

TRANSCRIPT

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into the use of cannabis in Victoria

Beechworth – 28 April 2021

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WITNESS

Mr Kin Leong, Principal Managing Lawyer, Criminal Law Practice, Victorian Aboriginal Legal Service

The CHAIR: I will just start with the formalities. Thank you so much for appearing today. We received your submission and that was really terrific.

Just to let you know that all evidence taken at this hearing is protected by parliamentary privilege. And that is provided for by the Constitution Act, but also the standing orders of the Legislative Council. Therefore any information that you provide to us today is protected by law, however, any comment that is repeated outside 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 and transcribing today's hearing. You'll receive a transcript of that. I encourage you to have a good look at it. It ultimately will form part of our report and it will also go up onto our website. We really again thank you taking the time to speak with us today. If you'd like to make some opening remarks and then we will pen it up to committee discussion.

MR LEONG: Sure, okay. Well hopefully I'll get through it in the allocated ten minutes, we will see how we go.

The CHAIR: Yes.

MR LEONG: So first of all I just would like to acknowledge the traditional owners of the land that we meet on today and also just acknowledge what a personal honour and privilege it is for me to live, work and raise my children on the country of the first nation's people in Victoria. Thank you also for the opportunity to come and speak to you today.

The CHAIR: Yes.

MR LEONG: So, my name's Kin Leong and I am the principal managing lawyer at a criminal law practice, so my presentation will be very much focused on the criminal justice system and how it deals with cannabis use in Victoria., but more specifically how it affects the Aboriginal and Torres Strait Island Regulation of Victoria. I have been at VALS for eight years, I have been a criminal law practitioner for a little bit longer than that.

Just by way of who VALS is, so we are the Victorian Aboriginal Legal Service. We were established in 1973. We are an Aboriginal controlled organisation and we are also a community legal centre. There is a slight point of difference in that we are not your average – sorry, no community legal centre is average – but we are not your normal community legal centre.

We have a raft of areas we practice in criminal law, family, civil law and our new Wirraway practice, which is focused mainly on police misconduct and police interaction with Aboriginal and Torres Strait Islander people and also deaths that occur in custody. From the criminal law level, we are also a point of difference from other CLCs, because we represent clients at all levels of the criminal justice system, from Children's Court, Magistrate's Court, right through to the Court of Appeal.

We appear on both matters that attract a grant of Legal Aid and matters that do not attract a grant of Legal Aid. And that really reflects the fact that many of our clients are caught up in low-level offending, which do not meet the Victoria Legal Aid guidelines, where immediate imprisonment is sort of a first entry point to attract a grant of Legal Aid. We also have our community justice programs, which provide a variety of services – some of them are wraparound services – and also a referral service for culturally appropriate and safe therapeutic services.

And the other thing that VALS do is our custody notification system with the 24 hour custody notification service. So as soon as an Aboriginal or Torres Strait Islander person is arrested in Victoria, we receive an automatic notification. We then conduct a welfare check and then if that person is about to be interviewed by police, we offer a 24 hour pre-interview advice line. With my team, depending on who you ask, it is either the most favourite or the least favourite part of their job, getting a call at 3 am in the morning, to provide pre-interview advice for an Aboriginal or Torres Strait Islander, the person who's about to be interviewed.

I might just dive straight into our submission. I know that you've seen it, but there's just a paragraph I'd like to read out, which really is the primary driver of why we are here today. 'VALS is particularly concerned with the

over-representation of Aboriginal and Torres Strait Island people in the criminal justice system where contact is a result of a low-level contact - low-level cannabis that then says. In particular, VALS notes the correlation between ongoing trauma resulting from colonisation and substance use and death in custody, highlighting a system-wide failure to address the complex contributing factors of substance misuse in the Aboriginal communities. Rehabilitation from drug disorders is an individual journey that commonly includes a relapse as part of the recovery process. Addressing public health and safety concerns through the criminal justice system only contributes to the underlying causes and perpetuates disadvantage and further contact with the criminal justice system.

