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## **Inquiry into Australia's Human Rights Framework**

Dear Secretary,

Thank you for the opportunity for Harm Reduction Australia (HRA) to make a submission to the review of *Australia's Human Rights Framework 2010 and the National Human Rights Action Plan*. While our comments will touch on all of the review terms of reference, our interest in the review primarily relates to the intersections between human rights, public health, and drug policy and specifically for this submission, focusing on Australia's human rights obligations with respect to drug policies, laws, and their implementation.

HRA is a national organisation committed to reducing the health, social and economic harms potentially associated with drug use. HRA is a membership-based organisation that represents the views of its members who are primarily people working in the health, welfare, and law enforcement sectors, but also include people who use drugs, concerned family members, students, and other individuals wanting to advocate for the continuation and expansion of harm reduction policies in Australia.

The Board and members of HRA are people who understand the complexities of drug use and are advocating for the safest, most effective ways to protect the health, rights, and wellbeing of individuals, families and communities addressing drug use. HRA takes a non-judgmental approach to drug use within society and aims to ensure that drug policies in Australia first and foremost do no harm and provide real benefit to Australian society through evidence-based and humane responses to drug use. Further information on HRA can be found on our website [here](#).

In addition, to our responses to the relevant TORs, we have also attached several documents (below) to further support our submission and for the Committee's further information and consideration.

### **Support for Core Human Rights Principles**

Australia is a signatory to the *Universal Declaration of Human Rights*. In addition, Australia is also a signatory to other key international conventions including the International Covenant on Civil and Political Rights (ICCPR) the International Covenant on Economic, Social and Cultural Rights (ICESCR) the International Convention on the Elimination of All Forms of

Racial Discrimination (CERD) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which enshrine a range of fundamental protections including (but not limited to):

- **right to life, liberty, and security of person**
- **right to the highest attainable standard of health**
- **recognition before the law**
- **right to not be discriminated against on the basis of race, gender, ability, religion, etc.**
- **principle of proportionality**

While collectively, these instruments enshrine fundamental protections for Australians both at international law and domestic law, as Rene Cassin has said in relation to the drafting of the *Universal Declaration of Human Rights*:

*“It would be deceiving the people of the world to let them think that a legal provision was all that was required... when in fact an entire social structure had to be transformed.”<sup>1</sup>*

HRA would argue that this is particularly true in the drug policy space, and therefore in developing this submission, in addition to the above-mentioned core rights protected at international and domestic law, HRA has also drawn on a range of broader human rights principles that aim to translate rights from purely legal protections into effective policies, practices and realities for the community. Specifically, this includes bringing due consideration in all we have raised and recommended to the wider principles of PANEL<sup>2</sup>:

- **Participation**
- **Accountability**
- **Non-discrimination and equality**
- **Empowerment**
- **Legality**

### **Drug Policies and Breaches to International Human Rights Law:**

It has been said at the global level that human rights and drug control have “existed in parallel universes for decades” which has not only resulted in drug policies and laws receiving insufficient scrutiny from a human rights perspective but has also contributed to the perpetuation of repressive drug policies and laws that have led to a plethora of human rights violations and abuses primarily against people who use drugs. Furthermore, this ‘system of parallel universes’ has had a disproportionate impact on those who are most marginalised in society and has led to extreme levels of stigma, discrimination, violence, poverty and disadvantaged.

The Global State of Harm Reduction Report published by the Harm Reduction International highlights that in June 2022, UN human rights experts called for an end to the ‘war on drugs’, stating that:

*“Data and experience accumulated by UN experts have shown that the “war on drugs” undermines health and social wellbeing and wastes public resources while failing to eradicate the demand for illegal drugs and the illegal drug market.’ The*

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<sup>1</sup> Rene Cassin, during the drafting of the Universal Declaration of Human Rights:

<https://humanrights.gov.au/our-work/rights-and-freedoms/human-rights-based-approaches>

<sup>2</sup> The PANEL approach was drawn from guidance provided by the Australian Human Rights Commission here: <https://humanrights.gov.au/our-work/rights-and-freedoms/human-rights-based-approaches#:~:text=Common%20principles%2C%20however%2C%20have%20been,Non%2Ddiscrimination%20and%20equality>

*statement also emphasised the responsibility of the UN system, the international community and individual UN member states to reverse the devastation.”<sup>3</sup>*

One of the key human rights mechanisms at the global level for monitoring and scrutinising human rights violations is the Universal Periodic Review (UPR). In relation to the intersection between human rights and drug policy, key international harm reduction and drug policy civil society organisations have pointed out the UPR is:

*“... an important tool for holding countries that are part of the United Nations ... accountable for respecting, promoting, and fulfilling the human rights of people who use drugs, as well as fulfilling the pledges countries have made through the Sustainable Development Goals (SDGs). The UPR has the potential to improve human rights everywhere, for everyone.”<sup>4</sup>*

In this context, HRA believes there are key drug policy and human rights issues at the global level that require urgent human rights scrutiny and should therefore be the subject of future UPR country-based reviews and Australia’s ongoing advocacy as a UN member state including:

## **1. Global Level:**

### **1.1. Criminalising Personal Drug Use & Possession:**

Many in the harm reduction and wider global drug policy sector are declaring a new dawn in drug policy reform. International bodies, including the United Nations, are now routinely and openly declaring the war on drugs a failure, and denouncing prohibition as not only ineffective but fundamentally harmful and inhumane.

