



Submission of Dr Kate Seear to the Legal and Social Issues Committee

Inquiry into the Drugs, Poisons and Controlled Substances Amendment (Pilot Medically Supervised Injecting Centre) Bill 2017

My qualifications and expertise

I am a Senior Lecturer in Law at the Faculty of Law, Monash University. I am a practising solicitor and Academic Director of Springvale Monash Legal Service. I also hold a competitive research fellowship from the Australian Research Council in the form of a Discovery Early Career Researcher Award (DECRA) Fellowship. This fellowship was awarded in 2016 and runs until 2018. It funds me to undertake a major international comparative study on alcohol and other drug issues/‘addiction’ in Australian and Canadian law. This research has led me to meet with and interview for my research a range of key stakeholders, including lawyers, across Canada, to examine how alcohol and other drug issues are dealt with in law.

As well as my abovementioned affiliations, I am an Adjunct Research Fellow at the National Drug Research Institute, Curtin University. This is one of the three major alcohol and other drug research centres in Australia, and receives Commonwealth funding. I was previously employed as a postdoctoral research fellow. I am a member of the editorial board of the international specialist journal *Contemporary Drug Problems*, and regularly peer review papers, by invitation from other experts around the world, on alcohol and other drug law and policy, including for prestigious international journals such as the *International Journal of Drug Policy*.

I have honours degrees in arts and law, and a PhD. I am the author (together with Professor Suzanne Fraser) of the world’s first full-length social science book examining hepatitis C and injecting drug use (*Making disease, making citizens: The politics of hepatitis C*, published through Ashgate). I am also the author of multiple technical reports, including reports for government, a number of peer reviewed journal articles, and other popular publications (e.g. pieces for the academic website *The Conversation*). The vast majority of my work examines alcohol and other drug law and policy.

This Inquiry

My submission addresses the terms of reference of the inquiry:

- Recommendations in Coroner Hawkins’ Finding – Inquest into the Death of Ms A, delivered on 20 February 2017 and other relevant reports;
- Nature and extent of current, relevant regulations;
- And nature and extent of associated, relevant policing policy.

Overarching principles in support of reform

Drug law reform is justifiable on a number of grounds. There is, as I shall explain, a substantial body of academic research supporting specific reforms. In addition, reforms are justifiable (and according to some interpretations, *necessary*) by virtue of a set of



additional overarching principles. These principles should be given weight in any consideration regarding whether a supervised injecting facility might be established in the state of Victoria. The main overarching principles that are relevant to the Terms of Reference and the Bill the subject of this Inquiry are threefold:

(a) Australia's existing policy framework of harm reduction: Australia's *National Drug Strategy* has a 'three pillar' system of supply reduction, demand reduction and harm reduction. Through its focus on harm reduction, Australia has previously implemented a number of world-leading and highly effective measures designed to reduce the harms that can sometimes be associated with alcohol and other drug (AOD) use. Reforms to drug laws including those that focus on reducing the harms that can be associated with drugs and reducing the harms that can be associated with prohibitionist approaches are consistent with Australia's overarching commitment to harm reduction.

(b) Specific human rights principles: In recent years a number of key stakeholders including international figures and organisations have expressed concern that existing drug laws and policies enable human rights breaches. For instance, Paul Hunt, the former United Nations Special Rapporteur on the Right to the Highest Attainable Standard of Health has said that in many societies,

[...] people who use drugs are invisible, stigmatized or demonized. And history teaches us that when this happens – when a group of people are invisible, stigmatized or demonized, widespread human rights abuse often follows.¹

According to UNAIDS:

Global efforts to control narcotic drugs and psychotropic substances are based on the premise that the misuse of these substances can lead to serious harm to the individual and society. As countries gather at the United Nations General Assembly Special Session (UNGASS) on the World Drug Problem on 19–21 April 2016, more than a half century after the Single Convention on Narcotic Drugs was agreed, *the harms caused by international drug control to people who use drugs require much greater attention.*²

Human rights considerations are particularly pertinent in Victoria. In 2006, Victoria became the second Australian jurisdiction (after the Australian Capital Territory) to introduce a human rights charter (formally known as the *Charter of Human Rights and Responsibilities Act 2006*; hereinafter 'the Charter'). The Charter recognises a number of rights for Victorians, including the right to life (section 9). There is a substantial body of jurisprudence suggesting that some protected rights (including the right to life) place positive obligations on government, including the obligation to preserve life. The Charter therefore arguably enables and/or necessitates drug law reforms, including reforms that would likely reduce harms and/or improve health.

