SPRINGVALE MONASH LEGAL SERVICE Inc.

Celebrating 40 years of Working for Justice

SUBMISSION

Prepared by Monash Faculty of Law Students

On behalf of Springvale Monash Legal Service

For the Inquiry into Drug Law Reform

LAW REFORM, ROAD AND COMMUNITY

SAFETY COMMITTEE

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Table of Contents

INTRODUCTION

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. For all of our operation, we have located within the Local Government Area (LGA) of the City of Greater Dandenong. We have been addressing the needs of marginalised community members, the majority who reside within the City of Greater Dandenong and its surrounds. The City of Greater Dandenong is the second most culturally diverse municipality in Australia, and the most diverse in Victoria. People from over 150 different countries reside in Greater Dandenong and 60% of the residents were born overseas. It also has highest number of resettlements from newly-arrived migrants, refugees and asylum seekers in Victoria. Data from the 2011 Census revealed that Greater Dandenong was the second most disadvantaged LGA in Socio-Economic Indexes for Areas (SEIFA) ratings.

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 Law Reform, Road and Community Safety Committee's Inquiry into Drug Law Reform, and the opportunity to identify areas for in which legislation can be altered to improve access to justice in this field.

Many of our clients are impacted by policy and legislation in this area, and our suggestions for possible reform address selected stages of the legal process.

This submission considers the legislative and policy-making framework surrounding drug driving infringements and offences, and provides suggestions for amendments to current laws. Our submission also discusses Drug Courts and their role in Victoria. We finish with a brief discussion around decriminalisation. SMLS is not seeking confidentiality regarding this submission.

A HUMAN RIGHTS APPROACH

Various human rights frameworks underpin the need for reform to current Victorian drug legislation. Human rights bodies around the world have expressed concerns regarding the reality that existing drug laws result in breaches of human rights. The International Drug Policy Consortium reflects that 'human rights abuses have proliferated under current drug control policies' around the world. [1] Human Rights Watch claim that 'Health and human rights are at the centre of this polarized debate'. [2]

More locally, human rights considerations must be considered and addressed in all legislation, given the introduction of a Human Rights Charter in 2006.[3] This Charter recognises various human rights for Victorians, including:

- The right to recognition and equality before the law;
- Rights in criminal proceedings

This Inquiry is an opportunity to consider current and proposed reforms legislation and policy from a human rights framework. Our submission reflects how our potential reforms can address this and incorporate our human rights obligations.

[1] International Drug Policy Consortium, 2017, Policy Principals Statement, retrieved from: http://idpc.net/about/policy-principles/principle-2

[2] Lohman, Diederik, March, 2016, The War on Drugs – A Cure Worse Than the Disease, Health and Human Rights, Human Rights Watch, retrieved from https://www.hrw.org/content/287990

[3] Charter of Human Rights and Responsibilities Act 2006

A. DRUG DRIVING

Zero Tolerance Approach

The 'zero tolerance' approach means, unlike drink driving, the level of driver impairment is not measured, which means that people can be convicted of a driving offence without evidence they were impaired or that drug use impacted their driving capacity.

Existing zero-tolerance drug-driving laws

Victoria's current laws surrounding drug-driving are contained within the *Road Safety Act 1986* (Vic) (RSA), specifically the offences outlined in section 49.[4] This discussion will be confined to driving offences involving illicit drugs, which are defined as delta-9-tetrahydrocannabinol (THC), 3, 4-Methylenedioxy-NMethylampthetamine (MDMA) and methylamphetamine.[5] SMLS highlights that the purpose of the Road Safety Act is 'to provide for safe, efficient and equitable road use'[6], and not to regulate the use of illegal substances.

