

**Justice Action submission for Victoria’s Parliamentary Inquiry into  
Drug Law Reform**

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## **JA Submission**

### **Victoria's Law Reform, Road and Community Safety Committee**

Topic: Drug law reform

#### **Executive Summary**

We at Justice Action (**JA**) applaud the Parliament of Victoria for recognising the pressing need to inquire, consider, and report on drug law reform. JA believes that the current policy implemented by the Victorian Government on the issue of drug usage can be improved. A high percentage of people incarcerated have committed a drug related offence, and this percentage is increasing. We believe that this trend will continue unless stakeholders view drug use as a health and social issue, rather than a criminal one. Below, we identify key issues that demand proper attention and propose a number of policy reform strategies, drawing on international examples of successful policy implementation where we deem it appropriate.

#### **1.0. IMPETUS FOR DRUG LAW REFORM**

##### **1.1. Emergence of drug law reform**

Despite adhering to a punitive, prohibition-based approach to drug use, rates of drug related harm have not decreased.<sup>1</sup> In fact, they reached a spike in 2015, where the highest level of drug-related deaths since the early 2000s was recorded<sup>2</sup>. While drug users are frequently prosecuted, the number of users and suppliers brought before the courts constitute only a proportion. As long as drug use is treated as a criminal problem, the state will be unable to fully apprehend those who commit drug offences. Furthermore, without evidence-based treatment programs, even offenders prosecuted by the state are likely to re-offend in the future, causing more harm to the community and failing to be rehabilitated into their communities. Consequently, JA believes that drug use should be treated as a health and social issue, rather than a criminal one. If

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<sup>1</sup> Ben Mostyn, Helen Gibbon and Nicholas Cowdery, 'The Criminalisation of Drugs and the Search for Alternative Approaches' (2012) 24(2) *Current Issues in Criminal Justice*, 261, 261.

<sup>2</sup> Alex Wodak, 'Why Australia needs drug consumption rooms', *The Conversation* (*online*), 18 January 2016 <<http://theconversation.com/why-australia-needs-drug-consumption-rooms-53215>>

this strategy were adopted, funding could be diverted from building and sustaining prisons to running education and rehabilitation programs. It would also reduce pressure on an already over-burdened court system dealing with a persistent influx of drug-related matters.

## **1.2 Misuse of pharmaceutical drugs**

Pharmaceutical drugs have an important, legitimate role in medical practice and can contribute to the health and wellbeing of individuals. Australia's Pharmaceutical Benefits Scheme (PBS) has arguably increased the access of many Australians to medications. In this submission, pharmaceutical drug misuse refers to any use of pharmaceutical drugs that is inconsistent with the intended use or directions.

Issues of pharmaceutical drug misuse are complex, exist on a spectrum and vary over time. Problems involve inadvertent misuse associated with prescribing practices, deliberate misuse in order to experience non-therapeutic effects of drugs, as well as resale of medicines for profit. In order to establish effective drug law reform, it is important to recognise the current patterns and rates of the use and misuse of prescription medication, as well as the extent and nature of drug-related harm.

The misuse of pharmaceutical medication involves a wide range of pharmaceutical drugs, but opioids and benzodiazepines are particularly concerning. Pharmaceutical drugs are usually taken orally as a tablet, capsule or liquid and also injected intravenously. Opioid analgesics and benzodiazepines are the most commonly misused classes of pharmaceutical drugs in Australia.<sup>3</sup> Benzodiazepines are a group of depressant drugs, referred to as hypnotic sedatives or tranquillisers that are commonly used to treat stress, anxiety and sleeping disorders. Between 1997 and 2012, oxycodone and fentanyl supply in Australia increased 22-fold and 46-fold respectively.<sup>4</sup> It is important to note that oxycodone is now the seventh leading drug prescribed in general practice.<sup>5</sup>

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<sup>3</sup> Malcolm Dobbin, 'Pharmaceutical Drug Misuse in Australia' (2013) 37(3) *Australian Prescriber*, 79.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

There is some connection between pharmaceutical misuse and criminal activity, as reflected in the disproportionately large number of police detainees testing positive for opioids and benzodiazepines. Urinalysis from the 2008 Drug Use Monitoring in Australia (DUMA) Survey of police detainees noted that 15% of adult detainees tested positive for an opiate metabolite not identified as heroin.<sup>6</sup> The precise relationship between offenders and pharmaceutical drug misuse is, however, unclear at this time.

Developing appropriate protocols to prevent the misuse of pharmaceutical drugs is important for medical practitioners and manufacturers. Manufacturers are developing technologies to formulate pills that are resistant to blows, as both prescriptive and non-prescriptive medication are often dissolved by the user and snorted or injected. For example, some drugs now contain a gelatinous material that dissolves thus making injections difficult. In 2010, the US drug manufacturer Purdue Pharma released a misuse-averting version of OxyContin containing a polymer made of long-chain molecules. The result was that the tablet was harder to crush, rendering it harder to snort and inject.<sup>7</sup> This is a substantial improvement for a manufacturer to implement, considering that 80% of global opioid drugs are sold in the US.<sup>8</sup> Australia, however, allowed the sale of a generic long-acting oxycodone without misuse deterrence characteristics in December 2014.