¹ Cited in UNAIDS (2016) *Do no harm: Health, human rights and people who use drugs*. UNAIDS. Available at: http://www.unaids.org/sites/default/files/media_asset/donoharm_en.pdf

² UNAIDS (2016) *Do no harm: Health, human rights and people who use drugs*. UNAIDS. Available at: http://www.unaids.org/sites/default/files/media_asset/donoharm_en.pdf at 3 (emphasis added).



Importantly, as well, the Charter requires new Bills introduced into the Victorian parliament to be assessed for their compatibility with human rights. Many existing drug laws were introduced before the Charter came into operation and have thus never been assessed in this way. In this sense, the Inquiry offers an opportunity, at the very least, to consider whether and to what extent existing approaches comply with human rights obligations. Moreover, if any legislative reform were to be proposed as a result of this Inquiry, that legislation would need to be assessed for its human rights compatibility. This Inquiry thus provides an opportunity to proactively consider not only whether existing laws comply with human rights but how proposed or potential reforms could adequately account for and incorporate human rights obligations.

(c) Stigma is often experienced by people who use AOD and reforms can generate important social, health and economic benefits: There is increasing recognition at both the international and national level that legislative frameworks sometimes play a role in contributing to or producing AOD-related stigma. For some, this is a human rights concern. There have been a number of calls for drug law reform based on the notion that existing approaches can be harmful and that reducing AOD-related stigma is a desirable and achievable goal.

<p>Recommendation: Establish a supervised injecting facility in City of Yarra</p>
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I agree with the recommendation of Coroner Hawkins, that a supervised injecting facility should be established in the City of Yarra.

As Coroner Hawkins explained in her February 2017 judgment, there were 172 heroin overdose deaths in Victoria in 2015.³ Of these, 20 occurred in the City of Yarra.⁴ The Victorian Coroners Prevention Unit Investigation in the case of *Ms A* noted that in an additional 15 fatal overdose deaths outside the City of Yarra in 2015 there was positive evidence that the heroin contributing to the death was purchased or sourced in the City of Yarra. This has led to growing calls for the establishment of a supervised injecting facility somewhere within the City of Yarra: perhaps in North Richmond. Research undertaken by the Centre for Research Excellence into Injecting Drug Use (CREIDU) has shown that injecting in the City of Yarra is ‘widespread, frequent and highly visible’ and that a supervised injecting facility should be explored as part of a suite of harm reduction measures for the area.⁵

Supervised injecting facilities (also known, variously, as supervised injecting rooms, drug consumption rooms and drug injecting facilities) are places where people who use or inject drugs can consume drugs in an environment designed to minimise the risk of harm. At the time of writing, there were about 90 such facilities around the world, with the majority of those based in Europe.⁶ Australia has just one such facility, being the Medically Supervised Injecting Centre (MSIC) based in Kings Cross, Sydney.⁷ There is a

³ http://www.coronerscourt.vic.gov.au/resources/d48c9cdc-8db0-45b5-83c2-5ea6918e3ccd/ms+a_+241816.pdf at 7.

⁴ http://www.coronerscourt.vic.gov.au/resources/d48c9cdc-8db0-45b5-83c2-5ea6918e3ccd/ms+a_+241816.pdf at 7.

⁵ http://creidu.edu.au/system/resource/9/file/Report-Nth_Richmond_Public_Injecting_Impact.pdf (accessed 13th March 2017).

⁶ <https://theconversation.com/why-australia-needs-drug-consumption-rooms-53215>

⁷ <https://uniting.org/our-services/for-adults/sydney-medically-supervised-injecting-centre>



substantial body of evidence suggesting that supervised injecting facilities reduce fatal and non-fatal overdoses, facilitate connections with other services and have a range of associated benefits for the community.⁸ The *National Drug Strategy* also acknowledges that supervised injecting facilities are an important intervention.

