

SUBMISSION

Prepared by Springvale Monash Legal Service for the Legislative Council's Legal and Social Issues Committee:

**Inquiry into the use of cannabis in Victoria**



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## **Our organisation**

Established in 1973, Springvale Monash Legal Service (SMLS) is a community legal centre that provides free legal advice, assistance, information and education to people experiencing disadvantage in our community. We are located in the Local Government Areas (LGA) of the City of Greater Dandenong and the City of Casey, with outreaches throughout the south east. We have been addressing the needs of marginalised community members, the majority who reside within the City of Greater Dandenong, the city of Casey and the Shire of Cardinia.

SMLS operates a duty lawyer service at various courts in Victoria, including Dandenong Magistrates Court, the Children's Court and provides legal representation at courts and tribunals such as the Victorian Civil and Administrative Tribunal, Fair Work Commission, Federal Circuit Court, Family Court and Victims of Crime Assistance Tribunal. For most of the 40 years in operation, SMLS has been running a clinical legal education program in conjunction with Monash University's Faculty of Law, whereby law students undertake a practical placement at the legal service as part of their undergraduate degree. Additionally, as a community legal centre, we offer legal assistance as well as an extensive community legal education program that is developed in response to feedback from the range of community engagement and community development activities that we are and have been involved in. For example SMLS has contributed to reforms in family violence laws and practices, access to civil procedure reforms, discrimination towards young community members in their use of public space and their interactions with the criminal justice system, as well as in highlighting the needs of refugees and asylum seekers, particularly unaccompanied humanitarian minors and women escaping family violence.

SMLS welcomes the Inquiry into Cannabis Use in Victoria, and the opportunity to identify areas for legislative reform to build a more fair and just Victoria.

Many of our clients are impacted by drug policy and legislation, and our suggestions for possible reform are based on our experience and observation of the ways in which our legal system impacts people who use cannabis.

SMLS is not seeking confidentiality regarding this submission.

## Terms of Reference

That this house, requires the Legal and Social Issues Committee to inquire into, consider and report, by no later than 2 March 2020, into the best means to —

- a. Prevent young people and children from accessing and using cannabis in Victoria;
- b. Protect public health and public safety in relation to the use of cannabis in Victoria;
- c. Implement health education campaigns and programs to ensure children and young people are aware of the dangers of drug use, in particular, cannabis use;
- d. Prevent criminal activity relating to the illegal cannabis trade in Victoria;
- e. Assess the health, mental health, and social impacts of cannabis use on people who use cannabis, their families and carers;

## Introduction

There are various models we could apply when seeking to reform drug policy in Victoria, such as;

- Legalisation with a government-controlled market
- Legalisation, with a focus on profit-driven commercialisation and minimal government regulation
- De jure decriminalisation, criminal penalties for use/possession are removed in the law (with optional use of non-criminal sanctions such as a civil or administrative penalty)
- De facto decriminalisation, criminal penalties remain in the law, but can be lessened in practice (such as via police guidelines to not enforce the law, or removing barriers to the expansion of diversion)

Research into the possible impacts of the different models on public health, public safety, youth and social justice is ongoing, and many experts agree that further research is required to draw firm conclusions about the long-term changes that may occur once cannabis laws are reformed.<sup>1</sup>

However, there is a growing understanding that traditional ‘harms’ associated with cannabis use cannot be separated from the harms inflicted by the prohibition and criminalisation of cannabis use, and the stigma these laws engender. The financial burden on the community, in terms of police and court resources spent on minor offending is often cited as a key reason for reforming drug policy, however SMLS strongly believes the human suffering caused by prohibition is grounds enough for urgent reform.

When considering possible changes to drug laws and policies, the focus is often on what may happen and possible outcomes for decriminalisation or legalisation. When considering drug law reform, it is essential to map possible outcomes from the policies we consider. However, it is also important to recognise what is currently happening *now*, that despite decades of prohibition people continue to use drugs.<sup>2</sup> We must acknowledge that the criminalisation of cannabis use is currently causing substantial social and health related harms for people, families and communities.

*‘The impacts of cannabis use are inherently tied up with, inseparable from and shaped by law and policy itself’*

*- Dr Kate Seear<sup>3</sup>*

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<sup>1</sup> Office of the Prime Minister’s Chief Science Advisor, “Cannabis.” Prime Minister’s Chief Science Advisor, New Zealand 2019, [www.pmcsa.ac.nz/topics/cannabis/](http://www.pmcsa.ac.nz/topics/cannabis/). Accessed 18 Sept. 2020.

<sup>2</sup> Welfare AloHa (2010) National drug strategy household survey report. Canberra: AIHW.

<sup>3</sup> Seear, K., 2020, Submission of Associate Professor Kate Seear To the Parliament of Victoria

Often, when examining the intersections between cannabis use and the law, we traditionally link it to the criminal justice system. This is certainly true, as the consumption, possession and sale of cannabis is illegal in Victoria, unless you have a prescription from a doctor.<sup>4</sup> The harms that emerge for people who are exposed to the criminal justice system are well documented. Lawyers often engage in debates about addiction, impact, substance use, treatment and punishment, while judges and magistrates make decisions about the nature of a person's substance use and its relationship to their legal matter.<sup>5</sup> A criminal conviction has a significant impact on the lives of those convicted, their family and community, including possible difficulties with employment, accommodation and travel to certain destinations.<sup>6</sup> In addition, a criminal conviction is a significant disadvantage in subsequent criminal proceedings, in that a criminal conviction may influence a police officer to lay charges; people with prior convictions may be denied bail, a criminal conviction may be used to undermine a person's credibility; or it may result in more severe penalties.<sup>7</sup>

