

# COMMUNITY LEGAL CENTRES TASMANIA

16 January 2023

Committee Secretary  
Parliamentary Joint Committee on Law Enforcement  
PO Box 6100  
Parliament House  
Canberra ACT 2600

via email: [le.committee@aph.gov.au](mailto:le.committee@aph.gov.au)

To the Committee Secretariat,

**Re: *Inquiry into Australia's illicit drug problem: challenges and opportunities for law enforcement***

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Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide a response to the *Inquiry into Australia's illicit drug problem: challenges and opportunities for law enforcement*.

CLC Tas is the peak body representing the interests of nine community legal centres (CLCs) located throughout Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

Five years ago, we launched a major report on drug law reform. The report entitled *The Case for a Health Focused Response to Drug Use in Tasmania's Legal System* called for all drug use to be treated as a health rather than a criminal justice issue.<sup>1</sup> The report found that the war on drugs had failed and that despite the considerable resources directed towards the criminalisation of drug use, there has been no curtailment of either the supply or the consumption of illicit drugs. The report reviewed alternatives including Portugal's decriminalisation model which has seen a reduction in crimes involving the use or threat of violence, a reduction in drug-related death and disease and a reduction in drug-related ambulance call-outs, emergency admissions and hospitalisations.

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<sup>1</sup> Community Legal Centres Tasmania, *The Case for a Health Focused Response to Drug Use in Tasmania's Legal System* (July 2017). As found at <http://www.clctas.org.au/wp-content/uploads/2013/06/DrugReformPaperFinal.pdf> (accessed 12 January 2023).

The report also included a cost benefit analysis from Dr Paul Blacklow, an economist at the University of Tasmania who found that if the Portuguese decriminalisation model was any guide, a health focused approach to illicit drug use would likely save tens of millions of dollars annually in Tasmania alone.

Since our report was released in 2017, the Australian Criminal Intelligence Commission has continued to report increasing seizures, weight of drugs confiscated and arrests. Indeed, in its most recent annual report the ACIC reported:<sup>2</sup>

*over the last decade, during which time the Australian population increased around 14 per cent: the number of national illicit drug seizures increased 74 per cent; the weight of illicit drugs seized nationally increased 314 per cent; [and] the number of national illicit drug arrests increased 96 per cent.*

In the ACIC's own words this equates to 1 illicit drug seizure every 4.5 minutes, 1 kilogram of illicit drugs seized every 14 minutes and 1 illicit drug arrest every 3.5 minutes.<sup>3</sup>

### **Australia's National Drug Strategy**

Harm minimisation is the foundation of Australia's *National Drug Strategy 2017-2026* and is sought to be achieved "through balanced adoption of effective demand, supply and harm reduction strategies".<sup>4</sup> This includes investment in around 50 diversion programs offered across Australia including Police Drug Diversion and Court Mandated Diversion in Tasmania.<sup>5</sup>

A comprehensive evaluation of police drug diversion undertaken by the *Australian Institute of Criminology* in 2008 found that there was a high rate of compliance with the required education or treatment programs and the majority of participants who were referred to diversion not re-offending in the 12–18 months after being cautioned.<sup>6</sup>

In relation to court mandated diversion, studies carried out comparing persons sentenced to court mandated diversion with persons who have not undertaken the program. An evaluation of the NSW Drug Court for example, found that when participants in the Drug Court were matched with offenders sentenced to more conventional sentences, Drug Court participants regardless of whether they remained in treatment or were removed from the program, were 17 per cent less likely to be reconvicted for any offence, 30 per cent less likely to be reconvicted for a violent offence and 38 per cent less likely to be reconvicted for a drug offence at any point

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<sup>2</sup> Australian Criminal Intelligence Commission, *2019-20 Illicit Drug Data Report* at 1-2. As found at [https://www.acic.gov.au/sites/default/files/2021-10/IDDR%202019-20\\_271021\\_Full\\_0.pdf](https://www.acic.gov.au/sites/default/files/2021-10/IDDR%202019-20_271021_Full_0.pdf) (accessed 12 January 2023).

<sup>3</sup> Ibid 4.

<sup>4</sup> Commonwealth of Australia, *National Drug Strategy 2017-2026* (Canberra: 2017) at 1.

<sup>5</sup> Ibid 4.

