

Submission to the Joint Committee on Law Enforcement inquiry into Australia's illicit drug problem - challenges and opportunities for law enforcement

February 2023



Community Legal Centres
Australia

Introduction

About this submission

Community Legal Centres Australia welcomes this opportunity to make a submission to the Joint Committee on Law Enforcement's inquiry into Australia's illicit drug problem – challenges and opportunities for law enforcement.

This submission addresses elements of the inquiry's Terms of Reference four and five, particularly:

- the involvement and effectiveness of law enforcement in harm reduction strategies
- the strengths and weaknesses of decriminalisation.

Community legal centres across the country work daily with people experiencing disadvantage, discrimination and trauma who are negatively impacted by the criminalisation of the personal use and possession of illicit drugs. We see first-hand the harms associated with treating drug use as a criminal legal issue rather than a health issue, including those associated with:

- discriminatory exercise of police discretion when diverting people from the criminal legal system, which contributes to high rates of incarceration for people experiencing disadvantage charged with minor drug offences particularly:
 - Aboriginal and Torres Strait Islander people
 - Criminalised women, who make up the fastest growing demographic in Australia's prisons, and are most likely to be imprisoned for non-violent and drug-related offences
- the interplay between states', and territories', drug laws and draconian bail regimes, which result in high numbers of people charged with simple drug offences being remanded in custody for charges unlikely to result in a prison term at sentencing because they breach strict bail conditions by continuing to possess and use illicit drugs of dependence
- disincentives and barriers to help-seeking created by criminal justice responses
- disruptions to treatment caused by periods of imprisonment, including on remand, for simple drug offences
- under-investment in harm reduction and treatment and rehabilitation services
- criminal record discrimination, which negatively impacts people's ability to improve their social and economic circumstances by creating barriers to accessing housing, health services, and employment.

As such, Community Legal Centres Australia and our membership network advocate taking a humane, health-focussed approach to responding to people who use drugs.

The first part of this submission summarises the strong and growing body of evidence that punitive responses to personal drug use and possession have failed. The second part sets out the key elements of a health-focussed response to drug use and associated recommendations.

Recommendations

Federal, state and territory governments should explicitly adopt, adequately fund, and implement a health-focussed response to personal drug use and possession in all Australian jurisdictions. This includes:

1. Reallocating funding and investment across the three pillars of the National Drug Strategy (harm reduction, demand reduction and supply reduction) so that more funding is directed to harm reduction and less to law enforcement responses
2. Increasing availability of health and social service-based treatment and rehabilitation facilities and services, including:
 - a. Targeted and culturally appropriate services for Aboriginal and Torres Strait Islander people
 - b. In rural, regional, remote, and very remote communities
 - c. Targeted services for women, people in prison, young people, LGBTIQ+ communities
3. Destigmatising, promoting, and expanding availability of harm reduction services, including pill testing, needle and syringe programs, safe injecting and drug use facilities, drug replacement programs etc.
4. Decriminalising simple drug offences for personal use and possession of all drugs
5. Reforming police and court criminal diversion programs, including:
 - a. Expanding eligibility criteria, for example by removing strict limits on the number of times a person can be diverted from the criminal legal system for simple drug offences
 - b. Removing police discretion in relation to diversion for simple drug offences
 - c. Making participation in treatment programs voluntary
6. Reforming harsh bail and sentencing laws to reduce the number of people incarcerated, including on remand for breaching bail conditions prohibiting them from possessing and using drugs of dependence, particularly women and Aboriginal and Torres Strait Islander people.

About community legal centres Australia

Community Legal Centres Australia is the national representative voice for the community legal sector. We are an independent, non-profit organisation set up to support community legal services to provide high-quality, free, and accessible legal, and related services to everyday people, especially people experiencing financial hardship, socio-economic disadvantage, discrimination, or domestic or family violence.

Our members are the eight state and territory community legal sector peak bodies. Together, we represent about 170 community legal centres, women's legal services, Family Violence Prevention Legal Services and Aboriginal and Torres Strait Islander Legal Services operating in metropolitan, regional, rural, remote, and very remote communities across Australia.

Our movement's vision is for a fair and equitable society in which:

- Our legal systems and institutions are accessible to all, decolonised, and no longer criminalise poverty, disadvantage, or disability

- All members of our community have access to the power, tools and means to live safe, secure, and meaningful lives, free from discrimination, violence, exploitation, and abuse
- We respect and protect the rights of First Nations people and communities to land, language, culture, and self-determination
- We respect and protect the natural environment for current and future generations.

Our expertise is grounded in the stories of the 200,000 people who engage our sector's services each year and who experience first-hand the barriers to justice that exist in our legal system. Our public advocacy ensures that their voices and experiences drive progressive system reform.

Failure of punitive approaches to drug use

The evidence is clear: punitive responses have failed

Punitive approaches to reducing illicit drug use, minimising harm, and disrupting local and international drug markets have failed.

They have not resulted in reduced rates of harmful drug use, nor had significant impacts on global illicit drug markets. A recent report by the Victorian Aboriginal Legal Service cites data on offences related to methamphetamines from the Victorian Crime Statistics Agency, which provide a powerful illustration of the extent of the failure of law-and-order approach to drug use. The report states,

In 2006, a total of just six methamphetamine offences were recorded [in Victoria]. This was a drug without any significant prevalence in the community. If the approach of punishing drug use and interdicting supply could ever succeed, it should be in these kinds of circumstances – with very low existing levels of addiction or community demand. Instead, the number of methamphetamine offences increased by 119,783% in the fifteen years to 2021.

Around Australia, the prevalence of methamphetamine has grown by so much – despite increasing police enforcement – that a Commonwealth Parliamentary inquiry stated in 2018 that “[w]hen former law enforcement officers and law enforcement agencies themselves are saying that Australia cannot arrest its way out of the methamphetamine problem, that view must be taken seriously.”¹

Investment in punitive approaches cost vastly more than health-focussed responses.²³ Australian governments spend more than \$1 billion each year on drug law enforcement and other supply control measures, yet the price of illicit drugs has fallen over the last decade

¹ Victorian Aboriginal Legal Service (2022) VALS Policy Paper: Harm Reduction Not Harm Maximisation – An Alternative Approach to Drug Possession, October 2022, pg. 8: <https://www.vals.org.au/publications/>.

² Fitzroy Legal Service (2017) Submission to the Victorian Government's Inquiry into drug law reform, 17 March 2017, Submission 147, pp. 4 – 5: <https://www.parliament.vic.gov.au/58th-parliament/lrcsc/inquiries/article/2810>.

³ Community Legal Centres Tasmania (2023) The case for a health focussed response to drug use in Tasmania's legal system – Update 2023, pp. 3 – 4: <http://www.cctas.org.au/2022/01/drug-law-reform-report/>.

and they remain relatively easy to obtain.⁴ Cost benefit analyses of implementing health-focussed responses to drug use suggest that taking a more humane approach would save millions of dollars per year. For example, research commissioned by Community Legal Centres Tasmania from the Tasmanian School of Business and Economics found that decriminalisation of illicit drug use in Tasmania would save the state government \$61.8 million in 2021 – 22 alone.⁵

Punitive approaches have failed to address the personal or social harms associated with illicit drug use. Instead, many of the everyday harms associated with drug use derive from its criminal status. Criminalisation ignores the complexity and reality of drug use and addiction, and often worsens the health, social and economic circumstances of people who use drugs.⁶ It cause harm to people who use or are dependent on illicit drugs by:

- increasing contact with the criminal justice system, particularly for people experiencing poverty, disadvantage, or discrimination (through unequal exercise of discretion by police, courts etc.)
- discouraging help-seeking in relation to the trauma that often underlies drug dependence, for emergency assistance in response to overdoses, and for longer-term treatment and rehabilitation
- negatively affecting people's ability to improve their social and economic circumstances by creating barriers to employment, housing, and other services (through criminal record discrimination)
- disrupting people's efforts at rehabilitation through unnecessary imprisonment – particularly where criminalisation interacts with states', and territories' draconian bail laws to leave hundreds of people in prison awaiting trial for drug charges that will not result in a prison sentence when they finally reach court.
- failing to provide adequate treatment and rehabilitation services to people in prison.⁷

Further, these harms are unequally distributed across our communities, with people experiencing poverty, homelessness, mental ill-health, and trauma disproportionately subject to criminal justice system responses compared with other drug users.

