



SUBMISSION

Prepared by South-East Monash Legal Service Inc. for the
Standing Committee on Health, Aged Care and Sport

In relation to the
Inquiry into the health impacts of alcohol and other drugs in Australia

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Our organisation

Established in 1973, South-East 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 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 and Family Court, and Victims of Crime Assistance Tribunal.

SMLS has one of the oldest clinical legal education programs in Australia, in partnership with Monash University's Faculty of Law, whereby law students undertake a practical placement at the legal service as part of their undergraduate degree.

SMLS has 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.

SMLS provides integrated, wrap around services through our Support Connect Integrated Program, where clients receive legal assistance, assistance from social workers and financial counselling through a partnership with Good Shepherd.

SMLS also has a significant policy, advocacy, and law reform program, contributing to reforms in family violence laws and practices, access to civil procedure reforms, employment law, sexual assault and victims of crime, youth law, gambling and electronic gaming machines and other legal topics relevant to our service delivery and the needs of our community.

Acknowledgement of Country

SMLS acknowledges the Bunurong People and the Wurundjeri People, the traditional owners of the land where we work, and First Peoples language groups and communities across Victoria and Australia. We pay our respects to Elders past and present. We celebrate the people, traditions, culture and strength of Aboriginal and Torres Strait Islander peoples, and the fight for survival, justice and country that has taken place across Victoria and Australia.

We sincerely thank the Traditional Custodians for caring for Country for thousands of generations. SMLS recognises the ongoing impact of colonisation, dispossession and racism experienced by Aboriginal peoples. As a Community Legal Centre, we acknowledge the violence of Australian law and its ongoing role in processes of colonisation. We recognise that sovereignty was never ceded, and that this always was and always will be Aboriginal land.

Terms of Reference

The House of Representatives Standing Committee on Health, Aged Care and Sport will inquire into and report on the health impacts of alcohol and other drug use in Australia, with the aim to:

- a) Assess whether current services across the alcohol and other drugs sector is delivering equity for all Australians, value for money, and the best outcomes for individuals, their families, and society;
- b) Examine the effectiveness of current programs and initiatives across all jurisdictions to improve prevention and reduction of alcohol and other drug-related health, social and economic harms, including in relation to identified priority populations and ensuring equity of access for all Australians to relevant treatment and prevention services;
- c) Examine how sectors beyond health, including for example education, employment, justice, social services and housing can contribute to prevention, early intervention, recovery and reduction of alcohol and other drug-related harms in Australia; and
- d) Draw on domestic and international policy experiences and best practice, where appropriate.

Scope of submission

Many of the questions are outside of the scope of SMLS services. We have only provided comments where we were confident that our expertise was a valuable contribution to the subjects raised.

We will limit our response to part c) of the Terms of Reference and will look at how the legal, justice and social services sectors can contribute to prevention, early intervention, recovery and reduction of alcohol and other drug-related harms in Australia.

Acronyms

SMLS	South-East Monash Legal Service Inc.
CLE	Community Legal Education
CLC	Community Legal Centre
AOD	Alcohol and other Drugs

Executive Summary

We thank the Standing Committee on Health, Aged Care and Sport for the opportunity to provide a submission to the Inquiry into the health impacts of alcohol and other drugs in Australia. International best practices in reducing harm related to alcohol and other drugs (AOD) focus on strategies that minimise negative health, social, and legal consequences for individuals and communities. These practices are informed by public health research, evidence-based strategies, and the understanding that substance use is a complex issue requiring a multi-faceted approach.

We recognise that some individuals may use drugs and alcohol without experiencing harm. However, we are also deeply aware of the significant harm that AOD use can cause to the individual, their family, and the broader community. AOD-related harms extend beyond physical and mental health issues and can also include life-altering consequences, such as criminalisation, visa cancellations, and deportation. Our commentary on this subject is limited to minor AOD offences such as possession and use of small quantities. We do not intend to comment on more serious offences including cultivation, selling, and trafficking of drugs.

