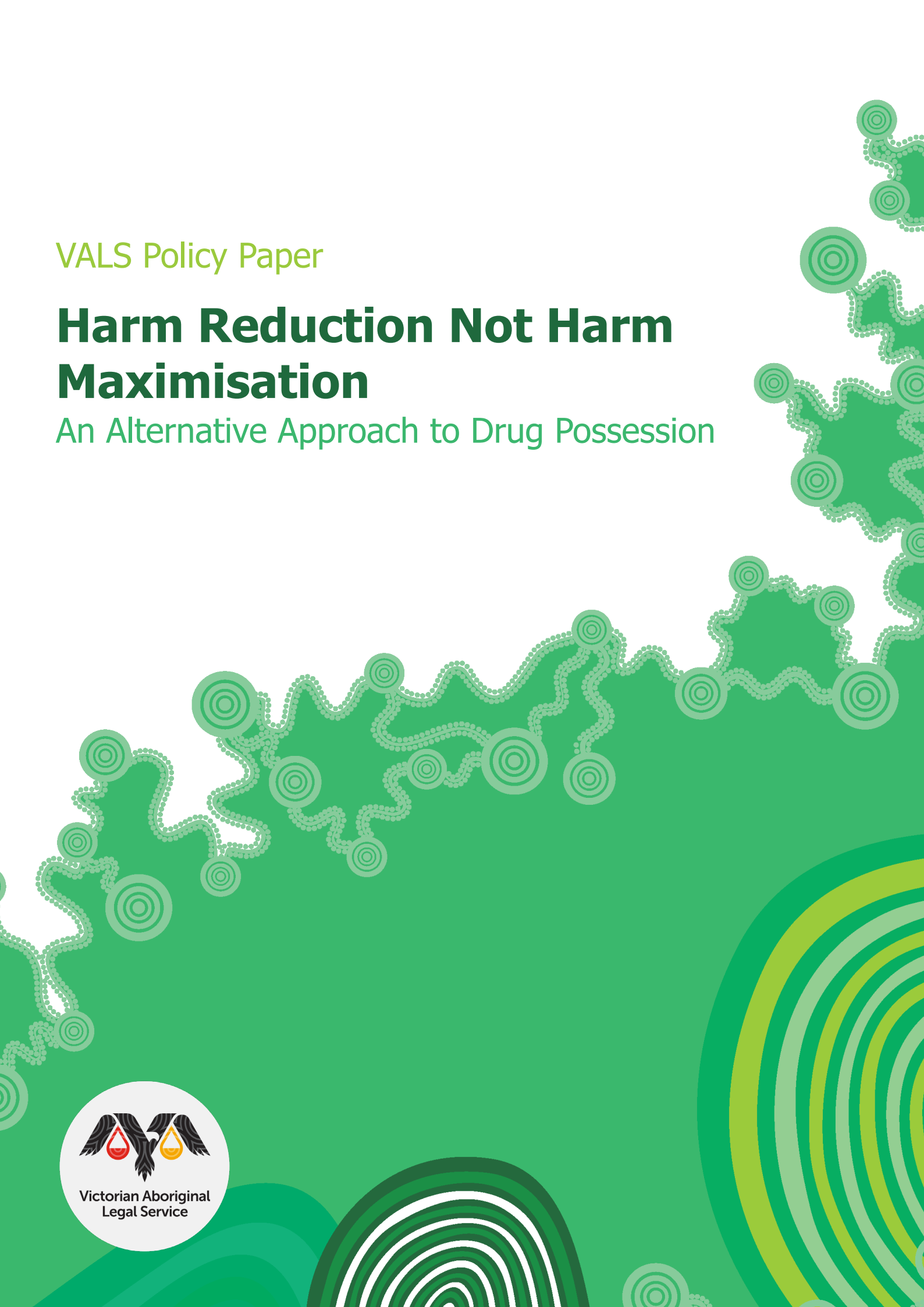
VALS Policy Paper

Harm Reduction Not Harm Maximisation

An Alternative Approach to Drug Possession



Contents

Victorian Aboriginal Legal Service

Acknowledgement of Traditional Owners

The Victorian Aboriginal Legal Services acknowledges all of the traditional owners in Australia and pay our respects to their Elders, past and present. Soveriegnty was never ceded. Always was, always will be, Aboriginal land.

Victorian Aboriginal Legal Service

Introduction

Aboriginal and/or Torres Strait Islander communities in Victoria have been devastated by discriminatory and violent policing since the beginning of colonisation. Aboriginal people continue to be stopped, searched, arrested, charged and imprisoned far more often than non-Aboriginal people. In the modern era, much of this systematic over-policing is enabled by laws – such as those prohibiting public intoxication or breaching the peace – which, while racially neutral on their face, are enforced against Aboriginal people at grossly disproportionate rates. Dragged into the criminal legal system by the discriminatory enforcement of low-level offences, Aboriginal people are further traumatised by police and prisons, and denied the support they need to avoid re-entering the same cycle.

One of the most common of these offences is the law against personal drug use and possession. Aboriginal people are no more likely to use illicit drugs than non-Aboriginal people, but they are charged with drug offences far more often – and in Victoria, that disparity has been worsening in the past decade, not improving.

At its root, drug use is a public health problem, not a criminal justice problem. The Victorian Government's current drug policy subjects people dealing with addiction to intrusive policing and excessive punishment, instead of giving them the support they need. The criminalisation of drugs interacts with Victoria's draconian bail laws to leave hundreds of people in prison awaiting trial for drug charges that will not result in a prison sentence when they finally reach court.

This approach has not succeeded in reducing the number of people who use drugs or mitigating any of the harms caused by addictive substances. It has only contributed to Victoria's ballooning prison population, separated children from their parents, and denied people who use drugs the healthcare they need. Aboriginal people are disproportionately the ones dragged into this cycle, but everyone in Victoria is being failed by this broken system.

It is time for Victoria to adopt a different approach. A true public health approach to drug use would be focused on harm reduction. That means respecting the rights of people who use drugs, and acknowledging that some level of drug use is inevitable.[1] Working to minimise the negative effects of drug use is therefore a far more realistic and important goal than trying to deter and punish that use. A harm reduction approach has a strong human rights orientation, with a focus on non-coercive measures that do not require people to stop using drugs in order to receive support.[2] Unlike traditional approaches to drug use that centre on criminalisation

1 National Harm Reduction Coalition, "Principles of Harm Reduction".

2 Harm Reduction International, "What is Harm Reduction?".

and abstinence, harm reduction initiatives focus on health outcomes and build on strong social networks, which makes many harm reduction measures highly cost-effective.[3]

The failure to treat Aboriginal people's health problems with a public health response contributes to the persistent gap in health outcomes between Aboriginal people and other Australians. As noted by the National Indigenous Drug and Alcohol Council, the introduction of culturally appropriate drug treatment services for Aboriginal people is essential to "reversing poor public health and criminal justice outcomes"[4] for Aboriginal people. A public health response built on harm reduction and self-determination would stop the needless and harmful policing of Aboriginal people who use drugs, and would help meeting Closing The Gap targets for both health outcomes and the criminal legal system.

In some spheres, Victoria has recognised the value of harm reduction and implemented initiatives in that spirit. The Medically Supervised Injecting Room – heavily criticised by supporters of a criminalising approach to drug use – operates by destigmatising drug users and providing them with the support they need to be safe and healthy. It has helped mitigate nearly 6,000 overdoses, and prevented many more.[5] But the effectiveness of initiatives like these will always be limited when they are isolated practices, implemented in a context of wide-ranging criminalisation and police intervention.

Realising the full potential of a harm reduction approach will require a more radical change: removing police and criminal courts from their destructive role in responding to drug use. International experience has shown the benefits that can be realised when drug use is no longer treated as a criminal matter. It has also shown the risks of a half-hearted approach to harm reduction that maintains extensive police involvement.

Victoria's current drug policy puts Aboriginal people who need support in prison – re-traumatising them, denying them proper healthcare, and increasing the risk of more deaths in custody. Ending the policy of criminalisation would mean giving people the help they need, and would empower Aboriginal people and their communities to deal with health problems without the stigma and trauma of policing and prisons. The existing system has failed catastrophically, but there are solutions available for any Government with the courage to recognise that failure.

3 Harm Reduction International, "What is Harm Reduction?".

4 National Indigenous Drug and Alcohol Council (2014), *Bridges and barriers: addressing indigenous incarceration and health (revised edition)*, Canberra: Australian National Council on Drugs.

5 North Richmond Community Health (2022), *Saving lives – updated results from the MSIR, 30 June 2018 – 30 June 2022*.

About this Report

This report presents lessons for drug policy in Victoria, drawing on the experience of current policy as well as an extensive comparative analysis of drug laws in other jurisdictions around the world.

The first half of the report is focused on Victoria's existing approach to drug use and possession. Part 1 of the report examines current policy in Victoria, and shows how a focus on criminalisation and policing has harmed Aboriginal people and other marginalised people. Part 2 explores how a public health approach could provide a more positive framework for drug policy, examining existing harm reduction initiatives and current proposals for law reform.

The second half of the paper examines international experience. Part 3 presents lessons from our analysis of drug laws in more than 40 jurisdictions, summarising existing good and bad practices. The Appendix provides a high-level comparative analysis of drug policy in those jurisdictions.

Recommendations

This paper does not propose a comprehensive model for drug policy reform. The details of any change are complex and will need to be developed with careful consideration of the consequences of current drug policy and the lessons to be learned from international experience.

However, it is clear that Victoria's current approach to drugs – built on criminalisation and repression – has failed. It is equally clear that addressing these failures will require reform that is comprehensive, and directly addresses the over-policing of people who use drugs, over-incarceration of people who should be receiving health supports, and the over-representation of Aboriginal people in the criminal legal system. VALS therefore has a number of key recommendations which should guide the process of drug law reform as it proceeds in Victoria.

Recommendation 1. The Victorian Parliament should decriminalise the possession of all drugs for personal use.

Recommendation 2. The model of decriminalisation adopted in Victoria must meaningfully reduce the over-policing of people who use drugs, not only eliminate criminal sanctions for drug possession.

Recommendation 3. The Victorian Government should consult with relevant stakeholders, including people with lived experience of drug use and the criminal legal system and Aboriginal

Community Controlled Organisations, to develop decriminalisation legislation.

Recommendation 4. The Victorian Government should invest in an expansion of health and social services, including alcohol and other drug treatment services, to fully meet the needs of people who use drugs.

Part 1: Drug Criminalisation Has Failed

Victoria's current drugs policy is almost exclusively built on policing and criminal justice responses. While there have been some experiments with public health initiatives – discussed in Part 2 of the report – the overwhelming focus of Victorian policy has been on criminal sanctions for anyone associated with drugs, and on empowering police to pursue that goal. This is in line with the Victorian Government's policies more broadly, which have frequently prioritised resourcing and powers for police and the criminal legal system.

This policy of criminalisation has not succeeded. The goals of a law-and-order approach to drugs are to use deterrence to lower demand for drugs, and disrupt the supply chain for illicit drugs. There is no evidence that this approach has led to lower drug use or reduced any of the social concerns associated with drugs. Drug use has not fallen: in 2001, 15.9% of people in Victoria over 14 had recently used an illicit drug; that figure had increased slightly, to 17.1%, by 2019.[6] Charges for drug offending have increased significantly: a Crime Statistics Agency analysis found that from 2007 to 2016, offence rates involving cannabis increased by 5.7% per year and the methamphetamine offence rate increased by, on average, 114.6% per year.[7]

The statistics on methamphetamine use are a particularly powerful illustration of the failures of a law-and-order approach to drug use. In 2006, a total of just six methamphetamine offences were recorded.[8] This was a drug without any significant prevalence in the community. If the approach of punishing drug use and interdicting supply could ever succeed, it should be in these kinds of circumstances – with very low existing levels of addiction or community demand. Instead, the number of methamphetamine offences increased by 119,783% in the fifteen years to 2021.[9] Around Australia, the prevalence of methamphetamine has grown by so much – despite increasing police enforcement – that a Commonwealth Parliamentary inquiry stated in 2018 that "[w]hen former law enforcement officers and law enforcement agencies themselves are saying that Australia cannot arrest its way out of the methamphetamine problem, that view must be taken seriously."[10]

6 Australian Institute of Health and Welfare (2020), *National Drug Strategy Household Survey 2019*, Supplementary Table S.23.

7 Crime Statistics Agency (2016), *What drug types drove increases in drug use and possession offences in Victoria over the past decade?*.

8 Ibid.

9 Crime Statistics Agency, *Recorded Offences – Tabular Visulation*, Table T5.

10 Parliamentary Joint Committee on Law Enforcement (2018), *Inquiry into crystal methamphetamine (ice): Final Report*, p158.

Rather than eliminating or even reducing drug use, all the policy of criminalisation has achieved is to lead marginalised people – particularly Aboriginal people – into unnecessary contact with police and the criminal legal system, with devastating consequences.

Drug Law & Policing in Victoria

The Law & Sentencing Practices

Under the *Drugs, Poisons and Controlled Substances Act (1981)* (Vic) (the **Drugs Act**),[11] it is currently an offence to use and possess a drug of dependence.

Legislation

In the Drugs Act, possession and use of a drug of dependence are offences. A person is deemed as being in possession if a drug of dependence is found in their custody and is under their personal control.[12] Section 5 of the Act extends the definition of possession to apply to situations in which a drug of dependence is found on "any land or premises occupied by the person" or is to be "used, enjoyed, or controlled by the person in any place whatsoever".[13] Possession of drugs is an indictable offence which can be tried summarily, while use of drugs is a summary offence.[14]

The penalties for possession of a drug of dependence differ in Victoria based on the drug. Possession of cannabis in a quantity of 50g or less carries a penalty of no more than 5 penalty units, or $924.60.[15] If this is an individual's first cannabis offence, section 76 of the Drugs Act creates a presumption that the court should give an adjourned undertaking without a conviction, though this is not mandatory.[16] Possession of more than 50g of cannabis, or any amount of any other drug, carries a maximum penalty of 1 year imprisonment or a fine of 30 penalty units (up to $5,547).[17] Sentences can be significantly higher if the court determines that possession is related to trafficking.[18]

11 *Drugs, Poisons and Controlled Substances Act 1981* (Vic) ('Drugs Act').

12 Drugs Act, s5.

13 Drugs Act, s5.

14 Sentencing Advisory Council (2018), *Trends in Minor Drug Offences Sentenced in the Magistrates' Court of Victoria*, p4.

15 Drugs Act, s73(1)(a).

16 Drugs Act, s76.

17 Drugs Act, s73(1)(b).

18 Drugs Act, s73(1)(c).

Sentencing Practices

In Victoria, the vast majority of individuals convicted of possession of a drug of dependence are given non-custodial sentences. Consolidated data for all drug charges are not readily available, but from 2018 to 2021:[19]

- Imprisonment was imposed for 12.6% of cannabis possession charges and 31.2% of methylamphetamine charges
- Fines were issued for 37.2% of cannabis possession charges and 26.8% of methylamphetamine charges
- Adjourned undertakings were given for 32.8% of cannabis possession charges and 16.9% of methylamphetamine charges
- Community Corrections Orders were imposed for 17.2% of cannabis possession charges and 24.4% of methylamphetamine charges.

This data appears to show an increase in the use of imprisonment in recent years: Sentencing Advisory Council analysis for 2016-17 showed a fine or an adjourned undertaking was the sentence for 90% of charges, and imprisonment or a CCO for only 5%.[20] These figures are not directly comparable, since the 2016-17 data is limited to cases with a single proven offence, to avoid the complexity of associating a total sentence with multiple proven offences.

Sentences vary significantly by drug type and the table below shows data for possession charges for four drug offence types sentenced in the Magistrates Court from 2018 to 2021.

	Cannabis[21]	Methylamphetamine[22]	Heroin[23]	Cocaine[24]
Total charges sentenced	12,558	14,783	2,317	1,001
Imprisonment	12.6%	31.2%	36.1%	24.2%
CCO	17.2%	24.4%	19.4%	26.4%
Fine	37.2%	26.7%	26%	28.8%
Adjourned undertaking	32.8%	16.9%	17%	19.8%

19 Sentencing Advisory Council, SACStat Magistrates' Court – Possess cannabis, accessed 2 September 2022; Sentencing Advisory Council, SACStat Magistrates' Court – Possess methylamphetamine, accessed 2 September 2022.

20 Sentencing Advisory Council (2018), *Trends in Minor Drug Offences Sentenced in the Magistrates' Court of Victoria*, p25.

21 Sentencing Advisory Council, SACStat Magistrates' Court – Possess cannabis, accessed 2 September 2022.

22 Sentencing Advisory Council, SACStat Magistrates' Court – Possess methylamphetamine, accessed 2 September 2022.

23 Sentencing Advisory Council, SACStat Magistrates' Court – Possess heroin, accessed 2 September 2022.

24 Sentencing Advisory Council, SACStat Magistrates' Court – Possess cocaine, accessed 2 September 2022.

As the table shows, cannabis and methylamphetamine charges are far more common than other kinds of drug possession charges. These figures also do not include cases that were diverted earlier – through a police caution, or the Magistrates Court's diversion program – which is substantially more likely for cannabis charges. The vast number of cannabis and methamphetamine charges clearly shows how the criminalisation of drugs has led to policing focused on two drugs for which education and treatment are clearly far more urgent and effective responses.

Despite the fact that most people sentenced for drug possession do not receive a custodial sentence, people are frequently held in Victorian prisons in relation to drug offences. This is largely because of the impact of Victoria's bail laws. On 30 June 2020, a drug offence was the most serious charge for 17.8% of people held on remand, compared to 13% of people serving a sentence.[25] The disparity is especially large for women: a drug offence was the most serious charge for 31.6% of women on remand, but only 21.7% of women serving a sentence. These gaps reflect the harsh bail laws which have led to many people being remanded in custody even while facing drug charges which are very unlikely to result in a prison sentence. The effect of bail laws has been particularly damaging to Aboriginal people: in March 2022, 50.6% of Aboriginal people incarcerated in Victoria had not received a sentence, compared to 42.6% of the overall prison population.[26]

Policing Practice

Over-policing of Aboriginal People

The available statistics indicate that drug use is broadly stable among Aboriginal people, and declining for some types of drugs, while it is increasing for non-Aboriginal people.[27] However, charges for drug use against Aboriginal people are increasing rapidly, and significantly faster than charges against non-Aboriginal people:

25 Corrections Victoria, Annual Prisoner Statistical Profile 2019-20, Tables 1.10 & 1.11.

26 Australian Bureau of Statistics, Corrective Services, Australia, March Quarter 2022, Tables 8 and 13.

27 Australian Institute of Health and Welfare (2020), *National Drug Strategy Household Survey 2019*, Supplementary Table 8.2.