4 Ibid., pg. iv.

5 Blacklow, P. (2023) *Illicit Drug Reform in Tasmania: A Cost Benefit Analysis 2021-2022*, Tasmanian School of Business & Economics, University of Tasmania, 12 January 2023. Reproduced in: Community Legal Centres Tasmania (2023) *The case for a health focussed response to drug use in Tasmania's legal system – Update 2023*: <http://www.ccltas.org.au/2022/01/drug-law-reform-report/>.

6 Fitzroy Legal Service (2017) *Submission to the Victorian Government's Inquiry into drug law reform*, 17 March 2017, Submission 147, pg. 5: <https://www.parliament.vic.gov.au/58th-parliament/lrrcsc/inquiries/article/2810>.

7 See for example: *Fitzroy Legal Service (2017) Submission to the Victorian Government's Inquiry into drug law reform*, 17 March 2017, Submission 147, pg. 5: <https://www.parliament.vic.gov.au/58th-parliament/lrrcsc/inquiries/article/2810>; Smart Justice for Women (2023) *Smart Justice for Women: Policy Platform 2022 – 2024 – Reducing the criminalisation of women in Victoria, Version 1: January 2023*: <https://www.fclc.org.au/sjfw#:~:text=Smart%20Justice%20for%20Women's%20Victorian%20Election%20Platform%202022&text=Prevent%20women%20from%20becoming%20criminalised,affordable%20housing%20options%20for%20women>; Victorian Aboriginal Legal Service (2022) *VALS Policy Paper: Harm Reduction Not Harm Maximisation – An Alternative Approach to Drug Possession*, October 2022: <https://www.vals.org.au/publications/>.

The criminalisation of personal drug use and possession contribute directly to the alarming growth in incarceration rates for women⁸ and the ongoing, shameful over-representation of Aboriginal and Torres Strait Islander people⁹ in Australian prison systems.

Most criminalised women are imprisoned or held in custody on remand for non-violent offences, including offences related to drug dependence. According to the Federation of Community Legal Centres (Victoria), most have personal histories of violence, abuse, and trauma, which intersect with experiences of poverty and drug use, and result in high rates of contact with criminal legal systems.¹⁰

Similarly, Aboriginal and Torres Strait Islander people are more likely to be pursued by police through the criminal justice system for minor drug offences than non-Indigenous people. For example, the NSW Bureau of Crime Statistics and Research found that between 2015 and 2019, “82.55% of all Indigenous people found with a non-indictable quantity of cannabis were pursued through the courts, compared with only 52.29% for the non-Indigenous population” and that NSW Police “were four times more likely to issue cautions to non-Indigenous people.”¹¹

Countless inquiries have recommended change

The evident failure of punitive responses to illicit drug use to curtail either supply or demand and, in fact, to increase associated harms for people who are disadvantaged and marginalised, makes clear that we urgently need to take different approach.

The view that we must treat drug use primarily as a health issue, rather than a criminal justice issue, is now widely accepted. Across the world, a growing number of governments (domestic and international), and international bodies, like the World Health Organisation,¹² acknowledge – in principle or in practice – personal drug use is a health issue deserving of a humane, health-focussed rather than a criminal response.

Table 1 below highlights key findings and recommendations from a selection of recent Australian federal, state, and territory government inquiries into illicit drug use. All have recommended governments recognise drug use as a health issue and implement, and adequately fund, health-focussed responses that prioritise harm reduction, access to treatment services, and diversion from criminal legal systems.

8 Smart Justice for Women (2023) *Smart Justice for Women: Policy Platform 2022 – 2024 – Reducing the criminalisation of women in Victoria, Version 1: January 2023*: <https://www.fclc.org.au/sifw#:~:text=Smart%20Justice%20for%20Women's%20Victorian%20Election%20Platform%202022&text=Prevent%20women%20from%20becoming%20criminalised,affordable%20housing%20options%20for%20women>.

9 Victorian Aboriginal Legal Service (2022) *VALS Policy Paper: Harm Reduction Not Harm Maximisation – An Alternative Approach to Drug Possession, October 2022*: <https://www.vals.org.au/publications/>.

10 Smart Justice for Women (2023) *Smart Justice for Women: Policy Platform 2022 – 2024 – Reducing the criminalisation of women in Victoria, Version 1: January 2023*: <https://www.fclc.org.au/sifw#:~:text=Smart%20Justice%20for%20Women's%20Victorian%20Election%20Platform%202022&text=Prevent%20women%20from%20becoming%20criminalised,affordable%20housing%20options%20for%20women>.

11 Michael McGowan and Christopher Knaus, *NSW police pursue 80% of Indigenous people caught with cannabis through the courts*, The Guardian, 10 June 2020, <https://www.theguardian.com/australianews/2020/jun/10/nsw-police-pursue-80-of-indigenous-people-caught-with-cannabis-through-courts>.

12 World Health Organisation (2014) *Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations*. Cited in Community Legal Centres Tasmania (2023) *The case for a health focussed response to drug use in Tasmania's legal system – Update 2023*, pg. 11: <http://www.cctas.org.au/2022/01/drug-law-reform-report/>.

Table 1: Select findings and recommendations from recent parliamentary inquiries into illicit drug use

Jurisdiction / inquiry	Findings	Recommendations
<p>Federal Joint Committee on Law Enforcement inquiry into 'ice' (2018)¹³</p>	<p>The Committee noted at [1.9] that the 'evidence before [it] reveals a consistent message articulated by alcohol and other drug experts, governments, the NIT and law enforcement agencies, that is: a person's drug use is a health issue and for this reason, Australian governments and law enforcement agencies cannot arrest their way out of it.'</p> <p>The Committee visited Portugal in 2017 and considered the decriminalisation model implemented there from 2001. They did not conclude a view on the appropriateness of decriminalisation in Australia, but dedicated a chapter of the final report to the Portuguese model, noting:</p> <ul style="list-style-type: none"> • the weight of evidence that suggested the Portuguese approach has been successful • the current approach to drug dependence in Australia is not working • if Australian governments were to consider decriminalising drug use and possession it would need to do so in conjunction with a substantial increase in the availability and capacity of drug treatment services • increased investment in treatment services was critical either way. 	<p>The Committee's recommendations focussed on measures to improve access to drug and alcohol treatment services consistent with the aims of the National Drug Strategy, including culturally appropriate services for Indigenous people and communities and specialised services for young people. For example:</p> <p>Recommendation 3</p> <p>Australian governments individually and collectively develop and implement plans to increase the capacity of residential rehabilitation across Australia in a way that ensures equitable access (at 2.85).</p> <p>Recommendation 9</p> <p>The Commonwealth government ensures that future public awareness campaigns engender compassion towards drug users and are targeted at and inform those people with the objective of encouraging them to seek treatment and support (at 4.52).</p> <p>Recommendation 13</p> <p>5.73 Commonwealth, state and territory governments re-balance alcohol and other drug funding across the three pillars of the National Drug Strategy (supply, demand, and harm reduction strategies) (at 5.73).</p>
<p>NSW Special Commission of</p>	<p>This comprehensive inquiry into drug use and policy in NSW found that:</p>	<p>The Special Commission's recommendations are clearly founded on harm reduction principles and promote the adoption of a health-focussed response to illicit drug use in NSW. They are predicated on increased</p>

¹³ Parliament of Australia Joint Committee on Law Enforcement (2018) *Final Report: Inquiry into crystal methamphetamine (ice)*, 27 March 2018: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Crystalmethamphetamine45/Final_Report.