SMLS recommends that it is imperative to prevent and educate on the physical, mental, and legal AOD-related harms. Early support and intervention are critical in mitigating the harm that interaction with the criminal justice system may have, particularly for vulnerable cohorts, including young people, those with disabilities, mental health conditions, and those with a vulnerable visa status.

As a community legal centre, we work with clients facing a wide range of legal issues, many of whom are marginalised and disempowered. Any interaction with the criminal justice system can have devastating and long-lasting consequences for our clients, affecting their employment, jeopardising their visa status, and threatening their already precarious housing situations. These far-reaching impacts of criminal justice contact increase the likelihood of recidivism. For this reason, we support the decriminalisation of drugs and advocate for a health-based approach to the treatment and care of AOD abuse and misuse. We have previously submitted recommendations regarding the decriminalisation of cannabis¹ and the reform of Australia's youth justice and incarceration system towards a less punitive system.² In our submission into the Inquiry into Children affected by parental incarceration³ we discussed Australia's harsh sentencing policies and our support for alternative justice responses to the use of drugs. We stated:

¹ South-East Monash Legal Service Submission to the Inquiry into the use of cannabis in Victoria (2020) <<https://www.smls.com.au/wp-content/uploads/2021/04/SMLS-Cannabis-submission-.pdf>>

² South-East Monash Legal Service Submission to the Inquiry into Australia's youth justice and incarceration system (10 October 2024) <<https://www.aph.gov.au/DocumentStore.ashx?id=fe204186-ca86-45ca-a1d2-85c082fc1efd&subId=768247>>

³ South-East Monash Legal Service Submission to the Inquiry into children affected by parental incarceration (28 April 2022) <https://www.parliament.vic.gov.au/4ae82c/contentassets/cb8f268002c748fdabd128dfcabd1f46/submission-documents/013-south-east-monash-legal-service-inc_redacted.pdf>

Australia has harsh sentencing policies; reform is needed, and imprisonment should be an option of last resort, particularly for primary carers and pregnant women where the crime is not serious and non-violent. There is little to no preventative support for parents in low socioeconomic areas, or those in family violence situations. We recommend moving away from punitive sentencing options towards alternative restorative options to reduce the rates of imprisonment and recidivism which in turn reduces the impacts on children, including intergenerational imprisonment and trauma.⁴

There is a clear need to shift the focus from a punitive and shame-based approach of criminalisation and abstinence toward a health-focused approach to reduce and minimise AOD related harms. This includes measures such as education, prevention, and early intervention, improving access to legal assistance, expanding diversion programs, and exploring alternative justice approaches, including decriminalisation.

SMLS and our clients

SMLS operates a duty lawyer service at various courts in Victoria, including Dandenong Magistrates Court and the Children's Court. These submissions are also based on our experience providing a duty lawyer service to young people in intervention order matters at the Children's Court. We see clients who experience mental health issues; alcohol and other drug ('AOD') issues; have experienced trauma as victim-survivors of sexual assault and/or family violence or as a refugee or asylum seeker. Many clients who come to see us have intersectional legal and non-legal issues and SMLS has experience working with those impacted by AOD in our communities in our work dealing with family law, family violence, criminal and civil law.

Prevention and early intervention through Community Legal Education

We advocate for an approach that prioritises protecting, rather than punishing, young people at risk of entering the justice system. Young people in particular are at greater risk of being criminalised for AOD use. Community legal education plays a vital role in this effort to protect young people from being unfairly criminalised. Through our programs, we emphasise the importance of educating young people about their legal rights and responsibilities. In many cases, young people may not even recognise that their issue is legal or that they have the right to seek help from a lawyer. Our community engagement initiatives aim not only to increase legal awareness but also to demystify the justice system and promote a proactive approach to seeking assistance.

We recognise the need for culturally competent trauma informed education and support in lessening the impacts of AOD harms. We see a need for those that may face the criminal justice system to have early access to legal education and assistance where needed.