Evidence suggests that in certain circumstances, these drugs have the potential to impair a person's ability to drive safely.[7] The call for reform stems from current injustices surrounding Victoria's zero-tolerance approach to drug-driving, particularly offences which have 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.[8]

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.[9]

Perhaps the catch-all approach of these provisions was more understandable in the past, when minute concentrations of substances in blood and saliva were not detectable as they increasingly are today. However, as technology continues to advance and testing machines become more refined, an individual should not receive harsher penalties purely based on technological development. Instead, the precision of technology and testing should underpin the shift away from zero-tolerance laws.[10] The acquittal of a person who tested positive for cannabis smoked nine days before he was pulled over in New South Wales highlights the flaws in the current system. His lawyer, Steve Bolt, compares the current zero-tolerance

[4] *Road Safety Act 1986* (Vic) s49.
[5] Ibid s3.
[6] Ibid s1
[7] Bosanquet, David, et al, 'Driving on ice: impaired driving skills in current methamphetamine users' (2013) 255 *Psychopharmocology (Berlin)* 163; European Monitoring Centre for Drugs and Drug Addiction, *Drug use, impaired driving and traffic accidents*, (European Monitoring Centre for Drugs and Drug Addiction publication, 2014) 45.
[8] *Road Safety Act 1986* (Vic) ss. 49(1)(bb), (h) and (i).
[9] Ibid s 3 and ss 49(1)(bb), (h), and (i).
[10] Pfaffe Tina, et al, 'Diagnostic Potential of Saliva: Current State and Future Applications' (2011) 57 (5) *Clinical Chemistry* 675; Kristof Pil and Alain Verstraete, 'Current developments in drug testing oral fluid' (2008) 30(2) *Therapeutic Drug Monitoring* 197.

drug-driving laws to, 'punishing someone by taking away their licence when they might have had a beer or two three days before driving.'[11]

Furthermore, the lasting ramifications of harsh penalties imposed are disproportionate where a person's driving was not significantly affected by illicit drugs. Such penalties may include mandatory licence suspensions, fines ranging from $155 to approximately $18,600, possible criminal convictions and imprisonment terms.[12] The punishment only differs based on first-time, second-time repeat offending. Unlike drink-driving offences, the penalties for drug-driving do not vary based on blood concentration readings. The implications of this are such that a person who tests positive for THC *9 days after* smoking cannabis can be held equally culpable as someone who has smoked cannabis *whilst* driving.[13]

Concerns regarding criminal convictions and the current zero-tolerance approach

Given the current zero-tolerance approach, acts of low culpability will often fall within the ambit of drug driving offences. Accordingly, our clients face serious concerns regarding the recording of criminal convictions in this area, and the implications this may have on their future prospects.

Currently in Victoria, the release of criminal conviction records is governed by the Victoria Police Information Release Policy. Such records may be released for employment, licensing, registration and voluntary work purposes.[14] Despite having anti-discrimination legislation in place, Victorian is the only state that is not afforded spent conviction legislation. In force at a Commonwealth level and in all other states and territories, spent conviction legislation generally applies to most offences where the offender has not reoffended in ten years.[15] The impact of a possible conviction and penalty can be devastating for an individual and their family. The outcomes are disproportionate; smoking a joint five days prior, as opposed to an alcohol related driving offence where the driver consumes alcohol immediately before entering a vehicle.

The AHRC has liberally construed the term 'criminal record' to encompass "*not only the actual record of a conviction but also the circumstances of the conviction including the underlying conduct*".[16] This can often be the most significant penalty for many of our clients, particularly the social stigma associated with drug-driving convictions. We therefore stress the need for reforms away from the current zero-tolerance approach given the wide-ranging implications of convictions, such as limitations on employment prospects.

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[11] Lorna Knowles and Alison Branley, 'Acquittal of man caught drug-driving nine days after smoking cannabis throws NSW drug laws into doubt', *Australian Broadcasting Corporation News* (online), 3 February 2016, <http://www.abc.net.au/news/2016-02-02/man-caught-drug-driving-days-after-smoking-cannabis-acquitted/7133628>. Retrieved March 2017

[12] *Road Safety Act 1986* (Vic) s49(3AAA).