Drug prohibition intersects with a range of other areas of law in addition to the criminal jurisdiction, including but not limited to:

### **Family Law and/or Child Protection:**

#### *Case Study: Maria (Name changed)*

*Maria was in a de facto relationship with Mark for 23 years. They have one child who is 14 years old. Maria was diagnosed with Tourette's syndrome 12 years ago. The only medication that would assist was cannabis. She would self-dose and more recently obtained a prescription for medical cannabis. Mark and Maria got into a fight in their home, and Maria threw some tools at Mark's car, though there was no property damage. Mark left with their daughter and obtained an intervention order, alleging her drug use was an issue with her alleged violence. Mark then applied to VCAT to remove himself from the lease and the landlord later obtained an order to evict her. Mark refused to tell Maria where he was taking their daughter to live. Maria is now homeless, and her health has deteriorated. Mark reported various breaches to the intervention order, such as when Maria contacted him to renew the registration on her car, which she was living in. SMLS made an urgent application to the Family Court, and waited approximately three months for a hearing. At the hearing, the father alleged Maria lacked capacity due to her drug use. However in the years they were a family, it was not an issue as she had been self medicating and parenting effectively for many years with no concerns from the father.*

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<sup>4</sup> For more information about medicinal cannabis, please see the Submission to the Senate Community Affairs References Committee inquiry into the current barriers to patient access to medicinal cannabis in Australia, Joint Submission from Associate Professor Kate Seear and SMLS, available at <https://www.smls.com.au/wp-content/uploads/2020/04/Medicinal-cannabis-submission.pdf>

<sup>5</sup> Seear, K., & Fraser, S. (2014). Beyond criminal law: The multiple constitution of addiction in Australian legislation. *Addiction Research & Theory*, 22(5), 438–450.

<sup>6</sup> S. Lenton, A. Ferrante and N. Loh, 'Dope Busts in the West: Minor Cannabis Offences in the Western Australian Criminal Justice System', *Drug and Alcohol Review*, no. 15, 1996, pp. 335-41. It should be noted that WA has recently introduced a cautioning scheme, and that the cannabis offence rate in WA has decreased by 47 per cent between 1995-96 and 1998-99 (The Australian Bureau of Criminal Intelligence, *The Illicit Drug Report 1998-99*, 2000).

<sup>7</sup> S. Lenton, M. Bennett and P. Heale, *The Social Impact of a Minor Cannabis Offence Under Strict Prohibition-The Case of Western Australia*, Curtin University of Technology, National Centre for Research into the Prevention of Drug Abuse, Perth, 1999.

Family court generally will not tolerate cannabis use from parents, and frequently make orders for parents to report negative results from drug testing in order to see the children unsupervised, as substance use is viewed as a 'risk factor' for the safety and wellbeing of children.<sup>8</sup> Children of people assessed as having substance 'addiction' are at risk of being temporarily or permanently removed from their care, be placed in state care, or have visitation with their family member who uses cannabis restricted or supervised. SMLS assists clients who use cannabis either recreationally or medicinally (often these are bound together) to treat various symptoms, but have stable jobs, fulfil their commitments and function as loving and responsible parents to their children. Indeed, in many circumstances the Court acknowledges that the use of cannabis does not impact their ability to be a parent, however remain unwilling to make orders for unsupervised time with their children unless the parent tests clear for cannabis. This can cause protracted family separation and delay already lengthy proceedings and orders. This can be problematic in an adversarial system. SMLS has seen cases where one parent uses the other party's cannabis to prevent access to children, where prior to separation, the cannabis use was never an issue. It is also noted that often both parties may have used cannabis at some point, however one party may attempt to frame the other party's use as impacting their parenting, accusing them of lacking capacity to care for children. Often residential rehabilitation is a prerequisite for the return of children from out of home care, and some parents experienced delay in accessing counselling and residential rehabilitation due to waiting lists and lack of services available.

### **Crimes Compensation:**

SMLS has previously raised concerns about the impact drug prohibition and stigma has on victims of crime.<sup>9</sup> Researchers have noted that a person who is the victim of a serious crime such as rape or family violence might be denied compensation under the Victims of Crime Act, despite their drug use being unrelated to the crime perpetrated against them. In addition, the Victims of Crime Assistance Tribunal in Victoria must take into account the victim's past, character, behaviour, and attitudes when determining their eligibility for compensation; and may result in an application for compensation being denied due to their use of illicit substances.<sup>10</sup>

### **Social Security Law:**

The Federal Government has repeatedly threatened to drug test social security recipients and punish those who fail the tests through payment quarantining and forced treatment, despite significant evidence outlining the harms and costs of such a scheme,<sup>11</sup> and almost no evidence that it would achieve its intended outcomes.<sup>12</sup>

### **Visa Cancellations:**

Charges related to drug use and/or possession can lead to a person's visa being cancelled. There has been a huge increase in visa cancellations in the last ten years, including for minor charges such as drug possession.

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<sup>8</sup> Seear, K., & Fraser, S. (2014). Beyond criminal law: The multiple constitution of addiction in Australian legislation. *Addiction Research & Theory*, 22(5), 438–450

<sup>9</sup> See SMLS's 2017 submission to the [Victorian Law Reform Commission: Review of the Victims of Crime Assistance Act 1996](https://www.victorianlawreformcommission.gov.au/review-of-the-victims-of-crime-assistance-act-1996), available at <https://www.smls.com.au/our-advocacy-work/>

<sup>10</sup> Seear, K., & Fraser, S. (2014). The addict as victim: Producing the 'problem' of addiction in Australian victims of crime compensation laws. *International Journal of Drug Policy*, in press. doi: 10.1016/j.drugpo.2014.02.016.