So, really that is the main reason why we are here. That paragraph also, if we were successful to achieve that, probably puts me out of a job, but that is okay. The focus really of the opening statement is our two key recommendations. and then once I have gone through those, I just want to focus on the correlation between drug offending and police responses specifically in the north-east region. And the dire consequences of the current regime and its intersection with the recent bail reforms, post Gargasoulas.

And then adopting a public health response to cannabis. So the key recommendations if I could sum them up as follows: one, the use and possession of cannabis for personal use should be decriminalised, and I know you've heard that already this morning. Use and possession should trigger a public health response, not a criminal justice response. A second recommendation, if there's no appetite to decriminalise cannabis, that cautions by police should be used as a first preference.

Access to cautions and diversions should be available, regardless of a person's criminal history and it should be made without the need for police consent and recommendation for diversion. At the moment if an adult in the criminal jurisdiction is seeking diversion, for any kind of offence, the police need to consent to it. And so, that is often a bar to people receiving the benefit of diversion. We also need to broaden the scope of drug courts in Victoria.

It's a great initiative, but at the moment it very much focuses on the heavy end of drug offending. So people that are facing nothing else but a custodial sentence for at least two years. So it would be that the therapeutic services that are employed by the drug court, and then what the drug court can access, are so important and we think that the drug courts should be expanded to even low-level drug offending.

And ultimately that the use and possession of cannabis should be a summary offence, not an indictable offence. Now there's a legal reason behind that, which I'll get to perhaps when I discuss bail reform.

The CHAIR: Yes.

MR LEONG: Just to take you through some statistics, around half of Aboriginal Victorians live in rural and regional areas. In the Hume region where we are today around 6,900 people identify as Aboriginal and Torres Strait Islander; that makes up about 2.4 per cent of the total population, compared with 0.9 per cent employed in the population. Greater Shepparton has the second highest Aboriginal and Torres Strait Islander population in the state. Around 2,700 people and I apologise if you've heard these statistics already this morning, have you?

The CHAIR: No.

MR LEONG: Because if you have I'll skip over it.

The CHAIR: No.

MR LEONG: Great, okay. The use of cannabis is slightly higher in the Aboriginal and Torres Strait Islander population than the non-Aboriginal and Torres Strait Islander population, but that gap has narrowed, and the rate of the Aboriginal Torres Strait Islander population using cannabis is actually on the decline. Despite this, there's a growing police emphasis on the issue. The number of incidents of use and possession involving Aboriginal and Torres Strait Islander people has risen by 55.5 per cent in the last five years and 97.5 per cent since 2011. Now, all these statistics are in our submission and if you want more details, absolutely contact our office and I can put you in touch with our police team that find these statistics. That is substantially greater than the overall increase in the wider community where there's been 25.8 per cent in the last five years.

This really suggests that drug issues in particular have seen an increasingly police flared response, rather than a health response. So a comparison with the Hume population, 11.8 drug use possession incidents per thousand, for the Aboriginal and Torres Strait Islander community, compared to 2.2 per cent - sorry 2.2 per thousand residents, who are non-Aboriginal and Torres Strait Islander. Aboriginal and Torres Strait Islander people are policed for minor drug offences five times higher than the non-Aboriginal and Torres Strait Islander community.

If we look at this comparison and how it plays out statewide, 235 per cent increase in drug use, possession incidents since 2011, 98 per cent since 2015. In the Aboriginal and Torres Strait Islander population, 12 people per thousand are arrested for drug use and possession. I think what that feeds into is the really unfortunate and I hope I'd be right in saying the unintended consequences of the bail reforms, leading to higher rates of custody.

So, just some background. On the first, between 1 July 2016 and 30 June 2019, 10.6 per cent proven cannabis possession charges resulted in a custodial sentence. However, 29.4 per cent resulted in a discharge, dismissal or adjourned undertaking, what is otherwise known as a good behaviour bond. However, under the recent bail reforms, possession of cannabis is indictable offence, so therefore by virtue of the Bail Act, it is a Schedule 2 offence.

So, if someone's been arrested and they've been charged with a Schedule 2 offence, we will say in this case, possession of cannabis, and they're on two or more counts of bail for another Schedule 2 offence — and this can be as low level as a theft from a shop or criminal damage, maybe kicking in a sign at a train stop or something like that — if they're in that situation they enter exceptional circumstances, and they need to demonstrate before a court, exceptional circumstances of why they should be released on bail.

