



Submission: Australia's Illicit Drug Problem: Challenges and Opportunities for Law

13 January 2023

Thorne Harbour Health

Thorne Harbour Health is one of Australia's largest community-controlled health service providers for people living with HIV, and lesbian, gay, bisexual, trans and gender diverse, intersex and queer (LGBTIQ+) communities. Thorne Harbour Health primarily services Victoria and South Australia, but also leads national projects. Thorne Harbour Health works to protect and promote the health and human rights of LGBTIQ+ people and all people living with HIV.

As it relates to this submissions, Thorne Harbour Health provides alcohol and drug counselling, care coordination and therapeutic group services for LGBTIQ+ people and people living with HIV.

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Executive summary

Thorne Harbour Health (THH) welcomes the opportunity to provide a submission for the Inquiry into Australia's Illicit Drug Problem: Challenges and Opportunities for Law. With the International Harm Reduction Conference to be hosted in Melbourne this year, this submission process serves as a timely reminder of remaining informed by international evidence-based approaches in harm reduction related to illicit drug use.

Noting the National Drug Strategy 2017-2026's¹ "3 pillars of Harm Minimisation", the pillar of "Harm Reduction"² and its underpinning principle of "evidence-informed responses"³ must remain the forefront consideration in informing funding, resourcing or strategies associated with any and all initiatives related to prospective reforms so as to better facilitate health, social and economic related harm-reduction initiatives regarding illicit drug use within the community.

This submission primarily focuses on illicit drug use by LGBTIQ+ communities and those living with HIV, drawing on specific and identifiable drug use trends and practices within these communities and highlighting particular issues regarding illicit drug use that disproportionately impacts these communities.

Thorne Harbour Health submits that the use of illicit drugs use must be viewed through a public health lens rather than that of a punitive justice lens, instructed by contemporary academic research and comparative international jurisdictional analyses. Such an adjustment of perspective must inform and influence any and all prospective reform initiatives, and accordingly forms the underlying theme of all our recommendations made herein.

This submission serves to call attention to the lack of information, data and research regarding illicit drug use and trends thereof amongst priority populations⁴, that in effect, serves to inhibit the tailoring of appropriate harm-reduction initiatives.

¹ Commonwealth of Australia, Department of Health, 'National Drug Strategy 2017-2026' ('National Drug Strategy').

² Ibid, p.1, 13-14.

³ See, ibid, p. 15: "Funding, resource allocation and implementation of strategies should be informed by evidence-based practice".

⁴ The author notes the inclusion of the LGBTIQ+ communities within the National Drug Strategy as a priority population as it pertains to illicit drug use: see, Ibid.

Terms of Reference

Pursuant to subsection 7(1) of the *Parliamentary Joint Committee on Law Enforcement Act 2010*, the committee will inquire into and report on the challenges and opportunities for law enforcement in addressing Australia's illicit drug problem, with particular reference to:

1. trends and changes relating to illicit drug markets in Australia, including the supply, trafficking, production, distribution and use of illicit drugs;
2. emerging trends and risks, such as new psychoactive substances, adulterated drugs and other new sources of threat;
3. law enforcement's ability to detect and respond to the trafficking of precursor chemicals and illicit drugs, including the adequacy of screening techniques and the impact of seizures on illicit drug availability and use;
4. the involvement of law enforcement in harm reduction strategies and in efforts to reduce supply and demand, including the effectiveness of its involvement;
5. the strengths and weaknesses of decriminalisation, including its impact on illicit drug markets and the experiences of other jurisdictions; and
6. other related matters.

For purposes of this submission, THH will only be discussing points 1, 4, and 5 above.

Summary of Recommendations

Chemsex

1. Improve capacity of service clinicians regarding the provision of, or referring to harm-reduction information relating to, individuals who engage in chemsex or chemsex related activities.
2. Fund research with the goal of gaining a greater understanding of chemsex as a practice within different GBMSM subpopulations in order to develop tailored harm-reduction models.
3. Fund research to better ascertain the relationship between HIV and chemsex.

Illicit drug trends amongst Australian MSM and those living with HIV

1. Fund a more comprehensive national study regarding the trends of illicit drugs use with the express inclusion of LGBTIQ+ individuals and people living with HIV.

Alkyl Nitrites

1. To decriminalise the personal possession of alkyl nitrites in Australia.
2. In absence of decriminalisation, for the TGA to reassess its scheduling of the alkyl nitrites isoamyl nitrite, butyl nitrite, isobutyl nitrite, octyl nitrite and amyl nitrite, with the goal of improving legal access of regulated alkyl nitrites to those who require it.
3. In absence of such reassessment, for the TGA to fund the publishing of a webpage, or at least coordinate the facilitation of a guide on how to legally obtain alkyl nitrites in Australia, identifying pharmacies that supply them upon presentation of a valid prescription. Additionally, where consumers choose to import alkyl nitrites, for such a webpage to providing consumers information to approved manufacturers and companies that will provide alkyl nitrites that correctly reflect its labelling and contents. This could mirror initiatives such as PrEP Access Now⁴⁹. Any information must be in accessible, plain English that lay community members can readily understand.

Law enforcement and harm reduction

1. Law enforcement agencies provide in principle support for harm reduction interventions that have demonstrated public health efficacy.

Needle and Syringe Programs (NSP)

1. To implement a nationally coordinated response of running a pilot study of an NSP in a custodial setting. The provision of injecting equipment should involve the availability of harm reduction information, including access to addiction counselling and treatment. The pilot should be accompanied by a training and education program for prison staff about the actual levels of risk associated with NSPs, based on currently available evidence.
2. Following a pilot study, to implement a nationally coordinated response in implementing NSPs in custodial settings.

Discontinuation of Drug Detection Dogs

1. To enact a nationally coordinated response to discontinue the use of drug detection dogs.

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2. Commission an independent evaluation of the use of drug detection dogs at music festivals and other public spaces to determine their effectiveness in deterring the use and trafficking of illicit substances, and any unintended consequences or risk of harms resulting from this strategy. Additionally, such evaluation should include a cost-benefit analysis of the use of drug detection dogs in the independent evaluation.

Naloxone training

1. Naloxone and training on overdose response to be provided to law enforcement officers in each state and territory as part of standard procedures and equipment.

Decriminalisation

1. A nationally coordinated response to decriminalise the personal possession and use of all drugs.

2. A nationally coordinated response to regulate possession and use of drugs through the public health system using diversionary measures, education, rehabilitation, and in rare cases as necessary, administrative sanctions, as per the Portuguese model.

1. trends and changes relating to illicit drug markets in Australia, including the supply, trafficking, production, distribution and use of illicit drugs;

The *Private Lives 3* research - Australia's largest study on LGBTQ+ health and wellbeing – has found that LGBTQ+ people use drugs that are deemed to be illicit at significantly higher rates than the general population⁵. This is consistent with findings from the Australian Household Drug Survey⁶ and other academic literature⁷ that shows LGB individuals consume illicit drugs more than double their heterosexual counterparts for all illicit drugs.

Below we have highlighted particular illicit drug use trends within these communities.

Chemsex

Chemsex, or intentional sex under the influence of psychoactive drugs, primarily crystal methamphetamine, gamma-hydroxybutyrate (GHB) or mephedrone⁸, mostly among men who have sex with men (MSM), remains a high-risk activity with potentially significant adverse health outcomes, including intoxication and overdose.

However, there remains limited engagement with health professionals and harm-reduction

⁵ Hill, A. O., Bourne, A., McNair, R., Carman, M. & Lyons, A. (2020). *Private Lives 3: The health and wellbeing of LGBTIQ people in Australia*. ARCSHS Monograph Series No. 122. Melbourne, Australia: Australian Research Centre in Sex, Health and Society, La Trobe University, p. 64-69. ('Private Lives 3') Here, *Private Lives 3* concludes that 44.4% of LGBTQ+ individuals had consumed non-prescribed drugs within the last 6 months.

⁶ Australian Institute of Health and Welfare, National Drug Strategy Household Survey 2019 <<https://www.aihw.gov.au/reports/illicit-use-of-drugs/national-drug-strategy-household-survey-2019/contents/data-visualisations/drug-use-and-population-groups>> ('National Drug Strategy Household Survey'). Here, the survey concluded that 40% of homosexual/bisexuals had consumed illicit drugs recently, whilst only 15.4% of heterosexuals had done the same.

⁷ Bourne, A., & Weatherburn, P. (2017). Substance use among men who have sex with men: patterns, motivations, impacts and intervention development need. *Sex Transm Infect*, 93(5), 342–346; Cochran, S. D., Grella, C. E., & Mays, V. M. (2012). Do Substance Use Norms and Perceived Drug Availability Mediate Sexual Orientation Differences in Patterns of Substance Use? Results from the California Quality of Life Survey II. *Journal of Studies on Alcohol and Drugs*, 73(4), 675–685.; T. Lea, M. Hammoud, A. Bourne, L. Maher, F. Jin, B. Haire, N. Bath, J. Grierson, G. Prestage Attitudes and Perceived Social Norms toward Drug Use among Gay and Bisexual Men in Australia, *Subst Use Misuse*, 54 (6) (2019), pp. 944-954, 10.1080/10826084.2018.1552302; Also see, Sophia E Schroeder, Adam Bourne, Joseph Doyle, Mark Stoove, Margaret Hellard, Alisa Pedrana, "It's not just the hit itself": the social practice of injecting drug use among gay and bisexual men in Australia, *International Journal of Drug Policy*, Volume 103, 2022, 103642, ISSN 0955-3959, <https://doi.org/10.1016/j.drugpo.2022.103642>. (Schroeder et al., (2022a))

⁸ Crozier B et al. (2022) *Sexual Health*, 19(1), 76–78. doi:10.1071/SH21223. It is important to note that this list of drugs is non-exhaustive.

information regarding these practices⁹. In order to facilitate the most efficacious results, any responses to chemsex must involve social and cultural strategies of harm reduction and sexual health promotion before, during, and after a chemsex session¹⁰.