<p><i>inquiry into the drug 'ice' (2020)</i>¹⁴</p>	<ul style="list-style-type: none"> • In the 10 years since NSW had a drug and alcohol strategy to support and guide policy, there has been a clear lack of direction for AOD health services, and significant gaps in services for people who need treatment, rehabilitation, and support • It is time for a different approach, the fundamental first step in which is recognising illicit drug use as a health and social problem rather than a criminal justice issue • The use of illicit drugs requires a compassionate response consistent with human rights approaches, rather than responses that compound harm. • Effective responses must recognise the social determinants of addiction, including trauma • There is a need to address the stigma attached to illicit drug use – which criminalisation and negative media commentary contribute to, and which prevents people accessing treatment and services.¹⁵ 	<p>government resourcing for drug rehabilitation and treatment. For example:</p> <p>Recommendation 5: Develop a whole of government alcohol and other drugs policy that:</p> <ul style="list-style-type: none"> • recognises drug use as a health issue as well as the harms associated with punitive responses • prioritises health and social responses and maintains harm minimisation as the overarching objective • ensures an appropriate distribution of resources and action to achieve the objective of harm minimisation. <p>Recommendation 11: Decriminalise possession of illicit drugs for personal by removing:</p> <ul style="list-style-type: none"> • criminal offences for personal use and possession • the limit on the number of treatment referrals a person may receive • civil sanctions for non-compliance with treatment. <p>At the same time, the NSW Government should increase investment in assessment and treatment services.</p> <p>Recommendation 18: Amend spent convictions legislation so that criminal records for simple possession offences are expunged after 2 years (rather than 10 years) or in the case of a young person, after one year (rather than three years).</p>
<p><i>Inquiry into the use of cannabis in Victoria (2021)</i>¹⁶</p>	<p>The weight of evidence presented to the inquiry supported cannabis reform in the form of introducing regulation rather than increasing penalties or maintaining the status quo (pg. 1)</p>	<p>The Committee formed a clear view that cannabis use should be considered a health issue, rather than a criminal justice issue and that the Victorian Government should further investigate the impacts of legalising adult personal use of cannabis. Recommendations include:</p>

14 Professor Dan Howard SC (2020). *Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants: Report Volume 1*, January 2020: <https://www.dpc.nsw.gov.au/publications/special-commissions-of-inquiry/the-special-commission-of-inquiry-into-the-drug-ice/>.

15 Ibid., pp. xxiv – xxv.

16 Legislative Council Legal and Social Issues Committee (Vic) (2021), *Report of the Inquiry into the use of cannabis in Victoria*, Parliament of Victoria, 5 August 2021: <https://apo.org.au/node/313452>.

	<p>The Committee found amongst other things:</p> <ul style="list-style-type: none"> • the harms arising from the criminalisation of cannabis affect a larger number of people and have a greater negative impact than the mental health and other health harms associated with cannabis use (pg. xv) • Criminal legal system responses overwhelmingly target cannabis users, with over 94% of cannabis-related arrests for offences of consumption. (pg. xv) • The restrictive eligibility criteria of drug diversion programs have excluded the people most in need of treatment and support services, including people experiencing disadvantage and Aboriginal and Torres Strait Islander people (pg. xvii) • A criminal record for a minor cannabis use or possession offence creates barriers to housing, education, and employment, which are counterproductive to rehabilitation and reintegration, potentially increasing the likelihood of reoffending (pg. xviii). 	<p>Recommendation 1: investigate the impacts of legalising cannabis for adult personal use in Victoria (pg. xiii).</p> <p>Recommendation 4: provide ongoing funding for alcohol and other drug sector organisations to provide programs that seek to build protective factors against problematic drug use (pg. xiv).</p> <p>Recommendation 7: provide further funding to expand drug diversion programs, particularly in rural and regional Victoria (pg. xvi).</p> <p>Recommendation 9: review the eligibility requirements for drug diversion programs to determine if they are too restrictive and excluding of vulnerable people in need of treatment and support (pg. xvii).</p>
<p><i>Inquiry into drug law reform in Victoria (2018)</i>¹⁷</p>	<p>The Committee found that there is growing recognition among governments and the community that greater balance between traditional law enforcement and health-based responses will have a broader positive effect on the health and safety of communities (pg. xvii).</p> <p>The Committee also noted the growing acknowledgment and recognition that the criminalisation of drugs is not achieving its intended objectives and the importance of conceptualising illicit substance use as a health and social issue rather than a strictly law enforcement issue (pg. xix).</p>	<p>The Committee's recommendations acknowledge that while people continue to use substances, more needs to be done to minimise the associated harms. For example:</p> <p>Recommendation 1: drug policy should be based on effective and humane responses that prioritise health and safety outcomes.</p> <p>Recommendation 2:</p> <p>Recommendation 9: develop a public awareness campaign on substance use and disorders to reduce negative labelling of people who</p>

¹⁷ Victoria Parliament Law Reform, Road Safety and Community Safety Committee (2018) *Inquiry into drug law reform*, March 2018: <https://apo.org.au/node/138586>.

		<p>use substances and to reduce harms associated with substance misuse (pg. xxiii)</p> <p>Recommendation 13: treat the offences of personal use and possession for all illicit substances as a health issue rather than a criminal justice issue ... Mechanisms to achieve this should include:</p> <ul style="list-style-type: none"> • exploring alternative models for the treatment of these offences, such as the Portuguese model of reform • removing the discretion involved with current Victoria Police drug diversion processes by codifying them. • reviewing all threshold amounts for drug quantities to appropriately distinguish between drug traffickers and people who possess illicit substances for personal use • conducting education and awareness programs to communicate with the public about the need to treat drug use as a health issue (pg. xxiv).
<p>WA Inquiry into illicit drugs (2019)¹⁸</p>	<p>The Committee found that several approaches used in Australia and internationally have successfully reduced drug-related harms by shifting policy priorities towards health, prevention, and harm reduction.</p> <p>The Committee made numerous findings related to reorienting WA's approach to drug use away from criminal justice responses and towards a health-focussed response. For example:</p> <p>Finding 43: Drug use and possession for personal use should be treated primarily as a health issue (pg. 74)</p> <p>Finding 16: A zero-tolerance approach to drug use is incompatible with harm reduction (pg. 115).</p>	<p>The Report's recommendations call for a refocussing away from a criminal justice approach and towards a health-focussed approach to drug use. In summary, the Committee recommended that:</p> <ul style="list-style-type: none"> • drug use is treated primarily as a health issue • criminal penalties for the personal possession and use of drugs be replaced with administrative penalties • current practices are reviewed and continually improved in line with contemporary evidence • people who need help for drug-related issues, including those in regional areas or in prison, can access that help • there be measures in place to reduce harm for those who are unwilling or unable to stop using drugs.

18 Legislative Council of Western Australia (2019) *Help, not handcuffs: evidence-based approaches to reducing harm from illicit drug use – Final report of the Select Committee into Alternative Approaches to Reducing Illicit Drug Use and its Effects on the Community*, November 2019:

[https://parliament.wa.gov.au/parliament/commit.nsf/\(\\$lookupAllCommitteesByName\)/Select%20Committee%20into%20alternate%20approaches%20to%20reducing%20illicit%20drug%20use%20and%20its%20effects%20on%20the%20community?opendocument#reports](https://parliament.wa.gov.au/parliament/commit.nsf/($lookupAllCommitteesByName)/Select%20Committee%20into%20alternate%20approaches%20to%20reducing%20illicit%20drug%20use%20and%20its%20effects%20on%20the%20community?opendocument#reports).

Law and policy reforms welcome but not enough

As demonstrated by the non-exhaustive summary of recent federal, state, and territory inquiries into illicit drug use and the efficacy of current responses, there are growing calls for governments to match in-principle recognition that drug use is primarily a health issue with action and investment that prioritise prevention, harm reduction, and access to treatment and rehabilitation. Across Australian jurisdictions, there has been a slow, but steady move towards implementing responses to personal use and possession grounded in harm minimisation principles. However, we have significant work to do to realise a genuine health-focussed and compassionate response response to drug use in this country.

Australia first committed to a harm-minimisation approach to drug use through the first National Drug Strategy, which the federal and all state and territory governments adopted in 1985. Since then, successive strategies have sought to minimise the harmful effects associated with drug use by balancing action and investment across three pillars of harm minimisation – demand reduction, supply reduction, and harm reduction.¹⁹ The current strategy, which runs from 2017 to 2026, aims to “build safe, healthy and resilient Australian communities through preventing and minimising alcohol, tobacco and other drug-related health, social, cultural and economic harms among individuals, families and communities.”²⁰

Due to Australia’s federated system of government, state and territory governments have made differing degrees of progress towards aligning jurisdictional responses to illicit drugs with the National Drug Strategy. Programs that divert people apprehended for simple drug offences from criminal legal system responses and into health-focussed responses are the most widely used form of harm minimisation in Australia, with 51 programs established by 2008.²¹

Criminal legal system diversion programs (implemented by police officers and courts) are an example of the *de facto* decriminalisation of personal use or possession of illicit drugs. *De facto* decriminalisation operates to decriminalise illicit drug use and possession ‘in practice’, but not by law. That is, possession and use of drugs remain criminal offences, but police officers and courts may exercise discretion to divert a person charged with these simple drug offences to (usually) mandatory treatment programs if they meet certain eligibility criteria.²² By 2019, all Australian states and territories had established one or more police and court-based diversion schemes,²³ which *de facto* decriminalise simple drug offences.