There is a growing global recognition of the need to urgently move towards the full decriminalisation/legal regulation of the use and supply of currently illicit substances for personal consumption, along with possession for personal use, to address the significant long-term health and financial consequences and the human rights violations that are caused by criminalising, arresting, convicting, and often incarcerating people who use drugs. Multiple reports from the Global Commission on Drugs (a group of eminent past heads of state and other dignitaries) have reiterated their collective view that drug prohibition has failed both the world and individual countries utterly and that significant drug policy reform is a matter of global emergency<sup>5</sup>.

One of the most frequently cited examples of the benefits of decriminalisation in the drug policy context, is Portugal. Over two decades ago, Portugal decriminalised the personal use and possession of small amounts (up to 10 days’ supply) of all drugs. Decades later, the benefits of decriminalisation in Portugal are overwhelmingly evident in multiple reports and independent evaluations that have demonstrated (among other outcomes) no major increases in drug use, significant decreases in

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<sup>3</sup> Excerpt from ‘Global State of Harm Reduction’ Report 2022 by Harm Reduction International (HRI) see: <https://hri.global/flagship-research/the-global-state-of-harm-reduction/the-global-state-of-harm-reduction-2022/>

<sup>4</sup> Aidsfonds, Harm Reduction International (HRI) & International Drug Policy Consortium (IDPC) 2019, Making the Universal Periodic Review work for people who use drugs: learning from the cycles completed between 2008 and 2017, the authors, n.p, <https://aidsfonds.org/news/potential-for-active-engagement-making-theuniversal-periodic-review-work-for-people-who-use-drugs>

<sup>5</sup> Global Commission on Drug Policy. 2021. Time to End Prohibition. <https://www.globalcommissionondrugs.org/reports/time-to-end-prohibition>

arrests, criminal records and incarceration rates and significant public health and human rights benefits including reduced deaths<sup>6</sup>.

In the past decade, other countries and jurisdictions have also successfully implemented cannabis decriminalisation and/or legalisation including in parts of the US, Canada, Latin America, Europe, and Asia. In addition to cannabis reform, other countries including Uruguay and jurisdictions such as Vancouver in Canada and Oregon in the United States, have followed Portugal's lead and decriminalised small amounts of all drugs for personal use. Some of the key early lessons learnt from both the Portugal and Oregon decriminalisation experiences, particularly in relation to human rights implications, however, are that there needs to be sufficient lead time when introducing reforms, not least of which, to allow for training of police and changes to law enforcement approaches and practices. Further, if the model involves replacing punitive laws with a system of administrative fines and/or referring people to drug treatment to avoid a criminal record, there needs to be sufficient time allowed and investment made in harm reduction and evidence-based drug treatment services.

Positive changes from decriminalisation reforms can only materialise if the wider system is adequately prepared, funded and supported to accommodate the legislative and policy reforms. Further, the experience in both Portugal and Oregon also highlight the importance of ensuring that those who are most affected by the proposed reforms, that is, people who use drugs, are not just consulted as part of any implementation/evaluation process but importantly, are meaningfully engaged in the process of developing any proposed changes<sup>7</sup>.

## **1.2. Use of the Death Penalty for Drug Offences:**

Currently, 35 countries retain the death penalty for drug offences and in 2021, 122 people were executed globally, 237 death sentences were given and over 3000 people were on death row – all for drug offences. While across 2021 and into 2022 there was some cause for optimism, with a slowing down in the numbers of executions, more recently this has changed with a sharp increase in executions in Iran and two executions for drug offences in Singapore already in 2023. As HRI notes in its report on this subject, *“it is imperative to note that this number is likely to represent only a fraction of all drug-related executions carried out globally”*<sup>8</sup>.

Given the Australian Governments longstanding stance against the death penalty in all its forms, HRA wanted to highlight this ongoing and developing problem to the Inquiry as part of further encouraging Australia's leadership both globally and regionally towards abolishing the use of the death penalty for any reason including drug offences.

## **1.3. Compulsory & Coercive Drug Detention Centres:**

The continued existence of compulsory drug detention centres, where people who use and are suspected of using drugs and other vulnerable populations are detained without due process in the name of “treatment” or “rehabilitation”, is a serious human rights concern. These compulsory drug detention centres (many of which are based in countries in the Asian region) raise multiple human rights issues including

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<sup>6</sup> Transform. 2014. Drug Decriminalisation in Portugal: Setting the Record Straight. Retrieved from: <https://www.unodc.org/documents/ungass2016/Contributions/Civil/Transform-Drug-Policy-Foundation/Drug-decriminalisation-in-Portugal.pdf>

<sup>7</sup> Netherland, J., et al. 2022. Journal of Urban Health: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8809225/> and Madden, A., Tanguay, P., and Chang, J. 2021. Decriminalisation: Progress or Political Red Herring? INPUD: <https://inpud.net/drug-decriminalisation-progress-or-political-red-herring-2/>

<sup>8</sup> See: <https://hri.global/flagship-research/death-penalty/the-death-penalty-for-drug-offences-global-overview-2021/>

the potential for increased exposure to HIV, hepatitis B and C and TB infections<sup>9</sup>. Although criteria for detention does vary within and among countries, detention often takes place without the benefit of sufficient due process, legal safeguards or judicial review. The deprivation of liberty without due process is an unacceptable violation of internationally recognised human rights standards. Furthermore, detention in these centres has been reported to involve physical and sexual violence, forced labour, sub-standard conditions, denial of health care, and other measures that violate human rights. It is HRA's strong view, that these compulsory and coercive detention environments should be closed immediately and those detained must be released.