<sup>6</sup> J Payne, M Kwiatkowski & J Wundersitz, *Police drug diversion: a study of criminal offending outcomes* (2008) Research and Public Policy Series Report 97. Canberra: Australian Institute of Criminology.



during the follow-up period (which averaged 35 months).<sup>7</sup> And, when only those Drug Court participants who had completed the program were compared, they were found to be 37 per cent less likely to be reconvicted of any offence, 65 per cent less likely to be reconvicted of an offence against the person, 35 per cent less likely to be reconvicted of a property offence and 58 per cent less likely to be reconvicted of a drug offence.<sup>8</sup>

Despite the proven success of diverting persons who use drugs away from the criminal justice system and into education, treatment and other services, the primary focus of Australia's response to illicit drugs continues to be law enforcement with analysis carried out by the National Drug and Alcohol Research Centre finding that nearly two-thirds (64 per cent) of all illicit drug expenditure was directed to law enforcement, with 23 per cent spent on treatment, 10 per cent on prevention, and just 2 per cent on harm reduction.<sup>9</sup>

#### **- Focus on Law Enforcement**

The focus on law enforcement to address illicit drug use rather than more effective harm minimisation measures such as education and treatment is best exemplified in the significant under-investment in alcohol and other drug (AOD) treatment. A review of AOD treatment services in Australia commissioned by the Australian Government in 2014 found that nationally, treatment places would need to double to meet demand.<sup>10</sup> The review estimated that approximately 200,000 people receive AOD treatment in any one year in Australia, but that the unmet demand for AOD treatment was conservatively estimated to be up to 500,000 people over and above those in treatment in any one year.<sup>11</sup> In Tasmania, a review carried out in 2017 found that 2,791 Tasmanians received treatment in 2018-19 but that an estimated 12,767 required treatment, leading the authors to conclude that "there is a significant number of Tasmanians who may need some form of AOD treatment who for a variety of reasons are not currently receiving treatment".<sup>12</sup>

#### **Decriminalisation**

The failure of our current law enforcement approach to illicit drug use has seen jurisdictions across Australia and the world consider alternatives including the adoption of a model in which all drug use is treated as a health rather than a criminal justice issue.

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<sup>7</sup> D Weatherburn, C Jones, L Snowball & J Hua, *The NSW Drug Court: A re-evaluation of its effectiveness* (2008) 121 *NSW Bureau of Crime and Statistics and Research* at 9.

<sup>8</sup> *Ibid* 11.

<sup>9</sup> Alison Ritter, Ross McLeod and Marian Shanahan, *Government drug policy expenditure in Australia - 2009/10* (National Drug and Alcohol Research Centre: Monograph No. 24, Sydney June 2013).

<sup>10</sup> Alison Ritter, Lynda Berends, Jenny Chalmers, Phil Hull, Kari Lancaster, Maria Gomez, *New Horizons: The review of alcohol and other drug treatment services in Australia* (Final Report: July 2014) at 13.

<sup>11</sup> *Ibid*.

<sup>12</sup> Department of Health, *Reform Agenda for the Alcohol and Other Drugs Sector in Tasmania* (November 2020) at 11-12. Also see Siggins Miller, 'A single Tasmanian alcohol and other drugs (AD) service system framework' (Final Report: August 2017) at 5.

**- Australian Parliamentary Joint Committee on Law Enforcement**

In March 2018 as part of its *Inquiry into crystal methamphetamine (ice)*<sup>13</sup> the Parliamentary Joint Committee on Law Enforcement visited Portugal to inquire into their decriminalisation model. After meeting with a range of experts the committee made the following observations:

*6.91 The committee's visit to Portugal provided it with valuable insight into that country's decriminalised drug framework. The Portuguese model offers an alternative to criminalisation and the "war on drugs". Whilst maintaining criminal sanctions against individuals and organised crime groups responsible for the trafficking of drugs, Portugal's drug users are treated with compassion. They are supported by police and the CDTs to receive education about the harms of drug use and attend voluntary treatment. Portugal has created an environment the purpose of which is to improve drug users' health, irrespective of whether or not they continue to use drugs, and that enables drug users to pursue treatment for their drug use without fear of criminal sanctions. The Portuguese drug framework has reduced the spread of HIV/AIDS and improved mortality rates, and appears to have the support of law enforcement agencies.*

*6.92 While decriminalised drug policies are demonstrated to have a positive impact on health outcomes for drug users, decriminalisation is not a "silver bullet". Reform to decriminalise drug use must occur in conjunction with investment in treatment services to ensure drug users are able to transition into treatment services without delay. The committee agrees with analyses that attribute the success of Portugal's approach to this combination of drug law reform and investment in treatment services.*