- In Victoria, the charging of Aboriginal people with drug use and possession offences increased by 128% from 2013 to 2022.[28]
- This compares to an increase of just 17% from 2013 to 2022 for non-Aboriginal people.[29]

What emerges from this data is abundantly clear: a criminal-justice focused response to drug use and possession has a disproportionately adverse effect on Aboriginal people in Victoria. Increased interaction with police and the criminal legal system maintains the existing, unacceptable incarceration rate of Aboriginal people in Victoria, and delivers no benefit to individuals or the public. Any arrest or police interaction – even if it later results in a caution, diversion or charges being dropped – is inherently harmful. It can be traumatising and creates a sense of mistrust and/or fear with police and other authorities. Inadequate training and improper conduct from police can also lead to these interactions escalating to become more hostile. This can result in further, more serious charges (such as resisting arrest or assaulting police) which would never have occurred if there was no original police interaction. Over-policing inflicts these harms disproportionately on Aboriginal people.

Victoria Police Drug Strategy 2020-2025

Issued in December 2020, Victoria Police's Drug Strategy (2020-2025) outlines the approach of the police to tackling drug use, and drug crime in Victoria. While the strategy does, in limited respects, move from discussions of drug use and possession as centrally criminal justice issues, acknowledging that "drug problems are first and foremost health issues", it still envisions Victoria Police as central actors in responding to drug use.[30] As outlined in the strategy, Victoria Police identify four key areas of focus - prevention, supply disruption, treatment and support, and harm reduction initiatives.[31] The four police approaches to addressing the areas of focus outlined in the strategy are:[32]

- Evidence-based and responsive approaches; including understanding the "sophisticated mechanisms for drug trafficking and production" in order to tackle supply and provision of controlled substances
- Policing capability to deliver; improving organisational alignment and intelligence

28 Crime Statistics Agency, *Alleged offender incidents by Aboriginal and Torres Strait Islander Status – Tabular Visualisation*, Victoria – Principal offence.

29 Ibid.

30 Victoria Police (2020), *Victoria Police Drug Strategy 2020-2025*, p11.

31 Ibid.

32 Ibid, p20.

sharing both inter and intra-organisationally, and supporting treatment referral services
- Forging strong community, government and agency partnerships; utilising relationships between organisations and community to disrupt the drug trade and serious drug crime
- Building resilience in the community

However, VALS' view is that for many people who use drugs – particularly Aboriginal people – increased police interaction is harmful, even if it is guided by the new Drug Strategy. The Drug Strategy still states an intention to "prevent drug use at every opportunity". It does not acknowledge the harms that can be inflicted by the policing of drug offences and makes reference to "building resilience in the community" with no recognition of how drug policing has often damaged and disrupted communities.[33] It is also deeply concerning that the Victoria Police Drug Strategy was developed without consultation with Aboriginal Community Controlled Organisations and fails to specifically mention the impact of drug criminalisation and policing on Aboriginal people in Victoria.

These issues reflect the fact that the police force will inevitably bring a crime-focused lens to drug issues, which means they will never be equipped to appropriately deliver harm reduction initiatives. Facilitating diversion, treatment, rehabilitation and education are functions better performed by organisations with more relevant expertise, and whose practice is not grounded in a criminal justice approach.

What also emerges from the Victoria Police Drug Strategy is a conceptualisation of 'harm reduction' that diverges strongly from the normative definition utilised by VALS and other public health and community organisations. Fundamentally, a 'harm reduction' approach, as identified by VALS, seeks to mitigate the adverse consequences of drug use, without stigmatising, coercing or criminalising people who use drugs. While it is a welcome step to see Victoria Police promising a "more person-centred and health-led approach to drug users",[34] describing policing activity to interrupt supply and reduce demand for drugs as 'harm reduction' initiatives is a fundamental divergence from accepted harm reduction practices. As shown in the Introduction, and discussed further in Part 2, a genuine harm reduction approach involves recognising that drug use will inevitably occur and attempting to reduce the harm associated with it. The Victoria Police approach, which views all drug use as harmful and therefore describes criminalising measures to deter drug use as 'harm reduction', shows the need for a more decisive step away from criminalisation in Victoria.

33 Ibid, pp12-13.

34 Ibid, p20.

Drug Diversion in Victoria

In Victoria there are two police diversion programs in use; the Cannabis Cautioning Program,[35] and the Drug Diversion Program (for all non-cannabis drugs). Both programs are accessed on a discretionary basis, meaning that the police are able, but not required, to offer diversion to a person who has offended if they meet the minimum criteria for eligibility.[36] Individuals over the age of 18 are able to access the Cannabis Cautioning Program, whereas the Drug Diversion Program is accessible to individuals aged 10 and over.[37] To be offered diversion, the person must admit to possessing the controlled substance, consent to diversion, not be involved in an additional offence during the course of the drug offence, and have no more than one previous caution recorded.[38] A person found in possession of more than 50g of cannabis, or the defined 'trafficable quantity' of any other drug, cannot be enrolled in diversion.[39] A person found in possession of drugs is limited to no more than two drug cautions of any type, including both cannabis cautions and other drug diversions.[40]

In the Cannabis Cautioning Program, a person is delivered an official caution, and offered the opportunity to participate in a non-compulsory education session; 'Cautious with Cannabis'.[41] The two-hour education session aims to address a number of harm reduction strategies, including avenues for treatment and rehabilitation.[42]

In the Drug Diversion Program, individuals are issued with an official caution. Consequently, the person is obligated to attend a 'drug assessment', and a subsequent session of 'drug treatment'.[43] In the assessment, the individual enrolled in the program is offered additional support services, including rehabilitation, living assistance, and withdrawal services.[44] The initial assessment is undertaken within 5 days of the initial arrest, and the treatment to follow within

35 Maurice Rickhard; Social Policy Group (2001), *A Critical Overview of Australian Approaches to Cannabis*.

36 Australian Institute of Criminology, Police Drug Diversion: A Study of Criminal Offending Outcomes (Report, May 2020), p6.

37 Ibid.

38 Ibid.

39 Ibid.

40 Ibid.

41 Ibid.

42 Ibid.

43 Ibid, p7.

44 Ibid.

5 days after the assessment.[45] Compliance must be achieved within 28 days from the initial arrest.[46]

Outcomes and Limits of Diversion

The positive effects of diversion, when compared with other punitive measures in dealing with possession offences, are empirically observable. As outlined in the Victoria Police Drug Strategy, people facing drug charges who participate in the Victoria Police Drug Diversion Program are 10% less likely to reoffend.[47] Victoria Police have suggested that the Cannabis Cautioning Program achieves the same reoffending outcomes as proceeding to summons or charge, at far lower cost.[48] Equally, diversion is a cost-efficient alternative to more expensive criminal justice measures, with diversion and other treatment programs providing an up to $8 return on investment for each $1 spent.[49]

However, diversion continues to be underutilised. The limited data that exists on cautions and diversions indicate they are used in far fewer cases than they could be. Victoria Police and the Crime Statistics Agency have reported that, from 2010 to 2016, police issued cautions for cannabis offences in around 70% of cases where the person was eligible for a caution.[50] The eligibility criteria for cannabis cautions are already strict – for example, they are unavailable for anyone with more than a single previous caution, or with simultaneous offending – so there is no clear reason why cautions are not being given in the other 30% of cases.

Cautions and diversion are given to Aboriginal people at significantly lower rates, which is a major shortcoming given the high rates at which Aboriginal people are policed for drug offences. Data from 2005 analysed by the Australian Institute of Criminology shows that in Victoria, Aboriginal people received 1.1% of cannabis cautions and 0.9% of other police drug diversions.[51] More recent data from Victoria is not available. However, related data suggests that these trends have continued around Australia. From 2013 to 2017 in New South Wales,

45 Ibid.

46 Ibid, p8.

47 Coghlan, S., Sutherland, P. & Millsteed, M, Evaluation of the Victoria Police Drug Diversion and Cannabis Cautioning Programs: Final Report. (Report, 2016)

48 Victoria Police (2020), *Victoria Police Submission to the Inquiry into the use of Cannabis in Victoria*, 9

49 Coghlan, S., Sutherland, P. & Millsteed, M, Evaluation of the Victoria Police Drug Diversion and Cannabis Cautioning Programs: Final Report. (Report, 2016)

50 Victoria Police (2020), *Victoria Police Submission to the Inquiry into the use of Cannabis in Victoria*, 9

51 Australian Institute of Criminology (2008), *Police Drug Diversion: A Study of Criminal Offending Outcomes*, p21.

police were significantly more likely to pursue an Aboriginal person through the court system for possession of a personal use quantity of cannabis than non-Aboriginal people committing the same offence.[52] While 82.55% of Aboriginal people found with a non-indictable quantity of cannabis were pursued through the courts, only 52.29% of non-Aboriginal people were.[53] Non-Aboriginal people were also four times more likely to receive a caution in cannabis possession cases.[54] This is also consistent with data on diversion generally (not limited to drug offences.) In 2019-2020 only 2.5% of matters in VALS' criminal law practice were adjourned for diversion, falling to just 1.3% in 2020-2021.[55] When compared with an overall diversion rate of 6.4% from 2019-2020 recorded across the board, it is clear that diversion is offered to Aboriginal people at a significantly lower rate.[56]

Eligibility requirements for both police cautions and court-based diversion are also inappropriately strict. A person can only receive two drug cautions of any type, and court-based diversion is generally limited to first-time offenders.[57] This is particularly problematic for Aboriginal people, who come into contact with police and the criminal legal system earlier and more frequently due to over-policing, and as a result can be barred from accessing diversion even for minor subsequent offences. The requirement for police and the prosecution to consent to diversion also creates room for bias in the exercise of this discretion, which further contributes to Aboriginal people being underrepresented in caution and diversion processes.

Finally, cautioning and diversion schemes are not designed or implemented in a culturally appropriate manner, which means that Aboriginal people have more difficulty accessing them and successfully completing their requirements. Particularly in rural and regional areas, a culturally appropriate program may not be accessible due to under-resourcing, or may not exist at all.[58] There is great potential for Aboriginal people's culture and community to make diversion even more successful, as the effectiveness of Koori Court in reducing reoffending shows. There are also clear international examples, like the Gladue Courts in Ontario, Canada, which show

52 The Guardian, 10 June 2020, 'NSW police pursue 80% of Indigenous people caught with cannabis through courts'.

53 Ibid.

54 Ibid.

55 In 2019-20, VALS provided legal representation in relation to 1,648 criminal law matters and 41 of these resulted in diversion. In 2020-21, VALS provided legal representation in relation to 1,045 criminal law matters and 14 of these matters resulted in diversion.

56 Sentencing Advisory Council, *Sentencing Outcomes in the Magistrates' Court* (Report, December 2020).

57 VALS (2020), *Submission to Sentencing Act Reform Project*, p18.

58 Ibid.

how culturally appropriate diversion programs can build on the strengths of Aboriginal culture.[59] The absence of such options in Victoria means that Aboriginal people are less likely to access diversion, and more likely to suffer harmful consequences from the criminalisation of drug use.

Case Study: Diversion in Gladue Courts in Ontario, Canada[60]

Gladue Courts in Ontario are analogous to Koori Courts in Victoria, though they have much broader jurisdiction to operate as a plea and resolution court. Diversion is a possible resolution. Whilst the process for accessing diversion still includes approval by the Crown Attorney, the decision is based on the recommendation of the Aboriginal court worker and legal counsel. Diversion is available to Aboriginal people even if this is not their first offence.

Individuals are diverted to the "Community Council" which is a restorative circle of Aboriginal volunteers, including Elders, based at the Aboriginal Legal Service (ALS). The role of the Council is to work with the individual to develop a 'decision' (which is a list of tasks to which the client agrees) and to approve successful completion of the diversion. The Council talks with the client about why the offence occurred, and works with the client to develop a rehabilitative program. They also link the individual to culturally relevant services suited to their circumstances and needs. A critical element of the way that the Council works is that it is the individual who decides on the program direction to follow. According to a 2016 evaluation of the program, this creates agency for the individual in their own development and leads to a program direction that is more likely to elicit commitment and to result in success.

During the period of diversion, the individual is supported by an ALS case worker who supports each client through their diversionary activities. The role of the case worker is not to enforce or police compliance with the diversion plan. If the individual is re-arrested, they are not allowed to return to the Community Council until they have completed the previous diversion.

In contrast to many diversion programs in Victoria, diversion to the Community Council appears to have the effect of engaging individuals with their culture and decreasing re-offending. The diversion programs aim to address the underlying reasons for offending and are more likely to divert the person away from further reoffending.

59 Aboriginal Legal Services (2016), *Evaluation of the Gladue Court Old City Hall, Toronto*, 43-44.

60 Ibid; VALS (2021), *Submission to the Inquiry into Victoria's Criminal Justice System*, pp160-1.

Drugs and Prisons

Inadequate Support During Withdrawal

Many people who enter prisons in Victoria, on drug or other charges, are either withdrawing from drugs, dealing with addiction, or may use drugs as a coping mechanism for past traumas. People in these circumstances need supports which do not attach blame or stigma to the use of drugs, and prison environments cannot provide such support as long as drug use in the community remains criminalised. As a result, people who use drugs are even more likely to suffer serious harms to their mental health and wellbeing when they are incarcerated.

The inadequate support for people withdrawing from drugs has been identified by the Victorian Ombudsman as a factor in high rates of force being used against people in prison, in a report on the use of force in the Metropolitan Remand Centre (**MRC**) and the Melbourne Assessment Prison (**MAP**).[61] Both MRC and MAP are 'front-end' prisons, which receive people on remand or at the start of a sentence; as such, they have disproportionately high numbers of people withdrawing from drug use. The Ombudsman's report pointed to this as one of a range of complex needs for which prison staff did not, or could not, provide adequate support.[62] The consequence of this is a more volatile and traumatising prison environment, in which prison officers resort to the use of force instead of providing appropriate supports.

The effects of inadequate support for people in withdrawal are extremely serious. Evidence regarding the adequacy of medical care for withdrawal provided to Veronica Nelson was heard during the Coronial Inquest into her death. During the Inquest, the Coroner also examined the impact of stigma and discrimination on Veronica's death, including stigma she may have experienced as a drug user. The Coroner's Court is yet to provide its findings in the Inquest. It is VALS' position that a vital element of appropriate care is giving people brought into prisons the right to choose between undergoing withdrawal or accessing substitution (such as opioid replacement therapy, discussed further below) to avoid or mitigate symptoms of withdrawal.[63] The criminalisation of drugs creates a stigma, particularly in prison environments, which can subsequently lead to health concerns being dismissed as a 'deserved' consequence of drug use rather than being responded to with appropriate care.

61 Victorian Ombudsman (2022), *Report on investigations into the use of force at the Metropolitan Remand Centre and the Melbourne Assessment Prison*.

62 Ibid, p8.

63 Inquest into the Death of Veronica Nelson, Submissions on Behalf of Uncle Percy Lovett (17 June 2022).

Equivalence of healthcare

The harms suffered by people who use drugs when they are imprisoned and not given adequate supports are a powerful illustration of the need for equivalence of healthcare in Victorian prisons and other places of detention, such as police cells.

Equivalence of care is a principle according to which governments have an obligation to ensure that people in prison have access to healthcare equivalent to what is enjoyed by people in the community. The *United Nations Standard Minimum Rules for the Treatment of Prisoners* (often known as the Mandela Rules) make clear that "prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary healthcare services free of charge, without discrimination on the grounds of their legal status."[64] The obligation to provide equivalence of medical care to people deprived of their liberty is also an implication of rights in *the International Covenant on Economic, Social and Cultural Rights*, which emphasises "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."[65]

The importance of equivalence of care to Aboriginal people in prison was recognised by the Royal Commission into Aboriginal Deaths in Custody (**RCIADIC**) more than thirty years ago. Recommendation 150 of the Royal Commission was that "health care available to persons in correctional institutions should be of an equivalent standard to that available to the general public," and specifically identified access to mental health and alcohol and other drug (**AOD**) services and the importance of culturally safe care. Equivalence of care is also the underlying goal of other RCIADIC recommendations regarding healthcare in prisons and police custody, including Recommendations 127, 252, 152, 154, 133, 265 and 283.[66]

Victorian prisons fall far short of meeting the standard of equivalence of healthcare. Victoria is the only jurisdiction in Australia where prison healthcare is managed through the justice department, rather than the health department, and at present the Department of Justice and Community Safety contracts out healthcare provision to six private providers, some of whom use further subcontractors. The inadequacy of prison healthcare has been highlighted by VALS on numerous occasions, and was a major issue in the coronial inquest into the death of Veronica Nelson.

64 United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN Doc A/RES/70/175 (17 December 2015).

65 International Covenant on Economic, Social and Cultural Rights, Article 12.

66 Williams (2021), 'Comprehensive Indigenous health care in prisons requires federal funding of community-controlled services', The Conversation.

Failure to provide adequate healthcare, equivalent to what is available in the community, inflicts more and more harm on incarcerated people who use drugs. The Royal Commission into Aboriginal Deaths in Custody, in recommending equivalence of care for people in prisons, specifically identified access to alcohol and other drug services as essential. Withdrawal and addiction are complex medical issues, which can interact in even more complex ways with pre-existing medical conditions and disabilities. Without appropriate specialist care, there is a high risk that these issues will be treated as non-serious, or even as a fair consequence for people who use drugs.

This is a particularly pressing issue for VALS because Aboriginal people are more likely to have more serious health conditions than other Australians, and because within the prison population, Aboriginal people have more health issues than non-Aboriginal people.[67] The provision of equivalent healthcare, including specialist drug treatment and culturally competent care, is urgent.

