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Dr Peta Malins
Lecturer, Justice and Legal Studies
RMIT University
GPO Box 2476, Melbourne, VIC 3001

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Executive Officer
Law Reform, Road and Community Safety Committee
lrrcsc@parliament.vic.gov.au

Re: VICTORIAN PARLIAMENTARY INQUIRY INTO DRUG LAW REFORM

I commend the Law Reform, Road and Community Safety Committee on conducting this inquiry into drug law reform.

I am a lecturer in Justice and Legal Studies at RMIT, with 16 years research and work experience in the alcohol and other drugs sector. The key focus of my research and practice has been the impacts – intended and unintended – of drug related interventions, with a particular focus on injecting spaces, intensive policing, and the use of drug detection dogs.

This submission responds to both of the Inquiry's terms of reference (TOR):

1. The effectiveness of laws, procedures and regulations relating to illicit and synthetic drugs and the misuse of prescription medication in minimising drug related health, social and economic harm;
2. The practice of other Australian states and territories and overseas jurisdictions and their approach to drug law reform and how other positive reforms could be adopted into Victorian law.

The submission addresses these TOR through examining:

- A. Drug detection dogs
- B. Responses to public injecting drug use

It makes the following recommendations:

1. Drug detection dogs should not be used in general detection operations at events, venues and public spaces;
2. Supervised injecting facilities similar to Sydney's Medically Supervised Injecting Centre (MSIC) should be urgently introduced in areas of high public injecting drug use.

Submission to the Victorian Parliamentary Inquiry Into Drug Law Reform

A. Drug detection dogs

Over the last three years, my research has focused on the impacts of using drug detection dogs in contexts such as festivals, bars and clubs, public transport and other public spaces. In contrast to 'specific' detection work, where dogs are used to locate drugs on a property following a search warrant, in these contexts the dogs are used for 'general' detection work. This means that they are used to home in on people who may be carrying drugs and to support the reasonable suspicion needed to justify a search of them or their property.

For the research, I have reviewed extensive academic literature, conducted field observations at six general drug dog operation sites in Victoria and NSW, reviewed video footage of operations at other sites, and conducted in-depth interviews with 10 key stakeholders and 20 people who have been searched by the dogs.

The preliminary findings of this in-depth qualitative study have been published in *The Conversation* (Appendix 3), and the final results are being prepared for publication in peer reviewed journals including *Theoretical Criminology*, *Contemporary Drug Problems* and *the International Journal of Drug Policy*. The seven key findings of my research are detailed below. Sample participant narratives and fieldwork notes illustrating and supporting these findings are attached (Appendix 1). While many of my findings offer richer understandings of the impacts of drug detection dogs, they are nonetheless consistent with existing and emerging research in the field. A list of these other relevant publications is also attached (Appendix 2).

1. General drug detection dog operations transform rather than deter drug consumption

Rather than deterring people from taking drugs, the use of general drug detection dogs predominantly transforms their use, altering the ways that people consume and transport drugs. None of my participants reported reducing or stopping drug use due to the dogs.

Participants instead reported the following adaptations to avoid detection:

- a) panicking upon seeing the dogs and consuming their drugs immediately rather than spacing them out through an event as planned;
- b) using drugs prior to arriving (pre-loading), rather than bringing them in and spacing out the use;
- c) stashing drugs internally (anal and vaginal cavities);
- d) buying drugs inside venues rather than carrying drugs in (sometimes different types of drugs and sometimes in larger quantities);
- e) choosing to carry and use drugs such as GHB or acid that are less likely to be detected;
- f) taking alternative event entry routes or modes of transport to avoid the dogs;
- g) carrying the drugs in as usual and bluffing their way past the dogs by appearing confident and relaxed;
- h) avoiding events with dogs, and instead using drugs at other events or at home.

2. General drug detection dog operations increase health-related harms

The adaptations described above substantially increase the risks of drug-related health harms because they increase the likelihood that people will:

- a) experience illness, injury or fatal overdose due to larger quantities being consumed over shorter timeframes;

- b) experience harms associated with internal cavity storage of drugs including risks of infection, injury and overdose, as well as reduced self-esteem;
- c) use more dangerous types of drugs or drugs that they are less familiar with because they are less detectable;
- d) buy drugs from sources that have not been tested and have less incentive for quality control and repeat business;
- e) use drugs alone at home, without peer supervision;
- f) avoid interacting with police and health services at events even when they need health or welfare assistance for themselves or their friends.

3. General drug detection dog operations increase a range of other harms

The participants in my study also detailed a range of less well-documented harms arising from encounters with general drug detection dogs, including:

- a) emotional and embodied trauma (short and long term), particularly for those questioned and searched by police; and particularly in instances where a strip search is carried out;
- b) increased anxiety before, during and after encounters with the dogs, even when not carrying any drugs, and particularly when the encounter results in police questioning or searching;
- c) increased anger before, during and after encounters with the dogs, particularly when the encounter results in police questioning or searching despite not carrying any drugs;
- d) emotions such as anxiety and anger having impacts on enjoyment of events, relations with friends and relations with police;
- e) emotions such as anxiety and anger having impacts on embodied experiences of drugs and their effects;
- f) increased sense of personal shame, humiliation and stigma associated with being publically sniffed by the dogs, being questioned and searched by police following a dog sniff;
- g) increased sense of generalised stigma due to the negative insinuations attached to media portrayals of the dogs searching young people who attend certain events
- h) reduced short and long term relations with police, increased cynicism about the dogs and police, and decreased trust of police.