Whilst the Committee was unable to reach a concluded view on the appropriateness of decriminalisation it conceded that “the current approach in Australia is not working” and recommended the adoption of a model which would shift “the focus on methamphetamine from a law enforcement problem to a health issue within an environment where treatment and support are readily available and without stigmatisation”.<sup>14</sup>

**- Victorian Law Reform, Road and Community Safety Committee**

In Victoria during 2018 the Law Reform, Road and Community Safety Committee handed down a major report into drug law reform entitled *Inquiry into drug law reform*.<sup>15</sup> Relevantly, the committee recommended that the Victorian Government “treat the offences of personal use and possession for all illicit substances as a health issue rather than a criminal justice issue”.<sup>16</sup>

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<sup>13</sup> Commonwealth of Australia, Parliamentary Joint Committee on Law Enforcement, *Inquiry into crystal methamphetamine (ice)* (Final Report: March 2018).

<sup>14</sup> Ibid para. 6.98.

<sup>15</sup> Parliament of Victoria, Law Reform, Road and Community Safety Committee, *Inquiry into drug law reform* (March 2018) para. 7.8.

<sup>16</sup> Parliament of Victoria, Law Reform, Road and Community Safety Committee, *Inquiry into drug law reform* (March 2018) recommendation 13.



### **- United Nations Chief Executives Board**

In November 2018 the United Nations Chief Executives Board for Coordination committed to promoting alternatives to conviction and punishment in appropriate illicit drug cases, including the decriminalisation of drug possession for personal use.<sup>17</sup>

### **- Western Australian Select Committee**

In November 2019 a Western Australian *Select Committee on Alternative Approaches to Reducing Illicit Drug Use and its Effects on the Community* handed down its final report.<sup>18</sup> The report found that “a number of approaches used within Australia and internationally have successfully reduced drug-related harms by shifting policy priorities from prohibition towards health, prevention and harm reduction”.<sup>19</sup> The Committee recommended that drug use be treated primarily as a health issue and that “criminal penalties for the use and possession of drugs for personal use are replaced with administrative penalties”.<sup>20</sup>

### **- Australian Capital Territory**

Most recently, the Australian Capital Territory passed the *Drugs of Dependence (Personal Possession) Amendment Bill 2022* which decriminalised drug use. According to the Minister for Health Rachel Stephen-Smith “this sensible reform is based on the expert advice that a health focused, harm reduction approach delivers the best outcome for people using drugs”.<sup>21</sup>

### **Reorientate personal drug use as a public health issue**

We strongly believe that all Australian jurisdictions should support drug use being treated as a health and not a criminal justice issue. Over the last five years this has been the recommendation of Inquiries carried out by the Commonwealth Parliamentary Joint Committee on Law Enforcement, Victoria’s Law Reform, Road and Community Safety Committee and a Western Australian Select Committee. Most significantly, the Australian Capital Territory has recently passed legislation making it Australia’s first jurisdiction to decriminalise all personal drug use.

Five years after *The Case for a Health Focused Response to Drug Use in Tasmania’s Legal System* was published, we have updated the report (see attached). Dr Paul Blacklow has again provided a cost benefit analysis, estimating that the total cost of illicit drug use in Tasmania in 2021-22 was \$592 million but that if the Portuguese decriminalisation example is used as a guide, the total cost of illicit drug use in Tasmania under decriminalisation would be \$530 million, a financial saving of \$62 million per annum.

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<sup>17</sup> United Nations Chief Executives Board, *Summary of deliberations*, New York, 18 January 2019 at 14.

<sup>18</sup> Western Australian Select Committee on Alternative Approaches to Reducing Illicit Drug Use and its Effects on the Community, *Help, not Handcuffs: Evidence-based approaches to reducing harm from illicit drug use* (November 2019).

<sup>19</sup> *Ibid*, iv.

<sup>20</sup> *Ibid*.

<sup>21</sup> ACT Government, Minister for Health Media Release, ‘Nation leading drug reform for the ACT’ 20 October 2022.

More importantly, the reorientation of personal drug use as a public health issue is likely to see a reduction in crimes involving the use or threat of violence, a reduction in drug-related death and disease and a reduction in drug-related ambulance call-outs, emergency admissions and hospitalisations.

If we can be of any further assistance, please do not hesitate to contact us.

Yours faithfully,



Benedict Bartl  
Policy Officer

**Community Legal Centres Tasmania**

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enc: *The Case for a Health Focused Response to Drug Use in Tasmania's Legal System (Update 2023)*