19 Community Legal Centres Tasmania (2023) *The case for a health focussed response to drug use in Tasmania’s legal system – Update 2023*, pg. 15: <http://www.cctas.org.au/2022/01/drug-law-reform-report/>.

20 Australian Government Department of Health and Aged Care (2017) *National Drug Strategy 2017 – 2026: A ten year framework that aims to reduce and prevent the harmful effects of alcohol, tobacco and other drugs*, 18 September 2017, pg. 5: <https://www.health.gov.au/resources/publications/national-drug-strategy-2017-2026>.

21 Community Legal Centres Tasmania (2023) *The case for a health focussed response to drug use in Tasmania’s legal system – Update 2023*, pg. 16: <http://www.cctas.org.au/2022/01/drug-law-reform-report/>.

22 Alcohol and Drug Foundation, *Decriminalisation in detail*: <https://adf.org.au/talking-about-drugs/law/decriminalisation/decriminalisation-detail/>.

23 *Ibid*.

To date, only the Australia Capital Territory (ACT), Northern Territory (NT), and South Australia (SA) have decriminalised personal use and possession of some illicit drugs *de jure* or 'at law'. This means a person cannot be charged with a criminal offence for possessing or using small quantities of some drugs, and police may only issue civil sanctions, like a fine or referral to an education or treatment program.²⁴

Under SA's the Cannabis Expiation Notice Scheme, adults apprehended for simple cannabis offences relating to personal possession or use of cannabis (or resin) and related equipment are issued an expiation notice (or fine) that does not attract a criminal conviction. If the person pays the prescribed fee within 28 days, they are no longer liable for prosecution and no conviction is recorded. A person can elect to be prosecuted and failure to pay the initial or reminder expiation notices results in deemed criminal conviction for the offence and civil enforcement of the expiation notice.²⁵

In 1996, the NT decriminalised simple cannabis offences. The NT legislation sets different threshold amounts for simple offences, allowing, for example, possession of fewer grams of plant material and resin, but cultivation of a greater number of plants. However, the major differences between the schemes are that in the NT, no criminal conviction results a person's failure to pay an expiation fee (only a debt to the state accrues) and young people can be referred to assessment and treatment in lieu of payment.²⁶

In January 2020, the ACT Government legalised possession and use of small quantities of cannabis. This means that there are no sanctions at all – criminal or civil – for people aged over 18 years who grow (non-hydroponically), possess, or use small quantities of cannabis at home. Health and police data for the first year of the scheme's operation showed a 90% drop in simple cannabis offences with no increase in hospital presentations related to cannabis use. While there was a slight spike in cannabis use in June 2020, this was consistent with a trend across all jurisdictions attributed to COVID lockdowns.²⁷

In October 2022, the ACT announced further plans to decriminalise personal use and possession of nine types of illicit drugs, including heroin, cocaine, and speed.²⁸ Due to come into effect fully from October 2023, the changes mean people found with small quantities of illicit drugs will not be criminally prosecuted, but instead cautioned, fined, or referred to a drug treatment program.²⁹ These progressive reforms make the ACT the only jurisdiction to decriminalise personal use and possession of most illicit drugs by law.³⁰

Table 2 includes key *de jure* and *de facto* decriminalisation initiatives operating in Australia.

24 Ibid.

25 Legal Services Commission of South Australia, *Cannabis: Expiation of simple cannabis offences*, LSC Duty Solicitor Handbook – Drug Offences: <https://lsc.sa.gov.au/dsh/ch12s06.php>.

26 Cannabis information and support, *Cannabis and the law*: <https://cannabissupport.com.au/cannabis-and-the-law/>.

27 ABC News, *What has changed in the year since cannabis possession was legalised in the ACT?* 31 January 2021: <https://www.abc.net.au/news/2021-01-31/what-has-changed-since-cannabis-was-legalised-in-the-act/13105636>.

28 Guardian Australia, *ACT becomes first Australian jurisdiction to decriminalise illicit drugs in small quantities*, 20 October 2022: <https://www.theguardian.com/australia-news/2022/oct/20/act-becomes-first-australian-jurisdiction-to-decriminalise-illicit-drugs-in-small-quantities>.

29 Ibid.

30 ABC News, *ACT government decriminalises small amounts of illicit drugs including speed, heroin, and cocaine*, 21 October 2022: <https://www.abc.net.au/news/2022-10-20/act-decriminalises-small-amounts-of-illicit-drugs-heroin-cocaine/101552008>.

Table 2: summary of diversion and decriminalisation initiatives in Australian jurisdictions³¹

Jurisdiction	Program	Type	Criteria
ACT	Cannabis use, possession, and cultivation legalised in specific circumstances (2020)	<i>De jure</i> decriminalisation	It is legal for people aged over 18 years in the ACT to possess, grow, and use small quantities of cannabis at home. Exceeding the limits set out at law incurs a simple cannabis offence in the form of a fine. It remains illegal to use cannabis in a public place or grow it in a place accessible to the public, to grow it hydroponically, and to expose children to cannabis smoke or store it where children can access it. It also remains illegal to sell or gift cannabis to another person or to drive with any cannabis in your system.
	Simple Cannabis Offence Notice Scheme (to 2020)	<i>De facto</i> decriminalisation	It is a crime for people aged under 18 to possess any amount of cannabis. Police have discretion to issue an on the spot fine of \$100, called a 'Simple Cannabis Offence Notice.' The Police can instead choose to lay charges and have the matter dealt with in court. The maximum penalty the court can impose is a fine of \$160.
	Simple Drug Offence Notice Scheme (2022)	<i>De jure</i> decriminalisation	From October 2023 the penalty for possession of a small quantity of decriminalised drugs (including amphetamine, cocaine, meth, MDMA, heroin, cannabis, psilocybin, and LSD) will be a \$100 civil fine (that will not need to be paid if the person chooses to attend an illicit drug diversion class), a diversion or a caution. Drugs not decriminalised, will have maximum prison terms for possession and use reduced from 2 years to 6 months. ³²
NT	Cannabis Expiation Scheme (1996)	<i>De jure</i> decriminalisation	The cannabis expiation scheme started in 1996. Under this scheme people 17 years of age and over found in possession of up to 50 grams of cannabis, one gram of hash oil, 10 grams of hash or cannabis seed, or two non-hydroponic plants can be fined 1.7 penalty units (in 2013 one penalty unit equalled \$130.) They have 28 days to pay the fine rather than face a criminal charge. If they don't pay the fine in full, there is no further criminal action (Misuse of Drug Act 2006; Section 20 B) but recovery may occur through

31 Note: this table does not include specialist drug courts, which operate in most Australian jurisdictions to divert people facing some types of criminal charges who have drug dependence issues into treatment and rehabilitation as an alternative to imprisonment. In most cases, people must plead guilty to the relevant charges and be willing to engage in treatment. Participation in treatment is supervised by the court and is mandatory. As with many police drug diversion programs, access to drug courts and associated treatment programs is at the discretion of police and non-specialist courts. Drug court evaluations have routinely found that they are successful at supporting rehabilitation and reducing recidivism rates among people who complete treatment programs. However, resourcing and access, particularly for people in rural, regional, remote, and very remote communities remains limited.

