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

April 2017

Darebin Community Legal Centre Inc.

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

By email: injectingcentrebill@parliament.vic.gov.au

Dear Secretary,

Darebin Community Legal Centre welcomes the opportunity to make submission to the Inquiry into the Drugs, Poisons and Controlled Substances Amendment (Pilot Medically Supervised Injecting Centre).

About Us

Darebin Community Legal Centre Inc. (DCLC) is a generalist community legal centre that provides free legal information, advice and advocacy for people who live, work and study in the City of Darebin.

DCLC engages community through drop-in and outreach services, including Koorie Outreach and Youth Outreach services. DCLC also runs a specialised Prison Outreach and Advocacy Program ('Prison Outreach') that provides legal information, advice, casework as well as non-legal advocacy for imprisoned people and their families across the state. Prison Outreach has advocated for prisoners' access to education, computers and healthcare, and provided legal casework in areas of debt, family violence, discrimination, and human rights breaches.

DCLC also delivers Darebin Intervention Order Service, a specialised family violence program providing duty lawyer services at the specialist family violence court at Heidelberg Magistrates Court, and at Neighbourhood Justice Centre. DIOS works closely with other family violence support services to provide holistic legal and social support to women experiencing family violence and also operates a Health Justice Partnership with Mercy Hospital, Heidelberg, co-locating legal advice clinics within the hospital to ensure better access to justice and health outcomes for women.

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Introduction

Darebin Community Legal Centre (DCLC) welcomes the opportunity to make submission to the Standing Committee's Inquiry into the Drugs, Poisons and Controlled Substances Amendment (Pilot Medically Supervised Injecting Centre) Bill 2017.

Our submission is guided by our decades of experience working with and providing legal advice and advocacy to marginalised people within our community, including people who have been criminalised by their use of illicit drugs.

Fundamental to this submission is our view that the harms associated with drug use are inextricably linked to the criminalisation of drug use and drug users. As a legal centre working closely with people use drugs, we have seen first hand the harmful impact of criminalisation. This includes stigmatisation, disenfranchisement, interruption to social and family life, harms to health, and risk of death.

DCLC unequivocally supports the introduction of a pilot medically supervised injecting centre (MSIC) as recommended by Coroner Hawkins in her findings in the Inquest into the death of Ms A.[1]

Addressing the Inquiry's terms of reference, our submission will be set out in two parts. Firstly, we submit that given the extremely strong evidence base regarding the effectiveness of MSICs in saving lives in both Australian and international contexts, the time for establishing and implementation of MSICs in Victoria is long overdue.

Secondly, we examine the current policing policies that surround drug use and possession, and recommend that the *Drugs, Poisons and Controlled Substances Amendment (Pilot Medically Supervised Injecting Centre) Bill 2017* and the ultimate Act that regulates MSICs goes beyond the NSW model. We submit that new, clear law and policing policies must be introduced and reflected in law for the MSICs to be truly effective in delivering the harm reduction objectives of MSICs.

A need for immediate implementation of MSICs in Victoria

The effectiveness of MSICs in saving lives is well documented around the world. The first MSIC was established in Bern, Switzerland in 1986 and there are now almost 90 MSICs around the world.[2] Australia's only MSIC commenced operation in 2001. A comprehensive study of Sydney's MSIC showed that over 4000 overdoses had been successfully managed without a single overdose death in a ten-year period. This study also found that the existence of a MSIC had no impact on increased drug use or delayed entry into treatment.[3] Other studies have also indicated other positive health results, including self-reported reduction in injecting risk behaviour and better health practices around injecting. [4]

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[1] (2016) Coroners Court of Victoria, Findings into the death of Ms A, COR 2016 2418, 20 February 2017.
[2] Wodak, Alex (2016) 'Why Australia needs safe consumption rooms' The Conversation, https://theconversation.com/why-australia-needs-drug-consumption-rooms-53215
[3] Freeman, K., Jones, C. G., Weatherburn, D. J., et al. (2005), ' e impact of the Sydney Medically Supervised Injecting Centre (MSIC) on crime', Drug and Alcohol Review March, 24(2), pp. 173–84
[4] Kimber, J., MacDonald, M., van Beek, I., et al. (2003), ' e Sydney Medically Supervised Injecting Centre: client characteristics and predictors of frequent attendance during the rst 12 months of operation', Journal of Drug Issues 33, pp. 639–48

In 2015, there were twenty overdose deaths in the City of Yarra. Fourteen of those deaths occurred in a public place. Coroner Hawkins' thorough inquiry into the death of Ms A highlighted very strongly that Ms A's death is one of those fourteen deaths involving drug use in a public place that could have been prevented if there had been a MSIC available to her.

Evidence heard at the Coroner's Court further confirmed that the life-saving role of Sydney's MSIC, which had successfully managed 6,500 overdoses without a single overdose fatality over a 16 year period.[5] Coroner Hawkins also accepted evidence of the crucial work of Sydney's MSIC in reducing other health risks by providing safe, clean injecting equipment and providing support workers on-site to link users with associated services such as health and mental health treatment, housing, and legal advice.