HRA's position on these centres is supported by a growing number of international and national organisations, governments and other entities including the UN family that has issued a joint UN statement calling on States that operate compulsory drug detention and rehabilitation centres to:

*"...close them without delay and to release the individuals detained. Upon release, appropriate health care services should be provided to those in need of such services, on a voluntary basis, at community level. These services should include evidence-informed drug dependence treatment; HIV and TB prevention, treatment, care and support; as well as health, legal and social services to address physical and sexual violence and enable reintegration. The UN stands ready to work with States as they take steps to close compulsory drug detention and rehabilitation centres and to implement voluntary, ambulatory, residential and evidence-informed alternatives in the community."<sup>10</sup>*

#### **1.4 Recommendations – Global Level:**

- That the Australian Government continue to strengthen and take up its roles and responsibilities as an ethical global citizen and UN member state to strongly advocate and display leadership, within UN mechanisms and treaty bodies (including at CND and HRC/UPR processes) and at diplomatic and public opportunities for:
  - an end to the war on drugs and the criminalisation of people who use drugs through the implementation of full decriminalisation approaches.
  - the abolition of the death penalty for drug offences (or any other reason) wherever it remains.
  - the immediate closure of compulsory and/or coercive drug detention centres in the name of 'drug treatment' wherever they exist.

#### **2. Domestic Level:**

HRA is a member of the Australian Civil Society Committee on UN Drug Policy and alongside like-minded organisations regularly engages in the Universal Periodic Reviews (UPR) of Australia's human rights performance conducted by the UN treaty body committees in relation to the rights of people who use drugs in Australia. In our response to the Australian Government's most recent national report to the UPR country review, in addition to commending the Australian Government in key areas, we also raised several

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<sup>9</sup> See Stoicescu, C., et al. 2022 here: [https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(22\)00003-4.pdf](https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(22)00003-4.pdf)

<sup>10</sup> International Labour Organisation; Office of the High Commissioner for Human Rights; United Nations Development Programme; United Nations Educational, Scientific and Cultural Organisation; United Nations Population Fund; United Nations High Commissioner for Refugees; United Nations Children's Fund; United Nations Office on Drugs and Crime; United Nations Entity for Gender Equality and the Empowerment of Women; World Food Programme; World Health Organisation; and Joint United Nations Programme on HIV/AIDS.

concerns about the overall framing of the report. Specifically, we highlighted our surprise that the report made no mention of the role of Australia's drug policies and laws in meeting Australia's human rights obligations. Moreover, we questioned how this was possible given the obvious integral links between human rights and drug policy at international law and through Australia's obligations under the 3 UN drug conventions – conventions, it should be noted, that are often used to justify practices and approaches that breach human rights standards<sup>11</sup>. In this context, HRA believes that one of the significant ongoing concerns raised by the UPR, is the absence of domestic mechanisms to implement and monitor Australia's human rights performance following these reviews, and the fact that current protections for the human rights of people who use drugs in Australia are inadequate.

To ensure more robust protections for Australians at the domestic level, HRA advocates for the introduction of an Australian Human Right Charter (or similar instrument) which is also recommended by leading experts in law, public health, and human rights, including Associate Professor Kate Seear and her colleagues at the Australian Research Centre in Sex, Health, and Society at La Trobe University. In their submission to this inquiry, Assoc. Prof. Seear and colleagues have placed the introduction of a national bill or charter of rights and the introduction of new mechanisms for legal protections as their top two recommendations. HRA fully supports the ARCSHS recommendations to the inquiry which is further expressed in our submission recommendations below.

Another issue of domestic concern of relevance to this Inquiry, is the current total absence in the National Drug Strategy (NDS) of any reference to the importance of human rights as a fundamental concept that should underpin Australia's federal and state/territory drug laws, policies, and their implementation<sup>12</sup>. Indeed, the Australian Civil Society Committee on UN Drug Policy in its submission on Australia's human rights obligations to UN CESCR, stated that:

*“Having a national strategy on drugs that is blind to human rights considerations creates space for governments to breach citizens’ human rights in the name of drug policy— and they do so.”<sup>13</sup>*

In contrast, Australia's National Blood Borne Viruses and Sexually Transmissible Infections Strategies 2023-2030 are underpinned by several guiding principles including human rights<sup>14</sup>. It raises questions as to why there would be such diversity between these two Australian Government national strategies in relation to something as fundamental as human rights given that the NDS and the BBVSTI strategies address a range of cross-cutting issues and some of the same key populations, specifically people who use/inject drugs. Again, the Australian Civil Society Committee on UN Drug Policy in their submission highlighted:

*“By noting their target populations “have the same rights to comprehensive and appropriate information and health care as other members of the community” the guiding principles enable to Strategies to weigh human rights against historical policy settings, and to value evidence above rhetoric.”<sup>15</sup>*

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<sup>11</sup> Australian Civil Society Committee on UN Drug Policy, 2021. Submission to the UN CESCR, proposing a List of Issues focusing on Australia's human rights obligations with respect to drug policies, drug legislation and their implementation. Available from: <https://www.fairtreatment.org/blog/2021/09/21/australias-human-rights-obligations-with-respect-to-drug-policies-laws-and-their-implementation/>

<sup>12</sup> [Ministerial Drug and Alcohol Forum (Australia)] 2017, National Drug Strategy 2017-2026, Department of Health, Canberra <https://www.health.gov.au/resources/collections/national-drug-strategy>

<sup>13</sup> Ibid

<sup>14</sup> National Blood Borne Viruses and Sexually Transmissible Infections Strategies 2023-2030 <https://www.health.gov.au/resources/collections/national-strategies-for-bloodborne-viruses-and-sexually-transmissible-infections> .

<sup>15</sup> Ibid

HRA believes that the absence of human rights principles within the NDS and the implications it has for the health and human rights of people who use drugs in Australia also highlights problems with the existing governance frameworks for the NDS. Several years ago, the key high-level advisory bodies and the ministerial and intergovernmental committees overseeing the governance of the NDS were disbanded and replaced with a single, at-arms-length ministerial advisory structure only. HRA believes this has created a serious governance vacuum that among other issues, is affecting Australia's track-record in several key areas including the human rights compliance of the NDS.