Deaths After Release

Equivalence of healthcare is also important because it can decrease the risk of death following release from custody.[68] Because of the difficulties and stresses of release from a highly institutionalised carceral environment, the rate at which Aboriginal people die after their release from prison is alarming. A study from researchers at the University of Melbourne estimated that in 2007-08 alone, between 79 and 176 Aboriginal and/or Torres Strait Islander people died within a year of being released from prison. Between 30.9% and 44.5% of post-release deaths were drug-related.[69] Research evidence also suggests that people who were imprisoned on drug-related charges may have a higher rate of post-release mortality than others.[70]

The causes of post-release deaths are complex and differ widely from case to case. However, the overall picture clearly involves very high death rates, with disproportionate numbers of drug-related deaths and a particularly high rate among people who were imprisoned in relation

67 Victorian Aboriginal Community Controlled Health Organisation (2015), Keeping our mob healthy in and out of prison: Exploring Prison Health in Victoria to Improve Quality, Culturally Appropriate Health Care of Aboriginal People, pp9, 13.

68 Royal Australian College of General Practitioners (2019). *Custodial health in Australia: Tips for providing healthcare to people in prison*, p. 5.

69 Kinner et al. (2011), 'Counting the cost: estimating the number of deaths among recently released prisoners in Australia', Medical Journal of Australia 195(2), pp64-68.

70 Jama-Alol et al. (2015), 'Influence of offence type and prior imprisonment on risk of death following release from prison: A whole-population linked data study', *International Journal of Prisoner Health* 11(2), pp108-118.

to drugs. The Coroners Court of Victoria identified in 2017 an urgent need to improve services for people who use drugs when they are released from prison. Evidence at the inquest into the death of Shae Paszkiewicz, who died after overdosing on heroin the day after his release from prison, highlighted "shortcomings in drug treatment programs in prison; inadequate clinical and therapeutic supports for people using drugs when they transition from prison to the community; sub-optimal delivery of Opioid Substitution Therapy both inside and outside prison; and a lack of information about health outcomes among people who have contact with Victoria's prison system".[71]

It is evident that the current approach of criminalisation and imprisonment is not helping to reduce dangerous drug use among people in prison. Equivalence of healthcare in prisons must be complemented by the provision of culturally appropriate throughcare services, to support people in their transition out of prison. VALS is a partner in the operation of Baggarrook, a transitional housing and holistic support program for Aboriginal women transitioning out of prison.[72] This is an important initiative which expands the transition supports for women, who face homelessness after release at about twice the rate men do, and have access to very few dedicated transitional housing supports.[73] In addition to housing support, broader programs should be designed and implemented, modelled on like the Throughcare service provided by the North Australian Aboriginal Justice Agency (**NAAJA**). NAAJA's Throughcare service begins working with people in prison and youth detention six months prior to their release, and continues to provide support post-release, including "Ongoing rehabilitation, Accommodation, Employment, Education and training, Health, Life and problem solving skills, and Reconnection to family and community."[74]

It can safely be concluded that the punitive approach to drug use is ineffective, and that attempts to provide rehabilitation and AOD services in prisons are manifestly inadequate. Improving AOD services within prisons, and ensuring a straightforward transition to services in the community after release, is crucial to reducing the harms associated with drugs in Victoria.[75] These changes are extremely difficult to implement while Victoria maintains its policy of drug criminalisation. People who only have issues with drug use, and have not committed other offences, need opportunities to rehabilitate voluntarily in a non-punitive environment. People who have committed other offences also need genuinely therapeutic interventions for their substance

71 Coroners Court of Victoria (2021), 'Critical drug support needed for prisoners re-entering the community'.

72 VALS, 'Baggarrook'.

73 Victorian Ombudsman (2015). Investigation into the rehabilitation and reintegration of prisoners in Victoria, p.102.

74 NAAJA, 'Throughcare'.

75 VAADA (2013), *Reducing the harm of prison: Dealing with alcohol and other drugs within the prison system*.

use, which will remain difficult to provide while a drug policy focused on criminalisation remains in place.

Access To Drugs In Prisons

The failure of Victoria's criminalising approach to drug use is exemplified by the rate at which drug use continues in prison. As of February 2022, the number of random drug testing samples in Victorian prisons that returned a positive result was 2.47%,[76] with the number of positive drug test results from targeted drug tests measuring 11.89%.[77] This is a significant increase from 2020 data, wherein the positive test result was 9.14% in regard to targeted drug tests.[78]

Access to illicit drugs within prison is facilitated both by family and friends of incarcerated people, but also by corrupt corrections officers who participate in drug trafficking in exchange for payment. Victoria's Independent Broad-based Anti-Corruption Commission (IBAC) has held four inquiries into the smuggling of contraband, among which drugs of dependence were included.[79] Operations Nisidia and Molara, conducted by IBAC, found that corrections staff across two Victorian prisons participated in the smuggling of contraband, including drugs of dependence, across prolonged periods of time.[80]

Operation Molara, commenced in September 2017, found that a corrections officer at Dhurringle Prison was engaged in the smuggling of both tobacco and drugs of dependence into the prison, for a prisoner for whom she had developed a personal relationship with.[81] A lack of security and oversight at the minimum security prison meant that the officer in question was able to continue bringing in contraband, facilitating the drug dependence of a vulnerable population, for an extended period of time.

The provision of drugs to incarcerated people by prison staff is deeply concerning because of the inherent imbalance of power in the prison environment. Corrections officers have extraordinary power over the lives of imprisoned people. When prison staff supply drugs, they further gain the ability to cut off supply at any time, or to report an imprisoned person to disciplinary proceedings. This extends the power of corrections officers, in a way that is even more prone to abuse. This is particularly concerning because of the serious flaws of the disciplinary process

76 Corrections Victoria, "2021-2022 Drugs in Victorian Prisons Report" (Report, January 2022), p6.

77 Ibid.

78 Ibid.

79 Independent Broad-based Anti-Corruption Commission, "Special Report on Corrections" (Report, June 2021), 5.

80 Ibid, 11.

81 Ibid, 8.

in Victorian prisons. The Victorian Ombudsman has found serious problems including people facing disciplinary proceedings not being given proper information about the charge, limited availability of legal advice, a lack of written reasons for decisions, and an absence of effective review rights.[82]

Operation Ettrick, another inquiry conducted by IBAC,[83] found that drug use amongst corrections staff themselves was a predictor for increased drug use within prisons by inmates. Operation Ettrick uncovered that a number of correctional staff at Port Phillip Prison were using drugs of dependence during the course of their employment.[84] Port Phillip Prison, in the same period of time, reported the highest rates of inmate drug use of any other Victorian prison.[85] At the time of the investigation (2016), there was no mechanism for the drug testing of prison staff in publicly managed prisons in Victoria, leading to a lack of scrutiny of corrections staff in relation to both drug usage at the workplace, and correspondingly a lack of ability to identify vulnerabilities in the trafficking of drugs into prisons by corrections staff.

Continuing use of drugs by both incarcerated people and prison staff highlights the futility of a criminalising approach focused on deterrence. Even in an entirely closed environment, subject to regular random drug testing, it has not been possible to fully deter or prevent the use of drugs. This should clearly signal the need for an alternative approach, which tries to address the trauma and health issues which may underlie drug use, while ensuring harm minimisation for those who do use drugs.

Instead, Victoria's overall approach to drug policy is manifested in a prison environment where the demand for drugs creates major risks of corruption and abuse, and disciplinary penalties for use of drugs only exacerbate the harms of imprisonment.

Fiscal Costs of Imprisonment

Maintaining a criminal justice focussed approach to drug use and possession has adverse effects both on an individual level, and from a fiscal perspective. According to data collated by the Productivity Commission, the annual cost of prisons in Australia exceeded $5.2 billion between 2019-2020,[86] accounting for over 1.6% of total government expenditure.[87] This is particularly

82 VALS (2021), *Submission to the Inquiry into Victoria's Criminal Justice System*, p226.

83 Independent Broad-based Anti-Corruption Commission (2020), "*Investigation Summary-Operation Ettrick*".

84 Ibid.

85 Corrections Victoria, "2021-2022 Drugs in Victorian Prisons Report" (Report, January 2022), p51.

86 The Productivity Commission, Australia's Prison Dilemma (Research Paper, October 2021) p7.

87 Ibid, 47.

jarring when it is understood that spending on corrective services has increased 40% over the last seven years.[88] Although deterrence is a central aim of imprisonment, including for substance use and possession offences, over 57% of those incarcerated have reoffended; 77% of Aboriginal people incarcerated have served a custodial sentence before.[89] When considering that expenditure per prisoner per day in Australia ranges from $294 to $559,[90] the financial burden of carceral approaches which do not effectively reduce reoffending clearly far exceeds the benefits.

Public health approaches are not just more efficacious in minimising the adverse effects of drug use, but also more cost-effective than their carceral counterparts. As noted by the University of NSW National Drug and Alcohol Research Centre and Drug Policy Modelling Program, drug decriminalisation significantly reduces criminal legal system costs through diverting people who use drugs towards education and health-based programs that present themselves as more cost efficient.[91] This modelling supports existing evidence that demonstrates that cautioning and early intervention programs, as well as police diversion programs for cannabis offences both reduce recidivism and save money. It is estimated that the daily cost of incarcerating one person in an Australian prison is ten times the cost of a place in a community corrections, or diversion program. It is estimated that by reducing the prison population by 1% and expanding community corrections programs, approximately $45 million per annum across the country would be saved.[92]

The fiscal efficiency of health-oriented approaches is acknowledged by Victoria Police in their 2020-2025 Drug Strategy, asserting that there is up to an $8 return on investment for each $1 spent on alcohol and other drug treatment.[93] While the Victorian Government has promised to invest over $42 million in diversion, rehabilitation and treatment programs in order to minimise recidivism and decrease imprisonment rates, it pales in comparison to the $1.8 billion allocated to prison expansion in the state.[94] In Victoria alone, there has been a 57.6% increase in the number of individuals imprisoned since June 2010, with the number skyrocketing from 4,537

88 Ibid, 8.

89 Jason Payne, 'Recidivism in Australia: findings and future research' (2020), Australian Institute of Criminology: Research and Public Policy Series 80(1), p60.

90 The Productivity Commission, Australia's Prison Dilemma (Research Paper, October 2021), p13.

91 UNSW & National Drug and Alcohol Research Centre (2017), *Decriminalisation of drug use and possession in Australia – A briefing note*.

92 The Productivity Commission, Australia's Prison Dilemma (Research Paper, October 2021), 47.

93 Victoria Police, Drug Strategy 2020-2025 (Policy Document, 2020).

94 Corrections Victoria, 'Corrections Budget for 2019-2020 Released' (May 2019).

to 7,151 in 2020.[95] While the number of imprisoned people declined during the pandemic, the Victorian Government is forecasting increases in the next two years – including growth of 10% per year in the number of women imprisoned – and is planning to deliver 2,000 new beds in prisons by the end of 2023-24.[96]

Human Rights Concerns

Victoria's Charter of Human Rights and Responsibilities (**the Charter**) sets out a number of human rights which government policy may restrict only with appropriate justification. Victoria's current drug policy directly impinges upon the rights of people who use drugs, often without adequate justification.

In some cases, it may be argued that personal drug use creates no social issues at all, such that prohibition itself is an unjustifiable limitation of the human rights to privacy and liberty. Given that much drug use is private, is not connected to any other offending and does not create any danger for other people, state interference in this kind of private activity is arguably in violation of human rights. In some jurisdictions, courts have found prohibition of some drugs to be inconsistent with constitutional liberty and privacy rights. Such findings have been made in Alaska in 1975,[97] Argentina in 2009,[98] Canada (in relation to medical use) in 2000,[99] Colombia in 1994,[100] Georgia in 2018,[101] Germany in 1994,[102] and South Africa in 2018.[103] While it is unlikely that a legal challenge could lead to the decriminalisation of drugs in Victoria, these findings give support to the notion that criminalising drugs can infringe on privacy and liberty rights.

Even where some drug use is problematic or creating limits to use is legitimate, the punitive,

95 Corrections Victoria, 'Corrections Statistics: Quick Reference' (30 June 2020).

96 Parliament of Victoria (2022), *Report on the 2022-23 Budget Estimates*, pp79-80.

97 Brandeis (2012), 'The Continuing Vitality of Ravin v. State: Alaskans Still Have a Constitutional Right to Possess Marijuana in the Privacy of Their Homes', Alaska Law Review 29(2).

98 Reuters, 26 August 2009, 'Argentina decriminalizes small-scale marijuana use'.

99 R. v. Parker, 2000 CanLII 5762 (ON CA).

100 Guzmán D.E, Yepes R.U, *Prohibition, a Backwards Step: the personal dose in Colombia*, TNI & WOLA Series on Legislative Reform on Drug Policies Nr. 4, 2010, p1.

101 Open Caucasus, 6 December 2018, 'Georgia 'tightens noose' on cannabis after Constitutional Court legalises use'.

102 Bundesverfassungsgericht (Federal Constitutional Court), Second Senate, decision of 9 March 1994, BVerfGE 90, p145. An unofficial English transaction of the decision can be found here.

103 Charles Parry, Bronwyn Myers, Jonathan Caulkins, 'Decriminalisation of recreational cannabis in South Africa', The Lancet, vol. 393, 10183, May 04 2019.

criminalising drug policy of Victoria goes far beyond a proportionate or justifiable limitation of people's human rights. Other sections of this report detail the numerous ways that the criminalisation of personal drug use is harming marginalised people in Victoria. Many of these harms directly engage the human rights, under the Charter, of people who use drugs. For example:

- The disproportionate enforcement of drug offences against Aboriginal people infringes the right to equality before the law
- The interaction of the drug and bail laws leads to many people spending extended periods in prison in relation to charges which will not receive a custodial sentence, infringing rights to liberty and security
- Criminalisation leads to large numbers of people in prison while withdrawing from drug use, without appropriate healthcare or support, infringing the right to humane treatment while deprived of liberty – this issue is discussed further below

A drug policy which respects human rights would recognise the disproportionate harms of criminalising and policing drug offences, and the significantly better outcomes which can be realised by a health-led, harm reduction approach.

Rights of Children whose Parents are Incarcerated or at Risk of Incarceration

Current Victorian drug law also infringes the human rights of children, because it leads to the unnecessary and harmful incarceration of parents. VALS made a submission to the Victorian Parliament's *Inquiry into children affected by parental incarceration*, which analyses in detail the implications for children of Victoria's extremely high imprisonment rate.[104]

Numerous rights under the Victorian Charter and the UN Convention on the Rights of the Child are relevant to the imprisonment of parents. The Charter contains rights for the protection of families and children, and a recognition of Aboriginal cultural rights (including kinship ties). The Convention on the Rights of the Child contains several articles protecting children against separation from their parents or disruption of their family environment.[105]

Protecting the rights of children with incarcerated parents can be complex, but it is clear that reducing the imprisonment of parents is a simple way to reduce these harms. Imposing custodial

104 VALS (2022), *Submission to the Inquiry into Children of Imprisoned Parents*.

105 Convention on the Rights of the Child, United Nations General Assembly, signed 20 November 1989 (entered into force 2 September 1990) ('CRC'). Key articles include Article 9 (regarding separation of children from their parents), Article 16 (regarding interference with children's family and privacy), and Article 20 (regarding children deprived of their family environment.)

sentences on parents, and in doing so separating a child from their parents and disrupting familial attachments, dually punishes the child as well as the parent.[106]

The impact of parental imprisonment ought to be central to decisions regarding criminal charging, bail, sentencing practices, and parole. The Parliamentary Inquiry recommended that the Victorian Government make changes to court procedures to achieve this,[107] though it has fallen short of VALS' recommendation to require courts to consider the best interests of any affected children and use alternatives to detention as far as possible.[108] At present, nearly two in five people incarcerated in Australia are parents.[109] A further 38% of people imprisoned are responsible for caring for one or more children in their communities.[110] Consequently, when parents or caregivers are imprisoned, including for drug use and possession offences, the effects on the children left behind are far reaching. For Aboriginal children, this risk is even greater, with the disproportionate rate of Aboriginal incarceration resulting in nearly 20% of all Aboriginal children experiencing paternal incarceration,[111] and 17% experiencing maternal incarceration.[112]

The effects of parental incarceration are wide reaching. Parental incarceration affects parent-child bonds, childhood attachments, educational outcomes, physical and mental health, socio-economic standing and community/kinship networks.[113] It also increases the likelihood of children being removed from their families into child protection, which ultimately raises the risk of harmful contact with the criminal legal system. These concerns are especially acute for Aboriginal children, who experience particular trauma from the child protection system. 46% of Aboriginal men incarcerated in NSW had been placed in out-of-home care as children, with 30.8% having one or more parents incarcerated for a period when they were a child.[114] This is significantly higher than their non-Aboriginal counterparts, who experienced out-of-home

106 VALS (2022), Submission to the Inquiry into Children of Imprisoned Parents, p22.

107 Victorian Parliament (2022), *Inquiry into children affected by parental incarceration*, Recommendation 7.

108 VALS (2022), Submission to the Inquiry into Children of Imprisoned Parents, Recommendation 3.

109 Victorian Association for the Care and Resettlement of Offenders, Families and Prisons in Victoria (Report, February 2018).

110 Australian Institute of Health and Welfare, The Health of Australia's Prisoners (Report, 2018), p14.

111 Indigenous Justice Clearinghouse, Indigenous people in Australia and New Zealand, and the intergenerational effects of incarceration (Research Brief, December 2019), p1.