Prior to the reforms, this was really just the domain of people arrested and charged for murder, treason and high-level drug trafficking. Look, in my career as a lawyer, I can safely say prior to the bail reforms I did no bail applications where exceptional circumstances needed to be made out. Very senior counsel could do those. And generally, for things like murder, it would have to be in the Supreme Court. Now, post the reforms, I would say most of my bail applications in the Magistrate's Court level are exceptional circumstances applications.

That is anecdotal, I do not have statistics, but that has certainly been my experience and certainly the experience of my team. The ramifications of this is that Aboriginal people, because of the statistics I have outlined before, more often or not find themselves in exceptional circumstances. Now there is, in fairness, a clause within the bail reforms s.13(a), which allows an Aboriginal person, or vulnerable person who finds himself in this situation, where just by virtue of being catapulted up to exceptional circumstances, they can apply for bail before a bail justice.

Now this is great in one sense, but the reality is, where a bail justice can't attend a police station to hear a bail application, that person is then remanded overnight to go before a magistrate, or if they're not lucky enough – if I can say lucky enough – to be arrested in Melbourne and fronting the Bail and Remand Court which operates after hours and on the weekend, you find yourself in a rural or regional region, you're arrested on a Friday night, you've got to wait until Monday.

So, that means someone who's arrested and charged for a low-level cannabis possession on two or more other counts of bail will spend the weekend in prison for a charge that statistically they're unlikely to do any custody for.

Some statistics again, so 22 March 2020 to 28 May 2020, there were 1,231 custody notifications into VALS. 20 percent required a bail justice, 17 percent non-attendance by a bail justice. Now that is not limited to regional areas. We often have city police stations. A lot of that can be, I have to concede, what happened with the COVID situation, so a lot of bail justices were refusing to attend police stations, but of course, for the poor application who finds himself in custody, having to sit there over the weekend waiting for a magistrate is not a great outcome.

So, for June 2020, sentence prisoners where drug offences were the most serious convictions. They make up 13 percent of the total prison population. Unsensenced prisoners, prisoners on remand and waiting sentence, that is 17.8 percent of the prison population. The Aboriginal and Torres Strait Islander prison population, 43 percent are unsensenced compared to the non-Aboriginal Torres Strait Islander unsensenced. Prisoner

population is growing by 209 percent but the Aboriginal and Torres Strait Islander prison population of unsentenced prisoner has grown by 431 percent.

So, two weeks ago marked the thirtieth anniversary of Royal Commission into Aboriginal Deaths in Custody. The key findings of that Royal Commission were the number of deaths due to the extreme and disproportionate rate of incarceration. There has been over 470 deaths in custody since that report, and the report said there was an urgent need to reverse the incarceration rate. I submit that the over policing and the bail reforms run in complete opposite to what the Royal Commission found. We can't reduce the prison population, the current situation of how we are dealing with cannabis use and possession and the unfortunate consequences, from the bail app.

A public health response is what VALS is really looking for as opposed to a criminal justice response. Research demonstrates that therapeutic intervention is the best way to deal, manage, recover and rehabilitate from any cannabis disorder. Currently access is inconsistent and highly discretionary. This is particularly concerning because when discretion rests with police and police prosecutors in the magistrates' court, this typically leads to a worse outcome for Aboriginal and Torres Strait Islander people.

In New South Wales, for example, 80 percent of Aboriginal Torres Strait Islander people are pursued through the courts for cannabis use compared to 52% of the non-Aboriginal Torres Strait Islander population. In Victoria we have 3 percent of people who identify as Aboriginal Torres Strait Islander people, 8 percent of the prison population is Aboriginal Torres Strait Islander but only 0.76 percent of matters are referred to diversion. So Aboriginal people, while being grossly overrepresented in the prison population, are grossly underrepresented when it comes to access to diversion in the magistrates' court.

