



Inquiry into Victoria's Criminal Justice System

Alcohol and Drug
Foundation

Submission

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ABOUT THE ALCOHOL AND DRUG FOUNDATION

The Alcohol and Drug Foundation (ADF) delivers evidence-based approaches to minimise alcohol and other drug harm. We recognise the power of strong communities and the important role they play in preventing problems occurring in the first place. A community-centric approach is at the heart of everything we do.

EXECUTIVE SUMMARY

The Alcohol and Drug Foundation (ADF) welcomes the opportunity to contribute to the *Inquiry into Victoria's Criminal Justice System*. With regards to the impact of alcohol and other drugs, we wish to address the terms of reference:

- (1) *an analysis of factors influencing Victoria's growing remand and prison populations;*
- (2) *strategies to reduce rates of criminal recidivism;*

Alcohol and other drug (AOD) use is often closely related to people's interactions with the justice system and the current criminalisation of certain drugs is in itself a reason why some people will have these interactions. If the criminal penalties were removed, there would then be no need for some people – often the most vulnerable members of our communities - to become entangled at all.

Removing criminal penalties from instances of simple drug possession can help address the fact that interactions with the justice system often exceed the harms that may be associated with the drug use itself. In addition to the stigma and discrimination experienced by people who use drugs, to which criminalisation is a contributing factor, people who become involved in the justice system can also experience long term negative impacts on their social, employment, housing, and travel opportunities.

These harms particularly affect our vulnerable communities, as described in the recent *Inquiry into the Use of Cannabis in Victoria*, tabled in Parliament 5 August 2021. The report found that Aboriginal and Torres Strait Islander community members, Culturally and Linguistically Diverse community members, and young people, are disproportionately harmed by the current criminal justice approach.

Drug use is a health issue, and the health system is best placed to support people who want it.

Recommendation: Remove criminal penalties for simple drug possession.

AOD use can also have a significant impact on a person's health and well-being, particularly if a person is experiencing a dependence on alcohol or other drugs. These impacts can contribute to a person's offending as they may negatively impact behaviour. For example, a person who is intoxicated by alcohol is likely to experience poor impulse control and increased risk taking, and in some cases aggression. This can contribute to instances of criminal behaviour such as assault and subsequent interaction with the justice system.

Research conducted by the Australian Institute of Criminology found that, based on the self-reports of police detainees, nearly half said their offending was related to alcohol or other drugs. Alcohol was reported as the cause more frequently than all other drugs combined.¹

When a person continues to experience AOD challenges following their release from prison it can impair their ability to reintegrate into the community, including securing work and stable accommodation, and have continued negative impacts on their health and wellbeing. All of these issues, especially when combined, makes it more challenging for that person to then remain out of contact with the justice system.

There is a strong need to increase access to treatment services for AOD in prisons. Providing AOD treatment and support for people who want it can help to make the transition back into the community easier and reduce rates of recidivism.

Recommendation: Expand access to alcohol and other drug treatment and support for people in prisons.

Recommendation: Increase access to Drug Courts.

Many of the risk and protective factors for alcohol and other drug use are shared with other issues, such as anti-social behaviour including criminal behaviour, and mental health challenges. Community-based prevention initiatives focused on increasing the protective factors and reducing the risk factors that affect a person's likelihood of using alcohol or other drugs, or experiencing harms from alcohol and other drug use, can also help to prevent those harms.

We need evidence-based future-facing strategies focused on building healthy, safe, and connected communities in order to truly address these harms. There are excellent examples, domestically and internationally, of how prevention initiatives can prevent and reduce a range of issues for individuals and their communities.

Recommendation: Invest in evidence-based prevention initiatives.

Young people who become involved in the justice system are often experiencing a range of complex and interconnected challenges which can be exacerbated by being entangled in the justice system. Children need to be supported in their community to address the issues that have brought them into contact with the justice system in order to prevent their continued involvement with it.

Recommendation: Raise the age to 14.

The ADF thanks the Committee for the opportunity to contribute to this Inquiry and appreciates the Committee's consideration.