4. General drug detection dogs are not neutral, objective detection instruments

Despite often being presented as neutral, objective detection tools, general drug detection dogs:

- a) work in close concert with police handlers and are adept at picking up on subtle conscious and non-conscious human cues that are inevitably shaped by subjective biases (see for example Lit *et al* 2011);
- b) are living creatures and are affected by climate, context, noise, fatigue, hunger and other drives;
- c) are deployed by police at some drug use locations more than others and thus impact upon some groups in society more than others (esp. more marginalized groups);
- d) are often directed to search specific people based on their appearance and/or behavior, and thus impact on some sub-groups more than others;
- e) do not always officially 'alert' to a person (by sitting down) before police declare grounds for a search, thereby operating more as a tool of legitimation, rather than detection.

5. General drug detection dogs are not reliable, effective or efficient at detection

Despite being presented as reliable, effective and efficient, general drug detection dogs:

- a) have a high false positive rate (of up to 75%), resulting in many people undergoing body and property searches without drugs being found (NSW Ombudsman 2006);
- b) are not detecting the majority of people carrying drugs past them;
- c) are very resource intensive (including costs of breeding, training, feeding, housing, medical care, and staffing) relative to incidences of drug seizures or arrests (see for example Parliament of NSW 2016);
- d) do not act as a substantial drug consumption deterrent or reduce overall drug use levels (Hughes *et al* 2017, Dunn & Dengarten 2009).

6. General drug detection dogs operate in a legal grey-area and their use may not stand up to court scrutiny

General drug detection dogs currently operate in a legal grey-area in Victoria. The ability of a dog identification to support grounds of reasonable suspicion necessary to conduct a search of the person has not yet been tested in Australia (see for example Marks 2007). While *Derby V DPP (2004)* and *Harris V DPP (2005)* both implied that a dog sniff does not itself constitute an unlawful search or assault (unless the dog comes in contact with the person), courts have not yet had the opportunity to test whether a dog identification can be used as reasonable grounds to justify a further search by police. The high false positive rate of the detection dogs raises doubt as to whether a court would support police in using a dog identification alone as grounds for reasonable suspicion to search a person or their property. Based on my interviews and fieldwork observations, police seem to be relying on one or more of a range of uncertain grounds to conduct a search, including:

- a) a dog identifying the person by sitting;
- b) a dog taking an interest in a person (including sometimes coming in contact with them) but not necessarily sitting;
- c) a person looking nervous upon seeing the dogs;
- d) a person turning around or moving away upon seeing the dogs;
- e) a person behaving suspiciously (such as placing something in a bag or pocket);
- f) a person's presence at a venue or event where drug use is likely to occur;
- g) a person consenting to a search without necessarily realising they could refuse;
- h) a person refusing to consent to a search.

It remains to be seen which combinations of grounds, if any, would stand up to court scrutiny. It is my contention that the use of general drug detection dogs is currently encouraging people to consent to searches they might otherwise lawfully decline, and is creating an aura of legitimacy around other potentially unlawful searches.

7. The use of general drug detection dogs may be in breach of people's right to privacy and reputation under section 13 of the Victorian Rights Charter

The use of general detection dogs, whether or not their identification can be used as grounds to search, may also be breaching people's right to privacy and reputation under section 13 of the Victorian Rights Charter. Being sniffed by dogs is experienced by many as an invasion of privacy, as are the police searches that can follow. The use of dogs creates social stigma and can impact on the reputations of those searched, those sniffed, and those who are associated with the events and venues where they are used.

Recommendation 1: Drug detection dogs should not be used in general detection operations at events, venues and public spaces

B. Responses to public injecting drug use

Prior to the drug detection dog research detailed above, my research was primarily focused on the impacts of responses to injecting drug use in urban space. Between 2000-2005, I reviewed extensive academic literature, conducted field observations with Melbourne's FootPatrol outreach Needle and Syringe Program, and conducted in-depth interviews with 20 women about their experiences of injecting in central Melbourne. The findings of this research has been widely published (Malins 2004, 2008; Malins, Fitzgerald & Threadgold 2006) and the key findings are summarised as follows:

1. Women who inject drugs in public spaces negotiate multiple, competing risks

Women who buy and inject drugs in public, use a range of spaces for injecting, including laneways and alcoves, parks, carpark, public toilets, and toilets located in commercial businesses. While proximity to purchase site is an important factor in location choice, the negotiation of risk also plays a key role. The women I interviewed described negotiating a range of competing spatialised risks including those of

- a) being caught by police in possession of drugs or equipment;
- b) blood borne virus infection, particularly through shared equipment;
- c) general infection through unhygienic contexts;
- d) injury through rushed injecting or overdose accident;
- e) overdose fatality, particularly if help is not sought in time;
- f) violence from other drug users or dealers;
- g) social stigmatisation as a 'junkie', for not only transgressing social and legal norms but also gender norms in urban space;
- h) personal shame and negative self-image as a 'junkie'.