⁴ Tess Domb Sadof, *Alternatives to incarceration for moms aim to strengthen families* (10 August 2015).

We deliver community legal education (CLE) to young people and have seen the positive impact that this has on increasing their knowledge of their rights and responsibilities. Our integrated service model allows our Community Development Workers and Social Workers to run CLE sessions in various formats, including workshops and run CLE in multiple organisations. Most of the attendees are young people from vulnerable and marginalised communities. The purpose of these CLE sessions is to empower young people and members of our communities with legal information, including information regarding drugs and alcohol and access to justice. Feedback from participants and partner organisations indicates that they find the content engaging and fresh, with the delivery being described as unique and unconventional.

Since 2018 SMLS has been engaging and educating young people in our region about their legal rights and responsibilities through our **Sporting Change** program. Sporting Change draws on our strong relationships with schools and local sporting clubs to educate and empower young people to understand the justice system while increasing access to justice through an integrated school lawyer. Sporting Change is supported by the State Government through the Federation of Community Legal Centres Integrated Services fund and the Victorian Legal Services Board.

Currently Sporting Change is run in two schools and is geared towards educating 13–17-year-old students (Years 8-10) on a variety of legal education topics. Sporting Change focuses on educating young people about their rights and responsibilities and potential consequences of their actions. The AOD CLE content covers the legal consequences for possession of different drugs. It lists the consequences in relation to each drug category, and the quantity found. The content was decided based on issues that young people face in the community. Our Community Development team is part of many networks and conducts ongoing consultations with various professionals and youth leaders to keep informed about existing issues that would inform our CLE content and delivery. The approach avoids stigmatising users and ensures that young people are informed of their legal rights. It also provides resources focused on recovery and harm reduction. Additionally, referrals to other services can be made if any disclosures are shared.

We recognise the profound impacts that criminalising young people can have on their futures and their families. Punitive responses to AOD use and misuse are ineffective and inappropriate and are not a trauma-informed approach to care and prevention of recidivism.⁵ The key to crime prevention is shifting the emphasis from punishment towards evidence-based strategies that prevent crime before the damage is done. Sporting Change views legal frameworks as the foundational context for understanding the law and legal processes within Victoria. This includes learning why certain laws exist, how young people can interact with the law, the potential consequences of negative legal encounters, where to seek help for legal issues, and the types of legal problems commonly faced by young people. Data indicates that young people have a limited understanding of legal frameworks before attending Sporting Change. Most young people identify issues like drug and alcohol use as the primary legal challenges they face, with little awareness of how other legal matters—such as employment law, family and relationship laws, and licensing and driving laws—also impact their lives. Recognising that an issue is of a legal nature is a key component of the program.

⁵ For one such study discussing ineffective punitive responses See: Keels, Micere, *Responding to the Trauma That Is Endemic to the Criminal Legal System: Many Opportunities for Juvenile Prevention, Intervention, and Rehabilitation* (Annual Review of Criminology, 2024. 7:329–55)

Some feedback from the program participants and our clients include:

'This program kept my brother out of jail.'

'Sporting Change is educational stuff that I don't learn in school'

'I really think Sporting Change was something different. It did give coming to school a different vibe on a Tuesday, like Sporting Change was gonna be lit! You know, the excitement to come to school that day, you know knowing that after three o'clock it's gonna be the best time of the week- hang out with some friends, play a lot of sports and learn something and just enjoy the rest of the week.'

'Talking to the lawyer made me feel better about my issue- they gave me so much support and I felt I could do it- you know, I could do it with their help'.

From our outreach work, we also see the importance of ensuring free legal assistance is accessible. Many of our vulnerable clients who may be impacted by AOD, including young people, often do not have the means or confidence to reach out to a legal service at their own initiative. By offering outreach services, integrated into locations where vulnerable young people are already accessing, young people may be encouraged to take early action in de-escalating and resolving their legal issues with the help of a lawyer. This is particularly relevant as many of our young clients' first interactions with the criminal justice sector may be related to the possession of or being under the influence of AOD.

