



Submission to the Inquiry into Drug Law Reform

17 March 2017

Introduction and Summary

The use of illicit drugs is an issue of great importance to all Victorians. The way our laws approach and govern the use, possession, and distribution of these drugs affects us in myriad ways, from the safety of our communities to our individual health and wellbeing. Too often the law treats drug use as an exclusively criminal issue, adding a layer of stigma to the experience of drug users, most of whom already experience stigma stemming from various socioeconomic factors. Rather than encouraging people who use drugs to refrain from future use – or acting as a disincentive to potential users – criminalisation exacerbates drug problems, increases risk of drug-related harm, and imposes significant costs on communities.

For the lesbian, gay, bisexual, transgender, and intersex communities (LGBTI), issues related to drug use are of immediate concern. These communities consistently report significantly higher rates of use of drugs than the general population.¹ This leaves LGBTI people far more vulnerable to the various harms associated with drug use, particularly the transmission of blood-borne viruses like HIV and hepatitis C. LGBTI people are also more likely to experience indirect harms as a result of drug use, such as mental health conditions, physical health problems, and many of the poor social and economic outcomes.

Harm reduction is the idea that the primary goal of any drug policy should be the reduction and minimisation of the negative consequences associated with drug use, with a particular focus on the health, wellbeing, and rights of the individual. In many respects, Australia has led the world in adopting harm reduction, notably in its establishment of community-based needle and syringe programs (NSPs). These efforts have been credited with limiting the spread of HIV in the early days of the epidemic, leading to a relatively low incidence of that disease. These programs, however, address only a fraction of the many potential harms associated with drug use. Overdoses and deaths continue to occur regularly throughout Victoria; people find their health and lives at risk due to use of drugs whose contents and safety are questionable; and a range of social and economic problems arise as a result of the current prohibitionist approach.

The principles of harm reduction should form the basis of Victoria's drug policy and reform efforts. This requires the government to acknowledge that complete abstinence and eradication of drug use is unrealistic; that issues of drug dependence and addiction are multi-faceted and cannot be addressed solely through the criminal law; that drug issues should be considered a public health issue and addressed using established public health frameworks; that the health and wellbeing of people who use drugs is paramount; and that reduction in the risks and harms associated with drug use should be the first and ongoing priority in the response to drug issues.

To this end, the Victorian AIDS Council makes the following recommendations to the Inquiry into Drug Law Reform:

Recommendation 1: That the principles of harm reduction and harm minimisation be included in a Principles and Objectives section at the beginning of any drug legislation resulting from this inquiry. These should establish in law the intent of the Victorian Government to treat drug and alcohol issues as matters of public health, and ensure that any subsequent rules and regulations establish the health and wellbeing of people who use drugs as paramount;

¹ Leonard W, et al. *A Closer Look at Private Lives 2: Addressing the mental health and well-being of lesbian, gay, bisexual and transgender (LGBT) Australians*. Melbourne: Australian Research Centre in Sex, Health and Society, 2015. Print.

Recommendation 2: That the Victorian Government decriminalise the purchase, possession, and use of all drugs for personal use. Criminal sanctions for those actions should be discarded in favour of public health interventions. To that end, the Victorian Government should repeal sections 73 and 75 of the *Drugs, Poisons and Controlled Substances Act 1981 (Vic)*, and create a new scheme of interventions and administrative sanctions under the *Public Health and Wellbeing Act 2008 (Vic)*;

Recommendation 3: That the Victorian Government establish safe injecting facilities in those areas where people are most affected by the harms associated with injection drug use, along the lines of the facility proposed for North Richmond by Fiona Patten MP in early 2017.

Recommendation 4: That the Victorian Government establish needle and syringe programs in all prisons and custodial settings, to reduce the risk of transmission of blood borne viruses in those settings, and to reduce the risk of injury to the staff of those facilities;

Recommendation 5: That the Victorian Government enact regulations for the availability of pill testing by harm reduction and health organisations to prevent accidental overdoses and ingestion of toxic substances;

Recommendation 6: That Victoria Police discontinue the use of drug sniffing dogs to detect small quantities of illicit drugs for personal use, in order to prevent overdoses due to panic;

Recommendation 7: That the Victorian Government enact regulations to expand and streamline access to opioid replacement therapy, to ensure people who are dependent on drugs do not experience any disruptions to treatment.

The Victorian AIDS Council

The Victorian AIDS Council (VAC) is Australia's first and oldest community led HIV organisation. As the peak organisation in Victoria for HIV prevention and sexual health, VAC provides services, support, and education for gay men and people living with HIV. In partnership with other organisations, VAC works to improve health outcomes for all members of the sexually and gender diverse communities. VAC is committed to working with health care providers to ensure their services meet the unique needs of all lesbian, gay, bisexual, transgender, and intersex (LGBTI) people.