Additionally, of concern, there remains an intricate relationship between chemsex, HIV treatment and prevention, harm reduction, and the provision of community-based health services.

The associative, not causal¹¹, relationship between chemsex and HIV that are largely attributed to three possible mechanisms: that chemsex facilitates HIV transmission via its disinhibitory nature to make riskier behaviours¹², that some gay, bisexual and other men who have sex with men (GBMSM) who are more prone to engage in the drug scene are also more prone to engage in unprotected sex¹³, or that chemsex is used by GBMSM with diagnosed HIV to help alleviate anxieties they feel about living with HIV and the risk they can pose to sexual partners¹⁴.

Given the absence of a consensus regarding the relationship between HIV and chemsex, further research is required in this field in order to determine improved and tailored harm-reduction strategies for this subpopulation.

Recommendations

1. Improve capacity of service clinicians regarding the provision of or referring to harm-reduction information relating to individuals who engage in chemsex or chemsex related

⁹ Demant, D; Carroll, JA; Saliba, B; Bourne, Adam (2022): Information-seeking behaviours in Australian sexual minority men engaged in chemsex. La Trobe. Journal contribution. <https://doi.org/10.26181/20461398.v1>.

¹⁰ Carol Strong, Poyao Huang, Chia-Wen Li, Stephane Wen-Wei Ku, Huei-Jiuan Wu, Adam Bourne, HIV, chemsex, and the need for harm-reduction interventions to support gay, bisexual, and other men who have sex with men, *The Lancet HIV*, Volume 9, Issue 10, 2022, Pages e717-e725, ISSN 2352-3018, [https://doi.org/10.1016/S2352-3018\(22\)00124-2](https://doi.org/10.1016/S2352-3018(22)00124-2).

¹¹ Ibid: "Although numerous studies have identified the association between chemsex and HIV, a causal connection between the two has not been established."

¹² FM Guerra, TJ Salway, R Beckett, L Friedman, SA Buchan, Review of sexualized drug use associated with sexually transmitted and blood-borne infections in gay, bisexual and other men who have sex with men *Drug Alcohol Depend*, 216 (2020), Article 108237.

¹³ See, J Bryant, M Hopwood, GW Dowsett, et al. The rush to risk when interrogating the relationship between methamphetamine use and sexual practice among gay and bisexual men *Int J Drug Policy*, 55 (2018), p. 242-248.

¹⁴ See, P Weatherburn, F Hickson, D Reid, S Torres-Rueda, A Bourne Motivations and values associated with combining sex and illicit drugs ('chemsex') among gay men in South London: findings from a qualitative study, *Sex Transm Infect*, 93 (2017), p. 203-206.

activities.

2. Fund research with the goal of gaining a greater understanding of chemsex as a practice within different GBMSM subpopulations in order to develop tailored harm-reduction models.

3. Fund research to better ascertain the relationship between HIV and chemsex.

Illicit drug trends amongst Australian MSM and those living with HIV

The most recent Gay Community Periodic Surveys (GCPS), a repeated, cross-sectional survey of gay men conducted in the metropolitan areas of seven jurisdictions across Australia, indicated the following illicit drug trends as it pertains to gay and bisexual men who have sex with men (GBMSM) and persons living with HIV (PLHIV). There has not been a national report produced since 2010, and therefore, THH has synthesised information from these state reports and summarised it in the below two tables:

Jurisdiction	Most prevalent illicit drug trends for MSM	Increase	Decrease
Adelaide ¹⁵	Amyl nitrite (poppers) was the most commonly used recreational drug in the six months prior to the 2020 survey (reported by 29.5% of participants), followed by cannabis (27.3%), Viagra (20.2%), and cocaine (9.9%) ¹⁶ .	Between 2012 and 2020, the proportions of participants who reported using amyl, Viagra, and cocaine increased.	The proportions who reported using ecstasy, crystal methamphetamine, and speed decreased. Recreational drug use appears to have been largely unaffected by COVID-19 restrictions, however, there were decreases in the proportions of

¹⁵ Broady, T., Chan, C., Bavinton, B., Mao, L., Jeffries, D., Bartlett, S., Batrouney, C., Skene, H., Prestage, G., & Holt, M. (2021). Gay Community Periodic Survey: Adelaide 2020. Sydney: UNSW Centre for Social Research in Health. <http://doi.org/10.26190/jvdk-bg23> ('Gay Community Periodic Survey: Adelaide').

¹⁶ Ibid, p. 6.

			participants who reported using amyl, ecstasy, and speed between 2018 and 2020.
Canberra ¹⁷	The most frequently used drugs in the six months prior to the 2021 survey were amyl/poppers (35.2%), cannabis (27.5%), erectile dysfunction medication like Viagra (17.4%), and cocaine (12.9%).	Between 2013 and 2021, there were increases in the proportions of participants who reported using amyl (from 26.6% to 35.2%), cannabis (from 20.2% to 27.5%), Viagra (from 8.7% to 17.4%), and cocaine (from 4.6% to 12.9%).	
Melbourne ¹⁸	The most frequently used drugs in the six months prior to the 2021 survey were amyl/poppers ¹⁹ .	Over time, the use of Viagra, cocaine, and ketamine has increased, while the use of speed has decreased. Following decreases in drug use with the onset of the COVID-19	The use of Viagra and crystal methamphetamine decreased between 2021 and 2022 ²¹ .

¹⁷ Broady, T., Chan, C., MacGibbon, J., Bavinton, B., Mao, L., Gabrielides, E., Bogie, M., Martin, S. J., Gaida, F., Gleed, L., Prestage, G., & Holt, M. (2022). Gay Community Periodic Survey: Canberra 2021. Sydney: Centre for Social Research in Health, UNSW Sydney. DOI: <http://doi.org/10.26190/s8dv-s822> ('Gay Community Periodic Survey: Canberra').

¹⁸ Broady, T., Chan, C., MacGibbon, J., Bavinton, B., Mao, L., McKenzie, T., Hynes, A., Batrouney, C., Burnett, C., Sicari, F., West, M., Prestage, G., & Holt, M. (2022). Gay Community Periodic Survey: Melbourne 2022. Sydney: Centre for Social Research in Health, UNSW Sydney. <http://doi.org/10.26190/p2gh-n362> ('Gay Community Periodic Survey: Melbourne').

¹⁹ Ibid.

²¹ Ibid, p. 7.

		pandemic, there were increases between 2021 and 2022 in the proportions of participants who had used cocaine, ecstasy, and ketamine ²⁰ .	
Perth ²²	The most frequently used drugs in the six months prior to the 2021 survey were amyl/poppers (35.8%), cannabis (27.2%), Viagra (21.1%), and ecstasy (11.1%).	Between 2014 and 2021, there were increases in the proportions of participants who reported using amyl (from 29.4% to 35.8%) and Viagra (from 14.2% to 21.1%).	There were decreases in the proportions of participants who reported using cannabis (from 30.4% to 27.2%), ecstasy (17.0% to 11.1%), crystal methamphetamine (from 12.3% to 5.7%) and speed (from 14.0% to 4.2%).
Queensland ²³	The most frequently used drugs in the six months prior to the 2021 survey were amyl/poppers (32.5%), cannabis (24.6%), Viagra	Between 2017 - 2021, there was an increase in the proportion who reported using Viagra.	Between 2017 and 2021, there were decreases in the proportions of participants who reported using amyl, cannabis,

²⁰ Ibid, p. 7.

²² Chan, C., Broady, T., MacGibbon, J., Bavinton, B., Mao, L., Coci, M., Lobo, R., Radha Krishnan, S., Morgan, T., Prestage, G. & Holt, M. (2022). Gay Community Periodic Survey: Perth 2021. Sydney: Centre for Social Research in Health, UNSW Sydney. DOI: <http://doi.org/10.26190/f57q-0e06> ('Gay Community Periodic Survey: Perth').

²³ Broady, T., Chan, C., MacGibbon, J., Bavinton, B., Mao, L., Cripps, S., Staunton, S., Adair, A., Coffey, L., Prestage, G., & Holt, M. (2022). Gay Community Periodic Survey: Queensland 2021. Sydney: Centre for Social Research in Health, UNSW Sydney. DOI: <http://doi.org/10.26190/dy2g-q958> ('Gay Community Periodic Survey: Queensland').

	(22.7%), and cocaine (12.9%) ²⁴ .		ecstasy, amphetamine, crystal methamphetamine, and GHB.
Sydney ²⁵	The most frequently used drugs in the six months prior to the 2022 survey were amyl/poppers (36.9%), cannabis (29.1%), cocaine (20.1%), Viagra (19.4%), and ecstasy (16.6%).	N/A	Over time, the use of all drugs has decreased.
Tasmania ²⁶	Amyl nitrite (poppers) was the most commonly used recreational drug in the six months prior to the 2020 survey (reported by 25.0% of participants), followed by cannabis (24.1%), Viagra (16.0%), and ecstasy (9.9%).	Between 2014 and 2020, the proportions of participants who reported using each listed drug remained stable, as did the number of different drugs reported (Table 21).	Between 2014 and 2020, the proportions of participants who reported using each listed drug remained stable, as did the number of different drugs reported (Table 21).