Just to give you some idea, a quick case study. It's been identified. We'll call her Jane. She's a young Aboriginal woman. She was arrested and placed on bail for a small amount of cannabis so, not placed on summons but placed on bail, so already she's in danger, if she's picked up for something else, of finding herself in exceptional circumstances. She shouldn't be on bail for this kind of offending. She has absolutely no criminal history. Police do not issue a caution. She sadly suffers PTSD due to previous abusive relationships, childhood trauma and abuse. Police oppose the diversion application by VALS because they said it would not address the possibility of reoffending, questioned what steps she had taken to address cannabis use and the prosecutor asserted that cannabis use was not being utilised to assist her with her mental health issues.

And they wanted evidence that she had made steps to address her issues with a professional before even considering diversion. It's important to note there is no allegation of other offences being committed – property, violence or otherwise. The shortcomings of this sort of approach by police and police prosecutors is that a recording of a court outcome of guilt has far greater ramifications for Jane than if she'd been given access to diversion. With limited ability to work, travel, and further exposure to the criminal justice system, there is absolutely nothing to address her underlying issues, and it is a high financial cost for the community to take someone through the criminal justice system.

A report on decriminalisation by UNSW National Drug and Alcohol Research Centre and drug modelling program found decriminalisation of drug use reduced costs to society, especially the criminal justice system costs. It reduces social cost to individuals including improving employment prospects. It doesn't increase drug use, does not increase other crimes. Further, the Australian Lawyer Alliance found current drug policies in Australia are ineffective, because criminalisation increases the dangers of drug use and limits opportunities for safe use and rehabilitation. Now VALS is currently working with King Wood & Mallesons looking at a different jurisdiction: 23 jurisdictions that have decriminalised cannabis and looking at comparative analysis and what is an effective public health response. Hopefully we will have that published later this year so if the inquiry is still going, I am happy to forward you a copy of that.

That is really it for my presentation. Everything else is fleshed out in our submission, so I am happy to attempt to answer any questions you might have.

The CHAIR: Thank you Kin and I think there's some really disturbing statistics that you've brought to the committee today but also through your submission. I'll turn Deputy Chair Tien Kieu.

Dr KIEU: Thank you Kin for your presentation today and for your in depth knowledge of the community you represent and also your very passionate advocacy for their rights and their problems. You have made some

recommendations for decriminalisation and just now you mentioned that some of that would lead to better outcomes. But now, let's go back to the Aboriginal and Torres Strait Islanders.

Apart from those problems associated with the criminal offences rather than the summary offences, the underlying issue, as you mentioned, about the over representation of those people in the judicial system and also with the police response to those people. the decriminalisation of cannabis, the use of that for personal use for example or summary offence with a monetary fine got a indictable offence, but there's still a problem as you raised about the judicial system treatment and maybe the police response, so how would that help with the Aboriginal and Torres Strait Islanders?

MR LEONG: Okay, so sorry, the question is, if cannabis use was decriminalised, and there was a lower sort of a lessen police response, how that benefits the Aboriginal Torres Strait Islander community? I think that it would be fair to say that Aboriginal Torres Strait Islander people are perhaps the most over-policed segment of our community, that it builds on an already traumatised community due to colonisation and dispossession and the discrimination they experience in the wider community.

I think that by addressing the issue of cannabis use and looking at the underlying issues as opposed to viewing the criminal outcome as the end of someone's journey of rehabilitation, that if they hadn't done anything up to this date there should be a punitive outcome. The effect then that that has on the individual, apart from going through the trauma of sitting in court and the public shaming that happens in court rooms and does little – we try to address individualised justice but I would have to say my experience in the magistrates' court with the high numbers it is hard to take that time that is required for individualised justice.

Koori Court goes a really long way in addressing those issues but the ramification is ultimately a court recorded outcome for that person, which greatly affects their ability to seek employment, and unemployment rates among the Aboriginal and Torres Strait Islanders are high. A criminal outcome does nothing to address that issue. In fact it makes it worse. If instead of the police intervention, we look at referrals to culturally appropriate and culturally safe therapeutic outcomes that go a long way to actually address why cannabis is being used in that situation. There's the idea that by not addressing that offending it may lead to further offending or perhaps further use of more serious drugs.