For more than 30 years, VAC has pioneered HIV prevention and health promotion campaigns designed to improve awareness and literacy of safer sexual health practices. VAC has adopted community development and harm reduction approaches to sexual health, working with diverse communities to address their unique needs, as well as empowering them to make informed decisions about their health. In addition to its work in sexual health, VAC provides comprehensive education and services for people experiencing difficulty with alcohol and other drugs. This includes the provision of harm reduction information, dependence counselling, peer support groups, and practical care and recovery support.

VAC commends the Victorian Government in its decision to review the laws concerning drug use in Victoria, and its willingness to consider reforms. We thank the government for the opportunity to comment on this issue, and to provide recommendations. In many ways, Australia has been at the

forefront of the response to both drug use and blood-borne viruses. Many of the programs that our country has established have been adopted throughout the world. Our progressive, forward-thinking approach to these issues places us in an enviable position as we contemplate how to address these matters in the future.

Following are recommendations regarding programs and approaches that VAC believes will help address problematic drug use in Victoria while decreasing the harms associated with drug use generally.

Enshrine principles of harm reduction and harm minimisation in Victorian law

Despite a long history of adopting harm reduction approaches to drug use, the laws governing drugs remain highly punitive, with personal possession and use considered criminal offences.² Too often this approach ignores the health and wellbeing of people who use drugs, and the practical difficulties involved in managing or abstaining from use. Once a person has entered the criminal justice system, the task of managing drug use becomes exponentially more difficult.

In order to address the incongruity between the lived experience of people who use drugs and the laws to which they are subject, the Victorian Government should endorse and adopt the principles of harm reduction. In 1996, the Canadian Centre on Substance Abuse developed a series of principles to guide the development of drug policy: Pragmatism, humane values, focus on harms, balancing costs and benefits, and priority of immediate goals.³

- *Pragmatism*: Society should acknowledge that some level of drug use is to be expected, and that limitation of use, reduction of dependency, and minimisation of related harms is more realistic than the complete eradication of drug use;
- *Humane values*: Moral judgments about the use of drugs or the people who use them must not interfere with the development of policy. It should not be mistaken as approval of drug use, but an acknowledgement that the health, welfare, rights, and dignity of the individual are of greater importance than personal moral concerns;
- *Focus on harms*: The harms associated with drug use (e.g. transmission of blood-borne viruses, overdose, and death) must be the primary focus of any drug law reform. Once these harms and their risk are addressed, then attention can turn to the degree or frequency of a person's use and, if necessary, developing appropriate treatment and care strategies with a trained and knowledgeable workforce.
- *Balancing costs and benefits*: Responsible authorities must continually monitor and evaluate the personal, social, and economic costs of various interventions as they are deployed, and weigh them against their benefits. Ineffective practices should be discontinued, while evidence-based practices and strategies must be considered.
- *Priority of immediate goals*: Responsible authorities and people who use drugs must work together to determine a range of goals in responding to drug issues, and identify which goals are of immediate concern. Responsible authorities should implement strategies that address these immediate goals before pursuing long-term goals.

² *Drugs, Poisons and Controlled Substances Act 1981* (Vic), ss 73 and 75.

³ Beirness, DJ, et al. *Harm Reduction: What's in a name?* Ottawa: Canadian Centre on Substance Abuse, 2008.

Abiding by these principles in the state's approach would ensure any policies and laws that result are evidence-based, effective, and responsive to the needs of people who use drugs. Such policies have the potential to reduce stigma and shame associated with drug use, and encourage people experiencing drug dependency to reach out to care and treatment providers.

Decriminalise the purchase, possession, and use of all drugs for personal use

The harms that can result from drug use are considered so severe as to warrant prohibition and criminal sanctions. Though understandable, this view ignores the fact that the harms are more likely to occur in environments of prohibition and criminalisation than in those where personal use can be tracked, managed, and, if necessary, treated. Criminalisation merely exacerbates drug problems. It acts as powerful disincentive to utilising harm reduction tools, and to seeking treatment or rehabilitation. Moreover, people who enter the criminal justice system are subject to compound stigma and shame, profoundly affecting their mental health and their ability to manage their use, or to abstain from it.