<sup>11</sup> Australian National Council on Drug. ANCD position paper: Drug testing 2013. <http://www.atoda.org.au/wp-content/uploads/DrugTesting2.pdf>

<sup>12</sup> Werb, D, Kamarulzaman, A, Meacham, MC, Rafful, C, Fischer, B, Strathdee, SA & Wood, E 2016, 'The effectiveness of compulsory drug treatment: A systematic review', *International Journal of Drug Policy*, vol. 28, pp. 1–9, viewed 21 September 2020, <<https://www.sciencedirect.com/science/article/abs/pii/S0955395915003588>>.

Visa cancellations cause significant harm to individuals, families and communities. People whose visa is cancelled spend an average of over 150 days in detention, separated from their families, waiting for final decisions from the Minister for Home Affairs.<sup>13</sup>

In 2019, the Chief Executives Board of the United Nations made a commitment to pursuing 'alternatives to conviction and punishment in appropriate cases, including the decriminalisation of drug possession for personal use'.<sup>14</sup> This statement articulates a global momentum that recognises the need to reform drug law and policy. A group of organisations including the World Health Organisation also released the 'International Guidelines on Human Rights and Drug Policy' that without inventing new rights outlines what is required of policy makers in the context of drug control law and human rights laws.<sup>15</sup> SMLS believes these guidelines should inform Victorian drug policy.

## Recommendations

1. SMLS recommends that the committee consider the urgent need for drug law reform in light of the harms associated with prohibition that are impacting our community in Victoria.
2. In the development and monitoring of legal policies regulating cannabis in Victoria, SMLS recommends all changes to be rights based, in that consideration of human rights obligations is given central importance.

## Addressing the Terms of Reference:

### A) The best means to prevent young people and children from accessing and using cannabis in Victoria

#### *Case Study: Tim (Name changed)*

*Tim was 15 when he started using cannabis. He did not like alcohol, and so he liked to smoke cannabis occasionally at parties. As he grew older, he found that it helped him with his anxiety, and over all felt that using cannabis was not harmful on his health. By the time he was 19, Tim smoked cannabis once or twice a week. He came to SMLS when he was charged with possession. He had already been given a warning by police and was therefore deemed ineligible for diversion. The Magistrate offered him an adjourned undertaking, where the offender must sign a document and make a promise to the Court not to commit any further offences. If the offender commits any further offending during the period of the undertaking, the offender can be brought back to Court and may be re-sentenced on the original charges.*

*Tim did not want the adjourned undertaking because he did not feel it would be possible to keep this promise, he felt strongly that he was going to use cannabis again. This was setting him up to fail. Tim asked for a fine instead, but he was given the adjourned undertaking anyway. By the end of the hearing, Tim was extremely upset and anxious.*

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<sup>13</sup> Visa cancellations on 'character' grounds: The Ombudsman reports 2018, Refugee Council of Australia, Refugee Council of Australia, viewed 21 September 2020, <<https://www.refugeecouncil.org.au/cancelling-visas-on-character-grounds-the-ombudsman-reports/>>.

<sup>14</sup> United Nations Supports Decriminalisation of Drugs 2019, Drug Policy Australia, viewed 21 September 2020, <[https://www.drugpolicy.org.au/un\\_supports\\_decriminalisation\\_of\\_drugs](https://www.drugpolicy.org.au/un_supports_decriminalisation_of_drugs)>.

<sup>15</sup> World Health Organization, UNAIDS, UNDP and the International Centre on Human Rights and Drug Policy. (2019). International Guidelines on Human Rights and Drug Policy. United Nations: Geneva.

The criminalisation of young people in Victoria is a serious concern, particularly for vulnerable young people facing disadvantage. Our legal system already discriminates against young people who are disadvantaged. For example, a residential care youth worker explained to SMLS that prior to approximately 2015, some service provider policies explicitly required workers in residential out of home care to inform police if a young person was using or in possession of cannabis. The youth worker compared this to young people living with their families - 'parents aren't likely to call the cops on their own kids'.<sup>16</sup> Apparently, many services providers have since altered this approach, recognising the harm it causes for young people, adopting a discretionary approach. However, adopting an approach that relies on individual discretion - be it residential worker or police - can be problematic, and may lead to discriminatory practices. To protect young people from criminal justice system related harms for cannabis use; decriminalisation or legalisation of cannabis is necessary.

There is little evidence that prohibitionist approaches to drugs, including cannabis, deters usage, even among young people. There have been several studies into the use of cannabis among young people in countries with different legal structures (decriminalised, legalised, commercialised).<sup>17</sup> One recent study concluded that 'Cannabis policy liberalisation does not appear to result in significant changes in youths' use, with the possible exception of legalisation for recreational purposes that requires monitoring.'<sup>18</sup> Other studies have confirmed this,<sup>19</sup> however, the general consensus appears to indicate that further research is required to map the long-term results of changing drug policy on young people.