32 ABC News, ACT government decriminalises small amounts of illicit drugs including speed, heroin, and cocaine, 21 October 2022: <https://www.abc.net.au/news/2022-10-20/act-decriminalises-small-amounts-of-illicit-drugs-heroin-cocaine/101552008>.

			the courts. Failure usually results in a debt to the state but no conviction (Hughes et al 2014). ³³
	Northern Territory Illicit Drug Pre-Court Diversion Scheme (2002)	<i>De facto</i> decriminalisation	Under the scheme, people under the age of 17 found in possession of cannabis or using cannabis around schools will be prosecuted in the courts. Youth or adults found in possession of up to 50 grams of cannabis can be referred for assessment and a one-hour education session. Further treatment is optional. Non-compliance is reported and a summons issued. Eligible offenders must have no prior convictions for violent offences or drug offences. ³⁴
NSW	Cannabis Caution Scheme (2000)	<i>De facto</i> decriminalisation	The scheme was developed in response to the NSW Drug Summit, which found that arresting people for minor drug offences is not always an effective response. NSW Police can exercise their discretion to issue a caution to a person found in possession of small quantities of cannabis. The caution includes information about cannabis education sessions provided by the Alcohol and Drug Information Service (ADIS). A person can only be cautioned twice and cannot be cautioned if they have prior convictions for drug offences, offences of violence or sexual assault. A Second and final caution includes a mandatory referral to ADIS. ³⁵
	Drug Criminal Infringement Notice Scheme (2020)	<i>De facto</i> decriminalisation	The scheme allows NSW Police to issue on-the-spot fines of \$400 to people found in possession of small quantities of illicit drugs instead of laying criminal charges. The person must be over 18 and has 28 days to pay the notice. The scheme was implemented in response to unsafe drug consumption practices by people at music festivals in NSW attributed, in part, to heavy-handed police enforcement. It is designed to divert first-time minor-drug offenders from court and the criminal justice system. ³⁶
QLD	Police Drug Diversion Program	<i>De facto</i> decriminalisation	This is a legislated scheme that allows QLD Police to offer people found with small quantities of some illicit drugs a referral to a drug diversion assessment program as an alternative to prosecution. Police may refer adults and children to the program. A person

33 National Drug Law Enforcement Research Fund (2016) *Australian police diversion for cannabis offences: Assessing program outcomes and cost-effectiveness*, report prepared by Shanahan et. al., Monograph Series No. 66, pg., 60: <https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:9d1ba5dd-cb73-31f0-900b-4599f4273481>.

34 Ibid.

35 NSW Police Force, *Drug programs and initiatives*:

https://www.police.nsw.gov.au/crime/drugs_and_alcohol/drugs/drug_pages/drug_programs_and_initiatives#:~:text=The%20Cannabis%20Cautioning%20Scheme%20provides,and%20seek%20treatment%20and%20support.

36 Australian Lawyers and Advocates, *NSW Drug Possession Penalty Notice Scheme*: <https://australianlawyersandadvocates.com.au/drug-possession-penalty-notice-scheme/>.

			may only be referred to the program once and attendance is mandatory. People who have committed another indictable offence related to the minor drug offence, have been convicted of prior offences involving violence, sexual violence, or drug trafficking, and who have previously been offered drug diversion are not eligible. ³⁷
South Australia	Cannabis Expiation Notice Scheme (2007)	<i>De jure</i> decriminalisation	A person apprehended for a simple cannabis offence (non-artificial cultivation of one cannabis plant, possession of 100g of cannabis or 20g resin, private consumption or possession of equipment for consumption) are issued with a fine of up to \$400. If the person pays the fine within 28 days, they do not have to attend court and no further action is taken. If the person does not pay the fine, they are deemed to be convicted and fined the amount of the unpaid expiation notice. The fine can then be enforced. ³⁸
	Police Drug Diversion Scheme (2007)	<i>De jure</i> decriminalisation	Under this scheme, SA Police must refer a person aged 18 over apprehended for a simple possession offence to a drug assessment service, which will determine if the person needs further support to address underlying issues that led to their misuse of drugs. The assessment service may make referrals to education, prevention, or treatment services. The person must make an undertaking they will comply with any treatment recommended by the assessment service, and participation in treatment is mandatory. If the person complies with treatment, when the undertaking expires, no further legal action can be taken. Failure to comply results in the termination of the referral and the person will be required to attend court. ³⁹
Tasmania	Initial Drug Diversion Initiative (IDDI) ⁴⁰	<i>De facto</i> decriminalisation	Under the IDDI, Tasmanian police officers can offer cautions and fines to adults and young people apprehended for low level drug offences and who have had little or no past contact with the criminal justice system in Tasmania. Tasmania Police may also refer people to counselling and education as an alternative to facing court to raise awareness the legal and health consequences of illicit drug use. People may receive 3 cautions on

37 Queensland Police, *Police drug diversion program*: <https://www.police.qld.gov.au/drugs-and-alcohol/police-drug-diversion-program>.

38 Legal Services Commission of South Australia, Cannabis: *Expiation of simple cannabis offences*, LSC Duty Solicitor Handbook – Drug Offences: <https://lsc.sa.gov.au/dsh/ch12s06.php>.

39 Legal Services Commission of South Australia, *Drugs of Dependence: simple possession offences*, LSC Duty Solicitor Handbook – Drug Offences: <https://lsc.sa.gov.au/dsh/ch12s10.php>.

40 Holyoake Tasmania, *Initial Drug Diversion Initiative*: <https://www.holyoake.com.au/our-programs/initial-drug-diversion-initiative>.

			drug-related issues within 10 years. If they are apprehended more than three times, they will be charged and criminally prosecuted. ⁴¹
Victoria	Cannabis Caution Program	<i>De facto</i> decriminalisation	People aged 18 and older can access the Cannabis Cautioning Program at police discretion. To be offered diversion, the person must admit to possessing the controlled substance, consent to diversion, not be involved in an additional offence related to the drug offence. A person found in possession of drugs is limited to no more than two drug cautions of any type, including both cannabis cautions and other drug diversions (see below). In the Cannabis Cautioning Program, police deliver an official caution and refer eligible people to a non-compulsory education session, 'Cautious with Cannabis'. The two-hour education session addresses harm reduction strategies, including avenues for treatment and rehabilitation. ⁴²
	Drug Diversion Program	<i>De facto</i> decriminalisation	Police may exercise their discretion to caution people aged 10 and older under the Drug Diversion Program. Under this program, police issue an official caution apprehended for minor drug offences and refer them to a mandatory 'drug assessment' and a subsequent drug treatment. In the assessment, people are offered additional support services, including rehabilitation, living assistance, and withdrawal services. The initial assessment is undertaken within 5 days of arrest, and the treatment must follow within 5 days after the assessment. Compliance must be achieved within 28 days from the initial arrest. ⁴³
Western Australia	Cannabis Intervention Requirement Scheme (CIR)	<i>De facto</i> decriminalisation	Under this scheme, WA Police may issue a Cannabis Intervention Requirement notice to a person aged 14 or older who is found in possession of up to 10g of cannabis or smoking equipment with detectable traces of cannabis. The notice requires a person to book and attend a Cannabis Intervention Session within 28 days of issue. If a person complies no further action is taken, and no criminal conviction recorded. The scheme does not apply to any other type of cannabis product or to cultivation. A person aged 14 – 17 may be cautioned twice under the scheme, while adults aged 18 and older may

41 Australian National Character Check, *Drug offences in Tasmania*: <https://www.australiannationalcharactercheck.com.au/Drug-Offences-Tasmania-TAS.html>.

42 Victorian Aboriginal Legal Service (2022) *VALS Policy Paper: Harm Reduction Not Harm Maximisation – An Alternative Approach to Drug Possession*, October 2022, pp. 14 - 15: <https://www.vals.org.au/publications/>.

43 Ibid.

			only be cautioned once. Subsequent offences are prosecuted (for adults) or may be referred to a Juvenile Justice Team (for young people). ⁴⁴
	Other Drugs Intervention Requirement Scheme (ODIR)	<i>De facto</i> decriminalisation	Under this scheme WA Police may divert eligible people charged with simple drug offences (including cannabis offences not covered by the CIR) into treatment. A person issued an ODIR must complete three Other Drug Intervention Sessions within a 42-day period. An ODIR can only be issued to an adult, and only on a single occasion. Subsequent simple drug offences will be prosecuted through the courts. ⁴⁵

44 Government of Western Australia Mental Health Commission, *Cannabis Intervention Requirement*: <https://www.mhc.wa.gov.au/getting-help/diversion-support-programs/cannabis-intervention-requirement-cir/#:~:text=A%20person%20is%20eligible%20for,containing%20detectable%20traces%20of%20cannabis>.