Jurisdiction	Drug trends for PLHIV
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²⁴ Ibid, p. 6

²⁵ Chan, C., Broady, T., Bavinton, B., Mao, L., Molyneux, A., Delhomme, F., Power, C., Clackett, S., Heslop, A., Prestage, G., & Holt, M. (2022). Gay Community Periodic Survey: Sydney 2022. Sydney: Centre for Social Research in Health, UNSW Sydney. <http://doi.org/10.26190/5pm2-rg76> ('Gay Community Periodic Survey: Sydney').

²⁶ Broady, T., Chan, C., Bavinton, B., Mao, L., Melody, S., Anning, M., Owen, L., Prestage, G., & Holt, M. (2021). Gay Community Periodic Survey: Tasmania 2020. Sydney: UNSW Centre for Social Research in Health. <http://doi.org/10.26190/ftwc-sb56> ('Gay Community Periodic Survey: Tasmania').

Adelaide ²⁷	N/A
Canberra ²⁸	The proportion of HIV-negative participants reporting no drug use decreased from 54.6% in 2013 to 43.9% in 2021.
Melbourne ²⁹	The proportion of HIV-positive participants who reported no drug use increased from 23.1% in 2018 to 29.1% in 2022. The proportion of HIV-negative participants who reported no drug use decreased from 39.5% in 2018 to 35.8% in 2022, while the proportion who reported using more than two drugs increased from (25.3% to 29.5%). ³⁰
Perth ³¹	N/A
Queensland ³²	Between 2017 and 2021, the proportion of HIV-positive participants reporting any drug use remained stable. The proportion of HIV-negative participants reporting no drug use increased from 41.1% in 2017 to 46.7% in 2021 and the proportion reporting using more than two drugs decreased from 20.8% in 2017 to 17.4% in 2021. ³³
Sydney ³⁴	The proportion of HIV-positive participants reporting no drug use increased from 23.6% in 2018 to 29.0% in 2022, while the proportion who reported using three or more drugs decreased from 45.7% in 2018 to 38.2% in 2022. The proportion of HIV-negative participants reporting no drug use increased from 33.3% in 2018 to 42.0% in 2022, while the proportion who reported using three or more drugs decreased from 32.9% in 2018 to 26.2% in 2022. ³⁵
Tasmania ³⁶	N/A

Summary and limitations

i) GBMSM

²⁷ Gay Community Periodic Survey: Adelaide, above n 15.

²⁸ Gay Community Periodic Survey: Canberra, above n 17.

²⁹ Gay Community Periodic Survey: Melbourne, above n 18.

³⁰ Ibid, p. 7.

³¹ Gay Community Periodic Survey: Perth, above n 22.

³² Gay Community Periodic Survey: Queensland, above n 23.

³³ Ibid, p. 7.

³⁴ Gay Community Periodic Survey: Sydney, above n 25.

³⁵ Ibid, p. 6.

³⁶ Gay Community Periodic Survey: Tasmania, above n 26.

It must be noted that these studies have inherent limitations, including but not limited to: focusing only on metropolitan localities and not including analyses of regional and rural populations, the inconsistencies regarding the data, and the absence of a national synthesised report. Therefore, increased funding to expand and consolidate this research must be a priority.

Regarding specific trends of illicit drug use within GBMSM communities, cannabis across all jurisdictions was the drug most prevalently used, whilst amyl nitrites, cannabis, and Viagra followed.

Implications

Possession of some of these drugs may be prima facie legal, however should a person not have proper authorisation to possess or use such drugs, there can be criminal consequences, thereby capturing the submission's scope of 'illicit' drugs. Alkyl nitrites, Viagra and cannabis all, in some form, sit at Schedule 4 of the *Poisons Standard*³⁷, that, if found on a person "without authorisation" will trigger legislation such as Section 36B of the Drugs, Poisons and Controlled Substances Act 1981, subjecting a person to a fine of 10 penalty units³⁸. Of concern, where a person is found to be in possession of a drug like cannabis, in some jurisdictions, cannabis can be classed as a 'drug of dependence'³⁹, thereby affording the ability to lay criminal charges.

Not only with respect to cannabis, this presents significant issues for other illicit drugs with high prevalence within the LGBTQ+ community, primarily within the MSM communities such as unauthorised performance and image enhancing drugs (PIEDs)⁴⁰, use of which are especially pronounced in MSM from culturally and linguistically diverse (CALD) backgrounds⁴¹. Importantly, in certain jurisdictions PIEDs such as testosterone and other anabolic steroids are classed as a 'drug of dependence', thus carrying the ability to be criminally charged for possession⁴², thus creating a disproportionate impact of criminalisation of possession of such substances upon MSM communities.

Summary and limitations

ii) People living with HIV

Whilst historic academic literature has concluded that illicit, or non-prescribed, drugs is generally higher among Australian communities of gay and bisexual men than among the

³⁷ *Poisons Standard June 2022 (Cth)*.

³⁸ See, e.g. in the Victorian context this would be equivalent to \$1849.20: Victoria Legal Aid, 'Penalty Units' (Webpage, 11 August 2022) <<https://www.legalaid.vic.gov.au/penalty-units>>.

³⁹ The author notes this is an example specific to the Victorian jurisdiction.

⁴⁰ Griffiths, Scott; Jotanovic, Dejan; Austen, Emma. Androgen abuse among gay and bisexual men. *Current Opinion in Endocrinology & Diabetes and Obesity: December 2021 - Volume 28 - Issue 6 - p 589-594*; Scott Griffiths, Stuart B. Murray, Matthew Dunn, Aaron J. Blashill, "Anabolic steroid use among gay and bisexual men living in Australia and New Zealand: Associations with demographics, body dissatisfaction, eating disorder psychopathology, and quality of life, *Drug and Alcohol Dependence*, Volume 181, 2017, Pages 170-176.

⁴¹ Scott Griffiths et al., 'Associations with demographics, body dissatisfaction, eating disorder psychopathology, and quality of life', *Drug and Alcohol Dependence* (2017) 181, p. 170-176.

⁴² For example, in Victoria, see: Victorian Government, Department of Health, 'Drugs of dependence and drug-dependent persons' (Website) <<https://www.health.vic.gov.au/drugs-and-poisons/drugs-of-dependence-and-drug-dependent-persons>>.

general population, and higher still among gay and bisexual men living with HIV⁴³, the above more recent data regarding those living with HIV fails to present any readily identifiable trends, parallel with findings made in other academic studies⁴⁴. However, findings within the *HIV Futures 10* indicates that painkillers/analgesics, cannabis, and tranquilisers/sleeping pills to be the most prevalent illicit drugs used by people living with HIV⁴⁵.

In this regard, there remains a fragmentation of studies regarding people living with HIV, highlighting the need for the funding for more comprehensive studies into drug use by people living with HIV so as to inform and tailor appropriate harm-reduction initiatives to this subpopulation.

Other considerations

There is an absence to similar scale surveys exclusively focussed on illicit drug use by TGD persons across Australia⁴⁶. Unfortunately, this absence of data is compounded by the lack of clinician literacy regarding drivers of drug use by TGD individuals within the forensic sector. Thus, there remains a key opportunity for research to identify trends within TGD communities across Australia.

Future research

In essence, further research is required to better understand LGBTIQ+ communities' needs and behaviours in using illicit drugs. Such research must explore the need for deliberate and critical engagement with prior literature and research and make a conscious effort to disrupt dominant discourses on illicit substance use by these communities.

Recommendations

1. Fund a more comprehensive national study regarding the trends of illicit drugs use with the express inclusion of LGBTIQ+ communities and people living with HIV.

⁴³ Hammoud, M. A., Jin, F., Degenhardt, L., Lea, T., Maher, L., Grierson, J., Mackie, B., Pastorelli, M., Batrouney, C., Bath, N., Bradley, J., & Prestage, G. P. (2017). Following Lives Undergoing Change (Flux) study: Implementation and baseline prevalence of drug use in an online cohort study of gay and bisexual men in Australia. *International Journal of Drug Policy*, 41, 41-50.

<https://doi.org/10.1016/j.drugpo.2016.11.012>; Lea, T., Mao, L., Hopwood, M., Prestage, G., Zablotska, I., de Wit, J., & Holt, M. (2016). Methamphetamine use among gay and bisexual men in Australia: Trends in recent and regular use from the Gay Community Periodic Surveys. *International Journal of Drug Policy*, 29, 66-72. <https://doi.org/10.1016/j.drugpo.2016.01.003>.

⁴⁴ Norman T et al., 'Non-prescription drug use among HIV positive gay and bisexual men in Australia: A latent class analysis and comparison of health and well-being' *International Journal of Drug Policy* 100 (2022) 103526 <<https://linkinghub.elsevier.com/retrieve/pii/S0955395921004448>>. This study indicates that the patterns of drugs use amongst GBMSM living with HIV are not uniform, rather specific patterns of drug use are related to distinct health inequalities.