We recognise the value in integrated services such as our Sporting Change program where our lawyer is within easily accessible to young people at the school. Having the lawyer onsite also allows for smoother cross-referrals and secondary consultations between our lawyer and the well-being team, paving the way for a holistic approach to dealing with the young person's needs.

*'The implementation of flexible funding models that support innovation, nurture and extend promising practices and prioritise learning for improvement and accountability has the potential to extend the capacity and reach of services.'*⁶

Recommendation 1:

SMLS recommends that the Government prioritises supporting CLCs to deliver tailored community legal education and engagement to young people and other vulnerable priority cohorts, in order to empower these groups with increased knowledge of their legal rights and responsibilities, including those related to AOD, and where to go to get help if needed.

Recommendation 2:

⁶ Goodrick, D., Sampson, M., *Meeting people where they are delivering integrated community legal services learnings from delivering integrated community legal services*, (Federation of Community Legal Centres, Victoria, Australia 2020)

SMLS recommends that the Government support sustainable funding mechanisms for integrated service delivery to ensure access to legal assistance. This includes allocating funding to the development, maintenance and sustainability of the partnerships between organisations.

The harmful impacts of criminalising AOD use on visa cancellations and deportations

We refer to our previous submission into the Inquiry into Children Affected by Parental Incarceration⁷ highlighting our concerns regarding the detrimental and harmful impacts criminalisation of drugs can have on families including visa cancellations and deportations:

*We are very concerned with the ability to deport those residents who have offended in Australia, and who have strong cultural and familial links with Australia. For example, 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. 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.*⁸

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'.⁹ 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.¹⁰ SMLS believes these guidelines should inform Victorian drug policy, which in turn will mitigate the impact on children of imprisoned parents on visas at risk of deportation.

The case for an alternative justice and health focussed response to mitigate AOD-related harms

We support prioritising a service, education and health-based response to dealing with AOD use. When considering law reform and a national strategy towards AOD related harm and offences, the focus of such discussions must be on the prevention of harm, treatment and rehabilitation rather than punishment.

A report by the New South Wales Bureau of Crime Statistics and Research (BOCSAR Report) highlights that cannabis is the most widely used illicit drug in Australia, and its criminalisation

⁷ South-East Monash Legal Service Submission to the Inquiry into children affected by parental incarceration (28 April 2022)

<https://www.parliament.vic.gov.au/4ae82c/contentassets/cb8f268002c748fdabd128dfcabd1f46/submission-on-documents/013-south-east-monash-legal-service-inc_redacted.pdf>

⁸ Refugee Council of Australia, *Visa cancellations on 'character' grounds: The Ombudsman reports* (2019) <<https://www.refugeecouncil.org.au/cancelling-visas-on-character-grounds-the-ombudsman-reports/>>

⁹ Greg Chipp, Drug Policy Australia, *United Nations Supports Decriminalisation of Drugs* (28 March 2019)

¹⁰ World Health Organization, UNAIDS, UNDP and the International Centre on Human Rights and Drug Policy, *International Guidelines on Human Rights and Drug Policy*, (March 2019)

results in significant costs to Australians “From 2001 to 2019, around 10% of Australians over the age of 14 reported using cannabis in the previous 12 months. In comparison, the next most common illicit drugs (cocaine and ecstasy) were used by around 3% of Australians (Australian Institute of Health and Welfare [AIHW], 2023). These high rates of cannabis use result in major costs to the criminal justice system. In 2015, cannabis use was estimated to cost Australians 4.5 billion dollars, with over half of these costs arising from the enforcement and prosecution of cannabis offences (Whetton et al., 2020)”.¹¹

We strongly believe that police, court and prison resources and funding are better used in preventing and punishing the cultivation, selling and trafficking of drugs rather than punishing often marginalised and vulnerable community members who possess small quantities for personal use. The appropriate response in these situations would be to take a therapeutic health-based approach including education, treatment, psychological, and social support.