Despite Australia being a signatory to key international rights conventions, and in the absence of a more robust and standalone legal framework to enshrine rights protections at the national level, there are unfortunately, too many examples of how Australian drug policies and laws (and their implementation) under the NDS routinely breach human rights obligations including:

### **Criminalising Personal Drug Use & Possession:**

In addition to moral arguments about drug use in society, it is often claimed that because Australia is a signatory to the 3 UN international conventions on drug policy, Australia cannot (and should not) shift from the current prohibitionist approach to drug use. The UN General Assembly Special Session (UNGASS) on the world drug problem, held in April 2016 in New York, however, resulted in agreement amongst member states (including Australia) on an Outcome Document.<sup>16</sup> Of particular relevance, this document encourages "alternative or additional measures with regard to conviction or punishment, in cases of an appropriate nature": paragraph 4(j). Further, during the UNGASS, the International Narcotics Control Board President reiterated that 'there is no treaty obligation to incarcerate for minor offenses such as possession of small quantities for personal use'.

Criminalising the consumption of drugs, the possession of small quantities of drugs and the cultivation of small quantities of cannabis for personal use, contrary to the guidance given by the top-level UN agencies and as cited above, also breaches the principle of proportionality. Currently, however, as noted above, human rights is not even mentioned in National Drug Strategy which is the key policy framework underpinning Australia's approach to drug use in society.

Under Australia's current approach to drug policies and laws, with few exceptions<sup>17</sup> the personal use and possession of drugs other than alcohol and tobacco, are criminalised. The criminalisation of people who use drugs in Australia is a barrier to the right to health. As the UN Chief Executives Board has emphasised,<sup>18</sup> in many nations the penalties applied to people convicted of drug offences are too frequently disproportional, and this is certainly the case across Australia. Furthermore, the CESCR has repeatedly found that the criminalisation of drug use and possession for personal use operates as a barrier to the right to health and has recommended decriminalisation<sup>19</sup>.

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<sup>16</sup> United Nations General Assembly (14 April 2016), *Our joint commitment to effectively addressing and countering the world drug problem*, A/S-30/L.1, <http://www.un.org/Docs/journal/asp/ws.asp?m=A/S-30/L.1>

<sup>17</sup> Notably the recent announcements of a shift to a decriminalisation approach to small amounts of drugs for personal use and possession in the ACT and QLD.

<sup>18</sup> United Nations Chief Executives Board (CEB) 2019, *Second regular session of 2018, Manhasset, New York, 7 and 8 November 2018. Summary of deliberations*, CEB/2018/2, United Nations, New York, <https://www.unsceb.org/CEBPublicFiles/CEB-2018-2-SoD.pdf>.

<sup>19</sup> See, amongst others: CESCR, Concluding Observations on the *6th Periodic Review of Norway*, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/NOR/CO/6&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/NOR/CO/6&Lang=En); CESCR (2020), Concluding Observations on the *7th Periodic Review of Ukraine*, <https://uhri.ohchr.org/en/document/f538cf71-f6d1-4e89-b96b-3818e5de8c6a>; CESCR (2020), *Concluding Observations on the 3rd Periodic Review of Benin*, <https://uhri.ohchr.org/en/document/b68e7215-1425-47f7-8e10-d635cfd970d2>

Contrary to international standards, criminal penalties in relation to drug offences are often very harsh and apply to the minor offences of drug consumption and possessing small quantities of drugs for personal use and cultivating small quantities of cannabis. HRA believes that the Commonwealth Government needs to act in concert with jurisdictional governments to shift to a model of full decriminalisation of drug possession for personal use and ancillary activities including cultivation and possession of drug use paraphernalia at both the Commonwealth and state/territory levels.

In Australian jurisdictions, the threshold quantities differentiating between a person being charged for possession of a drug for personal use, rather than possession for the purpose of trafficking, are far too low.<sup>20</sup> Typically, they are far below the levels that people who use drugs would normally purchase and possess for their own use, for example, in the Northern Territory where 0.5g<sup>21</sup> of MDMA equates to a trafficable amount, but the typical amount of MDMA consumed in a session is also reported to be 0.5g<sup>22</sup> - which means that people who use drugs often get charged with a trafficking offence. The Commonwealth government needs to act to have the threshold quantities in all Australian jurisdictions adjusted to match the realities of drug use, and possession of drugs for personal use.

All Australian jurisdictions have a reverse onus of proof for people charged with possession of drugs for the purpose of drug trafficking, which means that everyone who possesses drugs over a certain quantity threshold is presumed to be trafficking. This reverse onus of proof is unacceptable; it is contrary to basic principles of law in a democracy.<sup>23</sup> HRA believes the Commonwealth Government needs to act to ensure the offence of possession for the purpose of drug trafficking dealt with by the courts in the same way that they deal with other offences, namely with the prosecution being required to prove to the court that the offence was committed.

### **Stigma and Discrimination:**

The levels of stigma and discrimination routinely experienced by people who use/have used illicit drugs in the Australian community is both profound and pervasive. Indeed, this subject could easily be the focus of an entire submission to this Inquiry. Australian research into alcohol and other drugs (AOD) stigma and discrimination has found that the experience of stigma and discrimination for people who use drugs is so pervasive that it is basically a daily experience. Further, a recent Victorian coronial inquiry into the death in custody of an Aboriginal woman who was also an illicit drug user found, in a legal global first, that drug-related stigma was a contributing factor in her death<sup>24</sup>.