The over-promotion and heavy prescription rates of opioids and benzodiazepines can be attributed to the increase in the misuse of pharmaceutical drugs. There is a strong need to adopt a cautious approach when prescribing opioids and benzodiazepines to patients. Many of those who misuse pharmaceutical drugs are prescribed pain relief medication for chronic-malignant pain, such as lower back pain.<sup>9</sup> Some alternatives to the prescription of opioid and benzodiazepines include investigating and treating the primary causes of sleep disorders; using non-drug therapies such as exercise;

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<sup>6</sup> Australian Institute of Criminology, 'Drug Use Monitoring in Australia: 2008 Annual Report on Drug Use Among Police Detainees' (Media Release, 1 September 2008) <[http://www.aic.gov.au/media\\_library/publications/mr/mr09/mr09.pdf](http://www.aic.gov.au/media_library/publications/mr/mr09/mr09.pdf)>.

<sup>7</sup> U.S. Food & Drug Administration, 'FDA Approves New Formulation for OxyContin' (Media Release, 5 April 2008) <<https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm207480.htm>>.

<sup>8</sup> American Society of Interventional Pain Physicians, 'The American Society of Interventional Pain Physicians (ASIPP) Fact Sheet' (Media Release) <<https://www.asipp.org/documents/ASIPPFactSheet101111.pdf>>.

<sup>9</sup> C.W. Lin et al, 'Cost-effectiveness of General Practice Care for Low Back Pain: A Systematic Review' (2011) *European Spine Journal*, 1.

educating patients; discussing the benefits of non-drug management with patients and carers; and providing psychological services or therapy. Educating patients is valuable as evidence suggests that many users of over-the-counter medications unintentionally misuse them.<sup>10</sup> Supply of addictive medication should only occur after a thorough assessment of need and risk, and in the context of a comprehensive medical management plan including non-drug treatment approaches. This will effectively minimise health, social and economic harm.

Victoria should also implement the Electronic Recording and Reporting of Controlled Drugs System (ERRCD) - a Federal Government initiative implemented in Tasmania to prevent the misuse of prescription medication. It is an electronic recording and real-time reporting that monitors the prescribing and dispensing of controlled drugs to support the current controls mandated by each state and territory. Currently, only Tasmania has fully adopted this technology with the other states and territories being slow to implement it. Improvements should be made to rectify the time-consuming and cumbersome nature of the system, which requires doctors in other states and territories to call a national hotline, whereas pharmacists manage the real-time system.

## **2.0. CURRENT STATE OF DRUG USE IN AUSTRALIAN PRISONS**

The high percentage of drug use within prison entrants reveals the harmful health, economic and social impacts associated with drug use. With a greater focus on alternative strategies rather than criminalisation in policy-making, we believe that these harmful impacts will be reduced, benefiting not only those in prisons but also society at large, and when prisoners leave prisons.

### **2.1. Drug use in Australian prisons**

In 2015, two thirds of prison entrants reported illicit drug use in the 12 months prior to entering prison. Of these, younger entrants were more likely to have taken illicit drugs, with 76% compared to 53% of those aged 45 and over.<sup>11</sup> Indigenous entrants

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<sup>10</sup> Turning Point Alcohol & Drug Centre, 'Over the Counter Codeine Dependence' (Media Release, 30 June 2010) <[http://atdc.org.au/wp-content/uploads/2011/02/OTC\\_CODEINE\\_REPORT.pdf](http://atdc.org.au/wp-content/uploads/2011/02/OTC_CODEINE_REPORT.pdf)>.

<sup>11</sup> Australian Institute of Health and Welfare, *Illicit Drug Use* <<http://www.aihw.gov.au/prisoner-health/illicit-drug-use/>>.

were more likely to have used drugs than their non-Indigenous counterparts in the same timeframe.<sup>12</sup>

Methamphetamine use continues to prove disproportionately popular among the prison population; it was the most commonly used substance in the previous 12 months for prison entrants (50%), and reported 10 times more often by prison entrants than by the general community.<sup>13</sup> Moreover, methamphetamine use is prevalent among younger age groups (18 to 44), with 50% reporting using it compared to 5% in the wider community.<sup>14</sup>

Prison entrants generally practice clean injecting, with 90% reporting having used sterile injecting equipment all or most of the time in the previous month. Only 18% reported sharing equipment.<sup>15</sup> This is due in part to the wide availability of Opioid Substitution Treatment (OST) in prisons around Australia, which is associated with reduced drug injection among those with a history of injecting drug use. With less drug use, the health risks of needling sharing and infections are reduced. However, to be effective, OST in prisons should be complemented by education programs and an emphasis on community-based treatment.<sup>16</sup>

## 2.2. Drug use in NSW prisons

The New South Wales Corrections Health Service (CHS) estimates that an estimated 80% of prisoners have been imprisoned for offences related to legal or illegal drug use, or committed their crimes while under the influence of drugs.<sup>17</sup> Moreover, while serving time in prison, prisoners continue to use drugs, often in unsafe ways. In 2012, half of prison entrants reported using cannabis before entering prison and more than a third reported using methamphetamines.<sup>18</sup> In addition, 90% of prisoners reported

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<sup>12</sup> Ibid.

<sup>13</sup> Australian Institute of Health and Welfare, 'The Health of Australia's Prisoners 2015', <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129553682>>, 101.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid, 104

<sup>16</sup> Ibid.