A MSIC in the North Richmond area has been recommended by Coroner Hawkins as a practical life-saving and harm reduction strategy after examining the facts around the death of Ms A. MISCs have also saved countless lives in cities all over the world. Calls for a MSIC in Victoria are not new and have been prevalent since the 1990s, when drug overdose rates rose and Victoria recorded 359 deaths in 1999.[6] More recent statistics released by the Coroner's Court showed that there were 176 overdose deaths in the 6-month period between January – June 2013.[7] In 2015, there were 172 reported heroin over dose deaths in Victoria.[8] Coroner Hawkins stated that drug users "come into contact with the criminal justice system as a result of their addiction. When we accept that addiction is a health issue, we are able to consider more clearly what can and must be done to support heroin users and reduce their risk of death."[9] Sadly, a focus on criminalisation and viewing drug use outside of a harm-reduction and health lens will lead to more overdose deaths. We submit that the case for a MSIC in Victoria is strong and is clear and based in evidence. It is now time for the government to follow the lead of NSW and implement MISCs in Victoria.

In our view the reasons provided by Coroner Hawkins in nominating North Richmond as a relevant site for a MSIC are more than compelling. We submit that the implementation of a MISC cannot be an isolated change. We advocate for multiple MSIC locations across Melbourne and Victoria, and contend that a public health-oriented approach demands that the government should also invest in other MSICs around Melbourne and rural and regional Victoria, with a view to making the MSICs as accessible as possible to the people who need it. We draw the Committee's attention to statistics indicating the rates of overdose death in rural and regional Victoria are higher compared with metropolitan Victoria.[10]

We note that the MSIC in Sydney started as a pilot project in 2001, and was not officially allowed to permanently operate until 2011 after the passing of the *Drug Misuse and Trafficking Amendment (Medically Supervised Injecting Centre) Act 2010 (NSW)*. Despite the comprehensive evaluation revealing it to be effective in saving lives, reducing other health issues and winning strong approval from local community, this programme was named a 'pilot' for 10 years. It has also not been replicated in any other area within Sydney. In our submission, it is not possible to leave something as critically important as saving lives to political will. We submit that any pilot in Victoria should include a statewide strategy that would enable wider access to drug users needing to access a MSIC.

[5] (2016) Coroners Court of Victoria, Findings into the death of Ms A, *op cit*, p 17

[6] Accessed through National Coronial Information System, Victorian Department of Health (1991-2008).

[7] Dwyer, J., Drug Overdose deaths in Inner North West Melbourne, Coroners Prevention Unit, Coroners Court of Victoria, September 2013

[8] (2016) Coroners Court of Victoria, Findings into the death of Ms A, *op* cit, p 7

[9] Ibid. p 23

[10] Dwyer, J., *op cit*.

We further submit that Needle Syringe Programs (NSPs) and peer-led harm reduction education and support programs are a crucial part of any harm reduction strategy around drug use. We submit that continued and increased funding of NSPs and peer-led harm reduction education and support programs are required to complement the implementation of MSICs and to ensure a comprehensive and meaningful harm reduction strategy.

Legal Framework for Change and Appropriate Policing Policies and Procedures

Sydney's Kings Cross MSIC initiative was permanently given legal status through the insertion of Part 2A of the *Drug Misuse and Trafficking Act 1985* (NSW) (*DMTA*). Section 36B of the *DMTA* lists the objects of the MSIC:

> The objects of this Part are as follows:
> (a) to reduce the number of deaths from drug overdoses,
> (b) to provide a gateway to treatment and counselling for clients of the licensed injecting centre,
> (c) to reduce the number of discarded needles and syringes and the incidence of drug injecting in public places,
> (d) to assist in reducing the spread of blood-borne diseases, such as HIV infection or Hepatitis C.

Part 2A of the Act provides for provides for a legal exemption to criminal and civil liability to enable people to be in possession of small quantities for personal use and self-administration on the site. It also provides for protection from liability for health workers on the site. Notably this section is framed as an exemption from liability rather than a positive obligation for non-policing or non-prosecution. There is nothing in this section that stops police from policing the MSIC site for offences other than possession and personal use.

There is also nothing preventing the policing of people near the vicinity of the MSIC.

Subsection (4) of 36N states:

> (4) Nothing in this section prevents a police officer from exercising a discretion not to charge a person with an offence under section 10 or 11:
> (a) in respect of the possession of a prescribed drug, or
> (b) in respect of the possession of an item of equipment for use in the administration of a prescribed drug, while the person is travelling to or from, or is in the vicinity of, a licensed injecting centre.

This section enables police to exercise their discretion to *not* charge a person while they are travelling to or from a MSIC, but also leaves a wide discretion *to* charge a person in those circumstances.

In our submission, the objects of an MSIC, as articulated in s36B of *DMTA* can only be fully and properly realized if drug users are enabled to feel safe accessing the MSIC and if they can feel safe that they will not be policed and prosecuted on their way to accessing the MSIC. Police discretion and indeed police procedure does not provide a level of guarantee from policing required to ensure the integrity of the objectives of the MSIC is met. We note this needs to be guaranteed at law.