A therapeutic intervention does much more to reduce the risk of that happening. I am not sure if I have answered your question but is this — —

Dr KIEU: In the interest of time I am just wondering, because the decriminalisation of cannabis as you recommend or some other measure may or may not address the underlying issue of (indistinct) system towards the community or the police response to community.

MR LEONG: Sure, but what I would say is by not decriminalising it, by keeping it within the criminal justice system, absolutely nothing gets done to address those underlying issues. The only result is generally a court outcome and the trauma of someone having to tell me a very personal story really, and then I have to share that personal story in the most cold and unforgiving environment of the mainstream court and then beg and plead for this person to get possibly a fine without conviction. It does absolutely nothing to address the issue.

MS VAGHELA: Thanks Kin for your time and your presentation today. In the recommendation in your submission, there's mention that the use of cannabis and the possession of cannabis for personal use should trigger a health response not a criminal justice response. Is there any jurisdiction - local, interstate or international level - which is based on that response that we should be looking at?

MR LEONG: Are there jurisdictions that do that? Yes there are. I do not have those statistics with me, but I think Portugal is a fine example and quite the success story. I am happy to provide you more information on what's going on in Portugal and take that on notice, but yes there are very good examples of where a health response is doing much more to address drug use and abuse in the community than just the heavy fist of the criminal justice system.

MS VAGHELA: And what evidence is there from other jurisdictions about the effects of decriminalisation. Is there research to indicate whether decriminalisation increases or decreases cannabis use?

MR LEONG: My understanding is that I think there's been demonstrated I think in the New South Wales study that decriminalisation does not lead to greater drug use and certainly doesn't lead to greater cannabis use. No, so their finding is that decriminalisation doesn't lead to greater drug use in the community.

MS VAGHELA: And the effects of decriminalisation on other crimes. Is there any research on that?

MR LEONG: On, so on — —

MS VAGHELA: Other crimes?

MR LEONG: As in?

MS VAGHELA: If it was not decriminalised what would be the crimes and if it is decriminalised will it impact anything else?

MR LEONG: I see. So the question is, if we decriminalise cannabis would that lead to other crimes.

MS VAGHELA: Yes, say burglary or violence or any other crimes.

MR LEONG: I do not know if there's evidence on that. I believe that the New South Wales study says that there has been an increase in crime. However, what I would say is that if you do not decriminalise cannabis, under the current regime it certainly is a gateway to further incarceration which for us, representing Aboriginal Torres Strait Islander community really is our primary concern because custody is clearly not a safe space for the Aboriginal Torres Strait Islander community.

MS VAGHELA: Thanks for the (indistinct) for Aboriginal and Torres Strait Islander people.

MR LEONG: Thank you.

MS MAXWELL: Thank you. And apologies Kin that I was late coming in but thank you for your very detailed outline of your submission and the work that you do. Probably just two quick questions. One was you spoke about this being a health response.

MR LEONG: Yes.

MS MAXWELL: That there is a need for it to be a health response. Whilst I do in some instances completely agree with that, we know that our health services at the moment are inadequate. They are absolutely inundated. We now have the public drunkenness bill that will require a health response so, my first question is, how do you see foresee that being managed if this is to move over from let's say decriminalisation to a health response and secondly, you spoke about the figures of incarceration or court or charges for Torres Strait Islander. Were there other charges that were also significant along with those charges of use of cannabis? And the reason I ask that is just to determine was it specifically cannabis-related charges or were there other charges along with that so we can sort of discern the difference of getting some figures on that.

MR LEONG: Sure, so perhaps in relation to the first question, I mean I could guess you were talking about the cost to the community in running a health response. I am not across the figures that would be required for a health response but what I can say is my experience is the high cost of running it through the criminal justice system so the cost, from the very start, of say putting police on the street to employing like me to defend people; to create court rooms; to employ magistrates and all the support staff that go with that; building court houses and then building prisons. I think that cost is quite high. I could only guess but a coordinated health response is probably going to be cheaper to the community under the current regime under the criminal justice system.