REMOVE CRIMINAL PENALTIES FOR DRUG POSSESSION

Interactions with the justice system often exceed the harms that may be associated with drug use itself. In addition to the stigma experienced by people who use drugs, which delays or prevents help-seeking, people who become involved in the justice system because of drug use can also experience long term negative impacts on their social, employment, housing, and travel opportunities.

These harms are disproportionately experienced by some of our most vulnerable communities. The significance of this problem is clear in the *Inquiry into the Use of Cannabis in Victoria*, which spoke particularly to the impact of Aboriginal and Torres Strait Islander communities, Culturally and Linguistically Diverse communities, and young people.

Drug use is a health issue, and when people want to reduce or cease their use of drugs support will be most effective when delivered through the various AOD treatment services and other healthcare options.

The justice system does not specialise in providing healthcare and as such, is not an effective tool for helping people manage a health issue.

Criminalising people for the possession of small amounts of drugs is an expensive, disproportionate response that further contributes to the workload of an overburdened system. By removing criminal penalties from the simple possession of drugs in the absence of other offences, we can help to alleviate the burden on the justice system and reduce the collateral harms often experienced by people who use drugs that become involved in it.

Adopting an approach that frames drug use as a health issues can also reduce the stigma and discrimination experienced by people who use drugs, making it more likely that people will reach out for help with their AOD use when they want it.

Australian public opinion is also in favour of this approach.

The National Drug Strategy Household Survey 2019 asked Australians what action they believed should be taken against people found in possession of selected drugs for personal use. For each drug type, over two-thirds of Australians 18 years and older endorsed one of the following responses:

- a caution/warning/no action
- referral to treatment or education
- a fine.²

For ecstasy (MDMA), 80.5% of people supported one of those three options. For meth/amphetamine – arguably the most stigmatised drug in Australia – 68.4% of people supported one of those three options. For cannabis, 92% of people supported one of those three, with over half supporting a caution/warning/no action.

Australians do not want to see their community members – their family, friends, colleagues, and neighbours - who use drugs criminalised for it.

Health issues are best managed through the health system when support is asked for. No police response, including no stop and search, will produce the best outcomes for individuals and society, including the greatest cost savings in policing and potential for reallocation of police resources.

Should police be required to take action in instances of simple possession of drugs, we recommend the adoption of a purely health-based response, such as a referral to a health professional that a person may choose to pursue or not. It is important that this referral be voluntary. Most people who use drugs do not experience dependence or harms from that use and will not want treatment or support.

For example, people could be given the option to contact an alcohol and other drug support service to complete a screening, brief intervention, and referral to treatment (SBIRT). This enables people to get information about their drug use, including steps they can take to reduce harm and how to access treatment if wanted.

SBIRT is a flexible intervention that determines if an individual's drug use patterns merit a brief intervention, such as an individual who is at risk of developing dependence, or referral to more intensive treatment if the person is experiencing dependence.³ This ensures people are

appropriately supported depending on how risky their use is, and creates the opportunity for those who want to engage with a health service to do so without punishing those who do not want to.

The ADF recommends a response that does not include a financial penalty which would disproportionately impact those least able to pay. People experiencing socio-economic hardship or disadvantage tend to be members of visible (e.g., people experiencing homelessness) and/or historically overpoliced communities, and so are more likely to be in contact with police and thus to receive a fine which may compound upon their existing financial hardship.

EXPAND ACCESS TO ALCOHOL AND OTHER DRUG TREATMENT SERVICES FOR PEOPLE IN PRISONS

An estimated 65% of prison entrants in Australia had used illicit drugs in the past year, compared to about 16% among the general population.⁷ 4 Alcohol is also a significant concern. During the 12 months prior to prison, 34% of people who entered prisons reported consuming alcohol at levels that placed them at high risk of alcohol-related harm.⁷

Experiencing issues with alcohol and other drugs can be a contributing factor to offending. Research conducted by the Australian Institute of Criminology found that, based on the self-reports of police detainees, nearly half said their offending was related to alcohol or other drugs. Alcohol was reported as the cause more frequently than all other drugs combined.⁵

There is a strong need to increase access to treatment services for AOD both in the community and in prisons.