SMLS delivers a program in partnership with schools in the south east, called Sporting Change (for more information refer to Term of Reference 'C'). This program includes an afterschool program where we teach young people aged 13-17 about the law by using sport as both an engagement and an educational strategy. A high proportion of the participants are young people who have various attributes of disadvantage, for example family break down, family financial vulnerability, involvement with the legal system or family violence in the home. We provide a sporting activity each week, and over two terms, participants have the opportunity to play 8 different sports, including traditional sports such as Cricket and Soccer, as well as less common sports such as Brazilian Jujitsu and Fencing, while learning about a specific legal issue relevant to young people. The evaluation of the program revealed that sport was a key factor in participation in the program. One young person stated *'I like Sports, and I wish I was better at playing them. But Mum can't really afford for me to join a team, so that's why I joined Sporting Change.'* Another student showed outstanding skills in the Australian Football League module, and the coach from Melbourne Football Club tried to recruit her for the local club. She declined, stating that she knew there was no chance that her parents would be able to afford such an expense. Many young people expressed a similar sentiment; that they wished their families could afford the opportunity for them to participate in sports activities outside of school. From our experience, SMLS can see that whilst learning about the law has a positive impact on the

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<sup>16</sup> SMLS youth worker, 2020, Interview, Victoria

<sup>17</sup> See for example: Laqueur et al., "The Impact of Cannabis Legalization in Uruguay on Adolescent Cannabis Use," *International Journal of Drug Policy* 80 (2020); Leung et al., "What Have Been the Public Health Impacts of Cannabis Legalisation in the USA? A Review of Evidence on Adverse and Beneficial Effects," *Current Addiction Reports* 6, no. 4 (2019); Rotermann, "What Has Changed since Cannabis Was Legalized?" *Health reports* 31, no. 2 (2020); Dilley et al., "Prevalence of Cannabis Use in Youths after Legalization in Washington State," *JAMA Pediatrics* 173, no. 2 (2019);

<sup>18</sup> Melchior, M, Nakamura, A, Bolze, C, Hausfater, F, El Khoury, F, Mary-Krause, M & Azevedo Da Silva, M 2019, 'Does liberalisation of cannabis policy influence levels of use in adolescents and young adults? A systematic review and meta-analysis', *BMJ Open*, vol. 9, no. 7, p. e025880, viewed 14 September 2020, <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6624043/>>.

<sup>19</sup> Stevens, A 2019, 'Is policy "liberalization" associated with higher odds of adolescent cannabis use? A re-analysis of data from 38 countries', *International Journal of Drug Policy*, vol. 66, pp. 94–99, viewed 14 September 2020, <<https://www.sciencedirect.com/science/article/abs/pii/S0955395919300210?dgcid=author>>.

young person's safety the vehicle for critical engagement is a youth focused programme that incorporates lessons building knowledge and skill development.

Research has demonstrated that educational strategies should focus on harm reduction, fostering critical thinking, collaborative learning and skill development to empower young people to make safer decisions about using cannabis.<sup>20</sup>

### **Iceland Leisure card**

Iceland has received global attention for the dramatic change in the numbers of teenagers using substances. Data published reported that young people aged 15 to 16 having used cannabis one or more times fell from 17% to 5% from 1998 to 2018.<sup>21</sup> These impressive figures were the result of the implementation of a model based on evidence, community engagement, and building ongoing collaboration between research, policy and practice.<sup>22</sup> The Icelandic government reduced known risk factors and strengthened a broad range of community-level protective factors, such as parental engagement, evidence-based health promotion and alternative youth activities. While not all of the strategies implemented would suit a Victorian context, SMLS is particularly interested in the 'Leisure Card' or 'municipality coupon' that is available in Reykjavik. This coupon subsidizes *every single child* to participate in afterschool activities such as sports or music. A similar program has been introduced in Kaunas, Lithuania, where the city offers free sports activities on Mondays, Wednesdays and Fridays, including free transport for disadvantaged families. In Iceland, they survey young people every year, so that their data is up to date and to ensure the programs are working as intended.

### **Recommendations**

3. SMLS recommends the formal decriminalisation of cannabis possession in order to ensure young people are protected from harm relating to the criminal justice system
4. SMLS recommends removing financial barriers and providing greater opportunities for children and young people to participate in activities outside of schools, such as sports and music programs.
5. SMLS recommends collaboration between researchers and policy makers, including the ongoing monitoring and evaluation of programs addressing children and young people's use of cannabis.

### **B) Protect public health and public safety in relation to the use of cannabis in Victoria; and**

### **E) Assess the health, mental health, and social impacts of cannabis use on people who use cannabis, their families and carers**

When considering how best to protect people's health and safety in relation to the use of cannabis, it is essential to consider the nature of these harms, and what is causing them. Popular understandings of the harms associated with drug use including cannabis use often relate to the impacts of the drug itself, rather than impacts of the prohibition. The Global Commission on Drug Policy claims that 'harms created through implementing punitive drug laws cannot be overstated when it comes to both their severity and scope'. The

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<sup>20</sup> Midford, R & Cahill, H 2020, 'Taking a Skills Focused, Harm Reduction Approach to School Drug Education', Health and Education Interdependence, pp. 269–288, viewed 20 September 2020, <[https://link.springer.com/chapter/10.1007%2F978-981-15-3959-6\\_14](https://link.springer.com/chapter/10.1007%2F978-981-15-3959-6_14)>.

<sup>21</sup> 'Perspective — Iceland Succeeds at Preventing Teenage Substance Use -Emerald Insight' 2014, Emerald.com, viewed 20 September 2020, <<https://www.emerald.com/insight/content/doi/10.1108/S2048-75762019000007017/full/html>>.

<sup>22</sup> Sigfusdottir, I.D., Kristjansson, A.L., Gudmundsdottir, M.L. and Allegrante, J.P., (2011) Substance use prevention through school and community-based health promotion: a transdisciplinary approach from Iceland', Global Health Promotion. 18: 23



Commission called for an end to punitive measures, calling for the removal of all penalties ‘imposed for low level possession and/or consumption offenses’.<sup>23</sup>

Current approaches are a barrier to public health campaigns. Informative and evidence based public health campaigns are an important part of reducing potential harm from cannabis use. Prohibition decreases the efficacy of such campaigns – it is not straightforward to advise users on health issues when use remains illegal. Researchers note that in the current prohibition context, it is difficult to identify who users are, who is a heavy user, how old users are, and how strong the products are, or enforce age limits on purchasing.<sup>24</sup> The assessment of the impacts of cannabis use is best done through collaboration of policy makers, community services, researchers and health experts utilising reliable data collection strategies. Legalisation, regulation and/or decriminalisation allow for better data collection and analysis, and for monitoring and evaluating how people use cannabis and its effects.