<sup>17</sup> See Justice Action, *Drugs and Prisoner Health*, <[http://www.justiceaction.org.au/index.php?option=com\\_content&view=article&id=456:drugs-prisoner-health&catid=78&Itemid=1110&highlight=WyJkenVncyIsImRydWdzJy4iLDgwLCInODAiXQ](http://www.justiceaction.org.au/index.php?option=com_content&view=article&id=456:drugs-prisoner-health&catid=78&Itemid=1110&highlight=WyJkenVncyIsImRydWdzJy4iLDgwLCInODAiXQ)>.

<sup>18</sup> Intergovernmental Committee on Drugs, *Draft National Drug Strategy 2016-2025* (October 2015) <[http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/73E3AD4C708D5726CA257ED000050625/\\$File/draftnds.pdf](http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/73E3AD4C708D5726CA257ED000050625/$File/draftnds.pdf)>, 22.

sharing needles or injecting equipment.<sup>19</sup> This sharing of needles has contributed to the problem of blood borne viruses. In 2010, blood-borne virus rates among prisoners who reported injecting drugs were 51% for hepatitis C.<sup>20</sup>

### 2.3. Drug use in Victorian prisons

70% of entrants in Victorian prisons have used illicit drugs, with 44% of these having injected drugs in the past 12 months, in comparison with 12% of the general population over 14.<sup>21</sup>

In its 2015 strategic report, Victoria outlined a four-pronged approach to addressing drug-related harm: supply control, demand reduction, harm reduction and monitoring and innovation. These four goals have the potential to reduce harm by prisoners, and policies should be implemented with these goals in mind.

The first goal involves preventing and deterring drug use. The means to achieve this includes eliminating the demand and passage of drugs into prisons, as much as possible. The second component involves minimising the demand for drugs; achieved by psycho-education programs, long-term group treatment programs, counselling sessions and transitional support. The third goal comprises reducing harm caused by drug use. Programs would involve recognising that offenders struggle to abstain from drug use, and focus will be given to reducing harms caused by the offender's behaviour, rather than reprimanding possible drug abuse. For example, education about safe injecting practices to reduce risks from blood-borne communicable diseases such as hepatitis C, is encouraged. The final goal involves greater monitoring and innovation. It is recommended that correctional staff, in their interactions with prisoners and offenders, can be a source of motivation to undertake treatment programs and support them towards recovery.<sup>22</sup>

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<sup>19</sup> The Australian Institute of Health and Welfare, 'The Health of Australia's Prisoners 2012', <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129543945>>.

<sup>20</sup> Intergovernmental Committee on Drugs, above n 17.

<sup>21</sup> Dave Taylor and Sam Biondo, *Alcohol, Other Drugs and Prison: Before, During and After*, Victorian Council of Social Services <<http://insight.vcss.org.au/alcohol-other-drugs-and-prison-before-during-and-after/>>.

<sup>22</sup> Corrections Victoria, *Corrections Alcohol and Drug Strategy 2015 Overview*, State Government of Victoria <[http://assets.justice.vic.gov.au/corrections/resources/7956b05d-7d80-40ff-8185-bf464fab5e7/cv\\_a%26dstrategy\\_acc.pdf](http://assets.justice.vic.gov.au/corrections/resources/7956b05d-7d80-40ff-8185-bf464fab5e7/cv_a%26dstrategy_acc.pdf)>.

## **2.4. Drug use in Queensland prisons**

Recently, Queensland adapted their prison policy to meet the level of other States in terms of drug reform in prisons.

It now offers programs for opiate substitution treatment and reduction. This was implemented as a result of recent tests conducted in 2015-16 that showed an average of 17% of prisoners tested positive to drugs, ranging up to 22% in one prison. The introduction of treatment programs recognised the greater likelihood of contracting diseases if multiple people use one syringe.

The drug program to reduce substance abuse is a 21-week Pathways Program that targets High Intensity Substance abuse for people with history of criminality and drug use<sup>23</sup>. The aim is to target drug-dependant individuals and develop pro-social thinking in order to reduce recidivism and relapse through relationships and self-awareness. As the program is in its early stages, it has not yet been evaluated, though is grounded in evidence-based treatment.

## **2.5. Drug use in South Australian prisons**

In South Australia, an emphasis has been placed on seizing drugs; the number of searches conducted has doubled over the past 6 years. This has resulted in twice the amount of drugs being seized, the most common of which is Marijuana. Installation of drug detention security gates has also resulted in drugs found being reduced by 57%. However, despite this, there has been a 10% increase in positive drug tests.

A recent study conducted by the University South Australia has shown an increase in the use of methamphetamine of every 1000 prisoners. It increased from 150 in 2012 to 450 in Dec 2016.<sup>24</sup> This indicates, that while cracking down on the physical

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<sup>23</sup> Department of Corrective Services, Government of Western Australia, *Rehabilitation Programs*, (17 October 2016) <<http://www.correctiveservices.wa.gov.au/rehabilitation-services/rehab-programs.aspx>>.

<sup>24</sup> Sarah Scopelianos, Claire Campbell and Caroline Winter, *Methamphetamine Use in Adelaide Climbs as SA Calls for Action in Drug 'Scourge'* (25 January 2017) ABC News <<http://www.abc.net.au/news/2017-01-25/adelaides-methamphetamine-use-climbs-sewage-analysis-shows/8210188>>.

importation of drugs, programs that directly target the substance abuse rehabilitation of prisoners can have a more significant impact.