In relation to were there other charges attached to cannabis charges? Unfortunately, I do not have those statistics with me. I can't say it with any great authority but what I can say is that the statistics would be based on the sentencing outcome in relation to that specific charge. For those, I hope I am not telling people how to suck eggs but generally when we have a consolidated plea or a plea on a matter, each individual charge will have an individual sentence attached to that so the statistics that I have outlined I could say with partial confidence that that would be the sentence attached to the cannabis charge. But, I am happy to double check all of that and get back to you on that.

MS CROZIER: Thank you very much Chair and thank you very much Mr Leong for your presentation. It was very interesting. We have actually heard evidence from international jurisdictions which actually have said through the decriminalisation or legalisation that it has led to increased crime. It's all those things that you just listed were actually the reality of what is occurring so it is a complex issue and I am, like Ms Maxwell, very interested in the health response. I am just wondering, do your clients mostly have multi drug use issues? Because correct me if I am wrong, I think you said the use of cannabis is on the decline.

MR LEONG: Yes, among the Aboriginal community that is right, yes.

MS CROZIER: So why is that? Are they going to other drugs?

MR LEONG: Well look I can't say whether there's been a move to other drugs. Look, on the outside of this submission I would say that, I would submit that possession of any drug — so we are talking about small possession levels and personal use — we really should be looking at decriminalising all of those.

MS CROZIER: All drugs you're saying?

MR LEONG: For personal use? (indistinct) personal use. There should be a health response — —

MS CROZIER: So that is amphetamines?

MR LEONG: I think yes. I think that the primary concern — —

MS CROZIER: Heroin. Everything?

MR LEONG: Yes, I think the first point of intervention should be a health response. In all situations for small personal use.

MS CROZIER: On multiple times?

MR LEONG: Absolutely.

MS CROZIER: Every time somebody has a — —

MR LEONG: I think it would be a very bold move by the Victorian Government but I certainly think it is one that I would support. The reason I say that is because yes, I think there is evidence of multi drug use but our statistics that I prepared today are focussed on cannabis use. What I would say is that if there is a therapeutic response in addressing cannabis use, it goes a long way to addressing use of other drugs.

MS CROZIER: Okay, so you've just admitted that your clients have multi drug use issues, that you recommend that any possession, personal possession of a small amount of cannabis, heroin, amphetamines, should not be a criminal offence. On multiple occasions if that same person was picked up the same issue would be held. What do you equate to a small amount?

MR LEONG: Well I mean that would be a matter for the legislatures to (indistinct). The reason I say that, and I think that if you're looking at, if it is beyond their first time being picked up and it is — —

MS CROZIER: The health response isn't working.

MR LEONG: Well, yes, you could argue that, but you could also say that rehabilitation is a journey and that people relapse along the way, and trauma isn't a straight forward journey from start to recovery and that people do relapse along the way. And therapeutic intervention may not be successful the first time. It may be the fourth or fifth time — much like trying to give up smoking, or a recovering alcoholic. It may not actually be successful the first time they try recovery but may be successful on the fourth or fifth time and so I do think that we shouldn't see the criminal justice system as being a panacea that marks the end of someone's journey of recovery.

MS CROZIER: Those drugs are very dangerous.

MR LEONG: I agree.

MS CROZIER: And cause great damage to other individuals.

MR LEONG: Absolutely. And what I would say that generally then there would be other offences wrapped up beyond just possession charges that can still be criminalised and should be criminalised, so offences of violence, family violence, theft, burglaries, aggravated burglaries, other charges that are associated which may well be as a result of criminal — —

MS CROZIER: So how many of your clients would actually have those offences attached to some of their records?

MR LEONG: I couldn't say but all I can say to you is the focus of our presentation today is on cannabis use in the Aboriginal Torres Strait Islander community and that really, our submission remains specifically with cannabis use, and I really do not want to get stuck in the (indistinct) about drugs, but cannabis use in particular should be decriminalised.

MS CROZIER: My issue is around that health response and the pathways, the mental health implications and all of those issues so I am very interested in responses. Thank you very much.

MS WATT: Thank you Mr Leong. I have a couple of questions I am hoping I can have your indulgence for a time. You noted that issues arise with Commonwealth legislation relating to cannabis if Victoria decriminalised cannabis use and possession. So what steps in your opinion would Victoria need to take to manage any potential inconsistencies between State and Commonwealth law?