Stigma is also a relevant factor. Stigma is a key cause of health inequalities. It has been said that stigma:

thwarts, undermines, or exacerbates several processes (i.e. availability of resources, social relationships, psychological and behavioural responses, stress) that ultimately lead to adverse health outcomes. Each of these stigma-induced processes mediates the relationship between stigma and population health outcomes.⁹

Stigma can also delay or impede people's willingness to seek help or health care.¹⁰ A number of international organisations, key stakeholders and bodies are becoming increasingly cognisant of the prevalence of AOD-related stigma, the adverse dimensions of stigma, the need to understand its origins and to address them. The law has come into increasing focus as a result.¹¹ For example, in the 2008 *World Drug Report*, the United Nations Office on Drugs and Crime (UNODC) described stigma as one of the 'unintended consequences' of the international drug control system and its application.¹²

Colleagues and I have recently developed a framework designed to map AOD laws and assess the extent to which such laws might stigmatise people who use AOD.¹³ This framework is designed to illuminate which laws have the potential to generate stigma and/or enable discrimination and to highlight the reasons why law is more (or less) stigmatising. These findings can then be used to inform future decision-making regarding reform, appropriately balanced against other public policy considerations. A supervised injecting facility would be a valuable harm reduction measure that could, among other things, facilitate connections to other valuable social and community services for those

⁸ MSIC Evaluation Committee (2003). *Final report on the evaluation of the Sydney Medically Supervised Injecting Centre*. Sydney; Marshall, B.D., Milloy, M.J., Wood, E., Montaner, J.S. and Kerr, T. (2011). 'Reduction in overdose mortality after the opening of North America's first medically supervised injecting facility: a retrospective population-based study', *Lancet*, Apr 23;377(9775):1429-37; Tyndall, MW, Kerr, T, Zhang, R, King, E, Montaner, JG, and Wood, E. Attendance, drug use patterns, and referrals made from North America's first supervised injection facility. *Drug Alcohol Depend.* 2006; **83**: 193–198; De Vel-Palumbo, M., Matthew-Simmons, F., Shanahan, M. and Ritter, A. (2013) 'Supervised injecting facilities: what the literature tells us', *DPMP Bulletin*, 22.

⁹ Hatzenbuehler, M. L., Phelan, J. C., & Link, B. G. (2013). Stigma as a Fundamental Cause of Population Health Inequalities. *American Journal of Public Health*, 103(5), 813-821.

¹⁰ Hatzenbuehler, M. L., Phelan, J. C., & Link, B. G. (2013). Stigma as a Fundamental Cause of Population Health Inequalities. *American Journal of Public Health*, 103(5), 813-821; Link, B. G., & Phelan, J. C. (2001). Conceptualizing Stigma. *Annual Review of Sociology*, 27, 363-385; Schulze, B. (2007). Stigma and mental health professionals: A review of the evidence on an intricate relationship. [Conference Paper]. *International Review of Psychiatry*, 19(2), 137-155.

¹¹ For a more detailed discussion, see: Seear, K., Lancaster, K. and Ritter, A. (Under review). A new framework for evaluating the potential for drug law to produce stigma: Insights from an Australian study.

¹² United Nations Office on Drugs and Crime, *World Drug Report 2008*, https://www.unodc.org/documents/wdr/WDR_2008/WDR_2008_eng_web.pdf at 216 (accessed 24th February 2017).

¹³ Seear, K., Lancaster, K. and Ritter, A. (Under review). A new framework for evaluating the potential for drug law to produce stigma: Insights from an Australian study.



who need and want them. For these reasons, such a reform would likely have a stigmatising effect among people who use and inject drugs. Given the potential for a supervised injecting facility to have a number of ancillary benefits, including a reduction in AOD-related stigma, there is a sound public policy basis for considering reform.