The Australian public largely view drug use as a health and human rights issue, and largely support decriminalisation,<sup>25</sup> recognising that the criminalisation of cannabis significantly harms users and the community.<sup>26</sup> When Portugal decriminalised the use and possession of illicit drugs in 2001, it invested in drug treatment, harm reduction and social integration.<sup>27</sup> Studies have indicated a variety of positive social and health outcomes, including a reduced burden on the criminal justice system, decreased problematic drug use, reduced drug-related HIV and AIDS, and drug-related deaths.<sup>28</sup> Researchers have noted that the way in which decriminalisation is implemented is very important, and if implemented properly will have a range of benefits, notably lower numbers of people exposed to the criminal justice system, and that there is very little evidence that decriminalisation will lead to other types of crimes, such as supply or drug-related crime.<sup>29</sup>

Prohibition leads to criminalisation and stigma, which cause significant social and health harms to individuals, families and communities. Criminalisation further disadvantages already vulnerable and marginalised communities who are already unfairly impacted by the legal system due to class, race and being in public places more regularly. For example, a person experiencing homelessness may be more likely to be found

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<sup>23</sup> Global Commission on Drug Policy, *Advancing Drug Policy Reform: A New Approach to Decriminalization* (2016) <<http://www.globalcommissionondrugs.org/reports/advancing-drug-policy-reform/>>. Retrieved March 2017

<sup>24</sup> Hamilton, I & Sumnall, H 2021, ‘Are we any closer to identifying a causal relationship between cannabis and psychosis?’, *Current Opinion in Psychology*, vol. 38, pp. 56–60, viewed 19 September 2020, <<https://www.sciencedirect.com/science/article/pii/S2352250X20301391>>.

<sup>25</sup> Decriminalisation of drug use and possession in Australia - A briefing note -Inquiry Into Drug Law Reform Received 17 Mar 2017 Submission No. 164 -Appendix A N.D.

<sup>26</sup> Associate Professor Nicole Lee and Professor Alison Ritter Australia’s recreational drug policies aren’t working, so what are the options for reform? The Conversation March 2 2016 <https://ndarc.med.unsw.edu.au/blog/australias-recreational-drug-policies-arent-working-so-what-are-options-reform> accessed on 12 September 2020.

<sup>27</sup> Ricardo Goncalves, Ana Lourenco & Sofia Nogueira da Silva, ‘A social cost perspective in the wake of the Portuguese Strategy for the fight against drugs’ (2015) 26 *International Journal of Drug Policy* 199. Global Commission on Drug Policy, *Advancing Drug Policy Reform: A New Approach to Decriminalization* (2016) <<http://www.globalcommissionondrugs.org/reports/advancing-drug-policy-reform/>>. Retrieved March 2017

<sup>28</sup> Associate Professor Nicole Lee and Professor Alison Ritter Australia’s recreational drug policies aren’t working, so what are the options for reform? The Conversation March 2 2016 <https://ndarc.med.unsw.edu.au/blog/australias-recreational-drug-policies-arent-working-so-what-are-options-reform> accessed on 12 September 2020.

<sup>29</sup> NDARC, *Decriminalisation of drug use and possession in Australia - A briefing note, Drug Policy Modelling Program*, 2016, p 3

using or possessing drugs because that use is by necessity public. That person may have multiple offences and become ineligible for a diversion program.<sup>30</sup>

### *Case Study: Farzad (Name changed)*

*Farzad was 19 years old when he fled Iran. He was a student at a large university, and became involved in political protests against the oppressive government. He was arrested and beaten by the Iranian government, and imprisoned for several months. He describes the torture he experienced as horrific. After he was released, he fled the country. He came as a refugee to Australia and tried to build a new life while experiencing post-traumatic stress. He received counselling and support through Foundation House, a service that assists people who have experienced torture and trauma.*

*Farzad started using cannabis to help him sleep, as he experienced nightmares and other sleep disorders related to his history of torture.*

*He maintained his employment at a factory in Dandenong, lived with his friends and sent money back home to support his parents and siblings. He did not see his cannabis use as harmful, on the contrary, he felt that it helped him live his life and participate in his community.*

*Farzad was caught with a small amount of cannabis in his car while driving home one evening. He was charged with possession, SMLS represented him at Magistrates Court, where he requested a diversion.<sup>31</sup> Farzad felt that the experience of attending court was extremely stressful, including having to take time off work, and that he was ashamed to be there. He also stated that he planned to try and reduce his cannabis use, however he did not know how he would cope with his mental health issue without it.*

In order to protect health and safety, we must reduce drug related stigma in our community. Labelling people as 'drug addicts' has implications for their families, their employment, their visa status and more. Criminal records can exacerbate risk of unemployment, homelessness and poverty.<sup>32</sup> The stigma of a criminal record is carried through life; even long after someone may have sought treatment for problematic drug use and reduced their consumption.<sup>33</sup> Criminalisation significantly contributes to the stigma of cannabis use, which increases people's suffering and isolation and impacts the way they engage with services in their community.<sup>34</sup> Experiences of exclusion, marginalisation and discrimination impacted on participants' access to health care (including treatment) and other services such as welfare services, AOD treatment providers, and housing, fair treatment in the justice system, employment opportunities, and relationships with family,

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<sup>30</sup> Alcohol and Drug Foundation 'Decriminalisation vs legalisation' <https://adf.org.au/talking-about-drugs/law/decriminalisation/decriminalisation-detail/> accessed on 8 September 2020.