45 Government of Western Australia Mental Health Commission, *Other Drug Intervention Requirement*: <https://www.mhc.wa.gov.au/getting-help/diversion-support-programs/other-drug-intervention-requirement-odir/>.

Diversion works but eligibility is restricted, access granted inequitably

The positive impacts of diversion initiatives are measurable. They are cost-effective, reduce the burden on criminal justice systems, increase the uptake of treatment referrals and decrease re-offending.⁴⁶ As early as 2008, the Australian Institute of Criminology found that people diverted to education and treatment programs were highly likely to comply, and less likely to reoffend within 12 – 18 months of being cautioned than people who were not diverted.⁴⁷

However, as noted above, most programs in Australian jurisdictions can have overly strict eligibility criteria, rely on police and courts to exercise discretion for access, and remain under-utilised, particularly for Aboriginal and Torres Strait Islander people, young people, and other people in marginalised communities.⁴⁸

They are also used inconsistently across jurisdictions. A review of Australian diversion programs released by the National Drug and Alcohol Research Centre (NDARC) in 2019 found that 98% of people apprehended by police for simple possession in South Australia diverted from the criminal justice system, compared with just 32.4% in Western Australia. Rates of diversion in other jurisdictions fell in-between these two extremes, with Queensland (QLD) (at 36.3%) and New South Wales (NSW) (at 46.8 %) also falling below the national average.⁴⁹ NDARC attributed low rates of diversion in WA, QLD, and NSW, at least in part, to strict eligibility criteria, lower threshold limits for drugs other than cannabis, and restricted access to treatment services in rural, regional, and remote areas.⁵⁰

However, the same report also found that the proportion of offenders apprehended for drug use or possession but diverted away from a criminal justice system response by police declined between 2010-11 and 2014-15. This means that more offenders were prosecuted and punished for drug use or possession alone in that period. The study noted that reasons

46 National Drug and Alcohol Research Centre, *Criminal justice responses relating to personal possession of illicit drugs*, report prepared by C Hughes et al, May 2018, p 12: <https://ndarc.med.unsw.edu.au/resource/27-criminal-justice-responses-relating-personal-use-and-possession-illicit-drugs-reach>.

47 J Payne, M Kwiatkowski & J Wundersitz (2008) *Police drug diversion: a study of criminal offending outcomes*, Research and Public Policy Series Report 97. Canberra: Australian Institute of Criminology.

48 See for example: Fitzroy Legal Service (2017) *Submission to the Victorian Government's Inquiry into drug law reform*, 17 March 2017, Submission 147, pg. 5: <https://www.parliament.vic.gov.au/58th-parliament/lrccsc/inquiries/article/2810>; Smart Justice for Women (2023) *Smart Justice for Women: Policy Platform 2022 – 2024 – Reducing the criminalisation of women in Victoria – Version 1*, January 2023: <https://www.fclc.org.au/sifw#:~:text=Smart%20Justice%20for%20Women's%20Victorian%20Election%20Platform%202022&text=Prevent%20women%20from%20becoming%20criminalised,affordable%20housing%20options%20for%20women>; Victorian Aboriginal Legal Service (2022) *VALS Policy Paper: Harm Reduction Not Harm Maximisation – An Alternative Approach to Drug Possession*, October 2022: <https://www.vals.org.au/publications/>; Youthlaw Victoria (2020) *Inquiry into Use of Cannabis 2020: Legal and Social Issues Committee – A submission from Youthlaw*, September 2020, published submission 1389: <https://www.parliament.vic.gov.au/lscic/inquiries/article/4260>.

49 National Drug and Alcohol Research Centre (2019) *Criminal justice responses relating to personal possession of illicit drugs*, report prepared by C Hughes et al, May 2019. Cited in: Legislative Council of Western Australia (2019) *Help, not handcuffs: evidence-based approaches to reducing harm from illicit drug use – Final report of the Select Committee into Alternative Approaches to Reducing Illicit Drug Use and its Effects on the Community*, November 2019, pg. 34: [https://parliament.wa.gov.au/parliament/commit.nsf/\(\\$lookupAllCommitteesByName\)/Select%20Committee%20into%20alternate%20approaches%20to%20reducing%20illicit%20drug%20use%20and%20its%20effects%20on%20the%20community?opendocument#reports](https://parliament.wa.gov.au/parliament/commit.nsf/($lookupAllCommitteesByName)/Select%20Committee%20into%20alternate%20approaches%20to%20reducing%20illicit%20drug%20use%20and%20its%20effects%20on%20the%20community?opendocument#reports).

50 National Drug and Alcohol Research Centre (2019) *Criminal justice responses relating to personal possession of illicit drugs*, report prepared by C Hughes et al, May 2019, pg. 6: <https://ndarc.med.unsw.edu.au/resource/27-criminal-justice-responses-relating-personal-use-and-possession-illicit-drugs-reach>.

for the change could include changes in drug and policing trends, narrow eligibility criteria and a lack of available treatment services.⁵¹

These findings highlight the urgent need to fundamentally reform the way that we think about and respond to drug use and dependence and the services we invest in. In our view, to successfully implement a genuine health-focussed response to drug use, founded on human rights and harm reduction principles, we need to remove personal use and possession from criminal statutes in all jurisdictions and prioritise investment in prevention, harm reduction, treatment, and rehabilitation. The remainder of this submission examines the key elements of genuinely health-focussed responses to drug use and makes recommendations on the reforms needed to implement them.

Health-focussed responses to drug use

Health-focussed responses to issues like drug addiction involve understanding the drivers of people's behaviour – including trauma, ill-health, homelessness, and poverty⁵² - and providing positive support for behaviour change rather than using punishment and deterrence to coerce it.⁵³ There is ample evidence that implementing health-focussed responses to personal possession and use of illicit drugs deliver significant:

- cost savings for governments⁵⁴
- reductions in
 - crimes involving the use or threat of violence
 - drug-related death and disease
 - drug-related ambulance callouts, emergency admissions and hospitalisations.⁵⁵

A health-focussed response to drug use is also consistent with Australia's international human rights obligations under various UN conventions, including as a signatory to the:

- *Single Convention on Narcotic Drugs 1961*
- *Convention on Psychotropic Substances*
- *Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances 1988.*

These conventions commit state parties to criminalising and punishing the cultivation, manufacture, and trafficking of illicit drugs for non-medical or scientific purposes. However, the *Single Convention* explicitly excludes drug use from the definition of 'illicit traffic.'

51 Ibid., pg. 33.

52 Youthlaw Victoria (2020) *Inquiry into Use of Cannabis 2020: Legal and Social Issues Committee – A submission from Youthlaw*, September 2020, pg.3, published submission 1389: <https://www.parliament.vic.gov.au/lsc-lc/inquiries/article/4260>.

53 Victorian Aboriginal Legal Service (2022) *VALS Policy Paper: Harm Reduction Not Harm Maximisation – An Alternative Approach to Drug Possession*, October 2022, pg. 35: <https://www.vals.org.au/publications/>.

54 For example, the cost benefit analysis conducted by Dr Paul Blacklow at the University of Tasmania commissioned by Community Legal Centres Tasmania, which found that taking a public health approach to drugs would deliver savings over \$60m per annum in Tasmania alone.

55 Ibid., pg. iv.

Further, it permits state parties to “refrain from imposing imprisonment in cases of possession of drugs held for personal consumption without legal authority.”⁵⁶

Importantly, as noted by the Victorian Road & Community Safety Committee’s 2018 report on drug law reform:

*Reorientation to a health-based framework does not suggest going soft on crime but rather emphasises that responses to illicit drug use should focus on trafficking and punishment of criminal behaviour arising from use, while people apprehended solely for use and personal possession be directed to a range of treatment and support options, where necessary.*⁵⁷

Harm reduction

Health-focussed responses prioritise harm reduction

Health-focussed responses to illicit drug focus on reducing the health and social harms associated with drug use through acceptance, compassion, social connection, and non-coercive access to a range of treatment, rehabilitation and other health and social services.