I have previously argued that there is no legal barrier to the implementation of a supervised injecting facility in the state of Victoria.¹⁴ Legislative reform is needed to allow for the possession and use of otherwise (presently) illegal drugs. The MSIC is covered by Part 2A of the NSW *Drug Misuse and Trafficking Act* 1985. The MSIC framework allows for illicit drug possession and consumption, and offers police discretion in relation to charging people with drug offences if the person is travelling to or from the MSIC. I note that the Honorable Fiona Patten MP's Bill into the Victorian Parliament that would allow for reforms of this nature essentially mirrors the MSIC model.¹⁵

In other parts of the world (including, most notably, Canada), human rights principles have also been deployed to support the operation of supervised injecting facilities. Human rights principles were central to the Canadian Supreme Court's decision in *Canada (Attorney General) v PHS Community Services Society* (the 'Insite' case).¹⁶ The Insite case concerned the legality and status of a supervised drug injecting facility located in Vancouver ('Insite'). That case did not involve the establishment of a new facility, but, rather, the question of whether an already-established facility could be closed down. The Court found that the Federal Government's attempts to close down Insite engaged and limited the rights of people who use drugs under Section 7 of the Canadian Charter of Rights and Freedoms. Section 7 protects the right to life, liberty and security of the person. The Court found that in limiting peoples' access to health care services provided at Insite, the law creates a risk to both the health and the lives of people who use drugs, and in so doing, deprives them of the protections afforded under Section 7. The facility was thus allowed to remain open (and indeed plans to establish several more supervised injecting facilities across Canada are now well underway).

Victorian human rights considerations might similarly support the development and establishment of a supervised injecting facility. As noted earlier, the Victorian Charter protects the right to life (section 9). The UNHRC and the ECtHR have made clear that the right to life entails more than a negative duty to refrain from arbitrarily taking life, but also includes an obligation to take positive steps to safeguard life.¹⁷ In practice, the courts will generally allow a wide margin of appreciation to states as to how they regulate such matters, as well as a reasonably wide discretion to law enforcement authorities as to how they deploy resources.

¹⁴ <https://theconversation.com/why-theres-no-legal-barrier-to-a-melbourne-drug-injecting-room-despite-political-setbacks-73373>

¹⁵ http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/45DA3F157657671FCA2580C0007268EF/%24FILE/581PM25exi1.pdf

¹⁶ [2011] 3 SCR 134.

¹⁷ For example, the UNHRC has stated that: 'the right to life has been too often narrowly interpreted. The expression 'inherent right to life' cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures': General Comment 6, *Article 6: The Right to Life* (1982), U.N. Doc. HRI/GEN/1/Rev.1 at 6 (1994), [5]. See further Joseph, Schultz and Castan, *The International Covenant on Civil and Political Rights: Cases, Commentary and Materials* (2nd ed, 2004), Chapter 8, especially [8.01], [8.39]-[8.64]. The same interpretation has been applied to the equivalent right to life under the European Convention on Human Rights, see eg *LCB v UK* (1998) 4 BHRC 477, 456 [36]; *Osman v UK* (1998) 5 BHRC 293, 321 [11]; *Keenan v UK* (2001) 10 BHRC 319, 348-9 [88]-[90].



It is my view that the establishment of a supervised injecting facility is supported by the 'right to life' principle that appears in section 9 of the Charter.¹⁸ Given the high likelihood that a supervised injecting facility would bring a range of community, health, social and economic benefits, and given that it is consistent with established human rights principles, **I recommend that parliament establish a supervised injecting facility in the City of Yarra.**

Conclusion

I thank the Committee for the opportunity to make this submission and for their time and consideration. I would be more than happy to appear before the Committee to answer any questions or to elaborate on my submission should this be of use.

Yours sincerely,

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Dr Kate Seear
BA (Hons), LLB (Hons), PhD
Australian Research Council DECRA Fellow
Senior Lecturer in Law, Monash University
Academic Director, Springvale Monash Legal Service
Faculty of Law, Monash University

Email: [REDACTED]

¹⁸ Keynote address to the Australasian Viral hepatitis conference, Gold Coast, September, 2016
<https://addictionconcepts.files.wordpress.com/2016/10/viral-hepatitis-2016-keynote1.pdf>