2. Reduction of some risks increases other risks

Women reported using a range of strategies to reduce risk, some of which involved increasing other risks. Strategies discussed included:

- a) accessing Needle and Syringe Program services and using sterile injecting equipment to reduce risks of infection;
- b) safely disposing of injecting equipment in disposal bins to avoid risks of infection to others, to avoid stigmatizing injecting spaces, and to maintain a more positive self-image;
- c) avoiding laneways that are too dirty or stigmatised to reduce social stigma and maintain a more positive self-image;
- d) injecting with trusted other users to decrease overdose fatality risk;
- e) injecting in toilets where a supportive cleaning attendant is present, in order to maximise chances of getting help in case of overdose;
- f) rushing injecting to decrease the risk of being caught in possession of drugs;
- g) avoiding Needle and Syringe Program services and disposing of needles at injecting sites to avoid being caught by police carrying injecting equipment;
- h) injecting alone and in more secluded laneways and alcoves to avoid police, interpersonal violence or theft, and social stigma.

3. Zero-tolerance policing increases health and stigma risks

When police conducted intensive zero-tolerance style policing operations in spaces of high public injecting, women did not report being deterred from injecting drugs, but instead reported a range of adaptations that prioritised reducing the risks of police intervention, at the expense of health and other embodied risks. Such as:

- a) avoiding Needle and Syringe Program services thereby increasing risks of personal and public infection, and reduced self-esteem;
- b) rushing injecting processes, thereby enhancing risks of personal injury, infection and overdose;
- c) injecting alone and in secluded places, thereby increasing the risks of fatality though not being found in the case of overdose;
- d) moving temporarily to other municipalities to buy and inject drugs, thereby decreasing access to Needle and Syringe Programs and other support services and networks, and increasing chances of overdose or illness through unfamiliar drug sources and qualities, as well as through the heightened effects of drugs when used in unfamiliar environments (Siegel 2001).

4. Safer places to inject are needed and wanted by women who inject

When asked about what would make an injecting space more safe, women talked about needing somewhere:

- a) safe from police;
- b) safe from interpersonal violence;
- c) with access to sterile equipment, water and light;
- d) discreet enough to avoid stigma, but visible enough to get help in case of overdose;
- e) clean enough to avoid infection and to avoid feeling dirty and/or being stigmatized as a 'junkie', but not so sterile as to be uninviting or inhospitable.

Supervised injecting facilities, such as the Medically Supervised Injecting Centre (MSIC) in Sydney, would go a long way to reducing the risks associated with inject drug use for women and others who inject drugs as well as the wider community. Such services have been shown to significantly reduce overdose fatalities and infections, as well as broader community problems associated with visible street drug use (MSIC Evaluation Committee 2003). My research shows that for women who inject drugs, avoiding social stigma and maintaining self-esteem are also very important concerns (Malins, Fitzgerald & Threadgold 2006). Reduced self-esteem and increased stigma are likely to result in reduced self-care and health-seeking behaviours, increased experiences of discrimination in health-care, housing, jobs and other important areas of life, reduced sense of social responsibility and overall reduced health and wellbeing. Supervised injecting services that are discreet, clean, non-judgmental and welcoming, would also go a long way to reducing stigma, increasing self-esteem and enhancing social connectedness.

Recommendation 2: Supervised injecting facilities similar to Sydney's Medically Supervised Injecting Centre (MSIC) should be urgently introduced in areas of high public injecting drug use.

Conclusion

International research has shown that punitive law and order approaches to drug use are both ineffective and harmful. By contrast, harm reduction interventions such as pill testing and supervised injecting services have been shown to dramatically decrease risks for those who use drugs as well as the broader community. My research supports these findings literature, showing how enforcement and threats of criminalisation do not act as useful deterrents to drug consumption. The use of general drug detection dogs and intensive high visibility police operations do not reduce drug use, but rather displace and transform it. These transformations increase the risk of harm, including harm associated with overdose, infection, access to health services, distrust of police, self esteem and social stigma. I am therefore making this submission to urge the Victorian government to immediately end the use of general detection dogs, make possible the introduction of supervised injecting facilities and support a harm reduction rather than a punitive approach to drug use more broadly.

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Dr Peta Malins
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RMIT University
GPO Box 2476, Melbourne, VIC 3001

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Appendices

1. Interview narratives and fieldwork notes supporting drug detection findings
2. List of references (cited and supporting)
3. My article in *The Conversation* about drug detection dogs
4. My article in *Gender Place and Culture* about women's public injecting drug use