MR LEONG: Okay, well I know that the ACT faces that issue and at this point the Federal Government hasn't stepped in to address that inconsistency.

MS CROZIER: Could I just intervene here? That ACT went down a different model to decriminalisation so they didn't keep it as a criminal offence where decriminalisation still maintains a criminal nature so the ACT went a step further. Like I think they are facing some contradictions with Federal law. The decriminalisation in itself may not.

MR LEONG: Well obviously there's other issues concerned with the ACT as they are a territory not a state, but given that the possession of drugs is governed by the Drugs and Poisons Act, and it is a purely state offence, I think that decriminalisation potentially could occur without interference but I am not a constitutional lawyer. If I was smarter, I probably would be. So I just deal with criminal law and particularly with the Crimes Act.

MS WATT: Further to that, in your submission you discussed the benefits of drug treatment orders (indistinct) by the Victorian drug courts and the narrow criteria for an accused person to access the Victorian drug courts. Who is currently missing out on accessing drug treatment orders and what are the benefits for those who would otherwise be facing a term of imprisonment?

MR LEONG: So there's a couple of issues there: low level drug offending – the gateway into drug court is you must be facing an immediate term of imprisonment. That term of imprisonment should be at least two years and you must fall within the catchment area, so there's a little bit of postcode justice that occurs in the drug court so anyone facing lower level drug offences will just go through the mainstream court and not have all the services that are wrapped up in Drug Court. The other barrier which VALS would like to see is the ability for a drug treatment order. To get a drug treatment order you need to go to Drug Court and Drug Court isn't necessarily a culturally safe or culturally appropriate venue. Koori Court, in the sentencing conversation that happens in the Koori Court – those that have attended Koori Court — —

MS WATT: Yes, I have.

MR LEONG: — — will, say there's a very potent environment for rehabilitation. You can't get a drug treatment order out of Koori Court. So that will certainly be one issue that would certainly be one fix that I'd like to see in drug court. DTOs being available as a sentencing option for Koori Court.

MS MAXWELL: Could you just repeat that again for the record, please? Because I find that fascinating.

MR LEONG: As in you can't get a drug treatment in Koori Court. The only avenue for a drug treatment order is through Drug Court.

The CHAIR: So even magistrates can't do it?

MR LEONG: Yeah, if you've got someone in Koori Court that has a long history of drug offending and multiple drug use and the best way the magistrate thinks to intervene is through something like a drug treatment order that option is not available to them. Even after the person's been through the sentencing conversation, faced their Elders, the accused. Not something I would walk into voluntarily if I was in court because it is very personal and confronting process to go through and through the end of that. Where drug treatment and therapeutic services that are attached to that may be the best outcome, it is just simply not available.

MR LIMBRICK: Thank you Chair. Thank you so much for appearing today. One of the things that I wanted to ask about was why wasn't one of the recommendations for the regulation and legalisation of cannabis, because we heard some other potential benefits, such as lessening interaction with organised crime could be a benefit of that. We've also heard evidence about small scale users moving to small scale trafficking, which would be potentially eliminated with a legalisation regime. I am interested to hear your thoughts on that.

MR LEONG: Okay, anecdotally, my experience is that, in all my years at VALS I am yet to represent what I'd call a high level drug trafficking client. I do not think that offending is particularly rife in the Aboriginal Torres Strait Islander community. I do not have a statistic to back that up. It's just simply personal experience with the clients that I have. However, it would be fair to say that often we do see what I would consider low level trafficking and that would be people buying and selling among friendship groups. We are certainly not talking about Tony Mokbel.

So, in that situation I think that – again, that is very much in my submission generally to courts – it is generally evidenced as that low level trafficking is a way to fund their own drug use, and again, a health response would be the best response in that situation. However, trafficking is a very different horse, and I can see that trafficking is something that still needs to sit in the criminal justice system because, as it has been pointed out earlier, it is a very concerning offence, and it is very different to personal use offending. I hope that answers the question.