One of the ongoing issues in the context of human rights and anti-discrimination protections for people who use/have used illicit drugs in Australia, is that outside of circumstances that involve the delivery of services, education, employment, and commodities, people who use/have used illicit drugs are very often not protected at law in relation to any stigma and discrimination they may face. So, although some people may be protected at under anti-discrimination legislation if their rights are found to have

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<sup>20</sup> Hughes, CE, Cowdery, N & Ritter, A 2015, 'Deemed supply in Australian drug trafficking laws: a justifiable legal provision?', *Current Issues in Criminal Justice*, vol. 27, no. 1, pp. 1-20.

<sup>21</sup> Northern Territory of Australia: Misuse of Drugs Act (2017). Available from: [https://parliament.nt.gov.au/\\_data/assets/pdf\\_file/0018/452232/Misuse-of-Drugs-Act-2017-NT.pdf](https://parliament.nt.gov.au/_data/assets/pdf_file/0018/452232/Misuse-of-Drugs-Act-2017-NT.pdf)

<sup>22</sup> Price, O., Peacock, A. & Sutherland, R. (2021). Northern Territory Drug Trends 2021: Key Findings from the Ecstasy and Related Drugs Reporting System (EDRS) Interviews. Sydney: National Drug and Alcohol Research Centre, UNSW Sydney.

<sup>23</sup> Gray, A 2016, 'Presumption of innocence in Australia: a threatened species', *Criminal Law Journal*, vol. 40, no. 5, pp. 262-82.

<sup>24</sup> See media report here: <https://www.abc.net.au/news/2023-01-31/veronica-nelson-victoria-aboriginal-death-in-custody/101900156>



been breached in the context of for example, experiencing discrimination due to being on a registered opioid dependence treatment program, discrimination on the basis illicit drug use is typically not protected at law. This is because the 'behaviour' involved is illegal and therefore, their rights are often not protected. This can extend to employment, education, health care, insurance, club memberships and trade unionism, autopsies and funeral services, the list is long.

This is of course, a complex and nuanced area, and HRA does not have specific legal expertise. We do, however, again note the submission to this Inquiry by Assoc. Prof Kate Seear and her colleagues at the Australian Research Centre in Sex, Health, and Society at La Trobe University (who are legal experts), and who have also canvassed these issues and suggested areas requiring redress. This includes ensuring that, not only are appropriate protections and mechanisms made available to enshrine the rights of people who use/have used illicit drugs against stigma and discrimination in their daily lives, but that people are supported to come forward with their concerns. Too often people who use/have used illicit drugs, persevere with sometimes extreme and ongoing levels of stigma and discrimination, even where they may be some form of redress, due to fear of recriminations and/or feeling overwhelmed by the complaint mechanisms available.

It is now well-accepted that 'stigma kills' and this is particularly relevant in the context of illicit drug use where people are often made to feel separate from the remainder of the community. It should also be noted, that AOD treatment does not necessarily protect people who use or have used illicit drugs from rights violations with many reports documenting significant levels of stigma and discrimination for people engaged in AOD treatment due to the obvious power imbalances in this area of health care<sup>25</sup>. HRA supports the recommendations made by ARCSHS in relation to improving the protections and mechanisms available to this marginalised community.

#### **Intersection of Racism and Criminalisation:**

It is well-documented that Aboriginal and Torres Strait Islander people are profoundly over-represented in the Australian criminal justice system. In relation to illicit drug use, Aboriginal and Torres Strait Islander people are some 8 to 10 times more likely to be incarcerated than non-Indigenous people who use illicit drugs. Although the racial disparities experienced by Aboriginal and Torres Strait Islander people within public drunkenness offences have recently been tabled for abolition in Victoria, they still remain on the books in Queensland. These offences along with the ongoing over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system breach the right not to be racially discriminated against.

Several state police forces, including Victoria's, are not required to release community profiling data. In NSW, where this practice is managed via the Bureau of Crime Statistics and Research, significant disparities have been shown in the NSW Police Force's profiling of Aboriginal and Torres Strait Islander communities in the stop-and-search, arrest, and sentencing practices for cannabis possession. Given that Aboriginal and Torres Strait Islander peoples are incarcerated at the highest per capita level of any country in the world, coupled with the early implications of recently released NSW data, and the well documented racist origins and impacts of drug prohibition, there are serious questions to be asked about racialised policing of Australian drug laws and the lack of mechanisms in place to hold this practice to account<sup>26</sup>.

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<sup>25</sup> See Lancaster, K., Seear, K., and Ritter, A. her: <https://ndarc.med.unsw.edu.au/resource/reducing-stigma-and-discrimination-people-experiencing-problematic-alcohol-and-other-drug>

<sup>26</sup> Australian Civil Society Committee on UN Drug Policy, 2021. Submission to the UN CESCR, proposing a List of Issues focusing on Australia's human rights obligations with respect to drug policies, drug legislation and their implementation. Available from: <https://www.fairtreatment.org/blog/2021/09/21/australias-human-rights-obligations-with-respect-to-drug-policies-laws-and-their-implementation/>

Noting the above point, and that Aboriginal and Torres Strait Islander children accounted for 65% of the nearly 600 children aged ten to 13 years sent to prison in a twelve-month period, refusing to raise the age at which children can be sent to prison from ten to 14 years of age<sup>27</sup>: breaches both the right not to be racially discriminated against and the principle of proportionality<sup>27</sup>.