112 Ibid.

113 Ibid.

114 Chris Rossiter et al., '"Learning to become a better man": Insights from a fathering program for incarcerated Indigenous men' (2017), The Australian Journal of Social Issues 52(1), pp13-14.

care at a rate of 21.7%, and parental incarceration at a rate of 11.7%.[115] Parental incarceration clearly contributes to the separation of families and associated trauma for many children.[116]

As VALS noted in our submission to the Parliamentary Inquiry, there is a concerning lack of data on parents in the prison system and their children, including the number of children who come into the child protection system as a result of their parents being incarcerated.[117] The lack of data on this issue obscures the extent to which children are being adversely affected by the criminal legal system's treatment of their parents. It also means that it is impossible to identify how many parents are imprisoned because of drug charges. The Parliamentary Inquiry made important recommendations to improve the quality of data relating to children with imprisoned parents, and the Government should act on these recommendations urgently.[118]

It is undeniable that the criminalisation of drugs for personal use is a driver of family separation. A Californian prison population study noted that individuals imprisoned for drug-offences or non-violent offences are more likely to be parents than individuals incarcerated for violent offences.[119] While there exists no comparable Australian study, these patterns are likely to persist across similar cultural contexts. As of June 2021, 14.5% of the total Victorian prison population was imprisoned in relation to drug offences.[120] A significant number of these people would not be imprisoned under a drug policy less focused on criminalisation.[121]

Moving beyond criminalisation as the main framework for drug policy would be highly beneficial to children in Victoria who are experiencing marginalisation and disadvantage. For many children, it would both remove the trauma of parental imprisonment and, by providing an alternative health-led approach to drug use, help support better outcomes for children and parents.

115 Ibid, p14.

116 Peggy C. Giordano & Jennifer E. Copp, '"Packages of Risk"; Implications for determining the effect of maternal incarceration on child wellbeing' (2015), Criminology & Public Policy 14(1), pp157-158.

117 VALS (2022), Submission to the Inquiry into Children of Imprisoned Parents, p20.

118 Victorian Parliament (2022), *Inquiry into children affected by parental incarceration*, Recommendation 5.

119 Davis, L. M. et al., (2011), 'Understanding the Public Health Implications of Prisoner Reentry in California', p. 118.

120 Australian Bureau of Statistics (2021), *Prisoners in Australia*, Table 16.

121 Sentencing Advisory Council (2020), 'Most Serious Offences for Victorian Prisoners'.

Abstinence, Bail and Parole

The policy of criminalisation reflects an assumption that drug use is something the government should try to eliminate, rather than manage in a way that minimises harm. This assumption pervades government policy, leading to a punitive and ineffective approach to bail and parole.

Abstinence conditions on grants of bail and parole are far too common. This is not surprising when drug use is viewed primarily as a criminal behaviour. It is, however, counterproductive because it fails to recognise the realities of people who use drugs.

Bail is commonly granted with the condition that the person does not use alcohol or drugs, where the offence is related to drug or alcohol use.[122] It is clearly not reasonable to expect a person who may already have challenging and unstable living conditions, whose life has been further disrupted by being arrested and charged with an offence, to immediately cease all use of a substance to which they may have an addiction. Imposing this type of condition is effectively setting people up to fail. It is also setting them up to face further criminal charges because Victoria's restrictive bail laws include further offences for breaching bail and committing an offence while on bail. Failure to adhere to strict abstinence conditions does not reflect a failure to rehabilitate or a lack of willingness to do so. Substance addiction is a health issue that requires health assistance to address, and mandatory 'cold turkey' abstinence is not a way of supporting people to control, manage or reduce their substance use. Abstinence conditions, therefore, function only to entrench a person deeper in the criminal legal system.

Similar problems exist in relation to parole conditions. The lack of adequate transition support for people released from prison makes it highly likely that people will be released into unstable or traumatising, living conditions, a frequent precursor to drug use.[123] When people are routinely released from prison into homelessness, it is wholly unreasonable for the government to punish them for falling into drug use.

In some cases, a condition of bail or parole may require someone to engage with alcohol or drug services, rather than specifically requiring them to abstain. There are still significant problems with this type of approach. One difficulty is that as long as drug use is a criminal offence, it can still lead to a person being found in breach of their bail or parole conditions, even if there is no specific condition regarding drug use. A second issue with rehabilitation conditions is that mandatory rehabilitation is rarely effective or justifiable. As VALS stated in our submission to the Victorian Parliament's Inquiry into the Criminal Justice System, regarding both drug/alcohol

122 Armstrong Legal, web page, 'Bail Conditions'. Accessed 29 August 2022.

123 Victorian Parliament (2022), *Inquiry into Victoria's criminal justice system: Final Report*, pp678-80

rehabilitation and general prison rehabilitation programs:

> **"VALS firmly believes that rehabilitation programs should operate on voluntary principles. Attempts to rehabilitate people are unlikely to be successful when they are premised upon a carceral logic that threatens people with punishment – such as being returned to court in formal breach of a community corrections order – for not meeting the requirements of a program. There needs to be recognition of the complex needs of people who have committed offences and of the fact that rehabilitation cannot be forced. This is particularly true for Aboriginal people, and rehabilitative programs which are focused on encouraging reconnection to culture; meaningful engagement with culture and community can only come voluntarily, not from activities undertaken under the threat of a formal breach [...] It must also be recognised that disengagement from a program should be met with greater support to facilitate reengagement – a punitive approach simply will not enable rehabilitative objectives to be met**
>
> **[...] Involuntary rehabilitation has very limited prospects of successfully integrating people into society or establishing meaningful connections with culture, and so its value is very low. The focus of the Victorian Government needs to be on programming which attracts willing participants and creates environments where they are empowered to complete their rehabilitation voluntarily. This principle extends to drug and alcohol rehabilitation, which is a medical treatment that should always be provided on the basis of informed consent, not made mandatory."**[124]

The problems with mandatory drug rehabilitation are discussed further below, as one of the lessons learned from international experience.

Inappropriate abstinence and rehabilitation conditions on bail and parole particularly affect Aboriginal people. They are part of a broader problem, which is that these conditions are often imposed without consideration of their cultural appropriateness, and enforced without nuance or discretion. Conditions requiring someone not to contact a specific person, or go to a certain place, may conflict with cultural obligations for Aboriginal people. It is also crucial that rehabilitation services are accessible, which requires the provision of culturally appropriate services and the availability of services in rural and regional Victoria. Residential rehabilitation centres can provide effective services, but if they are located far from an Aboriginal person's

124 VALS (2021), *Submission to the Inquiry into Victoria's Criminal Justice System*, p194. Citations in this passage include Harm Reduction International (2010), *Human Rights and Drug Policy: Compulsory Drug Treatment*.

family, community and Country, the damage done by disrupting these connections may outweigh the benefits of the services.

Supervision of bail and parole is often punitive and rigid, and carried out by officers who have not undertaken cultural awareness training.[125] In 2019-2020, 19% of adults on parole had their parole cancelled.[126] Non-compliance with parole conditions - including breaches of conditions, loss of contact with Community Correctional Services (**CCS**) or unacceptable absences for scheduled appointments - was a factor in 73% of cancellations.[127] Community Corrections Orders (**CCO**s) often involve onerous and culturally inappropriate conditions, and there is a significant lack of culturally appropriate support for Aboriginal people on CCOs, particularly those who have disabilities. Aboriginal people are less likely to complete a CCO than non-Aboriginal people,[128] and more likely to receive a prison sentence as a result of breaching an order.[129]

There are major, more general problems with conditions on bail and parole and how they are applied to Aboriginal people. For Aboriginal people who use drugs and may have an addiction, these problems are especially severe. Cultural awareness in all these processes could be improved, but fundamental challenges will remain as long as drug use is a criminal offence, and treated as an inherently problematic or dangerous behaviour by government authorities.

Impacts on Aboriginal Communities

Overincarceration of Aboriginal people

The disproportionate enforcement of drug use charges against Aboriginal people, detailed above, occurs in the context of overincarceration of Aboriginal people in Victoria. While the enormous growth in the incarceration rate of Aboriginal people has wider causes than drug criminalisation alone, there is a clear relationship between these trends. As noted above, charging of Aboriginal

125 Ibid, p191.

126 Adult Parole Board Victoria (2020). Annual Report: 2019-20, p. 26.

127 Ibid, p. 26.

128 In 2019-2020 in Victoria, 45.2% of Aboriginal people on CCOs completed their orders, versus 58.5% of non-Aboriginal people on CCOs. See Productivity Commission, *Report on Government Services 2021*, Part C, Section 8, Table 8A.21. See also, Australian Law Reform Commission, *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, (2017), pp. 254 and 113.

129 Australian Law Reform Commission, *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, (2017) p. 113.

people with drug use and possession offences increased by 128% from 2013 to 2022.[130]At the same time, the overincarceration of Aboriginal people has worsened: immediately prior to the pandemic, in February 2020, the Aboriginal prison population was as high as 890, up more than 85% from June 2015.[131]

The criminalisation of drug use is clearly a contributor to overincarceration, which has reached crisis levels and is not improving. As VALS stated in our submission to the Victorian Parliament's Inquiry into the Criminal Justice System:[132]

> **These trends run completely counter to the Victorian Government's commitments and responsibilities towards Aboriginal people. It has been clear for decades that reducing the incarceration rates of Aboriginal people is urgent. A key finding of the Royal Commission into Aboriginal Deaths in Custody (**RCIADIC**), whose report was handed down more than 30 years ago, was that the number of deaths in custody is due primarily to the extreme and disproportionate rate at which Aboriginal people are imprisoned. A recent analysis found that, of the over 470 Aboriginal people who have died in custody since the Royal Commission's report, more than half had not been sentenced.[133] Both the scale of the increase in Victoria's imprisonment of Aboriginal people, and the concentration of that growth in the remanded population, are putting more and more Aboriginal lives at risk.**

Over-incarceration puts Aboriginal lives at risk and is immensely disruptive to Aboriginal families and children. Its perpetuation is an ongoing source of intergenerational trauma. It is at odds with the Government's commitments under the Closing the Gap Agreement and *Burra Lotjpa Dunguludja*, the Aboriginal Justice Agreement Phase 4. The Closing the Gap Agreement requires Victoria to reduce the incarceration rate of Aboriginal adults by 15%, and Aboriginal children by 30%, by 2031.[134] In *Burra Lotjpa Dunguludja* the Government made a more ambitious

130 Crime Statistics Agency, *Alleged offender incidents by Aboriginal and Torres Strait Islander Status – Tabular Visualisation*, Victoria – Principal offence.

131 Corrections Victoria, *Monthly Prisoner and Offender Statistics 2020-21*, Table 1.08.

Corrections Victoria, *Annual Prisoner Statistical Profile 2019-20*, Table 1.4

132 VALS (2021), Submission to the Inquiry into the Criminal Justice System, p54.

133 The Guardian, 9 April 2021, 'The 474 deaths inside: tragic toll of Indigenous deaths in custody revealed'.

134 Coalition of Aboriginal and Torres Strait Islander Peak Organisations and Australian Governments, National Agreement on Closing the Gap (July 2020), pp31-32.

commitment to fully close the gap by 2031.[135]

Given that Victoria has made almost no progress towards that goal since 2017,[136] it is clear that major policy change is needed to reduce the traumatising effects of over-incarceration on Aboriginal people and their communities. The continuing criminalisation of drug use, and its treatment as a criminal justice issue rather than a public health issue, means that Aboriginal people are needlessly imprisoned in Victoria. Recognising the inefficacy and injustice of criminalising drug use is an important step toward reducing over-incarceration.

The impact of criminal records

Aboriginal people are more likely to have a criminal record than non-Aboriginal people, and their overrepresentation in convictions for personal drug use is an important contributor to this situation. A criminal record has a major, disruptive effective on a person's life. The prevalence of criminal records among Aboriginal people helps perpetuate the community's lesser access to housing, employment and other services, entrenching marginalisation.

The Victorian Parliament's *Inquiry into the use of cannabis in Victoria* found that criminal records for cannabis offences act as an obstacle to accessing housing, employment and other services, which raises the risk of further contact with the criminal legal system.[137] Evidently, criminal records for using other kinds of drugs have a similar or greater effect. The consequences of having a criminal record for Aboriginal people can include:

- Difficulty accessing employment in many industries
- Exclusion from social and affordable housing
- Stigma in the community and exclusion from important kinship relationships
- For victim-survivors of family violence, a higher likelihood of being misidentified by police as a the person who has perpetrated violence
- A reduced likelihood of being granted bail in case of any later contact with police

All of these consequences, perversely, make it less likely that a person will be able to control and manage their use of drugs. Instead, they raise the chances of further marginalisation –

135 Victorian Government & Aboriginal Justice Caucus (2018) Burra Lotjpa Dunguludja: Aboriginal Justice Agreement Phase 4, pp30-31.

136 Ibid. The AJA reported a baseline of 1,495 Aboriginal people under adult justice supervision in 2017. At 30 June 2021, there were 1,468 Aboriginal people under supervision (771 in prison and 697 under community supervision.) Corrections Victoria, *Monthly Prisoner and Offender Statistics 2020-21*, Tables 1.12 and 2.12.

137 Victorian Parliament, *Inquiry into the use of cannabis in Victoria*, p158.

including homelessness and unemployment – which increases the risk of continuing drug use and ongoing, escalating contact with police and the criminal legal system.

A particular issue for Aboriginal communities is that criminal records can obstruct kinship care relationships. Both the stigma of criminal records and the legal requirements of the Working With Children Check process mean that someone with a record for using drugs may not be willing or able to undertake a kinship care arrangement.[138] This can mean that an Aboriginal child is placed with a more distant family member or friend, or removed into the care of child protection, because of low-level drug use. Disrupting the family and cultural connections of Aboriginal children is a serious harm, which is not justified by any serious risk associated with drug use.

138 Ibid, p162.

Part 2: Harm Reduction and Public Health

Public Health Approaches in Public Policy

The heart of VALS' position on drugs is that, to the extent that drug use is a social problem at all in Victoria, it is a public health problem that should be dealt with through a public health response. Public health response to issues like drug addiction involves understanding the drivers of people's behaviour and trying to provide positive support for behaviour change rather than using punishment and deterrence to coerce it.

In Victoria, moving towards more constructive public health responses is especially important for Aboriginal people. The colonial context of Australian criminal legal institutions means that trying to tackle health issues through police and prisons, while harmful for everyone, has disproportionate effects on Aboriginal people. This is particularly the case in relation to issues like drug use. The criminal justice approach that has traditionally dominated this discussion allows for Aboriginality to be pathologised as a risk factor for 'drug abuse', instead of recognising the traumatised and disadvantaged positions that Aboriginal people have been pushed into by systems, process and policies within Australian society.[139]

A failure to adopt a public health approach to public health issues is one of the key drivers of Victoria's growing prison population. The criminalisation of drug use is not the only area in which a focus on policing and criminal punishment has failed. Police remain at the centre of governmental responses to a range of issues which should be properly treated as public health issues. Three clear examples of this are the criminalisation of public intoxication, the policy approach to the pandemic, and the response to people experiencing mental health crises.

Decriminalisation of Public Intoxication

The repeal of offences for being intoxicated in public was recommended by the **RCIADIC** in 1991. More than a third of the deaths investigated by the RCIADIC took place when the person was detained for public intoxication, either for the criminal offence of public intoxication or pursuant to 'protective custody' powers.[140] In Victoria, this recommendation was ignored until 2019, when the Government finally committed to decriminalisation – after almost two years of advocacy by the family of Aunty Tanya Day, who

139 Amy McQuire, "Black and White Witness", Meanjin (Winter 2019).

140 VALS (2022), *Community Factsheet: Decriminalising public intoxication*.

was arrested for public intoxication and passed away after a fall in a police cell in December 2017.

Public intoxication is a textbook example of how policing responses to public health issues are ineffective, and disproportionately harmful to Aboriginal people. Whilst Aboriginal people make up 0.8% of the Victorian population, 6.5% of all public intoxication offences between 2014 and 2019 were recorded against Aboriginal people. Even in other states, where public intoxication offences have been removed, 'protective custody' continues to be used disproportionately against Aboriginal people, and still leads to people being detained when they have done nothing other than be intoxicated in public.[141]

Victoria is still in the process of decriminalising public intoxication and establishing a health response. The process has taken far too long, and the Government still has not made its position clear on key issues about the design of the new health response. VALS has consistently maintained that:[142]

- Victoria Police should not be First Responders in a health response to public intoxication and should not be given any new powers to respond to public intoxication
- If Victoria Police are involved in the health response, they should only be involved as a last resort and their role should be strictly limited.
- Victoria Police must be prohibited by legislation from detaining someone in a police cell or station for public intoxication.
- The threshold for police involvement (including a referral to police), must be high, where there is a "serious and imminent risk of significant harm to the intoxicated individual or other individuals."
- They should not have the power to detain someone in a public place whilst they identify a safe place where the person can sober-up. If police are given this power, it should be strictly limited.[143]
- They should not be given powers to detain someone for the purposes of transporting them to a safe place. If police are given transport powers, these powers must only be used as a last resort and must be strictly limited.[144]

141 Ibid, pp2-3.

142 Ibid, p7.

143 Expert Reference Group on Decriminalising Public Drunkenness (2020), *Seeing the Clear Light of Day: Report to the Victorian Attorney-General*, Recommendations 3, 9-15.

144 Expert Reference Group on Decriminalising Public Drunkenness (2020), *Seeing the Clear Light of Day: Report to the Victorian Attorney-General*, Recommendations 3, 9, 37.

- If police provide transport to an Aboriginal person, they must be required to notify the VALS Custody Notification Service.
- Health personnel should not have any powers to detain people who are intoxicated in public.
- If any new legislative powers are introduced, there must be robust accountability and oversight mechanisms in place to prevent abuse of these powers.

After several years of work, there is still no clarity on these issues. If they are not addressed, there is a risk that the new 'health response' will continue to see Aboriginal people detained for public intoxication, which a high risk of further harm and loss of life.