Research indicates that effective AOD treatment interventions can help lower recidivism rates.⁶ Providing treatment and support for people who want to access those while in prison, including in the lead up to and the period following a person's release from prison, is an important way to help people break cycles of offending.

Supporting people who inject drugs is another critical need. International data indicates that people who inject drugs are overrepresented in justice systems around the world.⁷ Australia is no exception, with almost half of the people in prison reporting having injected drugs at some point in their life and two-thirds having injected drugs in the past year.⁸

As such, providing harm reduction services in prisons, such as needle and syringe programs, is critical considering that more than 1 in 5 (22%) prison entrants tested positive for hepatitis C antibodies, and 8% of all prisoners reported that they injected drugs while imprisoned.⁸ Needle and syringe programs are provided in community settings to promote safer injecting practices and provide sterile equipment to reduce the transmission of blood borne viruses.

Under the *United Nations standard minimum rules for the treatment of prisoners*, people who are incarcerated "should enjoy the same standards of health care that are available in the community",⁹ including access to harm reduction services to prevent the transmission of BBVs, such as needle and syringe programs.¹⁰

This introduction has been called for by organisations such as the *Australian Medical Association and Hepatitis Australia*, as such programs are a pragmatic way to prevent the transmission of BBVs between people who are incarcerated, and to also prevent BBVs being further transmitted once those people have returned to their home community.¹¹

Hepatitis Australia is very clear in stating that “*[g]iven the inability of custodial authorities to achieve and maintain the unrealistic expectation of a drug-free prison environment, prevention strategies using proven harm reduction measures including prison-based Needle and Syringe Programs (NSPs) should be introduced in the interest of public health, duty of care and human rights obligations.*”

Introducing needle and syringe programs in prison to support people’s healthcare, so people can leave prison as healthy as possible and without the presence of any BBV’s or related illnesses.

INCREASE ACCESS TO DRUG COURTS

In instances where, as opposed to the simple possession of drugs for which we recommend the removal of criminal penalties, a person is facing other charges that make them eligible to attend a Drug Courts and are found to be experiencing a dependence on drugs that is contributing to their offending, we recommend access to the Drug Courts be extended so that they are available for all Victorians who may be supported by accessing them.

Drug Courts recognise the role that alcohol and other drug dependence can play in offending and the importance of addressing that dependence. Evaluations of Drug Courts indicate they can help to reduce recidivism.¹² We note and support that the Victorian Drug Courts recognise the need to treat alcohol dependence, as well as other drug dependence, to help people break cycles of recidivism.

The currently limited number of Drug Courts means that by accident of geography, a person can be ineligible to access a Drug Court program that might otherwise help them. The ADF recommends that access to a Drug Court should be available for all Victorians who need them, regardless of postcode.

INVEST IN EVIDENCE-BASED PREVENTION INITIATIVES

Many of the risk and protective factors for alcohol and drug use that community-based prevention initiatives focus on are shared with other issues, such as anti-social behaviour including criminal behaviour, and mental health challenges. For example, risk factors targeted by prevention activities can include family conflict and parental alcohol and other drug dependence, early school leaving, unsupervised leisure time, and low attachment to community.

Protective factors targeted by prevention activities can include a connection to culture and community, positive family relationships and attachment, involvement in supervised leisure activities with positive adult role-models, and a sense of belonging in school.

Prevention program that focus on socialisation and social competence, resilience, and connectedness - particularly in young people - can help mitigate risk factors that create social vulnerabilities. Of particular note is the protective power of engagement in supervised sport led by positive adult role models.

The Australian Institute of Criminology acknowledges the role of physical activity, but particularly sport, in preventing or reducing crime and anti-social behaviours due to the range of important protective factors it embeds. Sport plays a role in improving self-esteem and emotional skills, increasing positive peer associations, and facilitating good communication between family members.