#### **Prisons – Access to Harm Reduction and the Treatment of Women:**

Harm reduction is a human right. It is recognised as a critical component of the right to the highest attainable standard of health for people who use drugs. It is also recognised that the denial of access to harm reduction, including in prisons and custodial settings, violates the prohibition of torture and other cruel, inhumane, and degrading treatment. There is ample research evidence to show that despite all efforts, illicit drugs are readily available in Australian prisons and there are high levels of associated injecting drug use (driven at least in part, by the ongoing criminalisation of people who use/inject drugs). Research and anecdotal reports also confirm that inmates are routinely forced to re-use and re-fashion injecting equipment with a single needle and syringe being used and shared 100s of times between inmates with all the attendant BBV risks entailed.

Countries that have implemented access to new injecting equipment in prisons, have shown that such programs can be run successfully and without occupational health and safety risks to prison staff. It is within this context that we express our view that the ongoing refusal of Australian Governments to provide evidence-based harm reduction services in prisons including access to new injecting equipment despite their availability in the community, breaches the right to the highest attainable standard of health for Australian prisoners.

While the majority of state/territory prisons provide some form of access to opioid dependence treatment, ongoing resistance to providing full access to this highly effective and evidence-based medical treatment is still evident in some state prison and police custodial settings. This unwillingness to provide full and free access to the full range of ODT medications available in the community breaches the right to the highest attainable standard of health and is also a form of torture in accordance with International Guidelines).

Further, inadequately implementing the international agreement that women (including those accused of or convicted of drug-related offences) should be provided with non-custodial alternatives to imprisonment unless the offences are serious or violent: breaches the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)<sup>28</sup>.

HRA believes all these ongoing breaches in the Australian custodial context must be addressed urgently in the interests of health and human rights. We note with concern, however, that the NSW Government recently refused the UN sub-committee on the prevention of torture from visiting NSW prisons which raises serious concerns about human rights in our prison system. It has been reported that the *“Australia’s human rights commissioner, Lorraine Finlay, has questioned why the NSW government was blocking officials from the UN inspecting its jails if it was confident about meeting minimum standards. She said the NSW move could jeopardise promises made by Australia as part of the UN’s Optional Protocol to the Convention Against Torture (Opcat) that was ratified by the federal government under former prime minister Malcolm*

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<sup>27</sup> Ibid

<sup>28</sup> United Nations General Assembly 2011, Resolution adopted by the General Assembly on 21 December 2010, 65/229: United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), [http://www.unodc.org/documents/justice-and-prisonreform/Bangkok\\_Rules\\_ENG\\_22032015.pdf](http://www.unodc.org/documents/justice-and-prisonreform/Bangkok_Rules_ENG_22032015.pdf).

*Turnbull in 2017.*<sup>29</sup> HRA strongly encourages this Inquiry to take up these extremely concerning developments in the Australian context to ensure that as a minimum people deprived of their liberty are treated with dignity and in accordance with human rights protections in Australian custodial environments.

#### **Access to AOD Treatment:**

Although Australia has a comprehensive AOD treatment system with a large Opioid Dependence Treatment Program (ODTP) in all states and territories and a range of other government and non-government drug treatment services and programs across the country. Problems remain, however, in relation to accessing drug treatment services including the ODTP with multiple ongoing barriers to treatment including insufficient places, long waiting lists, lack of information on where and how to access services, stigma and discrimination, fears of coming forward for treatment and the associated potential implications, etc.

There are also human rights implications associated with the use of biological testing especially supervised and/or random urine drug screen analysis in the context of drug treatment. While it is not used in all drug treatment settings, where used, it is typically done for punitive purposes and is experienced as degrading, invasive and inhumane by many people subjected to it. There is, however, increasing evidence to show that such analysis is not only expensive and therefore a not cost-effective use of available resources, but does not provide a higher level of accuracy than using self-report on drug use<sup>30</sup>.

On a positive note, the federal government has very recently introduced reforms to the ODTP which will take effect on 1 July 2023 and will remove a fundamental discrimination that has been at the centre of the ODTP for decades. These reforms will remove prohibitive and discriminatory daily, uncapped, and unregulated dispensing/dosing fees that ODTP consumers have had to pay for decades. As of 1 July 2023, the ODTP will become part of the s100 HSD Community Access Program whereby consumers will only pay the standard PBS co-payment to access their medications. This will mean, that for most consumers, they will shift from paying between \$30 - \$70 per week to paying \$7 - \$30 per month<sup>31</sup>.

Access issues remain, however, with up to 100,000 people estimated as eligible for drug treatment but unable to access a suitable treatment program at any given time. There are also ongoing issues with access to appropriate medication-assisted treatments for drugs other than opioids especially methamphetamines. Finally, there are also issues associated with the refusal to permit the use of some drug treatment modalities that research globally has repeatedly demonstrated are of proven efficacy and cost-effectiveness<sup>32</sup> and are already used in other countries including diacetylmorphine or heroin-assisted treatment of opioid dependence and in our view, these constitute breaches the right to the highest standard of health and is an area that requires further attention in the context of this Inquiry.

#### **Roadside Drug Testing:**

HRA believes that roadside drug testing of drivers where police have no reasonable suspicion that the driver is impaired by a drug/s, but rather, charges people with the offence of having any detectable level of a proscribed drug in the body rather than

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<sup>29</sup> Taken from: <https://www.theguardian.com/australia-news/2022/oct/18/nsws-refusal-to-allow-un-inspectors-in-prisons-raises-questions-human-rights-commissioner-says>

<sup>30</sup> See: <https://onlinelibrary.wiley.com/doi/10.1111/add.16200>

<sup>31</sup> See more information here: <https://www.harmreductionaustralia.org.au/treatment-equity/>

<sup>32</sup> Degenhardt, L., Grebely, J., Stone, J., Hickman, M., Vickerman, P., Marshall, B. D., ... & Larney, S. (2019). Global patterns of opioid use and dependence: harms to populations, interventions, and future action. *The Lancet*, 394(10208), 1560-1579.

impaired driving: breaches the right of freedom from arbitrary arrest and detention. It also breaches the core human rights principle of proportionality as there is no evidence that roadside drug testing increases road safety. Despite the ongoing implementation of roadside drug testing in Australia over several years, and the thousands of people losing their licenses and receiving severe penalties, there has not been a single study conducted to evaluate the impact of this on road safety<sup>33</sup>. In the alternative, the ACT Human Rights Commissioner has documented the many ways in which roadside drug testing breaches both the ACT Human Rights Act and Australia's broader international human rights obligations.