By way of analogy, currently Victoria Police's current approach to harm reduction regarding policing NSPs is that 'members are advised not to target people in the vicinity of NSPs *just* because they have

visited an NSP'[11] (emphasis added). This does not prevent police from altogether approaching people in the vicinity of NSPs or maintaining a presence around NSPs. Police are able to target people who come out of an NSP so long as their use of the NSP is not the only reason for targeting them.

In drafting a new *Drugs, Poisons and Controlled Substances Amendment (Pilot Medically Supervised Injecting Centre) Bill*, we submit that it is important to go further than its NSW counterpart, and actively legislate to protect users of MSICs from criminal and civil liability while they are travelling to or in the vicinity of the MSIC.

We note the harmful effects of policing in the context of criminalising drug use can have the effect of vitiating the efficacy of harm reduction practices. US research has suggested that many police officers feel conflicted between an empathetic response to overdose and their role in the enforcement of laws aimed to reduce the supply of drugs in the community.[12] We submit that Victoria Police officers should be empowered to respond empathetically to overdose and public injecting drug use as a health issue, and not as part of their general law enforcement duties, through legislation that actively prioritises a public health response.

Correlation Between Policing and Overdose

The receipt of immediate medical care is essential for the survival of overdose victims. A 1996 US study showed that 90% of heroin overdose victims survived if they received emergency medical care while still exhibiting pulse and blood pressure.[13] With increased distribution of naloxone this rate has only improved. For instance, the Sydney MSIC has managed approximately 6,500 overdoses and has experienced a 100% survival rate.[14]

However, for an overdose victim to receive immediate medical assistance, a witness (usually a fellow user) must call for that assistance. In another US study, fear of police arrest was the most commonly cited reason for delaying calling for medical help, or not calling at all.[15] This finding has been corroborated in numerous other studies, including those conducted within Australia.[16] As such, we draw a direct link between overdose/fatal overdose and policing. In fact, the fear is so pervasive that Victoria Legal Aid advises members of the public:

> If you are with someone who has overdosed, you can tell the ambulance worker what drug that person took. Do not saying anything else to the ambulance worker. The police could take a statement from them. The police could use this as evidence against you.[17]

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[11] (2016) Coroners Court of Victoria, *Findings into the death of Ms A, op cit* p 13

[12] Traci C Green et al., 'Law enforcement attitudes toward overdose prevention and response' (2013) 133 *Drug and Alcohol Dependence* 677-684, 681.

[13] Karl A Sporer, Jennifer Firestone and S Marshal Isaacs, 'Out-of-hospital treatment of opioid overdoses in an urban setting' (1996) 3(7) *Acad Emerg Medicine* 660-7.

[14] (2016) Coroners Court of Victoria, *Findings into the death of Ms A, op cit* 7.

[15] Melissa Tracy et al., 'Circumstances of witnessed drug overdose in New York City: implications for intervention' (2005) 79(2) *Drug and Alcohol Dependence* 181-190, 181.

[16] See, eg, Catherine McGregor et al., 'Experience of non-fatal overdose among heroin users in Adelaide, Australia: circumstances and risk perceptions' (1998) 93(5) *Addiction* 701-11.

[17] Victoria Legal Aid, *Drugs, the Law & Safer Injecting* (6th ed, 2014) 3 <https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-resource-drugs-the-law-and-safe-injecting.pdf>.

Similarly, we note the submissions of the Victorian Alcohol and Drug Association (VAADA) in relation to Victoria Police's targeted operations in North Richmond, as outlined in Coroner Hawkins' Findings.[18] VAADA raised concerns about the harmful behavior that policing strategies can have, primarily that:

> [U]sers will consume their drugs rapidly so that they are not found in possession, and this results in higher risk of overdose.
> ... injecting drug use can be displaced from easier to access locations to more difficult locations where there is less likelihood somebody will be found quickly if they overdose.[19]

Consequently, we assert that a MSIC pilot will be most successful and robust in increasing access to clean equipment and a safe place to use drugs, and ultimately reducing risk of overdose death, if there is a consistent effort across Melbourne and the entire state to police in a manner that reflects the purposes of the MSIC. It is our submission that the most feasible way to ensure that police harm reduction practices and practical protections for drug users are written into law rather than relying on policy.

RECOMMENDATIONS

- That there be decriminalisation of individual drug use and possession in relation to all classes of drugs.
- That a North Richmond MSIC be established.
- That other MSIC be established in locations across Melbourne and across regional and rural Victoria. Mobile MSIC operations should also be considered.
- That statewide police response to overdose and public injecting of drugs be based on health considerations rather than law enforcement and that this is written in law and not policy, as required by any effective implementation of MSICs.
- That the *PMSIC Bill* exempt people using the MSIC from criminal liability for possession and use of drugs at the site and travelling to and in the vicinity of the site.
- That there be no active policing of MSICs, including in the vicinity of the MSICs.

[18] (2016) Coroners Court of Victoria, *Findings into the death of Ms A, op cit* 13.
[19] Ibid 14.

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