To this end, the Victorian Government should decriminalise the purchase, possession, and use of drugs for personal use. Such schemes, in varying forms, have been established throughout the world. Most notable, however, is the country of Portugal. In 2001, the Portuguese government removed all criminal penalties for the possession and personal use of drugs. Though the trafficking of drugs remains illegal, individuals caught with less than prescribed amounts of drugs are subject to administrative penalties, rather than criminal sanctions. People who are deemed dependent can access safe forms of the drugs from government-sanctioned providers, providing them with a safe pathway to managing their use.⁴

Though one might expect a significant increase in the rate of drug use, there has been only a slight, almost negligible, increase in use. More remarkably, the scheme has helped reduce the incidence of problematic use; reduced crime associated with purchasing drugs; increased the uptake of treatment; and decreased the incidence of harm and death associated with drug use. The scheme has also freed up law enforcement and judicial resources, allowing them to focus on the drug trade and black market, rather than low-level offenders.⁵

In Victoria, the Government could affirm its commitment to the principles of harm reduction by both removing criminal sanctions and by diverting the management of drug possession and use into public health channels. This would affirm the view that drugs are a health issue, rather than a criminal one, and remove the fear and stigma that discourages many people from accessing harm reduction resources and dependence treatments. Such a program would provide significant intervention opportunities and contribute to a decrease in problematic use. Just as the establishment of NSPs in Australia was a bold and progressive action, this approach would redefine drug issues in Australia and provide an example of a new, humane approach to drug dependence.

⁴ Greenwald, G. *Drug Decriminalization in Portugal: Lessons for creating fair and successful drug policies*. Washington: Cato Institute, 2009.

⁵ Ibid.

Establish safe-injecting facilities in targeted areas

Of the various harms that can result from drug use, death is the final, most troubling harm. Though easily preventable, in 2016 alone Victoria saw 170 deaths as a result of overdose. Of these, 34 occurred in the City of Yarra, with 20 in a small area of North Richmond alone. These deaths, beyond their obvious consequence for the person using drugs, affect their families and communities in profound and lasting ways. Where other interventions may have failed for these individuals, there is one that is demonstrably effective and widely used, yet unavailable in Victoria: safe-injecting facilities.

Safe-injecting facilities, or drug consumption rooms, are commonly found across Europe, but have also been established in Canada and in Sydney, New South Wales. These facilities have been remarkably effective in reducing overdoses, preventing overdose deaths, preventing the transmission of blood-borne viruses, and linking people who use drugs into treatment and care.⁶ At Sydney's Medically Supervised Injecting Facility, not a single overdose has occurred in sixteen years of operation.⁷

Victoria needs these facilities. They are an essential and proven tool for reducing drug-related harm and overdose-related deaths. In early 2017, a bill was introduced in Victoria's Legislative Council providing for the establishment of a safe injecting facility in North Richmond. The Victorian Government should approve this bill as a first step in establishing safe injecting facilities in targeted areas of high use and high risk throughout the state.

Establish needle and syringe programs in Victorian prisons and custodial settings

Australia introduced needle and syringe programs (NSPs) in 1986, at a time when HIV infections were sharply increasing. The early and widespread availability of these programs is credited with contributing to the relatively low prevalence of HIV among people who inject drugs.⁸ Rates of new HIV and hepatitis C infections among people who inject drugs remain low relative to other countries.⁹ This has enabled Australia keep its blood-borne virus epidemics mostly contained, facilitating robust responses in terms of prevention and treatment.

To maintain and improve these low rates, the Victorian Government should commit to the continuation and expansion of NSPs in Victoria. Actions include improving the quality of injection equipment available at NSPs, in order to prevent injury and accidental overdose; wider geographic availability of NSP facilities; improvements to training for NSP workers; and improved referral pathways to treatment and health services.

As part of its commitment to NSPs and the reduction of blood-borne virus transmission, the Victorian Government should establish NSPs in all prisons and custodial settings in Victoria. With

⁶ Wood, E, et al. "The Potential Public Health and Community Impacts of Safer Injecting Facilities: Evidence From a Cohort of Injection Drug Users." *Journal of Acquired Immune Deficiency Syndromes*, 32. (2003): 2-8.

⁷ Salmon, A, Kaldor, J, and Maher, L. *Sydney Medically Supervised Injecting Centre Evaluation Report No. 4: Evaluation of service operation and overdose-related events*. Sydney: National Centre in HIV Epidemiology and Clinical Research. 2007.

⁸ Kwon JA, et al. "Estimating the cost-effectiveness of needle-syringe programs in Australia." *AIDS*, 26. 17 (2012): 2201-2210.

⁹ McGregor S and Guy R, eds. *HIV, viral hepatitis and sexually transmissible infections in Australia: Annual Surveillance Report 2016*. Sydney: The Kirby Institute, 2016. Print.