It can be a gateway into local supports, provide supportive environments that occupy and engage young people in a positive manner, changing important social norms over time. In addition, sport further acts to decrease the amount of unsupervised leisure time (and therefore the time to take part in anti-social behaviour), reducing boredom, improving cognition and develop positive, lasting social connections.

Despite these benefits, participation in organised sport in Australia is low, with only about half of children aged 0 to 14 participating at least once a week. Participation halves during adolescence, with a sudden drop at age 15.

Barriers to participation also increase with social and economic disadvantage where transport, membership fees, lack of parental support and inadequate access to equipment can prevent and socially exclude many young people, particularly those at greater risk. Addressing these barriers is necessary to recruit and maintain engagement among young people in community sport, especially past the usual drop off age of 15.

Furthermore, prevention programs can have a positive impact on the whole community, as they empower communities to be knowledgeable and confident in developing and undertaking local prevention work. Communities that understand local health and wellbeing issues and opportunities, and actively work and advocate for improvements contribute significantly to systemic change.

Planet Youth

An international example of successful prevention is the Planet Youth approach, an evidence-based program from Iceland. Since the introduction of Planet Youth in Iceland in the nineties, youth alcohol and other drug use rates have transformed from some of the highest in Europe, to amongst the lowest.

Planet Youth strategies aim to increase social capital in communities through taking collaborative local action that brings together a range of stakeholders, from community members and schools to researchers and policy makers.

They work together towards addressing risk factors, such as a lack of supervised pro-social opportunities (e.g., organised sport/extracurricular activities) and low individual and/or community investment in traditional and positive values (e.g., high educational aspirations) while also building protective factors and social capital in the local area.

The Planet Youth model in Iceland has resulted in:

- 69% reduction in theft
- 19% reduction in violence
- 47% reduction in substance use
- doubled participation in community sport amongst young people.

Other benefits are reductions in incidents of school bullying and an increase in the time adolescents spend with their parents.

Planet Youth has now been adopted in 20 countries including Australia, Ireland, Chile, Spain, France, Italy, Russia, Sweden and Norway.

Learn more about the Planet Youth approach: <https://planetyouth.org/>

Local Drug Action Teams

A domestic example of evidence informed community-based prevention is the Local Drug Action Team (LDAT) Program. LDATs create partnerships between community-based organisations from the public, private, not-for-profit and community sectors. The projects led by these partnerships are evidence informed practice and represent collaborations that build upon longstanding, inter and cross sector relationships.

They reflect a common interest of participants in early intervention and prevention activities to address social inclusion, intergenerational substance use, stigma and protective factors in marginalised and high-risk groups.

Youth-focused LDATs are operating in Victoria have and continued to keep young people connected, even through COVID-19 lockdowns and restrictions.

For example, the Whittlesea LDAT brings together partners including the City of Whittlesea, Dardi Munwurro, Victoria Police and YSAS who worked together to deliver the 'Way Up' program for young Aboriginal Victorians aged 10-17 years. Focused on sharing cultural knowledge and creating connection, the Way Up program adapted to COVID-19 restrictions by connecting digitally with young people throughout lockdown. (Read the full story: <https://community.adf.org.au/projects/stories/way-up-whittlesea/>)

Learn more about LDATs: <https://community.adf.org.au/ldat-program/about/>

RAISE THE AGE TO 14

A [2018 report](#) by the Australian Institute of Health and Welfare found that young people who received an AOD treatment were 30x as likely as the Australian population to have had youth justice supervision.²

Addressing alcohol and other drug issues among the youth justice population could help to reduce recidivism, and prevent young people from returning to youth justice supervision.² Ideally, AOD treatment services should be used as a diversionary measure from initial contact with the criminal justice system. We know that young people who have early interactions with the criminal justice system are more likely to be drawn back in later in life.¹³

One way this can be facilitated is by raising the age of criminal responsibility to 14 years of age, in line with international practice, and the advocacy of a coalition of Australian organisations under the Raise the Age banner.

Children need to be supported in their community to address the issues that have brought them into contact with the justice system in the first instance, and help break cycles of recidivism.

Learn more about Raise the Age: <https://www.raisetheage.org.au/>

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