[13] Ibid

[14] Victoria Police, *Victoria Police Information Release Policy* (November 2016) <http://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media_ID=38447>. Retrieved March 2017

[15] *Crimes Act 1914* (Cth); *Criminal Records Act 1991* (NSW); *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld); *Spent Convictions Act 1988* (WA); *Annulled Convictions Act* 2003 (Tas); *Spent Convictions Act 2009* (SA); *Spent Convictions Act 2000* (ACT); and *Criminal Records (Spent Convictions) Act 1992* (NT).

[16] Australian Human Rights Commission, *Reports of inquiries into complaints of discrimination in employment on the basis of criminal record* No 19 (2002) 9.2.2.

SUGGESTED REFORMS

Recommendation 1: Drug Concentration Threshold
SS 49(1) (bb), (h) and (i)

We recommended introducing an additional legislative requirement of a blood drug concentration threshold limit for section 49(1) (bb), (h) and (i).[17] 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.[18]

There exists a significant body of international research which supports the introduction of threshold blood drug concentration limits. Studies have indicated that the mentioned illicit drugs have an influence on driving performance in a dose-dependent manner.[19]

There are slight variations between current recommendations of cut-off blood concentration thresholds. SMLS recommends that further independent research is conducted, building on current research findings, to determine a suitable threshold for adaption into Victorian law.

Recommendation 2: Subsequent Offences
S48 (2)

The s49(1) (RSA) details the various offences involving alcohol or other drugs. These offences vary in culpability as they cover both drink and drug driving, and the provision ranges from offences of refusal to undergo testing, to testing positive to a breath analysis within three hours of being in charge of a motor vehicle.

Currently, all s49(1) (RSA) offences are grouped together when considering 'first', 'second', and 'subsequent' offences.[20] Under the s48(2) 'blanket' provision, a previous drink driving offence will be considered a prior offence for a later drug driving charge, and vice versa. The practical effect of this provision is that it fails to distinguish between different levels of impairment and culpability of offenders. Additionally, the provision has the potential to adversely affect offenders as the maximum penalty for a subsequent offence can be up to fifteen times that of a first offence.[21] We therefore recommend the removal of the s48(2) 'blanket' provision in determining prior and subsequent offences. We further call for a new system of categorisation in accordance with culpability, starting with the offence type (refusal offences, driving with drugs present, driving with alcohol present etc). This new system of categorisation will need to consider the range of different levels of culpability within each offence type.

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[17] *Road Safety Act 1986* (Vic) s 3 and ss 49(1)(bb), (h), and (i).
[18] Ibid s 49.
[19] 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.
[20] *Road Safety Act 1986* (Vic) s48 (2)
[21] Ibid ss49 (3) (a)-(c); ss49 (3AAA)(a)-(c).

B. INFRINGEMENTS

Procedural Problems with the Infringements System

A number of our clients experience challenges in relation to their alcohol or other drug (AOD) use and we are frequently asked to prepare 'special circumstances' applications under s 65 of the *Infringements Act 2006* (Vic)[22] on their behalf. We have analysed the recent changes to the *Infringements Act 2006* (Vic) made by the *Fines Reform Act 2014* (Vic), highlighting how these changes will affect our clients with problematic AOD use. We note the infringements system is complex and difficult to navigate.[23] We highlight the need for a centralised fine management body, and the opportunity for special circumstances applications to be lodged earlier than enforcement order stage.

Reforms in Fines Reform Act 2014 (Vic)

The *Fines Reform Act 2014* (Vic) (FRA) has made some recent amendments in relation to infringements which will affect people who use AOD.

Section 215 - Application for Internal Review

S 215(1) (b) of the FRA allows people charged with offences to apply for internal review where they were unaware that an infringement notice had been served. This is of particular benefit to clients who regularly use AOD, as well as those who suffer from homelessness and mental health issues that may contribute to their capacity to attend to infringement notices. S215 (4) does, however, limit the scope of this provision, requiring applications to be made in writing within 14 days of notification. People must also have registered their change of address with VicRoads. At SMLS, we have seen clients including those with AOD dependency issues who may have limited capacity to respond to VicRoads in writing within this time period[24].