According to the US National Harm Reduction Coalition, ‘harm reduction is a set of practical strategies and ideas aimed at reducing negative consequences associated with drug use. Harm reduction is also a movement for social justice built on a belief in, and respect for, the rights of people who use drugs.’⁵⁸

The Victorian Aboriginal Legal Service describes harm reduction in relation to drug use as:

a set of principles and practises designed to mitigate the adverse consequences of drug consumption and substance abuse.¹⁶⁷ It means recognising that some level of drug use is inevitable ... and working to minimise the harms associated with it.¹⁶⁸ A harm reduction approach has a strong human rights orientation, with a focus on non-coercive measures that do not require people to stop using drugs in order to receive support.¹⁶⁹ Unlike traditional approaches to drug use that centre on criminalisation and abstinence,¹⁷⁰ harm reduction initiatives aim primarily at health outcomes, built on strong social and community connections, which makes [them] highly cost-effective.⁵⁹

Due to its grounding in respect for the fundamental rights of people who use drugs, non-judgment, and a desire to ensure support is accessible to as many people as possible, the harm reduction movement advocates voluntary support based on informed consent, rather than mandatory treatment.

56 Community Legal Centres Tasmania (2023) *The Case for a Health Focussed Response to Drug Use in Tasmania’s Legal System – Update 2023*, pp. 12 – 14: <http://www.cictas.org.au/2022/01/drug-law-reform-report/>.

57 Parliament of Victoria Law Reform Road and Community Safety Committee (2018) *Inquiry into Drug Law Reform*. March 2018. pg. XV: <https://apo.org.au/node/138586>.

58 National Harm Reduction Coalition, *Principles of harm reduction*: <https://harmreduction.org/about-us/principles-of-harm-reduction/>.

59 Victorian Aboriginal Legal Service (2022) *VALS Policy Paper: Harm Reduction Not Harm Maximisation – An Alternative Approach to Drug Possession*, October 2022, pp. 41 -42: <https://www.vals.org.au/publications/>.

Harm reduction benefits people and the community

Harm reduction measures are diverse because they are evidence based. Common initiatives include:

- Needle safety and exchange programs
- Safe injecting and other drug consumption rooms
- Drug replacement therapies (such as methadone programs and Naxalone distribution to prevent opiate overdose)
- Overdose education and prevention training
- Drug checking (such as pill testing facilities at concerts and music festivals).

Australia introduced a needle and syringe program across all jurisdictions in the late 1980s in response to the HIV/AIDS epidemic. While controversial at the time, the Centre for Research Excellence into Injecting Drug Use notes that our early adoption “is believed to have significantly mitigated this epidemic amongst PWID [people who inject drugs], to the extent that only 30 – 40 cases of HIV per year are transmitted via injecting drug use.”⁶⁰ Although the program has not reduced transmission rates for hepatitis C amongst people who inject drugs to the same extent, studies and modelling show that the program:

- Has reduced the prevalence of HIV/AIDS and hepatitis amongst people who inject drugs
- Saved healthcare systems \$220 million in 2000 – 2010 and up to \$950 million in future costs.⁶¹

In May 2022, the Uniting Medically Supervised Injecting Room operated in Kings Cross, Sydney, celebrated 21 years of service delivery to the community. Since opening, the service has supervised over 1.24 million injections, averted 11,000 overdose deaths, and made over 20,000 referrals to treatment and other support services. The service now receives bi-partisan political support and is widely accepted by local businesses, police, and the community.⁶² According to research conducted by the University of NSW and the University of Western Sydney in 2022, the service has also provided people who inject drugs with a refuge from violence, including police brutality and harassment by members of the public.⁶³

More recently, from July 2022, the ACT Government established Australia’s first fixed pill-testing site, the CanTEST Health and Drug Checking Service, under a six-month trial. The service can analyse the contents of small quantities of illicit drugs and provides harm reduction information. The service was established following two successful festival-based

60 Centre for Research Excellence into Injecting Drug Use (2015) *Syringe coverage and Australian NSPs: Policy Brief 9*, May 2015: https://creidu.edu.au/policy_briefs_and_submissions/12-syringe-coverage-and-australian-nsp#:~:text=Australia's%20needle%20and%20syringe%20program,90%25%20to%20around%2017%25.

61 Ibid.

62 Uniting (2022) *Media Release: MSIC celebrates 21 years and thousands of lives saved*, 6 May 2022: <https://www.uniting.org/blog-newsroom/newsroom/news-releases/msic-celebrates-21-years-thousands-of-lives>.

63 University of NSW (2022) *Injecting room has not only saved lives, it has protected clients from violence*, 3 June 2022: <https://www.unsw.edu.au/news/2022/06/injecting-room-has-not-only-saved-lives-it-has-protected-client>.

trials in 2018 and 2019.⁶⁴ An evaluation of the service's first three months of operation conducted by the Australian National University found that almost 1 in 5 people discarded their drugs when they learned what was in it and "early analyses suggest that the service is influencing service users' behaviours in a number of ways, including their discarding their drugs at the service, and a significant proportion stating that they 'definitely will not' use the drug after having received their test results." As a result, the ACT Government has extended the service's operation until at least August 2023.⁶⁵

Governments must increase support for harm reduction

There is also growing public awareness of and support for harm reduction initiatives across the community. For example, the 2019 National Election Study Survey showed that 63% of respondents support pill-testing. State Coroners in NSW and Victoria have also recommended its widespread uptake in response investigations into the drug-related deaths of several young people at music festivals since 2017.⁶⁶

Despite the clear and ample evidence supporting their efficacy, and this growing public governments continue to allocate the vast bulk of funding to law enforcement and other punitive responses. For example, a review carried out in 2008 estimated that \$1.3 billion was expended on direct drug policy interventions of which the majority was spent on law enforcement (55 per cent) followed by prevention (23 per cent) treatment (17 per cent) harm reduction (3 per cent) and other (1 per cent).⁶⁷

In recognition of this fact, the Parliament of Victoria's Law Reform, Road, and Community Safety Committee Victorian inquiry into drug law reform recommended the Victorian Government adopt a "four pillars approach to drugs in the community that views treatment and prevention as separate and individual pillars along with law enforcement (supply reduction) and harm reduction."⁶⁸ It also noted the chronic underfunding of treatment, prevention and harm reduction and recommended the Victorian Government "ensure money spent on drug policy is working to reduce harms."⁶⁹

As Table 2 above shows, every inquiry conducted by Australian governments into illicit drugs over the past five years has recommended increased investment in prevention, treatment, and harm reduction to support implementation of a health-focussed response to drug use.

64 Alcohol and Drug Foundation (2022) *An Australian First: Canberra's Fixed Pill Testing Site*, 25 July 2022: <https://adf.org.au/insights/aus-first-pill-testing-site/>.

65 ABC News (2023) *ACT extends confidential pill-testing service CanTEST as evaluation shows most users discarded tainted drugs*, 13 January 2023: <https://www.abc.net.au/news/2023-01-13/canberra-pill-testing-trial-extended/101851424>.

66 Alcohol and Drug Foundation (2022) *An Australian First: Canberra's Fixed Pill Testing Site*, 25 July 2022: <https://adf.org.au/insights/aus-first-pill-testing-site/>.

67 T Moore (2008) *The size and mix of government spending on illicit drug policy in Australia*, 27(4) *Drug and Alcohol Review*, 404 at 408.

68 Parliament of Victoria Law Reform Road and Community Safety Committee (2018) *Inquiry into Drug Law Reform*. March 2018. pg. xix: <https://apo.org.au/node/138586>.

69 *Ibid*, pg. xx.

Education needed to address stigma

One contributing factor to governments' reluctance to implement or expand harm minimisation initiatives may be the ongoing stigma that attaches to drug use and the impact of negative press coverage on community attitudes to some harm reduction initiatives, such as safe injecting rooms. For example, the Richmond safe injecting room, which is nearby to a local primary school, received a lot of negative media attention in early 2021 after parents and residents raised concerns over several incidents. The UK's Daily Mail reported parents running "a gauntlet of fear" to drop their children to school, describing the people who used the service as "junkies" and "shady characters," who "look strange."⁷⁰ Although some in the community continue to oppose the centre's operation, the school itself has reported that the number of incidents has reduced since the service opened in 2018, with fewer syringes and other drug paraphernalia in the area and less anti-social behaviour in and around the school.⁷¹

To address this, numerous experts, and inquiries,⁷² have highlighted the need for governments to significantly increase investment in community education programs – co-designed and delivered with health experts and people with lived experience of drug use – that dispel the stigma associated with drug use and drug dependence, the benefits of harm reduction and its positive social and economic impacts.