## **2.6. Drug use in Tasmanian prisons**

Approximately 500 prisoners are housed in the Tasmanian prison system across four prisons and two remand centres. Prisoners in Tasmania currently do not have access to alcohol and drug workers.<sup>25</sup> However, the shrinking of the Tasmanian prison population has been accompanied by improved support and rehabilitation services in prisons centred around harm minimisation and the right to health. Most notably, Tasmanian prisons have implemented health programs focused on limiting the spread of Hepatitis C.<sup>26</sup>

## **2.7. Drug use in Western Australian prisons**

The Western Australia Department of Corrective Services emphasises a law enforcement approach to drug use in prisons while also integrating a rehabilitative approach.

Its supply reduction strategies include the Drug Prevalence Testing program, targeted analysis testing of prisoners, and the Drug Detection Unit. The Drug Prevalence program involves the random selection of approximately 600 prisoners per quarter for testing, while more targeted analysis testing occurs on suspicion of use. The Drug Detection Unit consists of specialist drug detection dog/handler teams that service all WA correctional facilities to deter offenders and visitors from trafficking drugs. It is of particular importance that visitors who attempt to or are suspected of trafficking drugs to prisoners are sanctioned – these include visiting bans, non-contact visits and prosecution.<sup>27</sup>

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<sup>25</sup> Australian Institute of Health and Welfare, 'Prisoner Health Services in Australia 2012' (Media Release, August 2014) <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129548270>>

<sup>26</sup> Rob White, 'State of imprisonment: Tasmania escapes 'law and order' infection,' *The Conversation* (online), 22 April 2015 <<http://theconversation.com/state-of-imprisonment-tasmania-escapes-law-and-order-infection-38988>>

<sup>27</sup> Department of Corrective Services, Government of Western Australia, *Offender Drug and Alcohol Strategy* <[https://www.correctiveservices.wa.gov.au/\\_files/rehabilitation-services/drug-strategy.pdf](https://www.correctiveservices.wa.gov.au/_files/rehabilitation-services/drug-strategy.pdf)>, **10**.

The Department also focuses on preventing young people from drug use and harm by implementing age-specific measures such as access to education, health promotion, treatment and support services.<sup>28</sup> Prisoners assessed as high-need and high-risk are supported through addiction programs delivered by external drug agencies, while pharmacotherapy programs provide clinically managed support services that address dependence. Like other states, WA provides drug-free units that enable prisoners to reside in a safe environment.<sup>29</sup>

## **2.8. Priority demographics**

It is important to acknowledge the intersectional nature of the issue of drugs in prison. Often, there is a strong relationship between drug use, offending, mental health issues, and experiences of child abuse among prisoners. There is also the need to recognise that women and men use drugs differently.<sup>30</sup> Furthermore, people with an Aboriginal and Torres Strait Islander background are diagnosed with hepatitis C ten times more frequently than non-Indigenous Australian prisoners.<sup>31</sup>

## **3.0. ALTERNATIVES TO CRIMINALISATION**

In looking at drug law reform, it is useful to consider the approaches adopted by other States and countries, evaluate the success of these approaches and consider whether to adopt these approaches in Victoria.

### **3.1. Decriminalisation**

Decriminalisation refers to a reduction in criminal penalties for drug possession and use. For instance, instead of pursuing convictions for drug possession, drug users might be referred to compulsory rehabilitation programs. Research has shown that

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<sup>28</sup> Ibid, 11.

<sup>29</sup> Ibid.

<sup>30</sup> For more, see 'Drug Use', Justice Action, <[http://www.justiceaction.org.au/index.php?option=com\\_content&view=article&id=584:drug-use&catid=94&Itemid=1020&highlight=WyJkenVncyIsImRydWdzJy4iXQ](http://www.justiceaction.org.au/index.php?option=com_content&view=article&id=584:drug-use&catid=94&Itemid=1020&highlight=WyJkenVncyIsImRydWdzJy4iXQ)>. See also Tracy Brannigan Action Plan.

<sup>31</sup> Ilyse Resnick and Loren Brener, 'Hepatitis C and the Aboriginal population', (2010) *National Centre in HIV Social Research*, 1

those who participate in mandatory programs are just as likely to rehabilitate as those who attend voluntarily.<sup>32</sup>

### **Drug courts**

Drug courts were introduced in US in the 1980s and have proliferated internationally. The first Australia drug court was established in New South Wales in 1999, quickly followed by the establishment of drug courts in South Australia, Western Australia and Queensland in 2000 and Victoria in 2002.<sup>33</sup>

Drug courts adhere to the notion of therapeutic jurisprudence, in which the courts rely on the active use of judicial authority to choose the type of treatment and ongoing monitoring of the offender. Rather than incarcerate drug users, the aim of these courts is to implement treatment programs for drug users,<sup>34</sup> which is useful for reducing health, social and economic issues.

#### *i. Australian states and territories approaches*

Decriminalisation can either be de jure or de facto. In de jure reform, criminal penalties for use and possession are removed in the law. This includes replacing criminal penalties with administrative penalties (such as a ban) or civil penalties (such as a fine). De jure decriminalisation is practiced in three states/territories (SA, ACT and NT) in the form of civil penalties for cannabis only.

De facto reform is where criminal penalties remain in the law, but can be lessened in practice. This can occur through police discretion, in which offenders can be referred to education or treatment instead of court. De facto decriminalisation is provided in most states, and are also referred to as ‘drug diversion’ programs. For cannabis, this form of diversion is used by NSW, QLD, VIC, WA, TAS, and the ACT. In regards to

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<sup>32</sup> Alison Ritter, ‘Decriminalisation or Legalisation: Injecting Evidence in the Drug Law Reform Debate’, *The Conversation*, 12 April 2012 <<https://theconversation.com/decriminalisation-or-legalisation-injecting-evidence-in-the-drug-law-reform-debate-6321>>.