Section 208 and 209 - Service and Payment

S 208(1) of the FRA has reduced the deemed length of service of an infringement from 14 days after the date of the infringing act, to 7 days. In addition, s 209 reforms have reduced the payment time for infringements from 28 days to 21 days after the accused has been served with the infringement notice. This seven-day reduction in the deemed length of service may impose burdens for many of our clients to respond appropriately once a fine has been issued.

[22] *Infringements Act 2006* (Vic) s 65(1)(c).
[23] Saunders et al, 'The Impact of the Victorian Infringements System on Disadvantaged Groups: Findings from a Qualitative Study' (2014) 49(1) *Australian Journal of Social Issues* 45, 46.
[24] This also impacts clients who face housing instability.

Section 219 - Penalty Reminder Notices

S 219 of the FRA has further restricted the time for clients to pay their infringements or seek advice without financial punishment. The amendments have reduced the minimum time extension from 28 days to 14 days. This may put further pressure on community legal centres to provide more timely assistance.

Complexity of the Infringement System

The infringements system in Victoria is complex and difficult to navigate,[25] particularly for vulnerable and disadvantaged members of the community including those with AOD dependencies.[26] The key complexities are procedural and are largely due to having multiple enforcement bodies, two different systems of review and revocation, all with inconsistent applications. The system creates unnecessary delay, and is detrimental to individual wellbeing[27] as well as creating burden for service providers.

Burden on Community Legal Centres (CLCs)

SMLS assisted many clients with infringement matters and we are aware that many other CLCs are struggling to meet the needs of clients facing these issues. Changes to the procedural law governing infringements would deliver a sustainable decrease in the workload for these centres.

Multiple enforcement bodies

People who use AOD including problematic AOD use often present to CLCs with infringements relating to a number of different offences. At least 120 enforcement bodies were authorised to issue the 4.97 million infringements issued in 2010-11.[28] Given public transport offences, driving offences and parking tickets will attract infringements from separate enforcement bodies (and in the case of parking and other local council related fines; different enforcement bodies in different councils), it is not surprising that there is a lack of consistency in the issuance and management of infringements.

For this reason, the Sentencing Advisory Committee has recommended that Victoria introduce a centralised fine management body, in line with the other Australian states.[29] It was noted by the Sentencing Advisory Committee that there has been a similar trend in overseas jurisdictions including New Zealand and the United Kingdom.[30]

An example of this recommendation in practice is the introduction of the State Debt Recovery Office (SDRO) in New South Wales. The SDRO is responsible for '*the receipt and processing of fines issued*

[25] Saunders et al, 'An Examination of the Impact of Unpaid Infringement Notices on Disadvantaged Groups and the Criminal Justice System' (Criminal Justice Research Consortium, No 1, Monash University, February 2013), 59.
[26] Ibid, 29.
[27] Ibid, 30.
[28] Ibid, 20.
[29] The Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria Report, Sentencing Advisory Council, 4.3.18
[30] Ibid, 4.3.18

by various government agencies...and administering the fine enforcement system'.[31] If an infringement is payable to the SDRO, the enforcement agency registers the infringement once it has been issued. If the fine is payable to the agency itself, the enforcement agency registers the infringement with the SDRO after default of payment.[32]

Inconsistency in Outcomes of Internal Review Applications

People who have AOD dependency issues have two options if electing to rely on their substance use as grounds for review or revocation due to special circumstances.[33] Until an infringement has reached the enforcement order stage, an individual may apply for internal review of the infringement with the enforcement agency. As there are at least 120 enforcement agencies and no consistent procedure for dealing with these reviews, 'inconsistent decision making within and across agencies'[34] is a typical consequence. Despite a requirement in the Attorney-General's guidelines that each agency have guidelines for assessing appeals by people with special circumstances, none of the five agencies surveyed by the Victorian Auditor-General in 2009 including Victoria Police had produced such guidelines.[35]