⁴⁵ Norman, T., Power, J., Rule, J., Chen, J., & Bourne., A. (2022). HIV Futures 10: Quality of life among people living with HIV in Australia (monograph series number 134). Australian Research Centre in Sex, Health and Society, La Trobe University. doi: 10.26181/21397641, p. 32.

⁴⁶ The author notes the presence of literature such as *Private Lives 3*, above n 5, that includes statistics regarding illicit drug use amongst the LGBTQ+ population, but the report is neither solely focused on illicit drug use, nor does it have a direct focus on TGD individuals, thus presenting with notable limitations.

Alkyl Nitrites

Despite the TGA rescheduling of a series of alkyl nitrites with the intention of making the substance more available to consumers, there remains a critical disconnect in the accessibility of these alkyl nitrites due to the absence of any companies clearing the TGA's regulatory requirements. This has engendered the creation of a thriving black market for alkyl nitrites that are unregulated and possibly more dangerous to users.

Alkyl nitrites, colloquially referred to as 'amyl' or 'poppers', are used by and remain culturally significant to GBMSM where the substance is used as a muscle relaxant and pleasure enhancer during sexual intercourse. The majority of alkyl nitrites are relatively safe substances that are neither psychoactive nor chemically addictive. The risk profile of alkyl nitrites, inclusive of adverse effects, interactions and contraindications are known, identifiable and manageable.

In June 2019, the TGA handed down its findings that it would schedule alkyl nitrites including isoamyl nitrite, butyl nitrite, isobutyl nitrite and octyl nitrite to remain in Schedule 4 under the *Poisons Standard*, referring to substances that can be obtained via prescription at pharmacies. In the same decision, amyl nitrite was 'down-scheduled' to Schedule 3, making it available over the counter at pharmacies. Likewise, isopropyl nitrite and n-propyl nitrite was up-scheduled from Schedule 9 to Schedule 10, removing penalties for possession of the substances under relevant state law, such as the *Drugs, Poisons and Controlled Substances Act 1981* for the Victorian jurisdiction.

As the TGA identified⁴⁷, alkyl nitrites act as a means of avoiding anal tearing and blood exposure during MSM sexual intercourse, and therefore when consumers have access to alkyl nitrites risks associated with the transmission of blood-borne viruses such as HIV and Hepatitis C during sexual intercourse are reduced.

⁴⁷ See, Australian Government, Department of Health and Aged Care, Therapeutic Goods Administration, 'Regulatory options for appropriate access and safety controls for alkyl nitrites – Public meeting questions and answers' (Webpage, 31 January 2019) <<https://www.tga.gov.au/resources/publication/publications/regulatory-options-appropriate-access-and-safety-controls-alkyl-nitrites-public-meeting-questions-and-answers>>: "Poppers have a very practical use in the gay community when engaging in anal sex, in addition to lubricant and condoms. Poppers reduce pain and discomfort in the receptive partner - and greatly reduce the chance of physical damage occurring. This is especially true for younger gay men. The removal of legal access to poppers would have significant negative health outcomes, both mental and physical, on this population."

However, despite the TGA's decision, the accessibility of alkyl nitrites in Australia are restricted as no companies have yet cleared the regulatory requirements imposed by the TGA to legally distribute amyl nitrite; it remains illegal to purchase poppers from sex shops and sex-on-premises venues, and it is illegal to import amyl nitrite without a valid prescription.

In essence, the failures of the TGA have manifested an illegal drug market by inadvertently creating a void of any commercially available, domestically regulated alkyl nitrite medicine products in Australia⁴⁸. This has resulted in significant issues associated with international trafficking of unauthorised substances, and uncertainty regarding navigating how to lawfully obtain alkyl nitrites by prospective consumers.

Although consumers are able to access alkyl nitrites under Schedule 4, consumers will still require a valid doctor's prescription and have access to either a compound pharmacy to produce the substance, or have means and time to import the substance.

Accessing Schedule 4 alkyl nitrites present multiple barriers, including but not limited to:

- MSM, especially closeted or 'not out' MSM, who cannot access an LGBTIQ+-friendly doctor to obtain a valid prescription, or at a minimum, a doctor that consumers feel comfortable disclosing their sexual practices to; and/or
- Those from CALD backgrounds who may face discrimination and prejudice from the close-knit community they are a part of.

In addition to this, the above barriers are particularly pronounced for those living in rural areas, where accessible and appropriate healthcare for MSM is seldom available.

It is therefore reasonable to expect that these barriers can render users apathetic in obtaining such substances via legal means as consumers neither have clear information on how to lawfully navigate the system to obtain alkyl nitrites, nor have the ability to access any governmental approved commercially available nitrite.

Given the current framework has overregulated alkyl nitrites into lawful unobtainability, this has led many users to resort to obtain what is purportedly sold as alkyl nitrites via the black

⁴⁸ See, Australian Government, Department of Health et al., 'Alkyl nitrites – Appropriate access and safety controls' (Presentation) <<https://www.tga.gov.au/sites/default/files/background-consultation-on-appropriate-access-safety-controls-alkyl-nitrites-js-melbourne.pdf>>.

market out of necessity⁴⁹, many of whom are trafficked into Australia. Unsurprisingly, such substances sourced from the black market possess inherent risks and are possibly more dangerous to consumers due to their unregulated nature, something the TGA has noted in its testing that revealed many brands of alkyl nitrites' labels do not reflect the reality of the nature of the substance⁵⁰. Similarly, misleading, unregulated nature of alkyl nitrites pose significant issues as there remains many derivatives of alkyl nitrites that are classed within Schedule 10, referring to substances that are of such danger to health as to warrant prohibition of sale, supply and use of the substance that upon use of the substance, can manifest multiple health issues⁵¹.

Of equal concern, such consumer behaviour of accessing alkyl nitrites via the black market render those found in possession of particular type of alkyl nitrite subject users to financial penalties dictated by individual states and territories⁵².

Recommendations

1. To decriminalise the personal possession of all alkyl nitrites in Australia.⁵³
2. In absence of decriminalisation, for the TGA to reassess its scheduling of the alkyl nitrites

⁴⁹ Stefanie J. Vaccher, et al., 'Prevalence, frequency, and motivations for alkyl nitrite use among gay, bisexual and other men who have sex with men in Australia, *International Journal of Drug Policy*, 76 (2020) 102659 <<https://doi.org/10.1016/j.drugpo.2019.102659>>. This study concluded that the majority of alkyl nitrite users will seek out 'other ways' of obtaining the substance where they are unable to access it via legal means.

⁵⁰ Australian Government, Department of Health and Aged Care, 'Testing of Alkyl Nitrite 'Poppers' Therapeutic Goods Administration (Webpage, 6 June 2019) <<https://www.tga.gov.au/resources/publication/tga-laboratory-testing-reports/testing-alkyl-nitrite-poppers>>.

⁵¹ See, Australian Government, Department of Health and Aged Care, Therapeutic Goods Administration, 'Final decision(s) for matter(s) referred to the March 2019 Joint ACMS-ACCS meeting' (Webpage, 6 June 2019) <<https://www.tga.gov.au/resources/publication/scheduling-decisions-final/final-decisions-matters-referred-march-2019-joint-acms-accs-meeting>>; Australian Government, Department of Health and Aged Care, Therapeutic Goods Administration, 'Regulatory options for appropriate access and safety controls for alkyl nitrites – Public meeting questions and answers' (Webpage, 31 January 2019) <<https://www.tga.gov.au/resources/publication/publications/regulatory-options-appropriate-access-and-safety-controls-alkyl-nitrites-public-meeting-questions-and-answers>>. The TGA notes that use of such substance can cause serious but rare temporary or permanent retinal maculopathy or methaemoglobinaemia and can cause adverse interactions with existing medical conditions and certain blood pressure medications.

⁵² See, e.g. in the Victorian context, under the *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 36B(2) 'A person shall not have in his possession a Schedule 8 poison, Schedule 9 poison or Schedule 4 poison unless he is authorized by or licensed under this Act or the regulations to do so.' A person found guilty of possession of any of these substances will be subject to 10 penalty units.

⁵³ Thorne Harbour Health discusses decriminalisation of all illicit drugs below, in line with the Terms of Reference, see: "5. The strengths and weaknesses of decriminalisation, including its impact on illicit drug markets and the experiences of other jurisdictions".

isoamyl nitrite, butyl nitrite, isobutyl nitrite and octyl nitrite and amyl nitrite, with the goal of improving legal access of regulated alkyl nitrites to those who require it.

3. In absence of such reassessment, for the TGA to fund the publishing of a webpage, or at least coordinate the facilitation of a guide on how to legally obtain alkyl nitrites in Australia, identifying pharmacies that supply them upon presentation of a valid prescription. Additionally, where consumers choose to import alkyl nitrites, for such a webpage to providing consumers information to approved manufacturers and companies that will provide alkyl nitrites that correctly reflect its labelling and contents. This could mirror initiatives such as PrEP Access Now⁵⁴. Any information must be in accessible, plain English that lay community members can readily understand.

⁵⁴ See, 'PrEP Access Now' (Webpage) <<https://www.pan.org.au/>>.