### **Safe Injecting Facilities/Drug Consumption Rooms:**

There is currently only two safe injecting facilities/medically supervised injecting rooms in entire country in Sydney and Melbourne (with decades between the first and second room being established). This is despite the overwhelming evidence that these facilities save lives. The ongoing lack of these facilities in the face of increasing overdose deaths in Australia cities is a breach of the right to life and has been shown in other international jurisdictions such as Canada to be a denial of the right to the highest attainable standard of health (see ARCSHS submission on this matter).

These ongoing and unacceptable delays to the timely establishment of evidence-based, effective harm reduction services in the community raises important questions about why this is occurring. HRA believes that the delays to the establishment of these facilities has been significantly driven by negative, stigmatising, and discriminatory media coverage and negative public attitudes towards people who use/inject drugs. Repeated negative media articles and public statements (by authorities including senior police, parliamentarians, councillors, and business owners) that promulgate strong NIMBY (not in my backyard) attitudes among the Australian community is, in our opinion, a matter that should be taken up by this Inquiry. We raise this because it is these ongoing negative, stigmatising, and discriminatory attitudes that promote a general belief in the community that it is OK to treat people who use illicit drugs at best with contempt and disregard, and in some cases, to violate their most basic and fundamental human rights. For these reasons, we believe these issues are the business of this Inquiry.

Finally, in the context of SIFs/DCRs, the standardised practice of not allowing pregnant women to access supervised injecting facilities in Sydney and Melbourne also mitigates potential referral to antenatal care and again, is therefore a breach of the right to the highest attainable standard of health.

### **Use of Sniffer Dogs & Strip Searches in Public Spaces & Events:**

The use of drug sniffer dogs and strip searches, particularly of young people breaches the right to privacy and the principle of proportionality. For example, prohibitionist policing practices have been shown to cause significant unintended harms with young people being searched in public places and vulnerable young people being subjected to bodily searches in police and custodial environments. Passive alert detection or sniffer dog operations in several Australian jurisdictions targeting music event patrons (and other public places) have been causally linked to drug toxicity deaths from 'panic - swallowing' and post-traumatic stress disorders from being strip searched. There have been formal recommendations in various inquiry reports to stop such practices<sup>34</sup>. Unfortunately, however, these practices continue due to political investment

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<sup>33</sup> McDonald, D 2009, 'The policy context of roadside drug testing', Journal of the Australasian College of Road Safety, vol. 20, no. 1, pp. 37-43.

<sup>34</sup> See: [https://coroners.nsw.gov.au/coroners-court/download.html/documents/findings/2019/Music\\_Festival\\_Redacted\\_findings\\_in\\_the\\_joint\\_inquest\\_into\\_deaths\\_arising\\_at\\_music\\_festivals\\_.pdf](https://coroners.nsw.gov.au/coroners-court/download.html/documents/findings/2019/Music_Festival_Redacted_findings_in_the_joint_inquest_into_deaths_arising_at_music_festivals_.pdf)

in prohibitionist approaches and false claims by law enforcement officials that such practices are necessary to prevent young people using illicit drugs.

#### **Lack of Access to Drug Checking/Pill Testing:**

The ongoing absence of pill testing services (with the one notable exception of the recent fixed site pilot service in the ACT) despite overwhelming evidence and overwhelming expert and coronial opinion justifying its implementation<sup>35</sup> is a breach of the right to the highest attainable standard of health.

#### **Lack of Clarity in ‘Good Samaritan’ Laws:**

Many jurisdictions have ‘Good Samaritan’ laws but these laws often are not entirely clear on how and, even if they apply in relation to people who have used certain drugs, and/or who are intoxicated. However, these are people who are frequently present when overdose occurs and are therefore extremely important in relation to responses to overdose and the provision of naloxone (the opioid overdose reversal drug). Take-Home-Naloxone (THN) is now a federally funded program and some states and territories also provided funded access to naloxone kits. Given this situation, the ongoing lack of clarity in the legislation in some states and territories, may constitute a breach of the right to highest attainable standard of health, and the right to life itself and therefore, should be addressed as a matter of urgency.

#### **Recommendations – Domestic Level:**

##### **1. Implement policies and programs that will protect the human rights of people who use drugs.**

- Australia must set domestic priorities on human rights of people who use drugs, and ensure human rights obligations are set in jurisdictional and federal strategies.
- The principle of proportionality must be considered in all responses to drugs and drug use in society.
- People who use drugs must be actively and meaningfully engaged in development, design and implementation of drug policies and laws and wider issues that affect their lives, rights, and wellbeing.
- Australia should commit to undertake a systematic audit of drug policies and laws in Australia to fully document the extent to which these policies and laws do, or do not, accord with our nation’s human rights obligations.

##### **2. A National Human Rights Act**

- Australia must enact a national Human Rights Act to provide accountability, name Australia’s human rights obligations domestically, and ensure there are consequences for failing to consider and protect human rights of people who use drugs.
- Support for civil society organisations to protect human rights.