Pandemic Responses

The Victorian Government's response to the COVID-19 pandemic was heavily focused on police enforcement of public health restrictions. From mid-December 2020 until February 2021, 39,985 fines were issued to Victorians in breach of COVID-19 restrictions.[145] The vast majority of these fines were issued in relation to breaching lockdown restrictions, gathering limits, and travel restrictions.[146]

The Public Accounts and Estimates Committee Inquiry into the Victorian Government's response to the COVID-19 pandemic found that the most socio-economically disadvantaged Local Government Areas (**LGAs**) received twice the number of COVID-19 restriction breach fines per capita from April to September 2020, when compared with the most socio-economically advantaged LGAs.[147] In analysing the fines issued for COVID-19 restriction violations relative to the Australian Bureau of Statistics' Socio-Economic Indexes for Areas (**SEIFA**) data, the most disadvantaged LGAs received 0.73% per capita the total number of fines issued from April-September 2020.[148] Comparatively, LGAs with the most socio-economic advantage received just 0.36% per capital of the total number of fines issued.[149]

The five-day lockdown of public housing towers in North Melbourne and Flemington is another example of the harmful, policing-focused response to the pandemic in Victoria. The lockdown

145 Josh Taylor. "People in lower socio-economic areas twice as likely to cop a COVID fine, Victorian inquiry finds", The Guardian (February 2 2021).

146 Kristian Silva. "Victorians have been hit with thousands of COVID fines in the pandemic", ABC News (March 12 2022).

147 Public Accounts and Estimates Committee, "Inquiry into the Victorian Government's Response to the COVID-19 Pandemic" (Report, February 2021), p265.

148 Ibid.

149 Ibid.

confined families to their homes without exceptions, a far harsher restriction than was imposed elsewhere in Victoria. Enforcement of this lockdown was maintained by hundreds of police officers and Protective Services Officers. A high proportion of residents in the public housing towers were from over-policed communities that were likely to be particularly traumatised by this enforcement – including at least 12 Aboriginal families supported by VALS,[150] in addition to families from refugee and other culturally and linguistically diverse backgrounds, as well as people experiencing mental health and substance use problems.[151] The Victorian Ombudsman subsequently found that the lockdown violated Victorian human rights law.[152] The enforcement of these harsh restrictions also inhibited the ability for healthcare organisations to provide critical services to those living in the locked-down towers. Harm Reduction Victoria have stated that that the presence of police obstructed their ability to provide drug-related health services to individuals in the tower.[153]

The impact of this is clear. Communities experiencing pre-existing, entrenched disadvantage were more likely to be targeted by police in enforcing COVID-19 restrictions, despite the challenges poverty and socio-economic disadvantage pose for adherence to harsh restrictions. The inequitable distribution of heavy financial penalties has meant that COVID-19 restrictions only reproduced and reinforced existing inequalities. A re-orientation towards a health-based approach to ensuring community adherence to public health measures would ensure both that pre-existing inequalities are not reproduced, and avenues for discrimination are challenged.

A public health approach would be focused on providing information and education to help people understand the importance of following restrictions, and providing the necessary economic and social supports to enable people to do so. This was the type of approach adopted by the ACT and New South Wales for much of the early phases of the pandemic, with considerable success. Such an approach can build community solidarity and achieve high levels of public health compliance. A police-led approach instead generates resentment and confusion, and has a disproportionate impact on already marginalised people. VALS advocated consistently for a genuine public health approach to the pandemic, from the first declaration of a state

150 VALS (2020), *Public Accounts and Estimates Committee COVID-19 Inquiry Submission*, p62.

151 Public Accounts and Estimates Committee, "Inquiry into the Victorian Government's Response to the COVID-19 Pandemic" (Report, February 2021), p189.

152 Victorian Ombudsman (2020), *Investigation into the detention and treatment of public housing residents arising from a COVID-19 'hard lockdown' in July 2020*.

153 Flat Out & Harm Reduction Victoria (2020), *Submission to the Inquiry into the Government's Response to the COVID-10 Pandemic*, p10.

of disaster[154] to the reintroduction of curfews in 2021,[155] and in submissions to the Victorian Parliament's inquiry into the management of the pandemic.[156] The importance of a public health approach was also the basis of VALS' advocacy around the new pandemic management legislation, passed through Parliament in late 2021.[157]

Mental Health in Victoria

Responses to mental health issues in Victoria have long been too reliant on policing, with a focus on police-responses rather than a health-based approach. The new *Mental Health and Wellbeing Act* maintains significant powers for police officers in relation to people having mental health crises, and also gives new powers to less-trained Protective Services Officers.[158] This change is fundamentally at odds with Recommendation 10 of the Royal Commission into Victoria's Mental Health System, that "wherever possible, emergency services' responses to people experiencing time-critical mental health crises are led by health professionals rather than police."[159]

There have been a number of instances where police in Victoria were found to have used force inappropriately, or failed to appropriately de-escalate interactions with individuals experiencing mental health difficulties.[160] In 2017, footage emerged of six Victoria Police officers assaulting a disability pensioner, following a welfare call by the man's psychologist.[161] In 2020, police officers struck a man with a police car and stomped on his head during a response to a mental health incident in Epping.[162] Police do not have the right experience, professional background or training to deal with people experiencing acute mental health issues. The training given to police will always incline them to view these incidents through a lens of criminality or public disturbance, rather than with a supportive or clinical approach. Relying on police to respond to these health challenges will inevitably lead to a recurrence of these types of incidents.

154 VALS (2020), 'Increased police powers must not be free kick for discrimination'.

155 VALS (2021), 'The Andrews Government's love affair with policing is cheating Victoria out of an effective pandemic strategy'.

156 VALS (2020), *Public Accounts and Estimates Committee COVID-19 Inquiry Submission*.

157 VALS (2021), *Fact Sheet: Managing the pandemic in Victoria*.

158 Mental Health and Wellbeing Act 2022, Chapter 5.

159 Royal Commission into Victoria's Mental Health System (2021), *Recommendations*.

160 Police Accountability Project (2019), "Calls for Real Change in Policing of People with Mental Illness".

161 Nick Mckenzie, "Beaten, abused, humiliated and filmed by Victoria Police", The Age (2 April 2018).

162 The Age, 15 September 2020, 'IBAC to investigate two officers over Epping head-stomping incident'.

Profound problems also exist with the prolonged detention of people found unfit to stand trial. There is no data on how many individuals are currently imprisoned despite being deemed unfit to stand trial.[163] Victoria's current processes for people found unfit to stand trial can exclude people from the legal process of a trial, while still sending them to a prison environment which is entirely unsuitable for managing – let alone treating – their underlying mental health issues. This type of incarceration compounds the discrimination suffered by an acutely vulnerable group of people.

The police-led response to mental health crises is also closely related to the criminalisation of drug use. In Victoria, a wave of individuals being ascribed a 'dual diagnosis' demonstrates the extent to which mental health and drug addiction often exist in symbiosis, and hence require health-focused approaches over one's rooted in punitive justice and criminalisation. 'Dual diagnosis' refers to individuals who experience both substance use issues, and mental health issues.[164] Dual diagnosis is increasingly common in Australia, with 20% of those classified as drug dependent experiencing affective disorders (schizophrenia, bipolar disorder).[165] For the general population of those experiencing mental health issues, 35% also meet the criteria for a substance use disorder.[166] Although there is difficulty in determining causal links between the two (mental health issues may trigger substance use as a form of self-medication, or persistent drug use may trigger or exacerbate mental illness), they often present together and consequently require dual-treatment. However, the mental health, and drug and alcohol support and treatment services in Victoria fail to overlap sufficiently, forcing an individual with dual diagnosis to navigate two different systems to treat conditions that often significantly converge. The criminalisation of drugs pushes people away from both of these systems, and instead into contact with police who are more likely to regard them as simply drug users and not provide them with appropriate care or support.

Harm Reduction and Drug Policy

Harm reduction in the context of drug use, as understood by VALS, is a set of principles and practises designed to mitigate the adverse consequences of drug consumption and substance

163 Victorian Ombudsman. "Investigation into the imprisonment of a woman found unfit to stand trial" (Report, October 2018), p5.

164 Department of Health. "Substance misuse and mental illness-dual diagnosis" (Fact Sheet, 2017).

165 Ibid.

166 Ibid.

abuse.[167] It means recognising that some level of drug use is inevitable, irrespective of legislation criminalising it, and working to minimise the harms associated with it.[168] A harm reduction approach has a strong human rights orientation, with a focus on non-coercive measures that do not require people to stop using drugs in order to receive support.[169] Unlike traditional approaches to drug use that centre on criminalisation and abstinence,[170] harm reduction initiatives aim primarily at health outcomes, built on strong social and community connections.

Harm reduction practices are diverse, because they are based on clear evidence about what different supports are effective in different situations.[171] Initiatives that have been employed, both in an Australian context and internationally, include needle safety programs, safe-injecting and other drug consumption rooms, overdose education and prevention training (including the use and distribution of Naloxone to combat opiate overdose), and pill-testing.[172]

The harm reduction movement is built on principles of compassion and dignity, and respect for the fundamental rights of persons who use drugs, their families and broader communities.[173] Supporters of harm reduction insist that engaging in drug use should not preclude a person from free and equal participation in society. A logic of harm reduction seeks to "meet people where they are",[174] working without judgement or stigma to ensure that support services can reach as many people as possible. Consequently, all harm reduction initiatives are underpinned by informed consent, as opposed to mandatory treatment.[175]

Existing Harm Reduction Policies in Victoria

A number of harm reduction initiatives are currently in place in Victoria. These have been met with both largely positive public reception, and strong results in mitigating the adverse effects of drug use.

167 National Harm Reduction Coalition, "Principles of Harm Reduction".

168 National Harm Reduction Coalition, "Principles of Harm Reduction".

169 Harm Reduction International, "What is Harm Reduction?".

170 Victorian Aboriginal Legal Service, Submission to the Inquiry into the Use of Cannabis in Victoria (2020), p17.

171 Harm Reduction International, The Global State of Harm Reduction 2020, p26.

172 Ibid, p86.

173 National Harm Reduction Coalition, "Principles of Harm Reduction".

174 Harm Reduction International, The Global State of Harm Reduction 2020, p13.

175 Harm Reduction International, "What is Harm Reduction?".

Needle and Syringe Program

One of Victoria's longest standing harm reduction initiatives is the Needle and Syringe Program (**NSP**).[176] Established in 1987, the NSP emerged as a public health initiative designed to decrease the transmission of blood-borne viruses like HIV, and hepatitis B and C, which are more prevalent amongst communities who participate in intravenous drug use.[177] The NSP program operates across a variety of service providers and institutions, including government-funded NSPs (which provide both needle disposal and exchange, and information, advice and referrals), as well as community health services, youth organisations, some pharmacies, and drug treatment agencies.[178] Funded NSPs function on both a fixed-site basis, and through mobile services, hotlines, and outreach mechanisms.[179] It is estimated that NSP programs have prevented thousands of infections across Australia, and have led to a significant decrease in needle sharing practices amongst communities that engage in intravenous drug use.[180]

Opioid Replacement Therapy

Pharmacotherapy, or opioid replacement therapy, has also been successful as a harm reduction initiative in the Victorian context.[181] Beginning in the mid-1990s, Victoria transitioned from a clinical model of pharmacotherapy towards a community-based delivery model that incorporated both general practice and community pharmacy.[182] This means that long-term users of heroin or other opioids are able to access opioid replacement therapy, either in the form of methadone, buprenorphine, or a combination of buprenorphine and naloxone (Suboxone) from community-based services without the need for excessive clinical intervention or bureaucracy.[183]

Opioid replacement therapy sees success in both assisting in maintenance treatment for long-term opioid users, and in detoxification.[184] Methadone, buprenorphine and Suboxone bind themselves to the same receptors in the brain as opioids (including heroin, codeine,

176 Department of Health and Human Services, 'Needle and Syringe Program', Prevention and Harm Reduction (11 November 2021).

177 Ibid.

178 Ibid.

179 Ibid.

180 Ibid.

181 Department of Health and Human Services, 'Pharmacotherapy Policy in Victoria'.

182 Department of Health and Human Services, Policy for maintenance pharmacotherapy for opioid dependence, p11.

183 Ibid, p20.

184 Ibid, p10.

fentanyl, oxycodone, hydrocodone, and morphine), reducing cravings, and the effect of opiate withdrawal.[185] The chronic nature of opioid dependence requires that maintenance programs be accessible on a daily basis.[186] In the Victorian context, this has been facilitated by a number of methadone clinics that offer holistic support alongside pharmacotherapy, and through facilitating general practitioners to offer opioid replacement therapy.[187] This model of general practice has seen significant success in Victoria through providing pharmacotherapy in a context where multidisciplinary approaches to the health and comorbidities of drug use can be addressed. Equally, integrating pharmacotherapy into existing health services helps reduce the stigma around accessing drug support services, and reinforces the notion that drug use is a health issue.

In 2020, 50,000 people Australia-wide participated in opioid replacement therapy to treat opioid dependence, of which 15,000 were in Victoria.[188] This represents a 4.7% increase in the number of opioid dependent individuals transitioning into maintenance treatment, the single greatest per annum increase on record.[189] Corresponding to the increase in recipients of pharmacotherapy treatment, there has been a 15% increase in authorised providers of opioid replacement therapy since 2016.[190]

However, Aboriginal people dependent on opioids in Victoria are less likely to receive opioid replacement therapy than their non-Aboriginal counterparts, despite representing a proportionately higher percentage of heroin users in the state.[191] For those who do access treatment, Australia-wide data demonstrates that Aboriginal people experience excessive delays in both admission to opioid replacement programs, and maintain lower treatment retention

185 National Institute on Drug Abuse, Medications to Treat Opioid Use Disorder: Opioid Agonists and Partial Agonists (Research Report, 13 May 2021).

186 Department of Health and Human Services, Policy for maintenance pharmacotherapy for opioid dependence, p71.

187 Ibid, p11.

188 Royal Australasian College of Physicians, *Interim guidance for the delivery of medication assisted treatment of opioid dependence in response to Covid-19: a national response* (Guideline Report, 21 April 2020), p3.

189 Morgan Liotta, 'Who is seeking pharmacotherapy treatment for opioid dependence?', Royal Australian College of General Practitioners News (6 April 2021).

190 Australian Institute of Health and Welfare, National Opioid Pharmacotherapy Statistics Annual Data Collection (Annual Report, 30 March 2022).

191 Australian Institute of Health and Welfare, National Opioid Pharmacotherapy Statistics Annual Data Collection (Annual Report, 30 March 2022), p11.

rates.[192] This is problematic because consistent treatment is critical to achieving beneficial outcomes from pharmacotherapy. Greater resources to support culturally safe treatment pathways for Aboriginal opioid users would improve treatment outcomes in the state of Victoria.

Medically Supervised Injecting Rooms

Beginning in 2018, the Victorian government has been conducting a trial of a medically supervised injecting room (**MSIR**), located at the North Richmond Community Health Service on Lennox Street in North Richmond. The placement of the MSIR is of strategic importance, in a part of Richmond which has consistently seen high rates of heroin use for over 40 years.[193] The MSIR offers a supervised setting in which people can engage in intravenous drug use under the care of trained staff. This ensures that if an individual overdoses, they will be immediately responded to. Equally, as the MSIR is incorporated into the broader North Richmond Community Health Service, it is able to facilitate access to additional health services including blood testing, wound care, sexual health services, drug treatment, and mental health services.[194]

Key statistics in the first four years of the MSIR's operation include:[195]

- Since its opening, the MSIR has received 322,351 visits, of whom around one in six identify as Aboriginal, and one in three are homeless or in unstable housing.
- 5,907 overdoses have been mitigated.
- 103,110 additional health services have been provided onsite (mental health support, oral health, blood testing, and primary care services).
- 2,362 housing support services provided.
- 280 clients commenced treatment for Hepatitis C whilst onsite, with more than 900 others undergoing testing.
- 600 people have commenced participation in an opioid replacement therapy program, and 3,084 referrals made to external services for drug treatment support.

By providing a service for people who use drugs to access health services without requiring the cessation of drug use, the MSIR reduces the stigma around drug use, and engages with the community in an adaptable and responsive way. The success of the MSIR is reflected in the

192 National Indigenous Drug and Alcohol Committee, Alcohol and other drug treatment for Aboriginal and Torres Strait Islander peoples Policy Report, June 2014), 17.

193 North Richmond Community Health, Medically Supervised Injecting Room (2021).

194 Medically Supervised Injecting Room Review Panel (2020), Review of the Medically Supervised Injecting Room, p103.

195 North Richmond Community Health (2022), *Saving lives – updated results from the MSIR, 30 June 2018 – 30 June 2022*.

Victorian Government's decision to extend the trial for an additional three years.[196]

There are also plans for a second medically supervised injecting room to be established in the City of Melbourne, located near the Queen Victoria Market in order to combat the 51 deaths from opioid overdose in the municipality over the last 12 months.[197]

The success of existing initiatives provides a strong evidence base for harm reduction initiatives and practices in Victoria. The aforementioned positive steps in relation to the approach of Victoria to both drug use, and to people who use drugs are prime examples of the strength of a harm reduction approach.

Harm Reduction and Criminalisation

A harm reduction approach orients itself around practices that destigmatise drug use, in order to help people access the support they need with dignity and empowerment. Harm reduction initiatives like those which have been undertaken in Victoria are vitally important, but the logic underlying them sits uneasily with the continuing criminalisation and harsh penalties for personal drug use. Moving away from the criminalisation of drugs is a natural extension of the logic of existing harm reduction initiatives.[198]

Many of the adverse consequences of drug use on individuals, families and communities flow from the criminalisation of drugs rather than the use itself. This is both because policing and criminalisation have harmful effects, and because criminalisation makes it harder for people to access support when they need it. Decriminalisation ensures that for those who use drugs, particularly if that drug use is generating negative consequences for that individual and their community, access to assistance and support is navigated without fear of prosecution or police interaction.[199] Harm reduction initiatives like safe injecting rooms, needle exchange programs and pharmacotherapy are undermined in their efficacy when they exist within a legal framework that continues to criminalise and heavily punish drug use.

The decriminalisation of drugs is a central pillar in supporting harm reduction initiatives more broadly. This is supported by a significant evidence base, including within Australia at

196 Medically Supervised Injecting Room Review Panel (2020), Review of the Medically Supervised Injecting Room, p viii.

197 Bianca Hall & Noel Towell, 'State's second safe injecting room to open opposite Queen Vic Market', The Age (5 June 2020).

198 Joint United Nations Program on HIV & Aids, Health, Rights & Drugs: Harm Reduction, Decriminalisation and Zero Discrimination for People who use Drugs (Report, 2019).