4. the involvement of law enforcement in harm reduction strategies and in efforts to reduce supply and demand, including the effectiveness of its involvement

Law enforcement remains powerful in the introduction of and sustainability of harm reduction strategies. As identified by the then Australian Government Department of Health and Ageing, there are a variety of means in which police can contribute to harm-reduction initiatives regarding the use of illicit drugs, including encouraging the entry of persons who use illicit drugs into treatment, involvement in community-based activities, school-based drug education, and collaborative partnerships.⁵⁵

However, law enforcement can also present as a profound barrier for many marginalised communities in accessing or being referred to harm reduction services that could prevent transmission of blood borne viruses, overdose or other drug-related harms. For example, in a 2022 NSW study, one in three music festival attendees with diverse sexualities stated they feared getting in trouble with police so much so it would deter them from seeking help in a drug-related emergency⁵⁶.

In this regard, in order to reduce harms associated with illicit drug use, law enforcement agencies must provide in-principle support to evidence-based harm-reduction initiatives that have demonstrated public health efficacy in order to present as an approachable body by those who use drugs when in crisis. For example, academic literature has demonstrated almost universal public interest in accessing pill testing at festivals if police were supportive, whilst concurrently demonstrating the almost universal nullification of such support if arrest was a possibility.⁵⁷

This in principle support should extend to all areas of law enforcement, including in custodial settings, where vulnerable groups such as TGD persons and First Nations LGBTIQ+ persons are able to access affirming and culturally safe supports therapeutic harm reduction initiatives.

⁵⁵ Spooner, McPherson and Hall, 'The role of police in preventing and minimising illicit drug use and its harms' National Drug Law Enforcement Research Fund – Monograph Series No. 2 <<https://www.aic.gov.au/sites/default/files/2020-05/monograph-2.pdf>>.

⁵⁶ Page, R., Healey, A., Siefried, K.J., Harrod, M.E., Franklin, E., Peacock, A., Barratt, M.J. and Brett, J. (2022), Barriers to help-seeking among music festival attendees in New South Wales, Australia. *Drug Alcohol Rev.*, 41: 1322-1330. <https://doi.org/10.1111/dar.13479>.

⁵⁷ Barratt, M.J., Bruno, R., Ezard, N. and Ritter, A. (2018), Pill testing or drug checking in Australia: Acceptability of service design features. *Drug and Alcohol Review*, 37: 226-236, 230. <https://doi.org/10.1111/dar.12576>: “Almost all (97%) [of those surveyed] would use a service that police supported by keeping clear, and almost all (94%) would not use a service if arrest was a possibility.”

Recommendations

1. Law enforcement agencies provide in principle support for harm reduction interventions that have demonstrated public health efficacy.

Needle and Syringe Programs

Specifically with respect to custodial settings, THH strongly supports the availability of needle and syringe programs (NSPs) in custodial settings. NSPs have proven to be an efficacious harm reduction strategy at reducing the rate of transmission of blood-borne viruses (BBVs), a priority within the National Drug Strategy⁵⁸.

NSPs are relevant to the Terms of Reference as the involvement of law enforcement is central to the general managing and operations of custodial settings which would extend to the availability of NSPs within these settings.

There must be a nationally coordinated response in implementing NSPs across all custodial settings.

NSPs reduce infections

Simply put, prohibition forces prisoners to share needles, raising the risk of BBV transmission⁵⁹.

NSPs have long been recognised as one of the most effective strategies for preventing the spread of BBVs.⁶⁰ In Australia, the widespread availability of community NSPs has prevented a significant number of both HIV and hepatitis C infections⁶¹. It has also reduced future healthcare costs, providing a significant return on investment⁶².

⁵⁸ National Drug Strategy, above n 1, p. 14.

⁵⁹ See, Heinemann, A, 'Prevention of Bloodborne Virus Infections among Drug Users in an Open Prison by Syringe Vending Machines' (2001) 47(1) *Sucht* 57.

⁶⁰ Wodak, A. and Cooney, A. (2005). Effectiveness of sterile needle and syringe programmes. *International Journal of Drug Policy*, 16(1): 31-44; Hurley, S.F., Jolley, D.J. and Kaldor, J.M. (1997). Effectiveness of needle-exchange programmes for prevention of HIV infection. *The Lancet*, 349(9068): 1797-1800.

⁶¹ Kwon, J.A., Anderson, J., Kerr, C.C. et al. (2012). Estimating the cost-effectiveness of needle-syringe programs in Australia. *AIDS*, 26(17): 2201-2210.

⁶² *Ibid.*

In a review of the prison-based NSPs in European countries⁶³, no seroconversions for hepatitis B, hepatitis C, or HIV were reported in any of the programs⁶⁴. In Spain, where NSPs operate in every prison nationwide, a study of the first ten years of an NSP at a particular prison⁶⁵ found the overall prevalence of HIV among prisoners reduced from 21% to 8.5%, and the prevalence of hepatitis C fell from 40% to 26%⁶⁶.

In fact, models of needle and syringe programs, among other initiatives, in NSW were found to make hepatitis C virus elimination feasible in Australian prisons⁶⁷.

Prisoners comfortable with NSPs

Albeit at a lower rate than in the community, injecting drug use continues to occur in prison⁶⁸. Cunningham et al⁶⁹ found that among prisoners with a history of injecting drug use, between one third and three quarters will continue to inject in prison.

Australia has wide availability of community-based NSPs, and data shows that significant numbers of incoming prisoners have reported injecting drug use and familiarity with NSPs prior to entering prison⁷⁰; should NSPs be made available in Australian prisons their uptake would therefore likely be rapid and widespread. However, trained peer workers would be the most effective means of distribution, as uptake of NSPs in prisons is greatest when injecting equipment and harm reduction education is provided by fellow prisoners, due to higher levels of trust and confidentiality among peers⁷¹.

⁶³ Dolan, K., Rutter, S., and Wodak, A. (2003). Prison based syringe exchange programmes: A review of international research and development. *Addiction*, 98: 153-158.

⁶⁴ Ibid, p. 156.

⁶⁵ Ferrer-Castro, V., Crespo-Leiro, M.R., García-Marcos, L.S. et al. (2012). Evaluation of needle exchange program at *Peireiro de Aguilar* prison: A ten year experience. *Revista Espanola de Sanidad Penitenciaria*, 14(1): 3-10.

⁶⁶ Ibid, p. 7.

⁶⁷ Bretaña, N. A., Gray, R. R., Cunningham, E. B., Betz-Stablein, B., Ribeiro, R., Graw, F., Luciani, F., and Lloyd, A. R. (2020) Combined treatment and prevention strategies for hepatitis C virus elimination in the prisons in New South Wales: a modelling study. *Addiction*, 115: 901– 913. <https://doi.org/10.1111/add.14830>.

⁶⁸ Treloar, C., McCredie, L., Lloyd, A.R. The prison economy of needles and syringes: What opportunities exist for blood borne virus risk reduction when prices are so high? *PLoS ONE* 2016, 11, e0162399.

⁶⁹ Cunningham, E.B. et al., Longitudinal injecting risk behaviours among people with a history of injecting drug use in an Australian prison setting: The HITS-p study. *Int. J. Drug Policy* 2018, 54, 18–25.

⁷⁰ Butler, T., Lim, D., and Callander, D. (2011). *National Prison entrants' Bloodborne Virus & Risk Behaviour Survey, 2004, 2007, and 2010*. The Kirby Institute and National Drug Research Institute, 169-172.

⁷¹ Hoover, J. and Jürgens, R. (2009). Harm reduction in prison: the Moldova model. International Harm Reduction Development Program, Public Health Program, Open Society Institute, pp.16-17

No evidence NSPs pose a safety risk

Frequently raised objections to NSPs in prisons include the concern they will increase the risk of needle stick injuries during routine activities or from needles used as weapons. However, the evidence indicates these concerns are unfounded. Several countries have operated NSPs within prisons, from single-prison pilot programs to long-standing programs operating in all prisons. In none of the programs has there been an increase in needle-related accidents or incidents⁷². Indeed, without NSPs prisoners will continue to hide needles, resulting in an increased risk of needle stick injuries to staff⁷³.

In every prison-based NSP implemented, similar reservations were expressed by prison staff in advance of their rollout. However, over time staff reported high levels of acceptance and support for the programs, as well as a better understanding of risks and harm reduction strategies associated with injection drug use and BBVs⁷⁴.

NSPs do not increase injection drug use

In a review of NSPs in several European prisons, the availability of sterile injecting equipment did not correlate with an increase in drug use in any prisons studied, and in some prisons, it correlated with a decrease in drug use⁷⁵. Under models where equipment was obtained from either syringe dispensing machines, or from non-medical prison staff, drug use levels remained roughly the same⁷⁶. However, under programs where equipment was distributed by prison healthcare staff, external harm reduction organisations, or by prisoners trained as peer workers, the availability of injecting equipment correlated with a decrease in overall drug use. This was due to the increased uptake of NSPs under such models, which provided greater opportunity for education, treatment referrals and further harm reduction interventions⁷⁷.

⁷² Stöver, H. and Nelles, J. (2003). Ten years of experience with needle and syringe exchange programmes in European Prisons. *International Journal of Drug Policy*, 14(5-6): 437–444. ^[SEP]

⁷³ Heinemann, A. and Gross, U. (2001). Prevention of blood-borne virus infections among drug users in an open prison by vending machines. *Sucht*, 47: 57-65.

⁷⁴ Dolan, Kate, Scott Rutter and Alex D Wodak, 'Prison-based Syringe Exchange Programmes: A Review of International Research and Development' (2003) 98(2) *Addiction* 153.

⁷⁵ Stöver, H. and Nelles, J., above n 72, p. 442.