We also support alternative justice approaches, such as expanding the diversion scheme. We recommend harmonisation across states regarding the decriminalisation or legalisation of drug use for personal use. Where decriminalisation is not yet in place, we advocate for the expansion of diversion programs that provide holistic services, including rehabilitation, social, and psychological support. We have previously recommended diverting individuals from the criminal justice system due to the long-lasting consequences such contact can have, not only on the individual but also on their family and community.¹²

As a member of the Smart Justice for Young People¹³ and Smart Justice for Women¹⁴ coalitions we recommend an approach which prioritises diverting young people and women from the criminal justice system and ensuring any penalties imposed amongst these communities are not disproportionately onerous.

Some examples of ways this may be achieved include:

- A commitment to community-led, place-based initiatives to tackle disadvantage.
- Removing the requirement for police informant and/or prosecutor consent for diversion to be granted.
- Supporting any initiatives aimed at diverting young people from incarceration, including amendments to the *Bail Act* 1977 to reduce the number of young people in remand.

¹¹ Teperski, A & Rahman, S, *Why are Aboriginal adults less likely to receive cannabis cautions?* (NSW Bureau of Crime Statistics and Research No. 258, June 2023)

¹² We examined the negative impact imprisonment can have on children of incarcerated parents and the intergenerational trauma this may cause in our submission to the Inquiry into children affected by parental incarceration

South-East Monash Legal Service Submission to the Inquiry into children affected by parental incarceration (28 April 2022)

<https://www.parliament.vic.gov.au/4ae82c/contentassets/cb8f268002c748fdabd128dfcabd1f46/submission-documents/013-south-east-monash-legal-service-inc_redacted.pdf>

¹³ For more information see Federation of Community Legal Centres Vic, *Smart Justice for Young People* <https://www.fclc.org.au/smart_justice_for_young_people>

¹⁴ For more information see Federation of Community Legal Centres Vic, *Smart Justice for Women* <<https://www.fclc.org.au/sjfw>>

- Raising the age of criminal responsibility to 14.

There is an urgent need to adopt a health-based approach to recovery, rehabilitation, and treatment of AOD use. Funding should be directed to health-based services and rehabilitation providers, as this approach is more cost-effective than criminalising individuals and perpetuating the cycles of AOD abuse and misuse. AOD services must be adequately resourced and accessible, with no lengthy wait times for support, and they must be culturally appropriate, and trauma informed.

Internationally, many countries have taken various measures to drug law reform, with Portugal on one end of the spectrum decriminalising all drug use in the early 2000s, various harm reduction measures taken in the Netherlands, to the regulation of some restricted drugs in Canada. Australia has made progress in adopting a health-based approach to drug use, such as through medically supervised injecting rooms in Sydney and Melbourne. However, there is still significant room for improvement in embracing a more progressive, public health-focused model, similar to those seen in Canada, Switzerland, and Portugal. These countries prioritise reducing AOD related illnesses, AOD-related deaths, housing instability, and criminal activity while also addressing the production, sale, and trafficking of drugs through a focus on harm reduction and public health messaging.

Recommendation 3:

We recommend the urgent need for drug law reform in light of the harms associated with criminalisation that are impacting our communities.

In the development and monitoring of legal policies regulating cannabis, SMLS recommends all changes to be rights based, where consideration of our human rights obligations is given central importance.

Recommendation 4:

We recommend law reform that prioritises a health-based approach to dealing with those that may be impacted by AOD-related harms and to prioritise initiatives which divert people from the criminal justice system and avoid incarceration. A health-based framework is forward-thinking and is more sustainable than a justice-based framework.

Recommendation 5:

We recommend funding be redirected from criminalising young people for AOD related offences to education, and health-based services and rehabilitation services.

Recommendation 6:

We recommend investment into restorative justice options and law reform away from a strict punitive approach. Redirecting resources towards prevention, support and rehabilitation will have a greater economic impact for the Government than the raising imprisonment rates.