199 Ibid, p13.

present. Following the decriminalisation of possession and cultivation of personal use quantities of cannabis in the ACT in 2020, seeing a 90% decline in the number of cannabis cautions issued by the ACT police, but no corresponding increase in hospitalisations linked to cannabis consumption.[200] According to ANU Associate Professor and clinical psychologist Tegan Cruwys, "Decriminalisation does not legalise drugs. Our hope (for decriminalisation) is that it will reduce the degree to which people who take drugs are penalised, but also lead to better social and health supports that meet their needs".[201] The ACT's experience with cannabis decriminalisation has led to a further parliamentary inquiry, and a decision to introduce a decriminalisation model for all drugs, building on the success of the cannabis reform and other harm reduction initiatives.

By moving towards the decriminalisation of drugs, Victoria can extend its legacy of successful harm reduction practices, while ensuring that the system is accessible, equitable and empowering.

Advancing Drug Policy Reform in Victoria

Inquiry into the Use of Cannabis in Victoria

An important recent step towards drug policy reform in Victoria was the *Inquiry into the use of cannabis in Victoria*, conducted by Parliament's Legislative and Social Issues Committee from 2019 to 2021. The final report of the inquiry included a number of significant findings which should pave the way for reform of drug law in Victoria.

Key findings of the Inquiry included:

- That "[t]he harms that arise from the criminalisation of cannabis affect a larger number of people and have a greater negative impact than the mental health and other health harms associated with cannabis use."[202]
- That Victoria Police's cannabis cautioning program is inconsistently applied and is overly restrictive.[203]
- That Aboriginal people are "significantly overrepresented in sentencing statistics for minor cannabis offences compared to other Victorians"[204] and that Aboriginal people

200 Australian National University (2021), "Decriminalisation of Illicit Drugs Supports Harm Reduction", Research School of Psychology.

201 Ibid.

202 Parliament of Victoria, Legislative Council Legal and Social Issues Committee (2021), *Inquiry into the use of cannabis in Victoria*, p102.

203 Ibid, p131.

204 Ibid, p141.

face particular trauma from interactions with the criminal legal system.[205]

- That criminal records for cannabis offences act as an obstacle to accessing housing, employment and other services, which raises the risk of further contact with the criminal legal system.[206]

These findings, and the large body of submissions and expert evidence on which they were based, clearly support VALS' position that criminalisation of cannabis use in Victoria is harmful, particularly for Aboriginal people, and serves no reasonable public policy goal. They are also highly relevant to drugs other than cannabis, since policing of other drugs is even heavier and opportunities for diversion and non-criminal legal responses even more limited.

The draft report of the Inquiry included recommendations to legalise cannabis and expunge minor cannabis offences from people's criminal records.[207] These recommendations reflected the two years of work that had been done assessing expert evidence after the Inquiry began in May 2019. In July 2021, two weeks ahead of the report being released, Government MPs watered down the report, so that it recommended only 'investigating' the legalisation of cannabis.[208]

A two year inquiry, the findings of which clearly supported legalisation of cannabis, does not need to be followed by further investigation – it should be followed by reform. VALS is deeply disappointed by the Andrews Government's move to water down the Inquiry's report, and by the Premier's response dismissing even those weaker recommendations.[209]

Bill for the Partial Decriminalisation of Drugs

Following the Inquiry into the use of cannabis in Victoria, in February 2022 the leader of the Reason Party, Fiona Patten – who chaired the cannabis inquiry – introduced a bill to partly decriminalise drug use. The *Drugs, Poisons and Controlled Substances Amendment (Decriminalisation of Possession and Use of Drugs of Dependence) Bill 2022*[210] (the 'Decriminalisation Bill') seeks to decriminalise both use and possession of a small quantity of any drug. The Bill is intended to follow the Portuguese model of decriminalisation, and lead a transition from a criminal justice

205 Ibid, p163.

206 Ibid, p158.

207 The Age, 5 August 2021, 'Andrews government quashes push to legalise cannabis in Victoria'.

208 Parliament of Victoria, Legislative Council Legal and Social Issues Committee (2021), *Inquiry into the use of cannabis in Victoria*, p285.

209 7 News, 5 August 2021, 'Vic premier dismisses call to legalise pot'.

210 Drugs, Poisons and Controlled Substances Amendment (Decriminalisation of Possession and Use of Drugs of Dependence 2022 (Vic)

model of engaging with drug use, to a health based, harm-reduction approach.[211]

The central aim of the Decriminalisation Bill is to establish an alternative response to drug use and the possession of a small quantity of drugs. The Bill does not eliminate these offences, but it includes several major changes to alter the penalties for them. The Bill creates the following requirements in relation to the offences of drug use or possession of a small quantity of drugs:

- Police must issue a 'drug education or treatment notice' to a person who has committed one of the offences[212]
- Police cannot prosecute a person for these offences unless a person has failed to comply with the education or treatment notice[213]
- The penalty for these offences, if they are prosecuted, is reduced to 1 penalty unit[214] (currently $185)

The Bill makes no changes in relation to possession of larger quantities of drugs, or the sale, cultivation or manufacture of drugs. Drugs can still be seized by police and cannot be recovered by the person. The thresholds for a 'small quantity' already exist in the Drugs Act and are not amended by the Bill.[215] For example, a small quantity is defined as 50 grams of cannabis, 0.75 grams of methamphetamines, one gram of heroin, and one gram of cocaine.[216]

VALS' Position

VALS welcomes the introduction of the Decriminalisation Bill and its commitment to a health-based approach to drug use. However, the Bill is far from perfect. If Victoria is to end the unnecessary harm inflicted on Aboriginal people by the criminalisation of drugs, this Bill will need to be the start of a conversation about reform, not the end point.

The Bill has a number of important features which reflect international best practice, as discussed further in the next section of this report. These features include:

- Clearly defined limits for personal use/small quantity
- No delineation between 'hard' and 'soft' drugs

211 Patten, Fiona, Speech on the Drugs, Poisons and Controlled Substances Amendment (Decriminalisation of Possession and Use of Drugs of Dependence) Bill 2022, 23 February 2022.

212 Decriminalisation Bill, Section 13.

213 Decriminalisation Bill, Section 8

214 Decriminalisation Bill, Sections 8 and 9

215 Drugs Act, Schedule Eleven, Parts 2 and 3.

216 Ibid.

- Avoiding criminal charges and convictions
- Low financial penalties

However, there are still major shortcomings in the approach embodied in the Bill.

Extensive Involvement of Police

The Bill creates avenues for people to avoid criminal charges for drug use or possession, but these avenues are still administered entirely by Victoria Police. It is police who determine what conditions will be included in a person's drug education or treatment notice, and who decide whether to prosecute an offence if a person does not comply.[217] Police do not have the relevant expertise to assess what kind of education or treatment a person would benefit from; given the history of anti-drug policing, they are also likely to be biased towards onerous conditions, as are frequently imposed on bail and parole orders (discussed above). It also empowers police to continue coercive policing of drug use and possession at street level, with inevitably disproportionate impacts on Aboriginal people.

In other jurisdictions, such as Portugal, these powers are given to a specialised committee. Leaving these powers with police means that the Bill does not establish a genuine public health approach, but effectively a more regulated version of existing police diversion programs.

Excessive Responses to Non-Problematic Use

The Bill allows police to issue a drug education or treatment notice to anyone who uses or possesses a small quantity of drugs.[218] It does not establish a connection between the conditions of the notice and the circumstances of the drug use, nor does it appear to allow the Government to make regulations on this subject.[219] The effect is that a person could potentially be required to enter drug treatment after a single instance of social cannabis use. At a minimum, anyone stopped by police in relation to drug use or possession will receive an order with some conditions – there is no option to simply not proceed. This is in contrast to best practice approaches, detailed further below. Without this kind of option, the Bill will still often lead to excessively harsh responses to drug use which poses no real threat to the individual or anyone else.

217 Decriminalisation Bill, Section 13 (new section 80AAC).

218 Ibid.

219 Decriminalisation Bill, Section 13. This section establishes drug education and treatment notices in new section 80AAB. New clause 80AAB(3) provides that regulations can be made setting out what conditions may be included in a notice, but does not specifically provide that regulations may establish a connection between permissible conditions and the circumstances of the drug offence.

Mandatory Treatment Under an Education or Treatment Notice

Under the Bill, a drug education or treatment notice can direct a person to access treatment for their use of drugs.[220] This could include directing someone to enrol in a specific service at specific times, and provide evidence that they have done so.[221] A drug education or treatment notice can be in force for up to 12 months, and if the person does not comply at any point, they can be prosecuted and receive a conviction and criminal record. This effectively makes participation in treatment mandatory for people who have received a notice.

Mandatory treatment, or coercive approaches to treatment, fall outside the recommendations of international guidelines on harm reduction approaches.[222] Evidence demonstrates that treatment and rehabilitation in relation to drug use is most effective when initiated by the individual using drugs, as opposed to mandatory participation, as discussed further in Part 3 of this report.

Lack of Specific, Culturally Appropriate Provisions for Aboriginal People

While Ms Patten's speech in proposing the amendment acknowledged the compounding disadvantages faced by Aboriginal people who use drugs in Victoria,[223] the Bill does not contain any specific measures to support Aboriginal people. Given the current practice of disproportionate enforcement of drug laws against Aboriginal people, targeted supports and protections are absolutely necessary. In particular, the Bill should ensure that drug education and treatment notices are culturally appropriate – for example by specifically requiring consideration of a person's Aboriginality when preparing a notice. This kind of provision is essential to avoid the unequal enforcement of drug laws simply persisting under the Bill.

Drug Diversion and Infringement Working Group

Following the defeat of the Decriminalisation Bill in the Victorian Parliament, the Government agreed to establish a Drug Diversion and Infringement Working Group, to consider options for a trial of different approaches to enforcing drug law.[224] Very little information has been made public about this potential trial, but it appears likely to involve a less extensive version of the

220 Decriminalisation Bill, Section 13 (new section 80AAB).

221 Decriminalisation Bill, Section 13 (new section 80AAB(3)).

222 United Nations (2012), *Joint Statement: Compulsory drug detention and rehabilitation centres*, p2; World Health Organisation & UN Office on Drugs and Crime (2020), *International standards for the treatment of drug use disorders*, p21.

223 Patten, Fiona, Speech on the Drugs, Poisons and Controlled Substances Amendment (Decriminalisation of Possession and Use of Drugs of Dependence) Bill 2022, 23 February 2022.

224 The Age, 9 March 2022, 'Expert panel to look at new approach to drug crime in Victoria'.

approach in the Decriminalisation Bill, focused on expanding diversion rather than on reducing the policing of drug possession.

For a trial of drug education and treatment notices to be well-designed and informative, it is crucial that the working group incorporates the voices of the people most affected by the current approach to drug law enforcement – in particular, Aboriginal people and people with lived experience of drug law enforcement.

The decision to establish a working group, which will consider whether to conduct a trial, disappointingly reflects the Government's extreme caution around drug reform. When even the Victoria Police Drug Strategy concedes, at least in theory, that the criminalisation-focused response to drug use has failed, a bolder approach is needed.[225]

225 Victoria Police (2020), Victoria Police Drug Strategy 2020-2025, p18.

Part 3: Learning from International Experience

The criminalisation of drugs has created serious social problems around the world, and many jurisdictions have reformed their drug laws in recognition of these harms. Different approaches to drug reform have been taken in different countries and at different times. It is crucial to understand what has worked, what has failed, and where well-intentioned reforms have fallen short of their goals. Drug use is a complex public health issue, and criminalisation has inflicted serious and long-lasting harms. Undoing that damage and succeeding with an empowering, health-focused approach to drug use will only be possible with a careful examination of reform efforts elsewhere in the world. Repeating the mistakes from other jurisdictions would only set back reform by years, or even decades. It is equally important that those who map out the way forward in Victoria do not simply "copy-paste" best practices from other jurisdictions, without properly tailoring those practices to the unique Victorian context, or without a particular focus on the needs and experiences of Aboriginal people in this State.

Our Analysis

VALS has conducted research on approximately forty jurisdictions which have changed the legal status of some or all drugs. This research was completed with the support of pro bono research assistance from other legal professionals.

There is no single or dominant model in drug policy reform internationally. Some jurisdictions have focused their efforts on cannabis, while others have reformed the law on all drugs. The scale of reform is varied: from replacing criminal punishment with administrative penalties (such as fines), to eliminating drug possession as a criminal offence altogether to full legalisation of the production, sale and use of some drugs.

There is also no clear trend over time towards one form of drug law reform or another. In many countries, possession of drugs for personal use has not historically been criminalised; some of those jurisdictions have moved towards prohibition in recent decades or narrowed the scope of what constitutes personal use, while others have maintained their more health-based approach. In some jurisdictions, a previously prohibitionist approach has shifted towards decriminalisation, in various forms.

The variety of approaches to drug law in different places, at different times mean that it is very difficult to identify a single 'best practice' model, or make detailed recommendations about what reform should look like. This is particularly true because any change in Victoria would need to recognise the particular experience of Aboriginal people, who are disproportionately affected by

criminalisation and for whom culturally safe support services are essential.

This section of the report, therefore, does not attempt to prescribe a detailed policy approach. Instead, we have identified good and bad practices that emerge from the range of different models that have been adopted in different jurisdictions. These lessons must be heeded as Victoria moves towards developing its own approach to drug reform.

Undefined Thresholds for Personal Use – Bad Practice

In some jurisdictions, possession of drugs for personal use is legal, decriminalised or subject to exemptions, but there are no defined thresholds for what amount of drugs constitutes a personal use amount. This creates inconsistency and arbitrariness, and enables continuing police interference and discretion, which undermines many of the benefits of decriminalising drugs.

Peru's decriminalisation of personal possession is almost entirely ineffective in practice, because police almost always detain people in possession of drugs as a first resort, and only then evaluate whether the drugs were for personal use; police can detain people on suspicion of drug trafficking offences for up to 15 days before they are required to come before a court.[226]

In Chile, the drug laws provide an exemption only for drugs intended for private use in the near future.[227] No thresholds are provided, so a judge is required to determine whether a quantity of drugs fits this exemption. The legal burden often falls on the arrestee to prove this, and Chile's laws on even small-scale trafficking remain harsh.[228] Costa Rica similarly provides no specific threshold for personal possession, and substantial penalties – generally a minimum of eight years imprisonment – for trafficking offences.[229] While judges have sometimes taken a more liberal approach, in one case finding that 200 grams of cocaine could be for personal use if there was no clear evidence indicating it would be sold,[230] there is no consistency, and case-by-case determination means continuing police involvement.

226 Soberón, R. (2010), 'Legislation on drugs and the prison situation in Peru' in: *Systems Overload: drug laws and prisons in Latin America*, pp 77-8; Transnational Institute, *Peru – Decriminalization – Overview of drug laws and legislative trends in Peru.*

227 *Ley 20000; Sustituye La Ley N# 19.336 que Sanciona el Trafico Ilicito de Estupefacientes y Sustancias Sicotropicas* 2005, Articulo 4.

228 Ibid.

229 Law Library of Congress (2016), Decriminalization of Narcotics, p12.

230 Amador & Cortres (n.d.), Políticas de drogas y salud pública en Costa Rica, p3.

In Paraguay, the law establishes maximum thresholds but *also* requires a case-by-case determination by a doctor, requiring people to engage with the judicial system to prove that they should not be prosecuted.[231] Italian law leaves it to the discretion of a police officer (and subsequently a judge, if the person is charged) to decide whether a quantity of drugs is for personal use, resulting in inconsistent application of the country's personal use exemption.[232] In Armenia, the 'small quantity' threshold for decriminalised possession is not defined and police in practice allow only very small amounts, leading to frequent arrests of people possessing drugs for their own use.[233]

The failure to clearly define appropriate thresholds for personal use undermines many of the benefits of decriminalisation. It means that police have discretion to continue interfering in the lives of people who use drugs through searches and arrests, even if a court later decides that the drugs they possessed were for personal use. Many of the harms of the criminalisation of drugs flow from the early stages of searching, arrest and detention by police, and these harms are not eliminated when thresholds are not clearly defined. These harms are particularly pronounced when penalties for trafficking offences remain very harsh.

Harsh Administrative Sanctions – Bad Practice

In many jurisdictions, decriminalisation takes the form of replacing criminal punishment with administrative penalties. In some cases, these administrative sanctions are very harsh. As well as the dangers of continuing to force interactions between police and people in possession of small quantities of drugs, discussed above, this practice means that drug use can still lead to significant hardship being imposed by the state, perpetuating the harms of criminalisation.

In Estonia, administrative penalties for personal possession and use can include administrative detention for up to 30 days.[234] Italy also imposes administrative penalties including suspension of a person's passport or driver's licence.[235]

A common form of administrative penalty is fines. While fines can be less onerous than other sanctions, they are sometimes levied at extremely high rates. Estonia's penalty for possession

231 Transnational Institute (2009), 'Drug Law Reform Trend in Latin America'.

232 Grazia Zuffa (2011), How to determine personal use in drug legislation: The "threshold controversy" in the light of the Italian experience, Series on Legislative Reform of Drug Policies No. 15, p1.

233 Release (2016), *A Quiet Revolution: Drug Decriminalisation Across the Globe* (2nd edition), p14.

234 European Monitoring Centre for Drugs and Drug Addiction (2019), Estonia: Country Drug Report 2019, p5.

235 European Monitoring Centre for Drugs and Drug Addiction (2017), Italy: Country Drug Report 2017, p4.

of a small quantity of prohibited drugs can be as high as EUR1200 (A$1750).[236] Armenia's fine is more than double the monthly minimum wage.[237] Some jurisdictions impose particularly large fines for associated offences, such as public use (see further below) or possession near a school: Trinidad and Tobago has a TTD$250,000 (A$55,000) fine for driving under the influence of cannabis or possessing cannabis in a school or children's sporting ground.[238]

Harsh fines can result in people from lower socio-economic backgrounds being imprisoned or facing prosecution for non-payment, undermining the benefits of abolishing criminal penalties.