<sup>33</sup> David Indermaur and Lynne Roberts, ‘Finding Alternatives to Imprisonment: Drug Courts in Australia’ (2005) 86 *Australian Law Reform Commission Reform Journal*, 28.

<sup>34</sup> Australian Institute of Criminology, ‘Australian Responses to Illicit Drugs: Drug Courts’ (15 May 2015) <[http://www.aic.gov.au/criminal\\_justice\\_system/courts/specialist/drugcourts.html](http://www.aic.gov.au/criminal_justice_system/courts/specialist/drugcourts.html)>.

other illicit substances, this form of diversion is used by VIC, SA, WA, TAS, ACT, and the NT.<sup>35</sup>

The current unanimous policy focus of Australia's states and territories regarding drugs in prison is a probationary approach, focused on reducing the supply of drugs through measures such as detection dogs and urinalysis.<sup>36</sup>

## *ii. Overseas jurisdictions*

Arguably a growing number of 'developed' nations have begun to concede the failure of the 'war on drugs' and move towards decriminalisation.<sup>37</sup> In fact, 25 countries have decriminalised the personal possession of some or all illicit drugs.<sup>38</sup>

### **Portugal**

In 2001, Portugal decriminalised all illicit drugs while increasing funding to drug treatment and social reintegration programs. Possession of illicit drugs became an administrative offence, which attracts only civil penalties, including the payment of a fine or community service. 'Commissions for the Dissuasion of Drug Addiction' made up of legal, health and social work professionals were tasked with determining the appropriate penalty. Under current policies, while offenders are encouraged to seek treatment voluntarily, compulsory programs are rarely mandated. Notwithstanding, or perhaps by virtue of this approach, treatment rates have soared; from 1991-2011 the number of persons receiving drug treatment increased by 60%, while the number of users remained steady or declined.<sup>39</sup> This outcome might be explained by the expansion of rehabilitation services and a reduction in stigma surrounding drug use.

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<sup>35</sup> C Hughes, A. Ritter, J. Chalmers, K. Lancaster, M. Barratt & V. Moxham-Hall, 'Decriminalisation of drug use and possession in Australia – A briefing note' (2016) *Drug Policy Modelling Program*, NDARC, UNSW Australia

<sup>36</sup> Laura Eggertson, 'Reforms Urged to Address Illegal Drug Use in Australian Prisons', (2012) 184(15) *Canadian Medical Association Journal*, 793.

<sup>37</sup> Nicholas Cowdery, Helen Gibbon and Ben Mostyn, 'The criminalisation of drugs and the search for alternative approaches', (2012) 24(2) *Current Issues in Criminal Justice*, 261-269.

<sup>38</sup> George Murkin, 'Drug Decriminalisation in Portugal: Setting the Record Straight', *Transform Drug Policy Foundation*, June 2014, 2

<sup>39</sup> Drug Policy Alliance, *Drug Decriminalization in Portugal: A Health-Centered Approach*, (February 2015), <[https://www.drugpolicy.org/sites/default/files/DPA\\_Fact\\_Sheet\\_Portugal\\_Decriminalization\\_Feb2015.pdf](https://www.drugpolicy.org/sites/default/files/DPA_Fact_Sheet_Portugal_Decriminalization_Feb2015.pdf)>.

Despite claims of critics of Portugal's reforms, data indicates that rates of drug use have *not* increased post-decriminalisation. Precisely, drug use among 16-24 year olds has declined; a positive sign for reducing rates of long-term dependency. In addition, according to past month and past year drug use indicators, usage has fallen overall since 2001.<sup>40</sup> Furthermore, under a decriminalisation regime, Portugal has a rate of 3 overdose deaths per million citizens, in comparison to the European Union average of 17.3.<sup>41</sup> Other impacts of Portugal's reforms include reduced pressure on the criminal justice system, reduced HIV/AIDS drug-related infections, reduced problematic drug use and reduced drug-related deaths.<sup>42</sup>

## Netherlands

In the Netherlands, there is a split between what is defined as soft drugs, referring to cannabis, and hard drugs, referring to heroin, methamphetamines and cocaine.<sup>43</sup> The policy of the Netherlands government minimising the opportunity for soft drugs to become gateway for harder drug use by tolerating the use of soft drugs.<sup>44</sup> Possession of small quantities of cannabis has been decriminalised, though supplying of drugs, whether it be hard or soft drugs, is still a criminal offence. There is however a policy of tolerance for cannabis sold in coffee shops, though since 2013 only residents of the Netherlands can purchase cannabis from coffee shops.<sup>45</sup>

The effectiveness of the Netherlands policy has seen a large decline in people buying harder drugs from their cannabis sources: only 14% of cannabis users in the Netherlands report that suppliers offer other drugs besides cannabis, compared to 52% in Sweden.<sup>46</sup>

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<sup>40</sup> George Murkin, 'Drug Decriminalisation in Portugal: Setting the Record Straight', *Transform Drug Policy Foundation*, June 2014, 2

<sup>41</sup> Chris Ingraham, 'Portugal decriminalised drugs 14 years ago – and now hardly anyone dies from overdosing', *The Independent* (online), 6 June 2015 <<http://www.independent.co.uk/news/world/europe/portugal-decriminalised-drugs-14-years-ago-and-now-hardly-anyone-dies-from-overdosing-10301780.html>>

<sup>42</sup> Nicole Lee and Alison Ritter, 'Australia's recreational drug policies aren't working, so what are the options for reform?', *The Conversation* (online), 2 March 2016, <<https://theconversation.com/australias-recreational-drug-policies-arent-working-so-what-are-the-options-for-reform-55493>>

<sup>43</sup> Government of the Netherlands, *Difference between soft and hard drugs*, <<https://www.government.nl/topics/drugs/contents/difference-between-hard-and-soft-drugs>>

<sup>44</sup> Ibid.