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<sup>35</sup> Olsen, A, Wong, GT & McDonald, D 2019, ACT Pill Testing Trial 2019: program evaluation, Australian National University, Canberra, <https://openresearch-repository.anu.edu.au/handle/1885/195646?mode=full>; State Coroner’s Court of New South Wales 2019, Inquest into the death of six patrons of NSW music festivals, Hoang Nathan Tran, Diana Nguyen, Joseph Pham, Callum Brosnan, Joshua Tam, Alexandra Ross-King. Hearing dates: 8 – 19 July 2019, 10 – 13 September 2019, 19 – 20 September 2019. Findings of Magistrate Harriet Grahame, Deputy State Coroner. Date of findings: 8 November 2019, State Coroner’s Court, Sydney.

- We call for processes for regular dialogue between Government and NGOs on human rights, and funding support for NGOs to conduct activities relation to human rights education and the promotion of human rights.

### **3. National Human Rights Action Plan**

- We support the development of a national human rights indicator index to measure progress on human rights, and that this could consider aspects reviewed in the International Drug Policy Consortium's 2021 Global Drug Policy Index<sup>36</sup>.
- Implement domestic mechanisms to monitor Australia's human rights performance.
- Concluding observations of periodic reviews of Australia's human rights performance must be tabled in Parliament, including allocating which Department at the appropriate level of Government is responsible for each recommendation, proposed actions to implement recommendations, and timeframes and measurable outcomes for implementation and responses.

### **4. National Drug Strategy & Governance Framework**

- Australia must address the current absence of human rights as an underpinning principle in the National Drug Strategy (NDS) to ensure it is consistent with other relevant national strategies and protects and values human rights over historical policies arrangements and rhetoric.
- Review the current NDS governance framework with a view to establishing a framework that will ensure, among other core roles and responsibilities, Australia's compliance with its human rights obligations in all areas of drug policy, law, and implementation.

### **3. Conclusion:**

There are now a plethora of international standards and guidelines, as well as best practices from around the world, available to guide the development of appropriate and effective drug policy<sup>37</sup>. HRA believes that it is well overdue for Australia (at all levels of government and with all key stakeholders) to commit to engaging in an evidence-based and human rights-informed dialogue on drug policy reform in the best interests of the entire Australian community. We commend all of these standards, guidance and expert opinion to the Inquiry into Australia's Human Rights' Framework.

As noted above, HRA also supports the substantive content and the specific recommendations made by both the Australian Research Centre for Sex, Health and Society (ARCSHS) at LaTrobe University and the Students for Sensible Drugs Policy (SSDP) both of whom have made submissions to this Inquiry. We also acknowledge the work of the Australian Civil Society Committee on UN Drug Policy whose submission to the UN CESCR in relation to the rights obligation of the Australian Government has also underpinned our

<sup>36</sup> <https://globaldrugpolicyindex.net/wp-content/themes/gdpci/uploads/GDPI%202021%20Report%20EN.pdf>

<sup>37</sup>International Drug Policy Consortium, *IDPC Drug Policy Guide 3<sup>rd</sup> Edition*, (2016) <http://idpc.net/publications/2016/03/idpc-drug-policy-guide-3rd-edition>

submission. Collaboration with like-minded organisations is key to our work in the drug policy, harm reduction and human rights space. To this end, we acknowledge the work of ARCSHS, SSDP, and the Australian Civil Society Committee on UN Drug Policy, and the contribution they have made to our thinking and recommendations.

Finally, HRA is a highly regarded organisation in relation human rights and drug policy matters in large part due to the significant expertise that resides within the [HRA Board and our Advocates](#). Given this expertise, HRA would welcome the opportunity to speak to the Parliamentary Joint Committee on Human Rights at any hearings that may be scheduled as part of the Inquiry.

Please do not hesitate to contact us should you require any further information.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Annie Madden', with a long horizontal flourish extending to the right.

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## **Other Relevant Resources**

### **Compulsory & Coercive Drug Detention Centres:**

<https://www.hrw.org/report/2012/07/24/torture-name-treatment/human-rights-abuses-vietnam-china-cambodia-and-lao-pdr>

<https://www.hrw.org/news/2013/12/05/compulsory-drug-detention-centers-china-cambodia-vietnam-and-laos-health-and-human>

<https://www.opensocietyfoundations.org/uploads/9e633585-8066-4315-b324-b4c805319ab7/detention-and-punishment-name-drug-treatment-20160315.pdf>

<http://content.time.com/time/world/article/0,8599,2092004,00.htm>

### **Death Penalty for Drug Offences:**

<https://hri.global/flagship-research/death-penalty/the-death-penalty-for-drug-offences-global-overview-2021/>

[https://www.asiapacificforum.net/news/ending-death-penalty-asia-rights-groups-attend-regionalseminar/?utm\\_medium=email&utm\\_campaign=APF%20Bulletin%20June%202023&utm\\_content=APF%20Bulletin%20June%202023+CID\\_3d091954f35e96480b65131ce6548357&utm\\_source=Email%20marketing%20software&utm\\_term=Read%20more](https://www.asiapacificforum.net/news/ending-death-penalty-asia-rights-groups-attend-regionalseminar/?utm_medium=email&utm_campaign=APF%20Bulletin%20June%202023&utm_content=APF%20Bulletin%20June%202023+CID_3d091954f35e96480b65131ce6548357&utm_source=Email%20marketing%20software&utm_term=Read%20more)

### **Drug Treatment Data:**

<https://www.aihw.gov.au/reports/alcohol-other-drug-treatment-services/national-opioid-pharmacotherapy-statistics/contents/about>

### **Drug-Related Overdose in Australia:**

<https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/impacts/health-impacts>