<sup>31</sup> There is a significant amount of evidence that cannabis is beneficial to people's health, including people who have experienced trauma. For example, see Yarnell, S 2015, 'The Use of Medicinal Marijuana for Posttraumatic Stress Disorder', *The Primary Care Companion For CNS Disorders*, viewed 20 September 2020, <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4578915/>>.

<sup>32</sup> Professor Kate Seear and Springvale Monash Legal Service, *Joint Submission to the Senate Community Affairs References Committee inquiry into the current barriers to patient access to medicinal cannabis in Australia*, 17 January 2020.

<sup>33</sup> Lancaster, K., Seear, K. & Ritter, A. (2018). *Reducing stigma and discrimination for people experiencing problematic alcohol and other drug use*. Drug Policy Modelling Program Monograph Series; National Drug and Alcohol Research Centre, University of New South Wales, Sydney 108.

<sup>34</sup> Lancaster, K., Seear, K. & Ritter, A. (2018). *Reducing stigma and discrimination for people experiencing problematic alcohol and other drug use*. Drug Policy Modelling Program Monograph Series; National Drug and Alcohol Research Centre, University of New South Wales, Sydney

friends and community.<sup>35</sup> Criminalisation reinforces stigmatisation of drug dependency, addictions and use, and decriminalisation can be an intervention to stigmatisation.<sup>36</sup>

## Drug Driving

Victoria's current laws surrounding drug driving are contained within the Road Safety Act 1986 (Vic) (RSA), specifically the offences outlined in section 49.<sup>37</sup> SMLS highlights that the purpose of the Road Safety Act is 'to provide for safe, efficient and equitable road use'<sup>38</sup>, and not to regulate the use of illegal substances. Certain drugs have the potential to impair a person's ability to drive safely, however Victoria's zero-tolerance approach to drug-driving leaves no requirement of a person's driving being actually affected by a drug. Rather, such offences are established on driving with any concentration of an illicit drug in their saliva or blood, irrespective of impairment.<sup>39</sup> These provisions are problematic when they fail to consider how the drug affects actual driving capacity.

There is a lack of scientific evidence to support the causal relationship between significantly low drug concentrations and driving impairment. By capturing the most extreme low doses, the current 'any concentration level' or 'prescribed concentration' definitions fail to target the purposes of the Act. The lasting ramifications of harsh penalties imposed are disproportionate where illicit drugs did not significantly affect a person's driving. Such penalties may include mandatory licence suspensions, fines ranging from \$155 to approximately \$18,600, possible criminal convictions and imprisonment terms. Given these risks, and the social stigma associated with drug-driving convictions, SMLS stresses the need for reforms away from the current zero-tolerance approach given the wide-ranging implications of convictions, such as limitations on employment prospects. There exists a significant body of international research that supports the introduction of threshold blood drug concentration limits. Studies have indicated that certain illicit drugs including cannabis have an influence on driving performance in a dose-dependent manner.<sup>40</sup>

## Recommendations:

1. In order to protect people from the harms related to cannabis use, the Committee should give consideration to a regulated legalisation model, or a formalised (de jure) system for the decriminalisation of cannabis. In the alternative, introduce improvements to de facto decriminalisation through the removal of strict eligibility requirements in place in Victoria (e.g. those pertaining to diversion programs) and through removing barriers to the expansion of diversion, and ensuring access to diversion is not at the discretion of police.
2. Review policies regarding criminal history checks at pre-employment.
3. Consider ways to address stigma through public health programs

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<sup>35</sup> Lancaster, K., Seear, K. & Ritter, A. (2018). Reducing stigma and discrimination for people experiencing problematic alcohol and other drug use. Drug Policy Modelling Program Monograph Series; National Drug and Alcohol Research Centre, University of New South Wales, Sydney 49.

<sup>36</sup> Lancaster, K., Seear, K. & Ritter, A. (2018). Reducing stigma and discrimination for people experiencing problematic alcohol and other drug use. Drug Policy Modelling Program Monograph Series; National Drug and Alcohol Research Centre, University of New South Wales, Sydney.

<sup>37</sup> Road Safety Act 1986(Vic) s49

<sup>38</sup> *ibid*

<sup>39</sup> Road Safety Act 1986 (Vic)ss. 49(1)(bb), (h) and (i).

<sup>40</sup> European Monitoring Centre for Drugs and Drug Addiction, Driving under the influence of drugs, alcohol and medicines in Europe —findings from the DRUID project (European Monitoring Centre for Drugs and Drug Addiction publication 2012) 20. EMCDDA 2014, 7.

4. We recommended introducing an additional legislative requirement of a blood drug concentration threshold limit for section 49(1)(bb), (h) and (i) of the Road Safety Act. This limit should be based on research establishing a correlation between impaired ability to drive and prescribed blood drug concentrations levels, much the same as current drink-driving provisions. SMLS recommends that further independent research is conducted, building on current research findings, to determine a suitable threshold for adaption into Victorian law.