MR LIMBRICK: Yeah, I was sort of more interested in why wasn't legalisation recommended because that sort of pop trafficking activity would disappear under that sort of regime.

MR LEONG: Yeah, I think decriminalisation still allows for a public health response. It still allows intervention. Legalisation, well VALS position remains that decriminalisation is the way to go. I am not clear on why we didn't put legalisations in (indistinct) however I do see the benefits of decriminalisation that still allows intervention by the state and still allows a public health response and still provides the (indistinct) for the expense of public funds in addressing this issue that affects the entire community.

MR LIMBRICK: Thank you.

The CHAIR: Thank you, and I know we've gone a bit over time, so I appreciate other people's patience with us. Kin, what seems the overriding submission that VALS is making is that drug use should be treated as a health issue not a criminal one.

MR LEONG: Yes.

The CHAIR: And that we have continued to treat the drug use as a criminal issue, and it has taken us nowhere.

MR LEONG: Yes.

The CHAIR: It has not reduced drug use. And it has really not helped many people along the way. We also seem to get quite caught up in that very dangerous drug use – so the drug use where it is a disorder, where it is really problematic drug use, where the statistics are showing with cannabis in particular that the vast majority of people who use cannabis are not in the disorder spectrum. They're more in the personal use or —

MR LEONG: That is right, yes.

The CHAIR: — or, probably similar to if we looked at the statistics on alcohol. A majority of people who use alcohol do not have a problematic use, so I am wondering in your experience and I know this is probably anecdotal, but in your experience with those cannabis possession charges, what kind of percentage of your

clients would have problematic use with cannabis, because I also note that previous witnesses said that more Aboriginal people are coming forward with cannabis use as their primary drug of concern.

MR LEONG: Yes, and that is right and that is particularly true of the north east region as well. I think what's considered problematic cannabis use is probably very subjective judgment. The clients I deal with, and again, as you say it is anecdotal, where cannabis use is the feature of the brief and the feature of the charges, I would not describe that as problematic use. It would definitely be – I have been describing that before and I describe it here as personal use and it may well be self-medicating for pre-existing trauma, but it is certainly not the kind of use that leads to aggravated car jackings, burglaries. I wouldn't see it as the catalyst for more serious offending. Does that hopefully answer?

The CHAIR: It does and thank you, and I think this could be in every conversation with every witness that we have we wish we had more time. But thank you so much for Kin for presenting to us today. And being so forthcoming in responding to our answers. I know you did commit to some information on notice. If that is possible that would be great. We certainly have got lots of submissions and lots of information about Portugal for example rather than you doing research for us, let us do that research.

MR LEONG: Can I just add to the record my comments in relation to drugs beyond cannabis? I do not speak for VALS. They are very much my personal view as a criminal defence practitioner. I would like to spend less time in court with people with possession (indistinct) offences, but that is my personal view. I can't speak for VALS in relation to that. Just for the record, my statement beyond cannabis and personal use drugs being decriminalised is very much my view, not VALS. I can't speak for VALS on that. But I am happy if the enquiry would like to know VALS attitude, I could find out. It's just my view.

The CHAIR: I have a feeling that VALS made their position quite clear in 2017 when they put in a submission to the drug law reform commission which I think supported your views.

MR LEONG: Yes.

The CHAIR: But thank you.

MR LEONG: Thank you very much for your time. It's very much appreciated, and when courts return I would invite any of you, if you haven't sat in a Koori Court, they are at Magistrates or County, to come and see what actually happens in that court. It is incredibly potent and an incredibly transformative piece of therapeutic justice. If I could level any influence through this inquiry and I have the ear of any member of parliament, please, if we can make DTOs available to participants in Koori Court, that would be an incredibly life changing piece of legislation for many of my clients.

The CHAIR: We are, we are about to embark on a criminal justice enquiry so we'd welcome you to reiterate that in the next inquiry as well.

MR LEONG: I am sorry to speak out of school.

The CHAIR: No, thank you Kin.

MR LEONG: Thank you very much for your time.

MR LIMBRICK: Thank you.

MS CROZIER: Thank you.

MS VAGHELA: Thank you.

Witness withdrew.