was just so sad. He is not hurting anyone, right? He is just minding his own business. And I felt like this guy is just suffering a lot. He said he feels like he is being targeted by police, because he must live in a small community, I guess, from this, and all the police know that he smokes cannabis, and he is terrified the whole time.

The CHAIR: Great. Thank you both. That was great. I think it has really teased out a few of those issues. I think we did give you a little bit of homework there.

Mr NICHOLSON: Yes.

The CHAIR: The committee team will follow up with that. But, yes, we appreciate some of that data that we are trying to look at, and time and time again when we do inquiries we find that the data is not there. I think many committees prior to this one have recommended that more data be collected and no doubt this committee will also probably be heading towards something like that. Thank you again. As I mentioned at the outset, you will receive a transcript of today's session in the next little while and I encourage you to have look at it. We appreciate your time today. Thank you.

Ms KEITH: Thank you so much.

Mr NICHOLSON: Thank you very much.

Witnesses withdrew.