The inconsistent manner in which applications for internal review are dealt with has led to many solicitors discouraging clients from seeking internal review, particularly for matters managed by Victoria Police.[36] In 2013, Monash University's Criminal Justice Research Consortium found that all 23 interviewed solicitors and most financial counsellors were concerned about Victoria Police's internal review system as they 'rarely' withdraw notices on internal review and always refer matters to the Magistrates' Court where the individual is denied access to the Special Circumstances List.[37]

Without consensus on the method of analysing internal reviews across the 120 agencies state wide, it is difficult to predict the outcome of internal review applications. The perpetuation of random inconsistent outcomes undermines community confidence in the system.[38]

Special Circumstances List Restricted to Rejected Applications for Revocation

A rejection of an application for revocation on the basis of special circumstances results in a hearing on the special circumstances list of the Magistrates' Court, before a specially trained Magistrate with typically lower penalties.[39] By contrast, an unsuccessful application for internal review typically results in a hearing in open court. This may result in harsher penalties than the Special Circumstances List, for what is otherwise an offence incurred in identical circumstances.[40] This can be discouraging for clients

[31] The Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria Report, Sentencing Advisory Council, 4.3.19
[32] Ibid, 4.3.20
[33] See introduction to this section.
[34] Saunders et al, 74.
[35] Victorian Auditor General, Withdrawal of Infringement Notices Report (2009) VAGA, 2.
[36] Saunders et al, 79.
[37] Ibid, 79.
[38] Ibid
[39] Ibid, 27.
[40] Ibid.

who may seek payment plans to deal with these infringements rather than wait for the application of additional penalties in order to apply for revocation.[41] The result is that vulnerable people are paying for infringements the law may well be prepared to waive.[42]

Difficulty meeting requirements of Special Circumstances Applications

Given the requirements of a special circumstances application necessitating medical and/or psychological/social work reports, it can be challenging for clients who have AOD dependency issues to obtain the relevant documentation. Barriers include professional fees for the writing of such reports and letters as well as access to Medicare for non-residents including new migrants and people seeking asylum.

Further issues relate to the time taken to obtain such reports and the inconsistency of the reports provided, leading to rejected applications.[43] Even in cases where the costs of seeking such documentation are not prohibitive, many clients with problematic AOD use do not maintain consistent relationships with the same practitioners, resulting in the common occurrence of rejection of reports on the basis of rare or singular visits.[44] These challenges extend the time taken to apply for internal reviews and revocations and, even with the assistance of a CLC, this time pressure may result in infringements progressing to later stages of the infringement system. [45]

SUGGESTED REFORMS

Recommendation 1: Availability of Special Circumstances Applications for Revocation at any stage

It is recommended that clients are able to apply for revocation of their infringements on the grounds of special circumstances at any stage of the infringements process.

As explained above, SMLS clients, including clients with problematic AOD use are anxious about waiting for their infringement notices to reach the enforcement order stage (particularly if there are many), and many feel pressured to take out payment plans despite having strong special circumstances. In addition, this recommendation can greatly reduce the expense borne by enforcement bodies such as Civic Compliance Victoria when adding late penalty fees and sending repeated correspondence to a client who is waiting to reach a later stage. At SMLS, clients with many infringements and long histories of AOD dependency issues sometimes have to present to court multiple times for special circumstances hearings, as they have to wait for their infringements to become enforcement orders in stages.

It would be beneficial for clients to be able to apply for revocation on special circumstances grounds at an earlier stage. This may also reduce the administrative burden for enforcement bodies.

[41] Victoria Legal Aid, 'Vulnerable People and Fines' (Position Paper No 1, Victoria Legal Aid, October 2013) 8.
[42] Ibid, 25.
[43] Saunders et al, 19.
[44] Ibid, 20.
[45] Ibid.

Recommendation 2: A centralised fine management body

It is recommended that a centralised body is established to manage both the enforcement of infringements and decisions regarding special circumstances applications. The adoption of a centralised body will assist in streamlining the complex infringement system, and aid those utilising special circumstances avenues.[46] Adopting the recommendation of the Sentencing Advisory council may bring Victoria's fine enforcement system more in line with that of the other states and territories in Australia.