Even where fines are small, there is a risk of 'net-widening' when drug possession attracts a fine rather than a charge and prosecution. In Israel, advocates have noted that people using cannabis who might previously have been ignored or informally warned by police – because it was clearly not appropriate to arrest or charge them – are now *more* likely to face interaction with police, because of the ease for police of issuing a fine.[239] Similar concerns have been expressed about the imminent decriminalisation of drug possession in the Australian Capital Territory.[240]

The burden of administrative sanctions inevitably particularly impacts on already marginalised and over-policed communities. A decriminalisation policy in Victoria which retained harsh fines or other sanctions could lead to net-widening, exposing more Aboriginal people to penalties, which can create extreme financial stress and lead to prosecution and further criminalisation.

High Penalties for Public Use of Drugs

Where the possession of drugs is decriminalised, strict prohibitions on the use of drugs in public are often maintained. These prohibitions, particularly when they come with harsh penalties, disproportionately affect marginalised people who are already subjected to over-policing.

In Chile, penalties for use in public places can include mandatory treatment and rehabilitation, or suspension of a person's driver's licence.[241] Colombia's law provides that possession or use of

236 European Monitoring Centre for Drugs and Drug Addiction (2019), Estonia: Country Drug Report 2019, p5.

237 Talking Drugs, 'Drug Decriminalisation Across the World' (Web Page, Accessed 6 May 2021).

238 *Dangerous Drugs Act, Chapter 11:25*, s5C.

239 Haaretz, 1 April 2019, 'Marijuana Decriminalization Goes Into Effect in Israel. What Does That Mean?'; Times of Israel, 13 June 2019, 'PM said to back law to legalize public pot-smoking, home-growing for private use'.

240 Unharm (2022), *Briefing note: Decriminalisation of drug use in the ACT: getting it right*, p1.

241 *Ley 20000; Sustituye La Ley N# 19.336 que Sanciona el Trafico Ilicito de Estupefacientes y Sustancias Sicotropicas* 2005, Article 50.

drugs, even under the permitted thresholds, is illegal in parks, sports centres, near schools, as well as in other locations determined by local authorities.[242] In Trinidad and Tobago, possession of up to 30 grams of cannabis is permitted, but using cannabis in public is punishable with a fine of $50,000 Trinidad & Tobago Dollars (approximately A$11,000), with even higher fines (noted above) for possession in certain areas such as schools.[243]

Harsh penalties for public use predominantly affect people who are homeless or in insecure housing, who are forced to live much of their private life in public spaces.[244] These penalties are particularly likely to impact Aboriginal people, both because Aboriginal people are overrepresented among homeless people and because they are disproportionately likely to be stopped and searched by police.[245]

Mandatory Treatment and Education – Bad Practice

Decriminalisation of drugs in some countries has been implemented by replacing criminal punishment with mandatory referrals to treatment or education programs. While improving access to treatment and education is an important complement to the decriminalisation of personal drug possession, mandatory treatment is a problematic approach which does not fully realise the promise of a public health-led, harm reduction-oriented drug policy.

Compulsory treatment arrangements vary between jurisdictions. In Paraguay, an individual found with drugs must go to court to argue that the substances were for personal use; in this process, the court may determine that a person is dependent on drugs and mandate treatment in an "assistance centre for medical treatment and social recovery".[246] Mandatory preventative education or treatment can be imposed as administrative penalties for drug possession in Chile.[247] In Costa Rica, when police find a child using drugs, they notify the child welfare

242 Talking Drugs, 'Colombia', web page accessed 21 September 2022

243 *Dangerous Drugs Act, Chapter 11:25*, ss 5A – 5D.

244 McNamara et al (2021), 'Homelessness and Contact with the Criminal Justice System: Insights from Specialist Lawyers and Allied Professionals in Australia', International Journal for Crime, Justice and Social Democracy 10(1), p114.

245 Public Interest Advocacy Centre & Homelessness NSW (2021), *Policing Public Space: The experiences of people sleeping rough*.

246 Release (2016) A quiet revolution: drug decriminalisation policies in practice across the globe", p 27; Ley No.1340/88 de Paraguay, Articulo 28.

247 *Ley 20000; Sustituye La Ley N# 19.336 que Sanciona el Trafico Ilicito de Estupefacientes y Sustancias Sicotropicas* 2005, Article 50.

agency, which can place the child in compulsory treatment.[248] Croatian law requires courts to impose mandatory treatment if there is a danger that a person's addiction may contribute to future offending.[249] Israel's partial decriminalisation of cannabis allows referrals to a mandatory counselling session for a third offence (and criminalisation for a fourth.)[250] Mexican drug law provides for mandatory drug treatment after three instances of drug possession, escalating from voluntary treatment referrals on the first two occasions.[251]

Mandatory drug treatment represents a coercion-focused approach to drug use. In some cases, it simply means that criminalisation is maintained: if there are sanctions for failure to attend or participate in treatment, many people who use drugs will continue to face charges and have their lives disrupted by criminal punishment. More significantly, mandatory treatment does not achieve effective rehabilitation for people who use drugs. Mandatory rehabilitation as an alternative to imprisonment for drug-related offences is of the same coercive nature of the criminal legal system, with the threat of imprisonment acting as a form of compliance-generation with treatment.

Compulsory treatment, particularly if it requires a form of inpatient admission, can also reproduce the harms of a prison environment. As the United Nations Office on Drugs and Crime has noted, "confinement in compulsory drug treatment centres often worsens the already problematic lives of drug users and drug dependent individuals".[252] The UN Working Group on Arbitrary Detention has also stated that "[d]rug treatment should always be voluntary", and that "providing defendants with a choice between imprisonment and drug treatment" is "is an unacceptable infringement on the right to choose one's treatment freely, to refuse treatment or to discontinue it at any time."[253] Mandatory treatment in a residential drug treatment centre may amount to arbitrary detention.[254] Compulsory drug treatment centres also reinforce, rather

248 Law Library of Congress (2016), Decriminalization of Narcotics, p12.

249 Criminal Code of Croatia, Article 59; see also Council of Europe, *Human Rights and people who use drugs in the Mediterranean Region: current situation in 17 MedNET countries*, p14.

250 Idan Zonshine, 'Fines for cannabis use skyrocket amid COVID pandemic', The Jerusalem Post (online, 13 March 2021).

251 Government of Mexico, Decree amending the General Health Law, the Federal Criminal Code and the Federal Code of Criminal Procedures (20 August 2009), Article 193 Bis.

252 United Nations Office on Drugs & Crime (2009), 'From Coercion to Cohesion: Treating Drug Dependence through Healthcare, not Punishment', p3.

253 United Nations Human Rights Council (2021), *Arbitrary Detention relating to drug policies: Study of the Working Group on Arbitrary Detention*, p13.

254 United Nations Human Rights Council (2021), *Arbitrary Detention relating to drug policies: Study of the Working Group on Arbitrary Detention*, p13.

than reduce, stigmas around drug use, by continuing to represent the idea that people who use drugs need to be excluded from normal society and coerced into compliance.

These coercive conditions are not conducive to an effective therapeutic relationship. In the German context, researchers have observed that a mandatory treatment system does not recognise the reality of how people who use drugs actually achieve rehabilitation from addiction:

> **"The forced report of any treatment interruption or drop-out leaves the therapist in a difficult conflict situation as drug-dependent clients often relapse and return to therapy several times before they finally succeed. The fact that therapists have to act contrary to the therapeutic relationship – i.e. the obligation to keep therapeutic discretion – serves to harm it."[255]**

> **"Charging treatment personnel with performing the dual functions of treatment and control increases the possibility of treatment failure. This is especially true whenever the therapists must violate their clients' trust and communicate the contents of their therapeutic relationship to law enforcement."[256]**

VALS agrees with the many experts whose view is that any form of compulsory treatment or rehabilitation is a form of coercion, which undermines the efficacy of decriminalisation and harm reduction approaches.[257] Consequently, best practice for encouraging drug treatment within a model of decriminalisation does not involve any compulsory treatment or rehabilitation.[258] A model of referrals to treatment and encouragement to engage, rather than compulsory treatment, produces better outcomes in changing behaviour and better reflects the principles of a harm reduction approach.

255 Böllinger (2002), 'Therapy instead of Punishment for Drug Users – Germany as a Model?', *European Addiction Research* 8(2), p 58.

256 Böllinger (2004), 'Drug Law and Policy in Germany and the European Community: Recent Developments', *Journal of Drug Issues* 34(3), p493.

257 National Harm Reduction Coalition, "Principles of Harm Reduction".

258 Harm Reduction International, "What is Harm Reduction?".

Voluntary Measures in Portugal

An example can be found in Portugal, widely regarded as a successful international model of drug decriminalisation.[259] Individuals found in possession of drugs are required to attend an appointment at a 'Commission for the Dissuasion of Drug Abuse'.[260] The Commission "aims to facilitate an open discussion with members attempting to make the drug user aware of the harmfulness of drug use, including the consequences of further offenses, and to explain, recommend, and refer the user to various treatment options, where appropriate."[261] Individuals identified as maintaining 'problematic' but low-risk patterns of drug use are referred to education programs, while those with high-risk patterns of use are referred to specialised rehabilitation or treatment services.[262] The Commissions have powers to impose various administrative sanctions, but these are very rarely used.[263] Critically, sanctions are *less* used when an individual is drug-dependent: the law prohibits issuing a financial penalty to a person with an addiction, and other administrative sanctions are generally not used "because the commission is trying to persuade them to go into treatment, not force them into doing so."[264] The non-mandatory nature of the referrals are essential to upholding the voluntary choice that is central to a harm reduction ethic, ensuring that individuals who use drugs feel supported, as opposed to stigmatised, if they choose to participate in education or treatment programs.

Clinical data supports the fact that treatment outcomes (relapse rates, overdose rates) are significantly improved by voluntary participation in treatment, as opposed to mandated treatment, noting that a desire for cessation in drug use must be internalised, as opposed to externally imposed by the criminal legal system on an individual who uses drugs.[265]

259 TIME Magazine, 1 August 2018, 'Want to Win the War on Drugs? Portugal Might Have the Answer'.

260 Domoslawski (2011), *Drug Policy in Portugal: The Benefits of Decriminalizing Drug Use*, p29.

261 Domoslawski (2011), *Drug Policy in Portugal: The Benefits of Decriminalizing Drug Use*, p30.

262 Susana Ferreira, '*Portugal's radical drugs policy is working. Why hasn't the world copied it?*', The Guardian (online 5 December 2017).

263 Transform Drug Policy Foundation, *Drug decriminalisation in Portugal: setting the record straight*, (Report, June 2014), pp1-2.

264 Domoslawski (2011), *Drug Policy in Portugal: The Benefits of Decriminalizing Drug Use*, p30.

265 David Farabee et al. (1998), '*The Effectiveness of Coerced Treatment for Drug-abusing Offenders*', Federal Probation Journal 62(1), p3.

Recognising Impacts on Women – Good Practice

In jurisdictions across the world, drug offences – both for personal possession and for small-scale supply – have severe impacts on women. Drug charges are a major driver of the incarceration of women in many countries, and this needs to be recognised in any drug policy reform. For example:

- In Argentina, more than 60% of incarcerated women were imprisoned for drug-related crimes, markedly higher than the proportion of incarcerated men.[266]
- In Brazil, 80% of imprisoned women have been convicted on drug trafficking charges.[267]
- In Chile, more than 60% of imprisoned women were being held for drug offences (largely micro-trafficking offences).[268]
- In Costa Rica, 68.6% of women in prison are held for drug related offences.[269]
- In Mexico, 2014 data showed that 44.8% of imprisoned women were being held for drug crimes.[270] Women additionally are more heavily barred from access to treatment programs due to harassment and stigmatisation.[271]
- In Paraguay, drug-related offences are the most common offence for incarcerated women. More than half of Paraguay's imprisoned female population has not been sentenced and many spend years in pre-trial detention.[272]
- In Peru, women imprisoned for drug offences represent more than 60% of the female prison population.[273]

Costa Rica has specifically recognised these disproportionate impacts on women through the introduction of a provision which allows sentences for trafficking to be reduced – to 3-8 years,

266 Linklaters and Penal Reform International, 'Sentencing of Women Convicted of Drug-Related Offences' (Report, February 2020), p38.

267 Paul Miraglia, 'Drugs and Drug Trafficking in Brazil', *Foreign Policy at Brookings* (Policy Summary, July 2016), p8.

268 Marcos Munoz Robles (2018), 'Law N#20.000 of drugs in Chile: An example of Prohibition criminalized', *Sociedad Hoy* 26(1), p108.

269 Coletta Youngers, Teresa Garcia Castro and Maria Manzu (2020), 'Women Behind Bars for Drug Offences in Latin America: What the Numbers Make Clear', p13.

270 Transnational Institute (2020), 'About drug law reform in Mexico'.

271 Ibid.

272 Coletta Youngers, Teresa Garcia Castro and Maria Manzu (2020), 'Women Behind Bars for Drug Offences in Latin America: What the Numbers Make Clear', p15.

273 Colectivo de Estudios Drogas y Derecho (2017), 'Irrational Punishment: Drug Laws and Incarceration in Latin America', *Research Consortium on Drugs and the Law Regional Report* 2017, p 43.

instead of 8-20 years – for women experiencing poverty, women with caring responsibilities, and vulnerable women. The law also allows a court to order this reduced sentence to be served in home detention or other alternatives to imprisonment.[274]

As discussed in Part 1 of this report, women are particularly affected by drug law enforcement in Victoria. Women in prison are significantly more likely than men in prison to be incarcerated for drug offences, including being held on remand while awaiting trial.

Distinguishing 'Hard' and 'Soft' Drugs – Bad Practice

Many countries distinguish between drugs that the government views as more and less dangerous, and provide different legal approaches to different drugs. This is particularly evident with respect to cannabis, which is decriminalised or legalised in a large number of jurisdictions which have progressed with regard to laws relating to other drugs.

Decriminalisation or legalisation of cannabis may be an appropriate *first* step towards broader decriminalisation. However, distinguishing between drug types can, in some cases, serve as a justification for a continuing approach of criminalisation and stigmatisation for 'harder' drugs. It is essential to avoid this type of distinction. The harms of criminalisation, discussed extensively earlier in this report, are inherent and applicable to all types of drugs. While it is appropriate for education and treatment programs to be tailored to the different characteristics and risks of different substances, a difference in legal status only perpetuates the harms of criminalisation for people who may be most in need of destigmatised, accessible support.

Portugal's drug decriminalisation reform in 2001 explicitly rejected a distinction between hard and soft drugs.[275] Portuguese drug policy is instead built on the premise that individuals need support tailored to their individual drug use patterns, and appropriate to their individual life circumstances.[276] Portugal adopted this principle from the beginning of its reform process, but there are also positive examples of jurisdictions progressing from decriminalising some drugs (generally cannabis) to a wider reform. Oregon moved from legalisation of cannabis in 2014 to decriminalisation of all drugs in 2020,[277] while the Australian Capital Territory decriminalised

274 Transnational Institute (n.d.), 'Drug Law Reform: Costa Rica'.

275 Rego et al (2021), '20 years of Portuguese drug policy - developments, challenges and the quest for human rights', *Substance Abuse Treatment, Prevention and Policy*, p16.

276 The Guardian, 5 December 2017, 'Portugal's radical drugs policy is working. Why hasn't the world copied it?'.

277 'Measure 91: Text of Measure', State of Oregon (Document); State of Oregon, Oregon Health Authority, 'Drug Addiction Treatment and Recovery Act', (Web Page, 4 May 2021).

cannabis in 2020 and is on the verge of decriminalising other drugs.[278] However, even these jurisdictions continue to retain some problematic distinctions between drugs. The ACT decriminalisation proposals would impose fines and education/treatment programs on people who possess drugs other than cannabis, while cannabis possession attracts no penalties.[279] The inclination to draw strong distinctions between different types of drugs, which upholds stigma and makes it more difficult for people who use drugs to access support, must be tackled by any approach to decriminalisation of all drugs.

Criminal Records and Pardons – Good Practice

When decriminalising reforms are passed, they leave large numbers of people still struggling with criminal records from the previous drug law regime. The effects of criminal records are a profoundly harmful part of criminalisation, as noted in Part 1, and it is important that these harms are not allowed to persist when the drug laws are amended.

Decriminalisation amendments in Trinidad and Tobago, Bermuda[280] and Jamaica[281] have allowed people to have historic cannabis offences expunged from their criminal record. Expungement has also been part of reform proposals (not yet adopted) in Israel[282] and South Africa.[283]

A related measure involves pardons for people still serving prison terms or receiving punishment for repealed drug offences. Ecuador and Costa Rica have used pardons to release people from prison after law reform that would have affected their sentences.[284] Pardons are also accessible under Canada's legalisation of cannabis, and the Canadian Government has allocated funds to expedite access to pardons in these cases.[285]

278 ABC News, 9 June 2022, 'ACT government agrees to decriminalise small amounts of illicit drugs, such as ice, heroin and cocaine'.

279 Unharm (2022), *Briefing note: Decriminalisation of drug use in the ACT: getting it right*, p1.

280 *Expungement of Convictions Act 2020 (Bermuda)*; Ministry of Legal Affairs and Constitutional Reform, '*Cannabis Conviction Expungement Application', Government of Bermuda*.

281 Associated Press, 16 July 2015, 'Jamaica law to purge minor pot convictions goes into effect'.

282 David Yasvinski, 24 February 2020, 'Israel to expunge 40,000 cannabis convictions, implement Canadian-style legalization'.

283 Parliament of the Republic of South Africa, *Cannabis for Private Purposes Bill* (B19-2020); *Cannabis for Private Purposes Bill* (B19-2020).

284 Transnational Institute (2014), 'About Drug Reform in Ecuador'; Transnational Institute (n.d.), 'Drug Law Reform: Costa Rica'.

285 Government of Canada, *Fiscal Projections 2019* (Summary Table, 19 March 2019).

Clearing criminal records is an important measure to reduce the lingering consequences of criminalisation. However, in most cases, expungements and pardons have required the person affected to make an application, which reduces the effectiveness of the measure.[286] VALS has made extensive recommendations on the operation of Victoria's Spent Convictions Scheme, which allows convictions to be removed from a person's criminal record after a certain period of time, and these recommendations should be considered in the design of any drug law reform.[287]

Health and Social Services – Good Practice

As discussed in Part 2 of this report, one of the most important goals of drug decriminalisation is to enable wider access to health and other support services for people who use drugs. The effectiveness of decriminalisation as a public health measure is reduced if appropriate services are not put in place.