⁷⁶ Jürgens, R. (2007). *Interventions to address HIV in prisons: Needle and syringe programmes and decontamination strategies*. World Health Organization, UNODC, UNAIDS, Geneva.

⁷⁷ *Ibid.*

In this regard, it is unsurprising that even Federal Government reports and international experts have also espoused their support for the use of NSPs in correctional settings⁷⁸.

Legal considerations

Under human rights law, prisoners are entitled to access the same health care as those in the wider community and healthcare that is of the same quality as that within the wider community, as espoused under multiple international best practice regulations⁷⁹ and supported by Australian Medical Association position statements on Health and the Criminal Justice System 2012⁸⁰ and Medical Ethics in Custodial Settings 2013⁸¹.

Thus, to best reflect best contemporary evidence-based practice, public health considerations and legal obligations reflecting equivalency of care, NSPs within custodial settings must be implemented.

Recommendations

1. To implement a nationally coordinated response of running a pilot study of an NSP in a custodial setting. The provision of injecting equipment should involve the availability of harm reduction information, including access to addiction counselling and treatment. The pilot should be accompanied by a training and education program for prison staff about the actual levels of risk associated with NSPs, based on currently available evidence.
2. Following a pilot study, to implement a nationally coordinated responses in implementing NSPs in custodial settings.

⁷⁸ See, National Reports: Commonwealth Department of Health, Fifth National Hepatitis C Strategy (Canberra: Commonwealth of Australia); Glauser W. Prison needle exchange programs rare despite evidence. *CMAJ*. 2013 Dec 10;185(18):1563. doi: 10.1503/cmaj.109-4644. Epub 2013 Nov 4. PMID: 24190985; Niveau G. Relevance and limits of the principle of "equivalence of care" in prison medicine. *J Med Ethics*. 2007 Oct;33(10):610-3. doi: 10.1136/jme.2006.018077. PMID: 17906061.

⁷⁹ UN General Assembly, *Basic Principles for the Treatment of Prisoners: resolution / adopted by the General Assembly, 28 March 1991, A/RES/45/111*; United Nations, *Standard Minimum Rules for the Treatment of Prisoners*, 30 August 1955.

⁸⁰ Australian Medical Association, 'Position Statement on Health and the Criminal Justice System 2012'

<https://www.ama.com.au/sites/default/files/documents/Health_%26_the_Criminal_Justice_System_%28final%29.pdf>.

⁸¹ Australian Medical Association, 'Medical Ethics in Custodial Settings – 2013. Amended 2015' (27 March 2013) <<https://www.ama.com.au/position-statement/medical-ethics-custodial-settings-2013>>.

Discontinuation of Drug Detection Dogs

Drug detection dogs incorrectly indicate that drugs are present the majority of the time. For example, in the South Australian context, for the period of 2021-2022, as little as 16% persons who were stopped by drug detection dogs were found with illicit drugs⁸². Such results have remained relatively consistent since 2014, annual findings only vacillating by around 5%⁸³. Similar results have been recorded in New South Wales.⁸⁴ In essence, such data demonstrates that in the vast majority of cases, drug detection dogs are causing police to 'pat down' and search the belongings of people who do not possess any illicit drugs, not only unnecessarily infringing the principle of bodily autonomy, but unnecessarily wasting police time and resources.

In 2006, the NSW Ombudsman found no evidence that the use of drug detection dogs disrupted low-level street dealing in a sustained manner,⁸⁵ and the supply and use of illicit substances continues to occur at events where drug detection dogs are deployed, suggesting they are not working to deter drug use or trafficking as intended. Not only is the deterrence effect of drug detection dogs questionable, they are known to increase drug-related harms and higher-risk drug behaviours⁸⁶ such as panic-induced consumption⁸⁷ or concealing drugs internally⁸⁸ that all can increase harm suffered by users, even leading to

⁸² Data SA, South Australian Government Data Directory, 'Controlled Substances Act 1984 - Number of authorisations, drug detection deployments and seizures' <<https://data.sa.gov.au/data/dataset/annual-reporting-data/resource/6f72d29f-a698-4856-829e-4f5270fab4fa>>.

⁸³ Ibid.

⁸⁴ RMIT ABC Fact Check, 'Are drug sniffer dogs incorrect 75 per cent of the time?' *ABC News* (Online, 3 December 2018) <<https://www.abc.net.au/news/2018-12-03/fact-check-are-drug-dogs-incorrect-75-pc-of-the-time/10568410>>.

⁸⁵ NSW Ombudsman, 'Review of the *Police Powers (Drug Detection Dogs) Act 2001*' (June 2006), p. iv.

⁸⁶ Malins, P. 'Submission to the Victorian Parliamentary Inquiry into Drug Law Reform', Submission no. 196; Sophie Hickey et al, 'Drug detection dogs in Australia: more bark than bite?' (September 2012) *Drug and Alcohol Review*, 31, 778-783.

⁸⁷ Parliament of Victoria, Law Reform, Road and Community Safety Committee, Inquiry into drug law reform (Report, March 2018), Victorian Government Printer, 529.

⁸⁸ Grigg, J., Barratt, M.J. and Lenton, S. (2018). Drug detection dogs at Australian outdoor music festivals: Deterrent, detection and iatrogenic effects. *International Journal of Drug Policy*. DOI: 10.1016/j.drugpo.2018.08.002. This study concluded that of those who expected dogs to be present at their last festival ($n = 647$), only 4% reported that this threat led them to decide not to take drugs. Other responses included: concealing their drugs well (48%), getting someone else to carry their drugs (15%), buying their drugs inside (11%), taking less easily detected drugs (10%) and taking drugs before entering (7%). Of those who carried drugs in ($n = 418$), 10% concealed them internally and 1% swallowed them to retrieve inside. Of those who had drugs on their person when seeing a dog ($n = 189$), 10% reported consuming drugs in response. No respondents reported being detected with drugs due to a positive identification.

instances of death⁸⁹.

Studies have since expressly concluded that drug detection dogs are not an efficacious method of deterrence and that by virtue of their findings conclude that their use should be “urgently reconsidered”⁹⁰.

Recommendations

1. A nationally coordinated response to discontinue the use of drug detection dogs.
2. Commission an independent evaluation of the use of drug detection dogs at music festivals and other public spaces to determine their effectiveness in deterring the use and trafficking of illicit substances, and any unintended consequences or risk of harms resulting from this strategy. Additionally, such evaluation should include a cost-benefit analysis of the use of drug detection dogs in the independent evaluation.

Naloxone training

Opioids, including both licit and illicit substances, have been the leading class of drug present in drug-induced deaths in Australia for the last 2 decades⁹¹. The Australian Government notes that over 110,000 Australians are currently struggling with opioid dependence, 3 people die every day from opioid-related use, and that 64% of drug-induced deaths in 2018 involved opioids⁹².

In the absence of a readily available ambulance services that unfortunately is becoming an increasingly problematic paradigm across Australia, law enforcement officers in all Australian jurisdictions should be provided naloxone and training on overdose response as part of standard procedures and equipment.

⁸⁹ Parliament of Victoria, Law Reform, Road and Community Safety Committee, Inquiry into drug law reform (Report, March 2018), Victorian Government Printer, 529.

⁹⁰ Grigg, J., Barratt, M.J. and Lenton, S, above n 88. This study concluded that “[a]lmost all festival-goers surveyed did not report being deterred from drug usage by the expected presence of drug dogs. Instead, a variety of alternative responses to avoid detection were reported, many of which could place festival-goers at greater risk of experiencing drug-related harms.”

⁹¹ Australian Government, Australian Institute of Health and Welfare, 'Alcohol, tobacco & other drugs in Australia' (Report, 14 December 2022) <<https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/drug-types/illicit-opioids-including-heroin#Deaths>>.

⁹² Australian Government, Department Health and Aged Care, 'Take Home Naloxone Program' (Webpage, 21 November 2022) < <https://www.health.gov.au/our-work/take-home-naloxone-program>>.

Given that the Government is willing to promulgate a 'Take Home' program for naloxone⁹³, providing this substance to regulated law enforcement officers is a reasonable, logical and safe solution to further reduce opiate-induced fatalities in Australia.

Recommendations

1. Naloxone and training on overdose response to be provided to law enforcement officers in each state and territory as part of standard procedures and equipment.

⁹³ Ibid.

5. The strengths and weaknesses of decriminalisation, including its impact on illicit drug markets and the experiences of other jurisdictions.

“The global war on drugs has failed, with devastating consequences for individuals and societies around the world”⁹⁴

Criminalisation has failed to prevent drug use, driven drug manufacturing underground, led to more dangerous substances on the market, and contributed to mass incarceration. Drug decriminalisation is the removal of criminal penalties associated with the personal possession and use of drugs. It recasts drug use as a public health issue, not a matter for law enforcement. LGBTQ+ people have higher rates of drug use than the general population. They are vulnerable to the harms associated with criminalisation and those associated with the historical criminalisation of minority sexualities. Countries that have adopted a policy of drug decriminalisation, such as Portugal, have seen a reduction in crime and drug-related harms, and improvements in access to treatment.

It is important to note that the vast majority of people who consume illicit drugs do so on an infrequent basis. Even regular consumers of illicit drugs generally age out of regular use, thereby creating a disconnect of punishing persons and putting offences on their permanent criminal record⁹⁵ that can serve to profoundly stymie one's ability to fully engage with multiple facets of society⁹⁶.