<sup>45</sup> Government of the Netherlands, *Toleration policy regarding soft drugs and coffee shops*, <<https://www.government.nl/topics/drugs/contents/toleration-policy-regarding-soft-drugs-and-coffee-shops>>

<sup>46</sup> Kasia Malinowska, 'For Safe and Effective Drug Policy, Look to the Dutch', *Open Society Foundations* (online), 16 July 2013, <<https://www.opensocietyfoundations.org/voices/safe-and-effective-drug-policy-look-dutch>>

### 3.2. The principle of harm minimisation

JA believes that law reform to address the use of drugs in prisons should focus primarily on harm minimisation rather than criminalisation. This is the preferred approach outlined in the draft National Drug Strategy 2016-2025 (October 2015), produced by the Intergovernmental Committee on Drugs (IGCD). As explained in the national Drug Strategy report, harm minimisation refers to a three-pillar policy: (1) demand reduction, (2) supply reduction, and (3) harm reduction.<sup>47</sup> The underlying objective of harm minimisation is to encourage the safer practices and to reduce preventable harm in order to reduce social and health inequalities.<sup>48</sup> Importantly, the benefits of the harm minimisation approach are extensive; not only does it reduce the harm of individual drug users in prisons, but it also more likely leads to improving their individual wellbeing and provides safer environments for families, workplaces, and society at large.

In a 2016 paper published by independent public policy focused think tank 'Australia21'<sup>49</sup>, Former Victorian premier Jeff Kennett strongly advocated for building a supervised drug consumption room in Melbourne since visiting one in Sydney in 2015<sup>50</sup>. The centre in Sydney has led to no deaths and dramatically decreased instances of harm to drug users. Medically supervised drug injecting centres would therefore address the recent spike in the number of heroin-induced deaths in Victoria; the highest since the early 2000s.<sup>51</sup>

Reasons to build a drugs consumption room in Victoria as supported by Jeff Kennett include the following results and evidence: they have 'reduced the spread of HIV and hepatitis C, reduced deaths and injuries from drug overdose, lowered ambulance call-

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<sup>47</sup> Intergovernmental Committee on Drugs, 'Draft National Drug Strategy 2016-2025' (2015) *National Drug Strategy*, <[http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/73E3AD4C708D5726CA257ED000050625/\\$File/draftnds.pdf](http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/Publishing.nsf/content/73E3AD4C708D5726CA257ED000050625/$File/draftnds.pdf)>

<sup>48</sup> Ibid

<sup>49</sup> Australia21, 'Can Australia Respond to Drugs more Effectively and Safely?' (November 2016) <<http://australia21.org.au/wp-content/uploads/2017/02/Can-Australia-respond-to-drugs-more-effectively-and-safely-Roundtable-report.pdf>>

<sup>50</sup> Alex Wodak, 'Why Australia needs drug consumption rooms', *The Conversation (online)*, 18 January 2016 <<http://theconversation.com/why-australia-needs-drug-consumption-rooms-53215>>

<sup>51</sup> Ibid

outs, increased referral to health and social services including drug addiction treatment'.<sup>52</sup>

There has been no evidence of increased crime in the vicinity, and no evidence for increased drug use or delayed entry to drug treatment. Fears that the problems of drug markets might be exacerbated have proved groundless.

### 3.3. Needle and Syringe Program (NSP)

There is a strong rationale for the implementation of Needle and Syringe Programs (NSP) in Victorian prisons. Syringe sharing rates are significantly higher in prisons than among people who inject drugs in the general community. Therefore the implementation of NSP in Victorian prisons is an appropriate harm minimisation measure to reduce the risk of the spread of blood borne viruses among prisoners. A clean needle and syringe program that provides prisoners with a confidential service to readily access clean syringes is essential to building the trust and confidence of prisoners accessing the program. This is a measure that has been successfully implemented in countries including Switzerland, Spain, Portugal, Germany, Moldova, Kyrgyzstan, Belarus, Luxembourg.<sup>53</sup>

The first prison NSP program was introduced in Switzerland in 1992. In 1996, Germany launched its first NSP and then in 1997, Spain introduced its first program. By 2000, these 3 countries had a total of 19 prison NSPs in operation. These programs proved to be effective, as there were significant reductions in syringe sharing and reduction in the transmission of blood borne viruses. Additionally drug use patterns remained stable or decreased over time.<sup>54</sup> The positive results from these programs, along with an urgent need to address the high prevalence of the transmission of blood born viruses in prisons prompted an additional 6 countries (Moldova, Kyrgyzstan, Belarus, Armenia, Iran, Luxembourg) to launch NSPs by 2006. By 2011, a further 4