Recommendation 3: Medicare Item Number

It is recommended that a new Medicare Item Number is introduced for doctors to use when completing reports for special circumstances applications. The prohibitive fees some doctors charge for these reports can act as a disincentive for clients to make special circumstances applications. An item number would acknowledge the time taken to prepare complex reports, however the client would receive a rebate. This could also allow doctors to bulk-bill clients.
This recommendation will incentivise both doctors to write comprehensive reports, and clients to obtain these reports for special circumstances applications.

[46] Saunders et al, 29.

C. DRUG COURTS

The Drug Court of Victoria (DCV) is the Drug Division of the Magistrates' Court of Victoria.[47] It is the only court that can sentence an offender to a Drug Treatment Order (DTO) and currently operates at the Dandenong Magistrates Court.[48] In March 2017, Victoria will see its second Drug Court opened at the Melbourne Magistrates' Court.

Drug courts represent a number of challenges when being assessed through a human rights lens. It could be argued that mandatory treatment, ordered, motivated or supervised through the justice system even with perceived consent violates a person's human rights. [49] In addition, mandatory treatment for people with substance use disorders has not been proved effective in reducing long term drug use. [50]

Despite positive evaluations published in favour of Drug Courts, critical literature indicates methodological flaws in many evaluations regarding the success of drug courts. Research indicates that evidence about the effectiveness of drug court programs in reducing participants' substance abuse was limited and mixed. Drug courts tend to be selective of which offenders they work with, excluding people who may fall outside their scope, skewing recidivism comparisons. [51]

Despite these criticisms, it appears that the Dandenong Drug Court has contributed to reduce recidivism and many people appreciate this approach. SMLS also recognises that following a 2014 Inquiry regarding Methamphetamine use in Victoria[52], Drug Courts are likely to be rolled out in various locations across Victoria. Due to these factors, SMLS recognises the important role of Drug Courts in Victoria.

Sentencing and crime reduction advantages of DTOs

The DCV operates according to the overarching principle that in order to reduce AOD related offences the underlying AOD use must be treated. DTOs intend to rehabilitate the offender and thus reduce AOD related crime.[53] A DTO is a personalised and judicially monitored AOD recovery program that may involve addiction counselling, health treatment, housing assistance, education, training and employment.[54] This is an appropriate sentence for the offender group as it addresses both the problematic AOD use and its complex causes. According to the Chief Magistrate Peter Lauritsen, "no other non-custodial sentence could work with this group [and] there is really no capacity within a Community Corrections Order to bring treatment of such intensity and immediacy to bear upon these

[47] *Sentencing Act 1991* (Vic) s 3.
[48] Ibid s 18Y.
[49] Lunze Karsten, et al, 2016, Mandatory addiction treatment for people who use drugs: global health and human rights analysis BMJ 2016; 353 :i2943
[50] Ibid
[51] Franco, Celinda, Drug Courts: Background, Effectiveness, and Policy Issues for Congress (2010) Congressional Research Service, 7-5700, https://fas.org/sgp/crs/misc/R41448.pdf, retrieved March 2017
[52] Law Reform, Drugs and Crime Prevention Committee, 2014, Inquiry into the Supply and Use of Methamphetamines, particularly 'Ice', in Victoria — Final Report, Parliament of Victoria, retrieved March 2017 http://www.parliament.vic.gov.au/images/stories/LRDCPC/Tabling_Documents/Inquiry_into_Methamphetamine_text_Vol_01_with_addendums.pdf
[53] Sentencing Act 1991 (Vic) s 18X(1)(a), (c).
[54] Drug Court of Victoria, Submission to Australian Government *The National Ice Taskforce*, 20 June 2015 10-11 [8].

people".[55] Thus they are likely to be sentenced to a term of imprisonment. According to an Evaluation of the Drug Court of Victoria by KPMG, DTOs are preferable to imprisonment as they reduce the rate of recidivism[56].