**C) The best means to implement health education campaigns and programs to ensure children and young people are aware of the dangers of drug use, in particular, cannabis use**

Preventative drug education for young people has incorporated various approaches to protecting young people from drug related harm.<sup>41</sup> Frequently, education programs are premised on the idea that drug taking is illegal and harmful and should be abstained from; therefore, young people must be equipped with skills and knowledge to resist drugs.<sup>42</sup> An abstinence approach is supported by the current legislative regime of drug prohibition. However, this strategy 'contain(s) an implicit assumption that if young people are made aware of the illicit status of certain drugs than they will be less likely to consume them'.<sup>43</sup> In addition, these models have a deficit approach, wherein the use of drugs can be seen as an indication of individual failure.<sup>44</sup> Research also indicates that 'oversimplifying drug information...may work to limit rather than extend young people's agential capacity to reduce potential harms'.<sup>45</sup>

In our experience, we have found a limited number of programs that teach young people to understand the law as it related to drugs, and how the law impacts them. Research indicates that young people are 'excessively and inappropriately policed' due to 'their use of public space, which often makes young people more likely to be subject to stop and searches, name and address checks, move-on orders, as well as invasive strip searches'.<sup>46</sup> A deterrence model of drug education that focuses on warning young people about the illegality of drugs fails to inform young people of their rights if police were to search them on suspicion of possessing drugs.<sup>47</sup> This focus also curtails space for alternative forms of harm reduction education, and limits types of information available to young people, potentially increasing the young person's risk of harm. In our experience, reliance on drug education materials that aim only to deter young people from taking drugs does not speak to young people's lived experience or personal narratives of drugs and drug use.

### **CASE STUDY: SPORTING CHANGE PROGRAM**

*Sporting Change is a preventive community development program that contributes to young people engaging constructively in their community and in society. The program combines sports activities and legal education to assist young people with understanding the law. The program also helps young people access*

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<sup>41</sup> For a full history see Midford, R & Cahill, H 2020, 'Taking a Skills Focused, Harm Reduction Approach to School Drug Education', Health and Education Interdependence, pp. 269–288, viewed 20 September 2020, <[https://link.springer.com/chapter/10.1007%2F978-981-15-3959-6\\_14](https://link.springer.com/chapter/10.1007%2F978-981-15-3959-6_14)>.

<sup>42</sup> Ibid 272.

<sup>43</sup> Farrugia, A., Seear, K., Fraser, S., "Authentic advice for authentic problems? Legal information in Australian classroom drug education" in *Addiction Research & Theory* (2018) <<https://www.tandfonline.com/eprint/t8na8VJ8x6SH9fWb3xQv/full>>, p 197.

<sup>44</sup> Midford, R & Cahill, H 2020, op cit n 43.

<sup>45</sup> Farrugia, A., Seear, K., Fraser, S., op cit n 45, p 195.

<sup>46</sup> Cunneen, Chris; Goldson, Barry; Russell, Sophie --- "Juvenile Justice, Young People and Human Rights in Australia" [2016] *CrimJust* 23; (2016) 28(2) *Current Issues in Criminal Justice* 173, 117.

<sup>47</sup> Farrugia, A., Seear, K., Fraser, S., op cit n 45, p 197.

*justice through a school lawyer who is integrated into the school wellbeing team. This partnership program is delivered in three high schools across South-Eastern Melbourne by SMLS.*

*One of the legal modules taught is 'Drugs and the Law', where we combine legal education about drug law with a focus on rights and responsibilities when dealing with police. The concepts are taught through a sporting lens, linking the rules that professional athletes must abide by when competing with the laws regarding various drugs in Victoria. Young people are taught the consequences of being caught using or possessing drugs in light of the professional and legal consequences of professional athletes testing positive for drug use.*

*Evaluations of the program highlight the very limited knowledge young people have of Victorian law. Prior to participating in the sessions, when asked about their existing knowledge of drug laws in Victoria, 88% of participants over 2 years reported that they knew 'Not much' or 'Almost nothing'. Program evaluations indicate that the program increases young people's knowledge of their rights and responsibilities and enhances their ability to make informed decisions when it comes to drugs.*

Teaching about police interaction positions drug law within a legal system that polices and criminalises drug use, and helps young people understand the legal system and its actors, including police, the court and legal assistance organisations. Many students are eager to learn about drug law, but prohibition acts as a barrier to effectively teach young people about harm reduction practices, including managing interactions with police.

There is an abundance of research that demonstrates early engagement with the justice system has adverse effects on health outcomes for young people. Statistically, only small numbers of Victorian children come into contact with the justice system every year, totaling less than 1% of 10-17 years old.<sup>48</sup> Yet of those children, 40% reoffend within two years and 61% reoffend within 6 years.<sup>49</sup> Children who come into contact with the justice system early go on to "commit a wider range of offences and are more likely to reoffend violently".<sup>50</sup> Incarcerated people in Australia have higher rates of smoking; alcohol and other drug use; chronic physical illness; and mental health issues.<sup>51</sup>

Abstinence and prohibition education have limited evidence proving effectiveness,<sup>52</sup> and despite years of implementation, young people continue to use drugs including cannabis.<sup>53</sup> In contrast, evidence suggests that harm reduction educational strategies have a 'consistently beneficial influence on drug-using behaviour'.<sup>54</sup> Drug education that fails to inform young people of their legal rights and responsibilities may contribute to flow on harms in other areas of the justice system. In line with our avowed commitment to harm reduction drug policies in Australia, we must decriminalize drug use, and deliver drug education focused on harm reduction principles.

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<sup>48</sup> Reoffending by children and young people in Victoria n.d., viewed 21 September 2020, <[https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Reoffending\\_by\\_Children\\_and\\_Young\\_People\\_in\\_Victoria\\_Factsheet.pdf](https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Reoffending_by_Children_and_Young_People_in_Victoria_Factsheet.pdf)>.

<sup>49</sup> Ibid 1.

<sup>50</sup> Ibid 2.