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<sup>52</sup> European Monitoring Centre for Drugs and Drug Addiction, 'Perspectives on Drugs' (2015) <[http://www.salledeconsommation.fr/\\_media/drug-consumption-rooms-emcdda-pod2015.pdf](http://www.salledeconsommation.fr/_media/drug-consumption-rooms-emcdda-pod2015.pdf)>

<sup>53</sup> See 'Needle and Syringe Program', *Justice Action*, <[http://www.justiceaction.org.au/index.php?option=com\\_content&view=article&id=633:needle-and-syringe-program&catid=78&Itemid=1110&highlight=WyJkcVncvIsImRydWdzJy4iXQ](http://www.justiceaction.org.au/index.php?option=com_content&view=article&id=633:needle-and-syringe-program&catid=78&Itemid=1110&highlight=WyJkcVncvIsImRydWdzJy4iXQ)>

<sup>54</sup> Australian Injecting & Illicit Drug Users League, 'Needle & Syringe Programs in Prisons', (May 2015) <<http://www.aivl.org.au/wp-content/uploads/NSP-in-Prisons-An-International-Review.pdf>>

countries (Afghanistan, Tajikistan, Romania and Portugal) had introduced Prison NSPs. The effectiveness of these programs reflected previous outcomes, namely, the significant reduction in the transmission of blood borne diseases.<sup>55</sup>

Following a review on the success of NSPs internationally, the United Nations Office on Drugs and Crime (UNODC) and UNAIDS in 2007 recommended that prison authorities in countries experiencing an epidemic of HIV among people who inject drugs should urgently introduce and scale up NSPs.<sup>56</sup> The review concluded that prison NSPs are effective when coupled with comprehensive harm minimisation and health promotion strategies. The evidence reveals that sterile needles and syringes provided for people who inject drugs in prisons has led to a significant reduction of syringe sharing, and as a result, has reduced HIV and Hepatitis C transmissions. There is no evidence to suggest that prison-based Needle Syringe Programs have had unintended negative consequences.

Furthermore, NSPs have increased safety for prison staff as well as prisoners. The international evidence has shown that prisons operating NSPs have reduced the number of accidental needle stick injuries.<sup>57</sup> This is due to prison NSPs having strict regulations regarding the storage and disposal of needles and syringes, including keeping puncture proof containers in designated places within cells and having reliable supply of sterile needles and syringes to prisoners. This provides greater safety, as needles do not need to be hidden in common areas that pose a risk for accidental needle stick injuries.<sup>58</sup>

Prison Needle and Syringe Programs have been operating internationally for over 20 years with successful and effective outcomes, demonstrating that NSP programs can be safely and effectively implemented in Victorian prisons. These programs have the

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<sup>55</sup> Australian Injecting & Illicit Drug Users League, 'Needle & Syringe Programs in Prisons', (May 2015) <<http://www.aivl.org.au/wp-content/uploads/NSP-in-Prisons-An-International-Review.pdf>>

<sup>56</sup> World Health Organisation, 'Interventions to address HIV in prisons: Needle and syringe programmes and decontamination strategies Geneva: World Health Organization' (2007) <[http://www.who.int/hiv/idu/OMS\\_E4Acomprehensive\\_WEB.pdf](http://www.who.int/hiv/idu/OMS_E4Acomprehensive_WEB.pdf)>

<sup>57</sup> Canadian HIV/AIDS Legal Network, 'Prison Needle Exchange: Lessons from a Comprehensive Review of International Evidence and Experience' (2006) <<https://static.prisonpolicy.org/scans/prisonneedlexchange.pdf>>

<sup>58</sup> Australian Injecting & Illicit Drug Users League, 'Needle & Syringe Programs in Prisons', (May 2015) <<http://www.aivl.org.au/wp-content/uploads/NSP-in-Prisons-An-International-Review.pdf>>

potential to dramatically reduce the transmission of HIV and Hepatitis C and providing greater safety for both prisoners and prison staff.

Although NSPs are readily accessible in the community, there are currently no NSPs operating in Australian prisons. Prisoners within correctional facilities are denied access to clean needles and syringes. Significant proportions of prison populations inject illicit drugs. Needle sharing among prisoners is institutionalised, thereby making prisons potential incubators to blood borne infections. Prisoners released from prison thus poses significant health risks to the broader community. This is inconsistent with Australia's stance on harm minimisation.<sup>59</sup>

*i) The ACT: The Failure of a Model NSP*

In 2012, the ACT Department of Corrective Services expressed its decision to trial a needle and syringe program. The proposal was for a trial injecting room at the Alexander Maconochie Centre, which would allow sterile needles and syringes to be provided for illicit drugs. However, the program has consistently been met with resistance from members of the Community and Public Sector Union (CSPU), the union representing Australian prison corrections officers.<sup>60</sup> Indeed, in a recent vote on the issue in January 2017, only four corrections officers voted for the proposal while 151 voted against it.<sup>61</sup> When asked why he opposed the proposal for NSPs, ACT Regional Director of CPSU, Vince McDevitt declared that his members were 'unanimously' opposed to trialling NSPs in prison for safety reasons.<sup>62</sup>

*ii) NSW: Success story NSP*

In 1987, the NSW government amended the *Drug Misuse and Trafficking Act 1985* to legalise the possession of needles and syringes. Evidence reveals that NSW had huge amounts of community acceptance and support for the NSP program.<sup>63</sup> This approach to decriminalising needles and syringes has led to a decrease in the spread of AIDS.