Noting the National Drug Strategy 2017-2026⁹⁷ wherein of 'the 3 pillars of Harm Minimisation' expressly includes 'Harm Reduction'⁹⁸ it is critical that the Federal Government follow evidence-based practice that demonstrably facilitates harm-reduction regarding illicit drug use within the community.

Prohibition has failed

⁹⁴ Global Commission on Drug Policy, 'The War on Drugs' (Report, 2011) <<https://www.globalcommissionondrugs.org/reports/the-war-on-drugs>>.

⁹⁵ The author however notes the introduction of the *Spent Convictions Act 2021 (Vic)* and like-legislation.

⁹⁶ See, e.g. employment: Australian Human Rights Commission, 'Human Rights: Discrimination in Employment on Basis of Criminal Record' (Discussion Paper, December 2004) <<https://humanrights.gov.au/our-work/rights-and-freedoms/human-rights-discrimination-employment-basis-criminal-record#toc1>>.

⁹⁷ National Drug Strategy, above n 1.

⁹⁸ *Ibid*, p.1.

Over the past fifty years, prohibition and the ‘war on drugs’ has not only failed to prevent the use of drugs, it has directly resulted in the expansion of drug markets and a more dangerous drug supply. According to the 2021 World Drug Report, persons convicted of drug offences account for 18% of the global jail population⁹⁹.

Globally, around 284 million people aged 15-64 used drugs worldwide in 2020, a 26 per cent increase over the previous decade. Young people are using more drugs, with use levels today in many countries higher than with the previous generation¹⁰⁰. In Australia, law enforcement is estimated to cost between 61-70% of the total drug budget, with only 20-23% going to treatment¹⁰¹. These punitive drug laws do not promote the health of people who use drugs, and their enforcement requires a substantial amount of government funding that generally comes at the expense of evidence-based public health interventions. In 2018, the United Nations Chief Executives Board for Coordination (CEB) issued a statement reflecting these concerns, highlighting the need to “promote prevention and treatment, including harm reduction; and enhance action by justice and law enforcement systems to stop organized crime and protect – rather than target – people who use drugs.”¹⁰²

Current Practice

Laws that address the possession and use of drugs are largely within the remit of the states and territories, not the Commonwealth. In most states and territories personal possession and use of certain drugs is a criminal offence punishable by up to two years in prison. There are a number of (mainly de facto) forms of decriminalisation for personal drug possession and use. Under de facto forms of decriminalisation, marginalised people can avoid criminal penalties, subject to police discretion, or be referred to education and treatment programs if they meet certain eligibility criteria. However, criminal penalties can still be enforced for non-compliance with diversionary programs, or if an individual has committed multiple offences. While population-wide drug use rates are stable in Australia, increasing detection rates mean more people who use drugs risk criminal conviction and imprisonment for possessing and using small quantities of drugs. This enforcement model is inconsistent with the views of

⁹⁹ United Nations Office on Drugs and Crime (2021) World Drug Report 2021, Booklet 6

¹⁰⁰ United Nations Office on Drugs and Crime, 'World Drug Report 2022'.

¹⁰¹ Ritter et al., 'Government Drug Policy Expenditure in Australia – 2009/10' National Drug Research Centre, Drug Policy Modelling Program – Monograph 24 (June 2013) <https://ndarc.med.unsw.edu.au/sites/default/files/ndarc/resources/24%20Government%20drug%20policy%20expenditure%20in%20Australia%20-%202009_10.pdf>

¹⁰² 'Statement by UN High Commissioner for Human Rights Michelle Bachelet to the Harm Reduction International Conference', United Nations (Web Page)

<<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24529&LangID=E>>.

the large majority of Australians.

Decriminalisation works

Drug decriminalisation is not the same as legalisation. Decriminalisation involves removing criminal penalties. It is not the same as legalisation and regulation in the way that, for example, alcohol and tobacco are legal, regulated substances. Decriminalisation merely allows for the creation of infringements, or administrative sanctions, which are dealt with outside the criminal justice system. By removing offences for personal drug possession and use from the criminal justice system, authorities are better able to treat drug use as the public health issue it is, and design interventions that reduce drug-related harms. A 2016 Briefing Note by the Drug Policy Modelling Program at the University of New South Wales states that the available “research evidence indicates that decriminalisation of drug use: reduces the costs to society, especially the criminal justice system costs; reduces social costs to individuals, including improving employment prospects; does not increase drug use; [and] does not increase other crime.”¹⁰³

Comparative harms

The current legislative framework fails to reflect evidence-based practice as it pertains to personal and societal harms.

For example, the seminal study regarding harms of particular drugs by Nutt et al¹⁰⁴ indicates that multiple illicit drugs have less harms on users and others than legalised substances. The study concludes that alcohol is the most harmful drug to others, and the fourth most harmful to users, and the most harmful drug overall (when both categories combined) in the UK.

Notably, parallel results have been replicated in Australian studies¹⁰⁵.

¹⁰³ Caitlin Hughes et al (2016), Decriminalisation of drug use and possession in Australia – A briefing note. Sydney: Drug Policy Modelling Program, NDARC, UNSW Australia. 5-6.

¹⁰⁴ Nutt, D. J., King, L. A. and Phillips, L. D. (2010) Drug harms in the UK: A multicriteria decision analysis. *The Lancet*, 376(9752), 1558–1565.

¹⁰⁵ Bonomo Y, Norman A, Biondo S, Bruno R, Daglish M, Dawe S, Egerton-Warburton D, Karro J, Kim C, Lenton S, Lubman DI, Pastor A, Rundle J, Ryan J, Gordon P, Sharry P, Nutt D, Castle D. The Australian drug harms ranking study. *J Psychopharmacol*. 2019 Jul; 33(7):759-768. doi: 10.1177/0269881119841569. Epub 2019 May 13. Erratum in: *J Psychopharmacol*. 2019 Nov;33(11):1471. PMID: 31081439.

These studies present obvious dissonance in Australia's current legislative framework criminalising substances given that alcohol is legally accessible, available, distributed and regularly consumed substance by the majority of the Australian public.

The Portuguese experience

Various decriminalisation schemes have been established throughout the world, most notably in Portugal. In 2001, the Portuguese government removed all criminal penalties for the personal possession and use of drugs. While the trafficking of such drugs remains a criminal offence, individuals caught with small quantities are subject to administrative penalties, rather than criminal ones. In fact, the reforms enacted in Portugal revolutionise dealing with the issue of illicit drug use, changing the formal system that directs the person using drugs to a panel under the Ministry of Health, compared to that of the Ministry of Justice.

The exact penalties applied are decided by the Commissions for the Dissuasion of Drug Addiction (CDTs), however, the vast majority of cases referred to it are suspended, meaning no penalties are applied. CDTs are comprised of three appointees: a legal expert, a health professional and a social worker, who are supported by a multi-disciplinary team. CDTs offer "targeted advice and interventions, in conjunction with a network of wide-ranging (e.g. employment, psychological, medical, housing) local support."¹⁰⁶ People who are dependent on particular drugs can also access safe forms from government-approved providers, allowing them to safely manage and ultimately stop their use. While people who are dependent on drugs are encouraged to seek treatment, they are rarely sanctioned if they choose not to¹⁰⁷. The aim is for people to begin treatment voluntarily, as this improves the chances of treatment being successful.

Portugal's policy of drug decriminalisation has been successful in many ways. The harms associated with drug use have decreased, with more people seeking and accessing

¹⁰⁶ Arianna Silvestri, 'Gateways From Crime To Health: The Portuguese Drug Commissions' (Report, Winston Churchill Memorial Trust, 2014) 11- 12.

¹⁰⁷ Artur Domosławski, 'Drug policy in Portugal: the benefits of decriminalizing drug use' (Report, Open Society Foundation Global Drug Policy Program, June 2011) 30.

treatment. Overall rates of drug use have not increased, but rates of acquisitive crime—that is, crimes committed to help the individual ultimately acquire drugs—have dropped¹⁰⁸.

Widespread support for drug decriminalisation

Support for drug decriminalisation notably includes: The United Nations Chief Executives Board (CEB), chaired by the UN Secretary General and representing 31 UN agencies¹⁰⁹; the ACT Government, Mick Palmer, AO, APM, former Commissioner of the Australian Federal Police (1994–2001), together with three former police commissioners and assistant commissioners, two former heads of corrective services, a former supreme court judge and a former director of public prosecution¹¹⁰; The Fair Treatment partnership for drug law and policy reform – led by the Uniting Church Synod Of NSW and ACT – with 6562 current partners (from NSW, ACT, Australia and overseas), including specialist researchers, health professionals, law enforcement professionals, health, social equity, and civil liberties organisations, and the wider community¹¹¹; and the Australian Medical Association, which “supports the introduction of innovative policy models and trials, in a controlled manner, funded and evaluated appropriately, that might reduce harms and improve outcomes for users and society at large. For example: needle exchanges, pill testing, prisoner interventions and services, novel treatments and degrees of decriminalisation for some drugs etc.”¹¹²

Following the enactment of Portugal’s decriminalisation, the number of people arrested and referred to the Portuguese courts for drug offences decreased by more than 60% each year¹¹³, whilst the number of individuals incarcerated in Portugal for violating drug laws has

¹⁰⁸ Susana Ferreira, ‘Portugal’s radical drugs policy is working. Why hasn’t the world copied it?’ *The Guardian* (Online, 5 December 2017) <<https://www.theguardian.com/news/2017/dec/05/portugals-radical-drugs-policy-is-working-why-hasnt-the-world-copied-it>>.; Caitlin Hughes and Alex Stevens, ‘What can we learn from the Portuguese decriminalisation of Illicit Drugs?’ (2010) 50(6) *British Journal of Criminology* 1010.