NSPs already a familiar and effective strategy in community settings, introducing them in prisons could have a dramatic effect on the troubling rates of blood-borne viruses there. Data shows that significant numbers of incoming prisoners have reported injection use prior to entering prison, and are familiar with NSPs.¹⁰ Though objection to these programs typically stems from concern for the safety of prison staff, there is no evidence to suggest they increase risk. Evidence from other prison NSPs indicates they are unfounded. In none of the long-running programs examined in a large-scale study were such events reported.¹¹ Furthermore, the presence of NSPs correlated with an overall reduction in drug use in prisons.¹²

Allow pill testing

Victoria has seen multiple events of toxic and contaminated batches of certain recreational drugs causing accidental overdoses and toxic responses in people who use drugs, particularly at festivals and clubs. This occurs because people are often unaware of the precise content of the drugs they are taking, their strength, and their relative safety.

Pill testing is an easy and affordable way to avoid these events. Organisations like VAC could be licenced by the state to conduct the tests at events where drug use is likely to occur, using trained and knowledgeable test facilitators. These facilitators could act as valuable resources, not only preventing the use of toxic and unsafe drugs, but providing interventions in the case of overdoses, information about drugs and problematic use, and linking interested individuals to appropriate treatment and care services. VAC recommends the Victorian Government establish a scheme for provision of pill testing services by trained peer test facilitators.

Discontinue the use of drug-sniffing dogs

Drug-sniffing dogs are used throughout Australia as part of the effort to address drug trafficking. They are also often used to detect drugs carried by individuals in venues and on occasions where drug use is likely. In some situations, people in possession of drugs have panicked and consumed all their drugs at once, overdosing and causing lasting physical harm. For the most part, however, most people who use drugs report not being dissuaded from use by the presence of sniffer dogs.¹³

Perhaps more problematic is evidence suggesting that drug sniffer dogs are generally unreliable. In 2011, New South Wales police conducted nearly 15,000 searches on individuals due to a

¹⁰ Butler T, Lim D, Callander D. *National Prison entrants' Bloodborne Virus & Risk Behaviour Survey, 2004, 2007, and 2010*. The Kirby Institute and National Drug Research Institute. September 2011. 169-172.

¹¹ Stöver H, Nelles J. Ten years of experience with needle and syringe exchange programmes in European Prisons. *International Journal of Drug Policy*. 2003, 14(5-6) 437–444.

¹² Jürgens R. *Interventions to address HIV in prisons: Needle and syringe programmes and decontamination strategies*. 2007. Geneva: World Health Organization, United Nations Office on Drugs and Crime, and UNAIDS.

¹³ Dunn M and Degenhardt L. "The use of drug detection dogs in Sydney, Australia." *Drug and Alcohol Review*, 28. (2009): 658-662.

positive reaction from a sniffer dog; however, illicit substances were found in fewer than 3,000 of those searches, indicating the sniffer dogs are accurate only about 20 per cent of the time.¹⁴

Using the principles of harm reduction as a guide, this practice should be discarded. There is very little evidence supporting its use as a successful deterrent to drug use; it does not address the harms associated with drug use; and is cost-ineffective even compared to other detection strategies. The Victorian Government should work with Victoria Police and other authorities to discontinue the use of sniffer dogs.

Streamline access to drug substitution programs

In addition to the available of NSPs, Victoria's drug substitution program (also known as maintenance pharmacotherapy) has assisted many people experiencing dependence to address and manage their use. It is a proven intervention that contributes to marked improvements in the health and wellbeing of people who use drugs,¹⁵ and may contribute to reductions in the transmission of blood-borne viruses.¹⁶

Unfortunately, substantial anecdotal evidence indicates there are significant gaps in the Victorian scheme. These gaps have a profound effect on the success of the treatment, as well as limiting the populations who are able to access it. Though the policy regarding drug substitution in the state was recently updated, it is imperative that it be evaluated and amended to address any treatment shortfalls. The Victorian Government should conduct a review into the effectiveness of the current scheme with a focus on treatment availability across the various regions of Victoria; impediments to continuity of treatment; and educating the workforce to reduce the stigma associated with drug use.

¹⁴ Simmons, Amy. "Accuracy of police sniffer dogs called into question." *ABC News*, <http://www.abc.net.au/news/2011-12-12/accuracy-of-police-sniffer-dogs-called-into-question/3726228>. Accessed 14 March 2017.

¹⁵ Reime, J, et al. "The Impact of Misuse and Diversion of Opioid Substitution Treatment Medicines: Evidence Review and Expert Consensus." *Europea Addiction Research* 22. (2016) 2: 99-106.

¹⁶ MacArthur, GJ, et al. "Opiate substitution treatment and HIV transmission in people who inject drugs: systematic review and meta-analysis." *BMJ* 345, (2012).