Financial and economic advantages of DTOs

When compared to imprisonment, DTOs have clear financial and economic advantages. According to the same study, the total cost of an average two year term of imprisonment is $197,000.[57] This is over seven times greater than the cost of a DTO, which is $26,000. The reduction in recidivism and severity of offending because of DTOs is another financial advantage. According to the recent evaluation of the DVA by KPMG, over a two year period, offenders sentenced to DTOs were sentenced to a total of 6 125 days imprisonment for their subsequent reoffending. The control group was sentenced to a total of 10 617 days imprisonment. By reducing the days of imprisonment, DTOs saved $1.2million in associated costs.[58]

The holistic nature of DTOs that includes education, training and employment assistance for offenders yields considerable economic benefits. There is an increase income of the participating offenders and reduction of unemployment rates by 32%.[59]

Social advantages of DTOs

In addition to recidivism and cost savings, wider societal benefits have been associated with the DTOs. Such general societal benefits include a reduction in AOD use and long-term sobriety, a consequent increase in employment, further education, the reunification of families and drug-free babies.[60] By its multidisciplinary input and collaboration with social support providers, the DCV can address underlying causes of the offending such as family violence, unemployment or homelessness and also respond to social needs such as mental health care and crisis accommodation. All these other social needs and problems can affect the success of the DTO.[61] DCV Magistrates also prioritise the task of building trust and rapport with offenders, who are often socially marginalised, to promote cooperation towards defeating their addiction.

[55] Lee, Jane 'Drug Court the 'only way' to help drug-addicted criminals', *The Age* (Melbourne), 13 March 2015, 12.
[56] KPMG, Evaluation of the Drug Court of Victoria: Final Report (2014), KPMG, Magistrates' Court of Victoria
[57] Ibid 5.
[58] Ibid.
[59] Drug Court of Victoria, Submission to Australian Government *The National Ice Taskforce*, 20 June 2015 14 [10].
[60] Daniel McGlone, 'Drug Courts- A Departure from Adversarial Justice' (2003) 28(3) Alternative Law Journal, 138.
[61] National Association of Drug Court Professionals United States of America, *Defining Drug Courts: The Key Components* (Office of Justice Programs, US Department of Justice, 2004) 6.

SUGGESTED REFORMS

Recommendation 1: That the Capacity and locations of the Drug Court is Increased

Establishing Victorian Drug Court divisions in more locations will make allow more people to access the Drug Court and DTOs. Currently, those who do not live within the catchment areas for the Drug Court are not able to access it.[62] Expanding the Drug Court would be in line with the Victorian Charter of Human Rights and Responsibilities.

Under section 8(3) of the Charter 'every person is equal before the law and is entitled to the equal protection of the law without discrimination.'[63] Ensuring every person has equal access to the courts is one of the key elements of every person being equal before the law.[64] A person's postcode should not be a barrier to accessing the Drug Court. Expanding the Drug Court to all regions of Victoria would provide eligibility for DTOs to all Victorians regardless of where they live.

Even if it would be less efficient to expand the Drug Court to regional Victoria than investing in metropolitan areas, the Drug Court should nevertheless be expanded to regional Victoria.[65] The failure to do so would place people living in regional communities at a disadvantage, impacting on how they experience the justice system and preventing the rehabilitation and treatment of offenders.[66] People should not be denied equitable access to sentencing options due to the tyranny of distance. Any court jurisdictions with lower populations and less demand for a Drug Court could open a Drug Court part time, so that even in smaller Court jurisdictions the Drug Court is still accessible.[67] Making the Drug Court available all around Victoria would have beneficial effects on the health and wellbeing of those who experience drug addiction and who would be eligible for a DTO were it not for where they live.[68]

Recognising the need for infrastructure and support services

When it comes to expanding the Drug Court to other parts of Victoria, it is important to ensure that the proper infrastructure is in place and that detoxification centres and other support services are available. Effective drug treatment requires not only drug and mental health treatment but also the availability of other support services.[69] Comprehensive services including health, housing, education, employment, and social services are necessary to enhance the effectiveness of DTOs and the Drug Court.[70] It is important to allocate resources to ensure the links to these support services are available in all the areas to which the Drug Court is expanded.