¹⁰⁹ United Nations Chief Executive Board for Coordination, ‘Summary of deliberations’ CEB/2018/2, (18 January 2019).

¹¹⁰ Mick Palmer et al., ‘Can Australia respond to drugs more effectively and safely?: Roundtable report of law enforcement and other practitioners, researchers and advocates’ (Report, Australia21, September 2015).

¹¹¹ ‘Fair Treatment Campaign’, Uniting Church (Web Page) <<https://www.fairtreatment.org/>>.

¹¹² ‘Position Statement’, The Australian Medical Association (Web Page) <<https://www.ama.com.au/position-statement/harmful-substance-use-dependence-and-behavioural-addiction-addiction-2017>>.

¹¹³ Rego, X., Oliviera, M.J., LaMeiria, C. (2021) 20 years of Portuguese drug policy - developments, challenges and the quest for human rights. *Substance Abuse Treatment Prevention & Policy* 16,59 (2021). <https://doi.org/10.1186/s13011-021-00394-7>.

also dropped from 44% in 1999 to 24% in 2014¹¹⁴. Portugal's success is typified by population drug use rates being recorded far below the European norm and even further below those in the United States¹¹⁵. Likewise, there is some evidence that Portugal's decriminalisation resulted in lessened stigma around substance use that induced positive public health consequences¹¹⁶.

Decriminalising the personal possession and use of all drugs will reduce drug-related harms. It is widely supported and treats drug use as the public health issue it is, rather than as a problem for law enforcement. This approach improves investment in, and access to, drug treatment and rehabilitation, and reduces the personal and public financial and social costs associated with criminal penalties.

The ACT experience

Earlier this year, the ACT parliament passed laws that resulted in those within the ACT found with small amounts of nine different types of illicit drugs, inclusive of heroin, cocaine and speed, would not be criminally prosecuted, rather cautioned, fined or referred to a drug diversion program.

The ACT health minister, Rachel Stephen-Smith, expressed that focusing on harm reduction rather than criminally punishing drug users was the way forward towards a progressive, evidence-informed system.

Despite being a 12-month transition period, meaning the laws will not come into force until October 2023¹¹⁷, these reforms should represent a clear paradigm change in understanding and managing drug related harms in the Australian context.

¹¹⁴ Félix, S. and Portugal, P. (2017) 'Drug decriminalisation and the price of illicit drugs', *International Journal of Drug Policy*, 39, pp. 121–129. doi: 10.1016/j.drugpo.2016.10.014.

¹¹⁵ Rego, X., Oliviera, M.J., LaMeiria, C. above n 113.

¹¹⁶ Hughes C. E., Stevens A. "What can we learn from the Portuguese decriminalisation of illicit drugs?" *British Journal of Criminology*. 2010, p 157-198; Eastwood, N., Fox Edward, & Rosmarin Ari. (2016). *A quiet revolution: Drug decriminalisation across the globe* (Second ed.). London: Release Publication.

¹¹⁷ 'ACT becomes first Australian jurisdiction to decriminalise illicit drugs in small quantities' *The Guardian* (Online, 20 October 2022) <<https://www.theguardian.com/australia-news/2022/oct/20/act-becomes-first-australian-jurisdiction-to-decriminalise-illicit-drugs-in-small-quantities>>.

Drug use in LGBTQ+ communities

LGBTQ+¹¹⁸ people use drugs at significantly higher rates than the general population. There is a lack of research about drug use in people who are intersex and in people who are transgender. LGBTQ+ people who use drugs are vulnerable to harms associated with criminalisation of drug use, which include stigma, discrimination, reduced use of health services, and exposure to the black market. They are also vulnerable to harms associated with the after-effects of historical criminalisation of minority sexualities, such as the reluctance to report crime due to assumptions of police hostility; these persist despite evidence of increased support of LGBTQ+ communities by police in Australia. Although more research is needed, these harms can particularly affect sexually and gender diverse youth.

Criminalisation of illicit drugs disproportionately impacts LGBTQ+ persons

Private Lives 3 has concluded that LGBTQ+ people use drugs that are deemed to be illicit at significantly higher rates than the general population¹¹⁹, consistent with findings from the Australian Household Drug Survey that identified that LGB individuals consumed illicit drugs more than double than their heterosexual counterparts for all illicit drugs¹²⁰ and other associated academic literature¹²¹. Accordingly, LGBTQ+ individuals have been identified as a priority population within the National Drug Strategy¹²².

Research has suggested that these higher rates are often attributed to stigmatisation of sexual minority identities,¹²³ valued cultural practices among GBM¹²⁴, and for gay community spaces being problematised as promoting substance use among vulnerable GBM through

¹¹⁸ The author notes that this acronym is distinct from 'LGBTIQ+', with the conscious exclusion of the intersex population given the absence of any substantial evidence base.

¹¹⁹ *Private Lives 3*, above n 5, p. 64-69. Here, *Private Lives 3* concludes that 44.4% of LGBTQ+ individuals had consumed non-prescribed drugs within the last 6 months.

¹²⁰ National Drug Strategy Household Survey 2019, above n 6. Here, the survey concluded that 40% of homosexual/bisexuals had consumed illicit drugs recently, whilst only 15.4% of heterosexuals had done the same.

¹²¹ See, above n 7.

¹²² National Drug Strategy, above 1, p. 18, 29.

¹²³ Schroeder, SE; Bourne, Adam; Doyle, JS; Hellard, ME; Stooze, Mark; Pedrana, A (2022): Constructing a 'target population': A critical analysis of public health discourse on substance use among gay and bisexual men, 2000–2020. La Trobe. Journal contribution. <https://doi.org/10.26181/21302556.v1>. (Schroeder et al., (2022b))

¹²⁴ Green, A. I., & Halkitis, P. N. (2006). Crystal methamphetamine and sexual sociality in an urban gay subculture: an elective affinity. *Cult Health Sex*, 8(4), 317–333; Race, K., Lea, T., Murphy, D., & Pienaar, K. (2016). The future of drugs: recreational drug use and sexual health among gay and other men who have sex with men. *Sex Health*. 14(1) 42-50.

aggravating loneliness and normalising drug use as a form of maladaptive coping.¹²⁵

Concernedly, *Private Lives 3* similarly noted that among participants who had used drugs for non-medical purposes in the past 6 months, 19.6% of trans women experienced a time where they had struggled to manage drug use or when it negatively impacted their everyday life in the past 6 months, followed by 18.2% of non-binary participants, 16.8% of trans men, 12.7% of cisgender women and 12.4% of cisgender men¹²⁶.

Because LGBTQ+ people use drugs at significantly higher rates than the general population, these communities are therefore disproportionately impacted by the criminalisation of personal drug use. Thus, our advocacy for in-principle support to be provided by law enforcement agencies for evidence-based public health initiatives¹²⁷ such as pill testing would provide much needed support and safety to LGBTIQ+ communities given the higher prevalence of illicit drug use.

Moreover, drugs of particular prevalence within the LGBTIQ+ communities such as cannabis¹²⁸ or PIEDs by the subpopulation of MSM and CALD MSM¹²⁹ continue to endure as criminal offences for possession in particular jurisdictions, which unsurprisingly, has a disproportionately negative impact these communities.

Evidence shows drug decriminalisation does not increase drug use or reduce crime and drug-related harms. Personal drug use is a public health issue, not an issue for law enforcement. Drug decriminalisation has proven to be effective in several international jurisdictions. Portugal decriminalised the possession and use of all drugs in 2001, whereby rates of drug use in Portugal have not increased, and 'acquisitive' crime to acquire drugs has decreased. There is widespread community and expert support for drug decriminalisation.

Recommendation 1

1. A nationally coordinated response to decriminalise the personal possession and use of all

¹²⁵ Schroeder et al., (2022b), above n 123.

¹²⁶ *Private Lives 3*, above n 5, p. 68.

¹²⁷ See above, Recommendation 1 under Terms of Reference '4. the involvement of law enforcement in harm reduction strategies and in efforts to reduce supply and demand, including the effectiveness of its involvement'.

¹²⁸ See above, 'Summary and Implications i) GBMSM' under Terms of Reference '1. trends and changes relating to illicit drug markets in Australia, including the supply, trafficking, production, distribution and use of illicit drugs'.

¹²⁹ See above n 40 and 41.

drugs.

2. A nationally coordinated response to regulate possession and use of drugs through the public health system using diversionary measures, education, rehabilitation, and in rare cases as necessary, administrative sanctions, as per the Portuguese model.

Conclusion

Within this submission, Thorne Harbour Health submits that the use of illicit drugs use must be viewed through a public health lens rather than that of a punitive justice lens, calling for the decriminalisation of personal possession of illicit drugs.

Additionally, this submission identifies the trends of illicit drug use and practices within the LGBTIQ+ communities and those living with HIV, further drawing attention to particular illicit drug issues that disproportionately affect these populations.

Lastly, this submission further identifies multiple areas for further research and study so as to better understand particular communities' interaction with particular substances so as to inform the tailoring of relevant and appropriate harm reduction initiatives.