Decriminalisation

De jure decriminalisation supports harm reduction

For many harm-reduction advocates, *de jure* decriminalisation of personal use and possession is a critical component of successful health-focussed responses to illicit drugs. For example, the Victorian Aboriginal Legal Service argues that the efficacy of harm reduction initiatives is undermined when they exist within a legal framework that continues to criminalise and heavily punish drug use.⁷³

As noted above, many of the adverse consequences of drug use on individuals, families, and communities flow from the criminalisation of drugs rather than the use itself. This is because policing and criminalisation have direct harmful effects, and because criminalisation makes it harder for people to access support when they need it.

Further, the discretionary nature of the *de facto* decriminalisation initiatives implemented by most Australian governments, means that the people who most need access to

70 Daily Mail (2022) *A dead body, a creep who flashes children and pools of vomit – The shocking reality of primary school next door to an injecting room: 'I'm terrified my son will pick up a syringe.'* 13 May 2022. <https://www.dailymail.co.uk/news/article-10811815/Meibourne-school-Richmond-drug-injection-centre-sparks-mothers-fury.html>.

71 ABC News (2021) *Richmond West Primary School lockdowns linked to safe injecting room prompts crisis meeting of parents*, 25 March 2021: <https://www.abc.net.au/news/2021-03-25/parent-concerns-richmond-west-primary-safe-injecting-room/100027572>.

72 See, for example, the inquiries extracted in Table 1.

73 b Victorian Aboriginal Legal Service (2022) *VALS Policy Paper: Harm Reduction Not Harm Maximisation – An Alternative Approach to Drug Possession*, October 2022, pg. 45: <https://www.vals.org.au/publications/>.

compassionate, trauma-informed, and non-judgmental support, are those least likely to receive it.

On the other hand, *de jure* decriminalisation increases the likelihood that people whose drug use is harmful to themselves or their community, can access treatment and rehabilitation, as well as support for the underlying drivers of their drug use, without fear of prosecution or police interaction.⁷⁴

Decriminalisation more effective than zero-tolerance

At least 26 countries worldwide, and 11 states of the United States have decriminalised simple drug offences in some form.⁷⁵

Portugal decriminalised the purchase, possession, and personal use of illicit drugs in 2001 as part of a suite of reforms aimed at reducing the harms associated with heroin use. The reforms, often held up as the gold standard in global drug policy, replaced criminal penalties for personal use offences with fines (for people whose drug use is assessed by a local Commission for the Dissuasion of Drug Addiction as not an addiction), and non-monetary administrative penalties (for people whose drug use is assessed as addiction), including warnings, prohibition from international travel or possessing firearms and referrals to voluntary treatment. The reforms have been widely credited for contributing to a reduction in the number of drug-related deaths and the rate of HIV infections in Portugal and improving health outcomes for people who use drugs. Despite initial concerns, the reforms did not result in increased rates of drug use or drug tourism in Portugal, with drug use rates in the country currently below the European average.⁷⁶

Critically, under the Portuguese reforms, decriminalisation was accompanied by a substantial investment in drug treatment, harm reduction and social re-integration policies. Subsequent research studies and evaluations of Portugal's drug policy and the policies of other jurisdictions who have decriminalised simple drug offences, have consistently found that such investment in wider health and social reforms has been critical to the success of legislative reforms.⁷⁷

At the other end of the spectrum, Sweden continues to take a zero-tolerance approach to drug use with markedly different results. Sweden's drug policy aims to achieve a drug-free society and is based on the notion that all non-medical consumption of drugs is abuse. All illicit drug use is harshly sanctioned with criminal penalties. However, far from achieving its stated intention, drugs remain easily accessible in Sweden and drug-related deaths continue to rise. A 2020 report by the European Centre for Monitoring Drugs and Drug

74 Ibid.

75 Professor Dan Howard SC (2020). *Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants: Report Volume 1*, January 2020, pg. xxix: <https://www.dpc.nsw.gov.au/publications/special-commissions-of-inquiry/the-special-commission-of-inquiry-into-the-drug-ice/>.

76 Parliament of Australia Joint Committee on Law Enforcement (2018) *Final Report: Inquiry into crystal methamphetamine (ice)*, Chapter 6 - Decriminalisation, 27 March 2018: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Crystalmethamphetamine45/Final_Report.

77 Ibid. at [6.32].

Addiction found that Sweden had highest rate of drug-related deaths per capita in the European Union, at almost four times higher than the average.⁷⁸

We refer the Committee to an excellent analysis of international approaches to drug use recently conducted by the Victorian Aboriginal Legal Service in for a more detailed examination of the costs and benefits associated with the drug policies implemented in 31 international jurisdictions.⁷⁹

Investment in wider health and social services critical

As noted throughout this submission:

- Australian governments' investment in responses to illicit drugs remain heavily weighted towards law enforcement and the criminal justice system.
- Most recent inquiries into responses to illicit drug use in Australia have
 - recommended that governments significantly increase investment in and expand availability of treatment and rehabilitation programs, particularly in rural, regional, remote, areas (see Table 1)
 - highlight the need for targeted programs for groups most at risk of criminalisation due to drug use, including Aboriginal and Torres Strait Islander people, young people, and women.
- Jurisdictions that have had the most success at reducing the social and economic harms associated with drug use in their communities have combined decriminalisation of simple drug offences with significant investment in health and social services, including prevention, harm reduction, and treatment and rehabilitation.

In our view, the evidence is clear that to implement a successful health-focussed response to drug use, founded on harm reduction principles, Australian governments must significantly increase investment in trauma-informed, culturally safe, community-based, health-driven services tailored to the specific needs of different groups of people who experience drug dependence.⁸⁰

78 EMCDDA (2020) *Drug report: Trends and developments 2020*, European Monitoring Centre for Drugs and Drug Addiction, Luxembourg Publications Office of the European Union, pp. 67- 68: https://www.emcdda.europa.eu/publications/edr/trends-developments/2020_en.

79 Victorian Aboriginal Legal Service (2022) *VALS Policy Paper: Harm Reduction Not Harm Maximisation – An Alternative Approach to Drug Possession*, October 2022: <https://www.vals.org.au/publications/>. See Part 3: Learning from International Experience, pg. 63, and Appendix: International Jurisdictional analysis, pg. 67.

80 Smart Justice for Women (2023) *Smart Justice for Women: Policy Platform 2022 – 2024 – Reducing the criminalisation of women in Victoria, Version 1: January 2023*: <https://www.fclc.org.au/sifw#:~:text=Smart%20Justice%20for%20Women's%20Victorian%20Election%20Platform%202022&text=Prevent%20women%20from%20becoming%20criminalised,affordable%20housing%20options%20for%20women>.

Recommendations

Federal, state and territory governments should explicitly adopt, adequately fund, and implement a health-focussed response to personal drug use and possession in all Australian jurisdictions. This includes:

1. Reallocating funding and investment across the three pillars of the National Drug Strategy (harm reduction, demand reduction and supply reduction) so that more funding is directed to harm reduction and less to law enforcement responses
2. Increasing availability of health and social service-based treatment and rehabilitation facilities and services, including:
 - a. Targeted and culturally appropriate services for Aboriginal and Torres Strait Islander people
 - b. In rural, regional, remote, and very remote communities
 - c. Targeted services for women, people in prison, young people and LGBTIQ+ communities
3. Destigmatising, promoting, and expanding availability of harm reduction services, including pill testing, needle and syringe programs, safe injecting and drug use facilities, drug replacement programs etc.
4. Decriminalising simple drug offences for personal use and possession of all drugs
5. Reforming police and court criminal diversion programs, including:
 - a. Expanding eligibility criteria, for example by removing strict limits on the number of times a person can be diverted from the criminal legal system for simple drug offences
 - b. Removing police discretion in relation to diversion for simple drug offences
 - c. Making participation in treatment programs voluntary
6. Reforming harsh bail and sentencing laws to reduce the number of people incarcerated, including on remand for breaching bail conditions prohibiting them from possessing and using drugs of dependence, particularly women and Aboriginal and Torres Strait Islander people.