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[62] Victorian Alcohol and Drug Association, *Drug Courts in Victoria: evidence & options*, Position Paper (2013) 2.
[63] *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 8.
[64] Richard Coverdale, *Postcode Justice - Rural and Regional Disadvantage in the Administration of the Law in Victoria* (Centre for Rural Regional Law and Justice, Deakin University, 2011) 15.
[65] Ibid 16.
[66] Ibid.
[67] Victorian Alcohol and Drug Association, *Drug Courts in Victoria: evidence & options*, Position Paper (2013) 4.
[68] Ibid
[69] National Association of Drug Court Professionals United States of America, *Defining Drug Courts: The Key Components* (Office of Justice Programs, US Department of Justice, 2004) 6.
[70] Victorian Alcohol and Drug Association, *Drug Courts in Victoria: evidence & options*, Position Paper (2013) 3.

D. VICTIMS OF CRIME ASSISTANCE ACT

We have read the submission prepared by Dr Kate Seear pertaining to amendments relating to the Victims of Crime Assistance Act.

Specifically, the recommendation to amend s54 of the Victims of Crime Assistance Act 1996 (Vic) to limit the circumstances within which past evidence of illicit drug use may adversely impact a victim of crime application of the Road Safety Act 1986 (Vic) and endorse that recommendation. SMLS operates a legal clinic for victims of sexual assault, in partnership with the South Eastern Centre Against Sexual Assault (SECASA), assisting victims with Victims of Crime Assistance claims. We wholeheartedly endorse Dr Seear's proposed reforms.

E. DECRIMINALISATION

In Australia, government expenditure in response to illicit drugs in 2009-2010 consisted of:

- 66% allocated to drug law enforcement
- 21% to drug treatment
- 9% to prevention; and
- 2% to harm reduction.[71]

Despite the allocation of a substantial portion of government funds on drug law enforcement, the overwhelming majority of people who use drugs in Australia in 2012 reported that obtaining illicit drugs was 'easy' or 'very easy'.[72] When criminalisation is prioritised over harm reduction strategies, neither drug use nor overdoses are reduced.[73]

[71] A Ritter, R McLeod & M Shanahan, Government Drug Policy and Expenditure in Australia- 2009/10 (2013) <http://www.dpmp.unsw.edu.au/sites/default/ files/dpmp/resources/DPMP%20MONO%2024.pdf>. Retrieved March 2017

[72] Jenny Stafford & Lucinda Burns, *Key Findings From The 2016 Illicit Drug Reporting System: A Survey of People Who Inject Drugs* (2016) National Drug and Alcohol Research Centre <https://ndarc.med.unsw.edu.au/sites/default/files/ndarc/resources/IDRS%20October%202016_FINAL.pdf>. Retrieved March 2017

[73] The European Monitoring Centre for Drugs and Drug Addiction.

Recommendation 1

We recommend the removal of a criminal record for drug possession for personal use offenses, and consider instead either no penalty at all or reducing consequences to fines or similar. [74]

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 Commission called for an end to punitive measures, calling for the removal of all penalties 'imposed for low level possession and/or consumption offenses'. [75] Internationally, various countries including Czech Republic[76] and Portugal[77] have implemented successful decriminalisation policies. Extensive research highlights the benefits of decriminalisation including social, financial, public health, recidivism and community harmony. [78]

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[74] Global Commission on Drug Policy, *Advancing Drug Policy Reform: A New Approach to Decriminlization* (2016) <http://www.globalcommissionondrugs.org/reports/advancing-drug-policy-reform/>. Retrieved March 2017
[75] Ibid.
[76] See, e.g, *Single Convention on Narcotic Drugs as amended by the 1972 Protocol*, signed 13 March 1961, 520 UNTS 204 (entered into force 13 December 1964).
[77] 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 Decriminlization* (2016) <http://www.globalcommissionondrugs.org/reports/advancing-drug-policy-reform/>. Retrieved March 2017
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