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<sup>59</sup> HIV Australia, 'It's Time: A Case for Trialling an NSP in Australian Prisons', (2016) 14(1), *Australian Federal AIDS Organisations*, <<https://www.afao.org.au/library/hiv-australia/volume-14/vol-14-no-1/its-time-a-case-for-trialling-an-nsp-in-australian-prisons#.WKphg2SqHw>>

<sup>60</sup> Finn O'Keefe, 'Trial of needle and syringe program announced for ACT prison' (2012) 10(2), *HIV Australia*.

<sup>61</sup> ABC News, 'Needle exchange program rejected for Canberra's jail', ABC News (online), 17 September 2016, <<http://www.abc.net.au/news/2016-09-17/needle-exchange-program-rejected-at-canberra-jail/7854290>>

<sup>62</sup> Finn O'Keefe, 'Trial of needle and syringe program announced for ACT prison' (2012) 10(2), *HIV Australia*.

<sup>63</sup> Department of Health, *Return on investment in needle and syringe programs in Australia: report*, (2009) <<http://www.health.gov.au/internet/publications/publishing.nsf/Content/illicit-pubs-needle-return-1-rep-toc~illicit->

The effectiveness of NSW's harm minimisation approach is also shown through the positive health and economic impacts. It was estimated that during the period 2000-2009, NSPs have directly averted 32,050 new HIV infections, and 96,667 new HCV infections. Additionally, during 2000-2009 the gross funding for NSP services was \$243 million. This investment yielded healthcare cost savings of \$1.28 billion; approximately 140,000 DALYs gained; and net financial cost-saving of \$1.03 billion.<sup>64</sup> This is an approach that the Victorian government can adopt for great health, economic and social results.

*iii.) Ways to Overcome Barriers to the Effective Implementation of NSP*

Too often, important policy decisions are made without any basis in concrete evidence, instead influenced by factors such as community attitudes, media bias, and political sensitivities. The continued resistance to the implementation of NSP in Australian prisons seems to suffer from the same problem. The following paragraphs identify a number of strategies that can be implemented to increase the chances of the successful implementation of NSP in Australia. What further contributes to the difficulties with overcoming resistance to implementing effective drug law reform is the general risk aversion that is engrained in the culture of politics. By no means exclusive to the case of implementing NSP, this culture has contributed to a policy environment that is reluctant to engage with necessary processes of reform.<sup>65</sup>

*1. Lobbying by stakeholders*

In order to successfully overcome the resistance to NSPs in Australia, there needs to be a greater pressure from relevant stakeholders. There should be continued discussion with groups of prison officers who are opposed to NSPs, health

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pubs-needle-return-1-rep-app~illicit-pubs-needle-return-1-rep-app-a~illicit-pubs-needle-return-1-rep-app-a-nsw#his>

<sup>64</sup> AIDS Council of NSW, *Return on investment 2: Evaluating the cost-effectiveness of needle and syringe programs in Australia* (2009), <<http://www.acon.org.au/wp-content/uploads/2015/04/Evaluating-the-cost-effectiveness-of-NSP-in-Australia-2009.pdf>>

<sup>65</sup> Australian Injecting and Illicit Drug Users League, *Legislative and Policy Barriers to Needle and Syringe Programs and Injecting Equipment Access for People Who Inject Drugs* (2010), [http://www.aivl.org.au/wp-content/uploads/29057-AIVL-book-text\\_FA.pdf](http://www.aivl.org.au/wp-content/uploads/29057-AIVL-book-text_FA.pdf)

professionals, members of Parliament, and other relevant stakeholders. Another necessary focal point is evidence-based arguments to develop ways to reduce the spread of blood borne viruses.

## *2. Difficulty achieving higher community support*

Greater community support is critical in order for a NSP program to succeed and be accepted in the health sector and the community. To obtain community support, information and education of the value of the NSP needs to be provided to the general public. With higher community support, the implementation of a NSP program should help minimise drug-related harm.<sup>66</sup>

## **4.0 APPENDIX**

### **4.1. Appendix A – Terms of Reference**

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<sup>66</sup> NSW Department of Health, *Needle and Syringe Program Guideline 2013*, (28 August 2013) <[http://www0.health.nsw.gov.au/policies/gl/2013/pdf/GL2013\\_007.pdf](http://www0.health.nsw.gov.au/policies/gl/2013/pdf/GL2013_007.pdf)>



## **LAW REFORM, ROAD AND COMMUNITY SAFETY COMMITTEE**

### **Terms of Reference**

58<sup>th</sup> Parliament

Received from the Legislative Council on 11 November 2015

### **Inquiry into Drug Law Reform**

That pursuant to section 33 of the *Parliamentary Committees Act 2003* this House requires the Law Reform, Road and Community Safety Committee to inquire into, consider and report, no later than 9 March 2018 —

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; and
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.

### **Committee Membership**

<b>Mr Geoff Howard</b>	Labor Party	Chair
<b>Mr Bill Tilley</b>	Liberal Party	Deputy Chair
<b>Hon Martin Dixon MP</b>	Liberal Party	
<b>Mr Khalil Eideh MLC</b>	Labor Party	
<b>Ms Fiona Patten MLC</b>	Australian Sex Party	
<b>Ms Natalie Suleyman MP</b>	Labor Party	
<b>Mr Murray Thompson</b>	Liberal Party	

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