<sup>51</sup> Australian Institute of Health and Welfare 2019. The health of Australia's prisoners 2018. Cat. no. PHE 246. Canberra: AIHW. <<https://www.aihw.gov.au/getmedia/2e92f007-453d-48a1-9c6b-4c9531cf0371/aihw-phe-246.pdf.aspx?inline=true>> page 4

<sup>52</sup> See for example: McCambridge, J. (2007). A case study of publication bias in an influential series of reviews of drug education. *Drug and Alcohol Review*, 26(5), 463–468.

<sup>53</sup> Welfare AloHa (2010) National drug strategy household survey report. Canberra: AIHW.

<sup>54</sup> Midford, R & Cahill, H 2020, 'Taking a Skills Focused, Harm Reduction Approach to School Drug Education', *Health and Education Interdependence*, pp. 269–288, viewed 20 September 2020, <[https://link.springer.com/chapter/10.1007%2F978-981-15-3959-6\\_14](https://link.springer.com/chapter/10.1007%2F978-981-15-3959-6_14)>.

## Recommendations:

1. Drug education packages must emphasize harm reduction and personal narrative.
2. Position education as an early intervention that disrupts pathways into the criminal justice system by equipping young people with the knowledge and skills to create and participate in safe and meaningful environments.
3. Ensure young people are aware of their rights and responsibilities when dealing with the criminal justice system through holistic education strategies.

### D) Prevent criminal activity relating to the illegal cannabis trade in Victoria

The current Victorian legislative framework criminalises possession, use and trafficking of cannabis;<sup>55</sup> however, it is this framework of prohibition that creates a context of 'criminal activity'. We have noted the different approaches to drug law reform that do not rely on prohibition – legalisation with and without subsequent regulation of the cannabis market, and *de jure* and *de facto* decriminalisation.

Legalisation of cannabis provides a legislative mechanism for people to obtain drugs,<sup>56</sup> an example being the legal availability of alcohol and cigarettes. Legalisation of cannabis would see an immediate decrease in drug related crime, and would also provide opportunities for harm reduction through community driven and state level drug education and health promotion programs. SMLS supports exploring potential models of legalisation, with a view to create a framework that has the least associated economic and social harms for the Victorian community.

Global research into drug decriminalisation has shown positive impacts on the community including:

- a reduction of demand on the criminal justice system, with overall less use of police, courts and imprisonment; and
- improved social outcomes, for example better employment prospects due to the absence of recorded criminal convictions.<sup>57</sup>

SMLS recommends a *de jure* model of decriminalisation that removes criminal penalties from the legislation. A *de facto* model of decriminalisation leaves scope for drug related harm due to the potential for police discretion regarding enforcement.<sup>58</sup>

SMLS is a member the Federation of Community Legal Centre's Infringements Working Group, and we also assist a large proportion of clients each year with outstanding infringements. Everyday SMLS witnesses the compounding affect infringement debt has on the health and wellbeing of people, especially those experiencing alcohol and drug related harms. When considering opportunities for decriminalisation we note the importance of refraining from civil/pecuniary sanctions as a form of deterrence as this only leads to further justice related economic harms.

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<sup>55</sup> *Drugs, Poisons and Controlled Substances Act 1981*

<sup>56</sup> Hughes, C., Ritter, A., Chalmers, J., Lancaster, K., Barratt, M. & Moxham-Hall, V. (2016). Decriminalisation of drug use and possession in Australia – A briefing note. Sydney: Drug Policy Modelling Program, NDARC, UNSW Australia

<sup>57</sup> *Ibid* 4.

<sup>58</sup> Eastwood, N., "Decriminalization around the world" in *Legalizing Cannabis: Experiences, Lessons and Scenarios*, editors, Decorte, T., Lenton, S., and Wilkins, C., (Routledge London and New York, 2020\_p 135.

In Victoria the police diversion program, Cannabis Caution Program, is available to adults who: are found possessing less than 50 grams of cannabis; are subject to no other serious charges; and are willing to admit the offence.<sup>59</sup> The program can only be accessed twice and diverts the adult out of the criminal justice system without recording a conviction.

Cannabis diversion programs can be seen as a form of therapeutic justice, due to the requirement to take part in a drug education program instead of normal punitive sentencing. Researchers gathered expert opinion from the justice and health sector, and noted diversion was seen as 'more cost effective, pragmatic and consistent with a harm minimisation approach'.<sup>60</sup> Problems arise with the current model of diversion where the requirement for police discretion and referral may be limited by 'cultural resistance and beliefs that diversion is a "soft option"',<sup>61</sup> and where strict eligibility criteria limits how many times or when a person can access diversion.

An introduction of a legislative scheme for diversion could take away the discretionary element and broaden the criteria for eligibility. Unlimited, mandated diversion, with an increased maximum possession threshold quantity would mean that therapeutic options could be more widely and consistently available.

## **Recommendations:**

*Springvale Monash Legal Service takes the opportunity to endorse the submission of Dr Kate Seear.*

1. Legalisation is explored as a potential model to reduce criminal activity.
2. Where a decriminalisation model is considered, rely on the de jure model to remove criminal penalties from the legislation.
3. Avoid reliance on civil and pecuniary sanctions for cannabis use and possession due to the propensity for fines to produce and compound debt related harm.
4. Further expand the availability of diversion and introduce clear legislative requirements removing police discretion and introducing wider catch all criteria without caps on access to the program.

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<sup>59</sup> Hughes, C., Seear, K., Ritter, A. & Mazerolle, L. (2019). Monograph No. 27: Criminal justice responses relating to personal use and possession of illicit drugs: The reach of Australian drug diversion programs and barriers and facilitators to expansion. DPMP Monograph Series. Sydney: National Drug and Alcohol Research Centre, UNSW Sydney.

<http://doi.org/10.26190/5cca661ce09ce>, p 26.

<sup>60</sup> Ibid 5.

<sup>61</sup> Ibid 7.