Initiatives implemented as part of a harm reduction-focused approach to drug use have included (the list of jurisdictions for each initiative is not comprehensive):

- Drug checking services (in Argentina,[288] Italy,[289] and the Netherlands[290])
- Take-home naloxone to mitigate opioid overdoses (in Estonia[291] and Italy[292])
- Expanded funding for alcohol and other drug services (in the Australian Capital

286 A Klein and VJ Hanson, "Ganja Licensing in Jamaica: Learning lessons and setting standards" (Interdisciplinary Centre for Cannabis Research and University of West Indies, 2020) p 14

287 VALS (2021), *Submission to the Legal and Social Issues Committee Inquiry into a Legislated Spent Convictions Scheme*.

288 Harm Reduction International (2018), *Global State of Harm Reduction 2018*, p98.

289 Martina Fregonese, et al (2021), 'Drug Checking as Strategy for Harm Reduction in Recreational Contests: Evaluation of Two Different Drug Analysis Methodologies', *Frontiers in Psychiatry* Vol 12, pp 1, 6.

290 Trimbos Institute (2019), 'The Drug Information and Monitoring System (DIMS): Factsheet on drug checking in the Netherlands'.

291 United Nations Programme on HIV/AIDS, 'Health, rights and drugs — Harm reduction, decriminalization and zero discrimination for people who use drugs', p24.

292 Harm Reduction International (2019), *The State of Harm Reduction in Western Europe 2018*, p12.

Territory,[293] Colombia,[294] Switzerland,[295] and California[296])
- Needle and syringe programs (in Czechia,[297] Italy,[298] the Netherlands,[299] Spain,[300] and Switzerland[301])
- Drug consumption rooms (in Germany,[302] the Netherlands,[303] Spain,[304] and Switzerland[305])
- Opioid substitution treatment (in Germany,[306] Armenia,[307] Argentina,[308] and Spain[309])

Broader social support services are also important. Estonia has expanded drug education in

293 Australian Capital Territory, *Parliamentary Debates,* *Parliamentary Debates*, Legislative Assembly, 25 September 2019, 11.03 (Mr Barr).

294 Transnational Institute (2012), *Bogota's medical care centres for drug addicts (CAMAD)*.

295 Senate of Canada, 'Switzerland's Drug Policy, Prepared for the Senate Special Committee on Illegal Drugs' (Web Page, 14 January 2002).

296 'California Proposition 64, Marijuana Legalization (2016)', *Ballotpedia* (Web Page).

297 Transnational Institute, 'Czech Republic exemplifies smart and humane drug policy', 3 July 2012.

298 Harm Reduction International (2019), *The State of Harm Reduction in Western Europe 2018*, p18.

299 European Parliament, Directorate-General for Internal Policies, 'A review and assessment of EU drug policy', (2016), *Policy Department C: Citizens' Rights and Constitutional Affairs*, 1-219: 143.

300 Òscar Parés Franquero and José Carlos Bouso Saiz, 'Innovation Born of Necessity: Pioneering Drug Policy in Catalonia' (Global Drug Policy Program, Open Society Foundations, March 2015), pp28-9.

301 Miriam Wolf and Michael Herzig, 'Inside Switzerland's Radical Drug Policy Innovation' *Innovation Review* (Web Page, 22 July 2019); Senate of Canada, 'Switzerland's Drug Policy, Prepared for the Senate Special Committee on Illegal Drugs' (Web Page, 14 January 2002).

302 Deutsche Aidshilfe, 'Drogenkonsumräume – Quantity and Locations'.

303 Anouk de Gee et al, 'Drug Consumption Rooms in the Netherlands: 2018 Update', (2018) *Trimbos Institute* 1-26: p11.

304 Constanza Sánchez and Michael Collins, 'Better to Ask Forgiveness Than Permission: Spain's Sub-national Approach to Drug Policy' (Policy Brief 12, Global Drug Policy Observatory, June 2018), p3.

305 Miriam Wolf and Michael Herzig, 'Inside Switzerland's Radical Drug Policy Innovation' *Innovation Review* (Web Page, 22 July 2019); Senate of Canada, 'Switzerland's Drug Policy, Prepared for the Senate Special Committee on Illegal Drugs' (Web Page, 14 January 2002).

306 Michels et al, 'Substitution treatment for opioid addicts in Germany', *Harm Reduction Journal* 4(5) (2007).

307 Statement by H.E. Mr. Arsen Torosyan, Minister of Health of the Republic of Armenia, *Ministerial Segment of the Sixty-Second Session of the Commission on Narcotic Drugs* (Vienna, 15 March 2010), p3; Talking Drugs, 'Drug Decriminalisation Across the World' (Web Page, Accessed 6 May 2021).

308 Harm Reduction International, *Global State of Harm Reduction 2018* (Report, 2018), p100.

309 Constanza Sánchez and Michael Collins, 'Better to Ask Forgiveness Than Permission: Spain's Sub-national Approach to Drug Policy' (Policy Brief 12, Global Drug Policy Observatory, June 2018), p3.

schools, but has also seen the value in providing children with more and better-resourced support systems and school activities, to avoid marginalisation which can lead some young people to drug use.[310] Expanded drug education programs have also been implemented in other jurisdictions.[311] Switzerland's drug policy reform included funding for training on drugs and drug addiction for professionals in the health and justice systems, to improve their engagement with people who use drugs.[312]

In most cases, harm reduction initiatives have evolved separately from reform to the criminal law on drug possession. As noted in Part 2 of this report, such initiatives are beneficial but are more effective when the ethos of harm reduction is properly recognised through decriminalisation. They are most effective when the expansion of support services and the decriminalisation of drug possession are conducted in tandem, in a joined-up approach that replaces over-policing with meaningful support. Oregon, in the United States, provides a positive example of a joined-up approach to decriminalisation and health supports. The law which decriminalised personal possession of drugs in Oregon also established new Addiction Recovery Centres, a 24/7 phone support line, and a new Drug Treatment and Recovery Services Fund to administer grants for expanded services.[313] Portugal similarly delivered its 2001 decriminalisation reform in tandem with the creation of new support programs.[314]

Conversely, in some jurisdictions support has remained difficult to access. In Mexico, while legislation prescribed that drug treatment facilities would be free of charge for people found in possession of drugs, a lack of funding has meant that treatment is not available in practice.[315]

310 Estonian Ministry of the Interior (2014), Estonia's drug prevention policy: white paper.

311 National Council on Drug Abuse, Talk Di Truth; Government of the Netherlands, 'Drug use and addiction care'.

312 Senate of Canada, 'Switzerland's Drug Policy, Prepared for the Senate Special Committee on Illegal Drugs' (Web Page, 14 January 2002).

313 State of Oregon, Oregon Health Authority, 'Drug Addiction Treatment and Recovery Act', (Web Page, 4 May 2021).

314 'Lei n.º 30/2000' (Web Page, 2000) <, English version: 'Decriminalisation: Portuguese legal framework applicable to the consumption of narcotics and psychotropic substances', *SICAD*; 'Decreto-Lei n.º 183/2001' (web Page, 2001).

315 Dan Werb et al, 'Mexico's Drug Policy Reform: Cutting Edge Success or Crisis in the Making?' *International Journal of Drug Policy* (September 2014) 2.

THIS PAGE HAS BEEN LEFT BLANK

Appendix: International Jurisdictional Analysis

This Appendix presents a table summarising key aspects of drug law in 31 jurisdictions. The research for this report covered a larger number of jurisdictions, many of which are referred to in the analysis of lessons learned from international experience (presented above). The table in this section includes only jurisdictions which have specifically reformed the criminal law on drug possession, going beyond police diversion to establish non-discretionary decriminalisation in some form.

The table details the model adopted (decriminalisation, depenalisation, legalisation, etc.), the type of drugs covered, the year of introduction, and the policy basis for the change to drug law. It also provides a short overview of accompanying health and support services, and the impacts of the drug law reform on drug use, public health and the criminal legal system.

Jurisdiction	Type of Drug	Model	Introduced	Policy Basis	Accompanying Services	Drug Use & Health Impacts	Criminal Legal System Impacts
Argentina	Any drug	Decriminalisation under a court ruling; inconsistent implementation.[1]	2009[2]	Court decision, under constitutional rights to privacy.[3]	Drug court pilots;[4] drug checking;[5] needle and syringe programs (no longer operative);[6] opioid substitution therapy.[7]	A 2017 study found significant increases in drug use between 2010 and 2017.[8] No analysis has connected this increase to the decriminalisation court decision, which has been very inconsistently implemented.	Enforcement of prohibition continues at high rates. Between 2011 and 2016, 36% of drug-related cases opened at the federal level were related to personal use.[9] More than 60% of incarcerated women were imprisoned for drug-related crimes, markedly higher than the proportion of incarcerated men.[10]
Armenia	Any drug	Decriminalisation; choice between a fine or drug treatment.[11]	2008[12]	Zero tolerance approach was discouraging treatment. Reform to reduce addiction and spread of disease through unsafe drug use.[13]	Opioid substitution therapy.[14]	Increase in the number of people receiving treatment for addiction, without fear of prosecution.[15]	Criminal cases dropped 27 per cent in the first nine months of 2011 compared with 2010.[16] Some people who use drugs continue to be incarcerated if they cannot pay the fine, which is three times the monthly minimum wage.[17]
Australian Capital Territory	Cannabis Upcoming extension to all drugs	For cannabis – no sanction for possession and limited cultivation.[18] For other drugs – choice between treatment or $100 fine.[19]	2020[20]	Prioritising access to health services; destigmatising drug use.[21]	Investment in AOD treatment and support services; 24-hour helpline.[22]	No increase in hospital presentations and stakeholders assert no increase in cannabis use;[23] too early for full study.	Cannabis offences fallen to near zero.[24]
Austria	Any drug	Caution/probation for 1-2 years if possession below set thresholds.[25]	1971[26]	Principle of 'treatment instead of punishment'.[27]	Drug treatment services through public healthcare (specialist and generalist).[28]		Increase in temporary discontinuation of prosecutions for personal possession between 2004 and 2013.[29]
Belgium	Cannabis	Possession under threshold subject to fines only for first two offences within 12 months.[30]	2003[31]	Recognising reality of drug use, adopting multi-dimensional policy including harm reduction.[32]	-	Substantial increases in cultivation in the 2000s.[33] Cannabis use remains stable among university students.[34]	Continued recording of tens of thousands of possession offences, indicating partial implementation.[35]

Jurisdiction	Type of Drug	Model	Introduced	Policy Basis	Accompanying Services	Drug Use & Health Impacts	Criminal Legal System Impacts
Bermuda	Cannabis	Decriminalisation under set thresholds.[36] Legislative proposals to legalise & regulate.[37]	2017[38]	Reducing harmful impacts of criminal records on young men.[39]	Provisions for education and treatment to be provided to users of cannabis.[40]	Small increase in the number of people who have used cannabis in the past 12 months; very large increase in people reporting having used cannabis at some point in their life.[41] Data suggests a spike in experimental one-off use after decriminalisation and/or more honest reporting.	Steep fall in possession charges and convictions.[42]
Brazil	Any drug	Compulsory education or community service for personal possession; fines for non-compliance. No defined threshold for personal use.[43]	2006[44]	Costs of incarceration, prison overcrowding, HIV/AIDS infection rates.[45]	Involuntary hospitalisation/rehabilitation (introduced 2019).[46]	-	No clear thresholds for personal possession; people caught with very small amounts of drugs are frequently charged with trafficking.[47] In 2017, one third of all imprisoned Brazilians were charged with trafficking.[48] 80% of imprisoned women are convicted of trafficking.[49]
Canada	Cannabis	Legalised possession, regulated production and sale.[50]	2018[51]	Failure to reduce youth use; excessive impacts of criminal records; benefits to organised crime of prohibition.[52]	Development of holistic prevention, education and treatment programs using cannabis tax revenue.[53]	At the end of 2020, 20% of Canadians aged 15 or older reported cannabis use in the previous 3 months, up from 14% immediately prior to legalisation. 7.9% of Canadians reported using cannabis daily or almost daily, up from 5.4% prior to legalisation.[54]	The amnesty program for those convicted under the previous system has been criticised as overcomplicated and under-publicised.[55]
Chile	Any drug	Non-criminal administrative sanctions (fines; mandatory treatment;	2005[58]	Reducing sanctions for possession while increasing punishment for trafficking,		No effect on trends in drug use.[60]	Drug arrests make up half of all arrests.[61] Consumption and possession arrests still make up 62% of drug arrests.[62]

Jurisdiction	Type of Drug	Model	Introduced	Policy Basis	Accompanying Services	Drug Use & Health Impacts	Criminal Legal System Impacts
		suspension of driver's licence)[56] for personal possession. No defined threshold.[57]		including 'micro-trafficking'.[59]			Only 2.6% of arrests for possession/consumption result in penalties,[63] but arrests continue due to the absence of a specific threshold. 60% of imprisoned women are held for drug offences, largely micro-trafficking.[64]
Colombia	Any drug	Decriminalisation under set thresholds. Since 2016, choice between fines or education for use or possession in public spaces.[65]	1994[66]	Court decision under constitutional liberty rights.[67]	At subnational level, mobile addiction support services[68] & safe injecting programs.[69]	Drug use trends come in a context of very inconsistent implementation of court rulings and continuing difficulty accessing support services without stigma.[70]	Continuing arrest and detention of people carrying drugs. [71] The number of people imprisoned for drug offences has increased significantly since 2000.[72]
Costa Rica	Any drug	Prohibition, but no penalties for personal use and possession.[73] No thresholds for personal use.[74]	At least 1988[75]		Treatment and prevention services.[76]	-	Incarceration rates for drug offences are extremely high.[77] 68.6% of the women in prison are held for drug related offences.[78] Any type of trafficking continues to carry a minimum 8-year prison sentence.[79] Sentencing reforms were introduced in 2013 to reduce the impact of trafficking sentences on women.[80]
Croatia	Any drug	Fines and mandatory treatment orders only for personal use and possession.[81] No specific thresholds.[82]	2013[83]	Principle of 'helping instead of punishing' people who use drugs.[84]	Addiction support services; opioid substitution therapy.[85] Addiction support and psychosocial interventions during imprisonment (pre-trial and sentenced).[86]	According to the European Monitoring Centre for Drugs and Drug Addiction, the total number of drug law offences in Croatia has slightly increased since 2010, and most offences are related to cannabis (followed by amphetamines and MDMA/ecstasy).[87]	Changes (providing alternatives to imprisonment) resulted in a decrease of sentences of imprisonment and decreased the pressure on the prison system.[88] Substantial reduction of (young) people with criminal records.[89]

Jurisdiction	Type of Drug	Model	Introduced	Policy Basis	Accompanying Services	Drug Use & Health Impacts	Criminal Legal System Impacts
Czechia	Any drug	Fines only (up to A$940) for personal use and possession below set thresholds.[90]	1990 (thresholds introduced in 2010).[91]	Containing HIV; failure of criminalisation to reduce use.[92] Prevention, treatment and resocialisation, harm reduction and supply reduction.[93]	National addiction policy; needle and syringe programs,[94] preventative activities and education in schools.[95]	-	-
Georgia	Cannabis	Fine only (A$220) for first possession or purchase in 12 months. No sanction for use in private homes.	2018[96]	Court decision under constitutional freedom of personality rights.[97]	-	Evidence suggests no changes to patterns of cannabis use. [98]	-
Israel	Cannabis	Fines only for first two possession offences under set threshold; mandatory rehabilitation, education or counselling for third offence; criminal proceedings available for fourth and subsequent offences.[99]	2019[100]	Increased emphasis on education and treatment. Reducing stigma on people who occasionally use drugs.[101]	Expanded education and rehabilitation treatment using revenue from fines.[102]	-	Major increases in fines issued (up 70% from 2019 to 2020).[103] Critics have suggested that fines are now issued in cases where police would not have pursued any enforcement previously.[104]
Jamaica	Cannabis	Fines only for possession under 56.6g[105] and public use.[106] Exemptions for religious or medical purposes.[107] Legalised limited private cultivation. [108]	2015[109]	Harmful impacts of criminal records; court system backlogs.[110] Promoting cannabis tourism and export industry.[111]	Non-stigmatising cannabis education campaigns. [112] Mandatory drugs counselling for children or people dependent on cannabis.[113]	Limited evidence available, but surveys suggest little public knowledge of the changes, so unlikely that use has increased.[114]	Rapid decline in prosecutions for cannabis possession.[115] Creation of an administrative procedure for expunging previous convictions.[116]
Luxembourg	Cannabis	Fines only for personal possession and use.[117]	2001[119]	Reducing the scale of illicit markets was a goal of decriminalisation	Revenues associated with legalisation will support prevention, health promotion,	Data demonstrates a decline in lifetime prevalence of any illicit drug use among students	-

Jurisdiction	Type of Drug	Model	Introduced	Policy Basis	Accompanying Services	Drug Use & Health Impacts	Criminal Legal System Impacts
		Transitioning to legalisation.[118]		and remains a goal in the move to legalisation.[120]	education and addiction treatment.[121]	aged 12-18 years since 1999.[122]	
Malta	Cannabis	Legal possession up to 7g & personal cultivation; fines only for possession between 7g and 28g.[123]	2021 (previously decriminalised since 2015).[124]	Improving opportunities for rehabilitation.[125] Reducing harsh policing of cannabis use.[126]	Harm reduction-based educational campaign.[127] Drug Offenders Rehabilitation Board to refer for counselling or treatment.[128]	Prevalence of cannabis use among young people was stable after decriminalisation in 2015.[129]	-
Mexico	Any drug	Possession below set thresholds not enforced.[130]	2009[131]	Strains on law enforcement system;[132] encouraging engagement with treatment.[133]	Mandatory treatment for third non-enforcement action.[134] Increased funding for rehabilitation centres; free access to rehabilitation for those referred through police.[135] Continued difficulties accessing treatment.[136]	-	Very limited application of non-enforcement rules by local police.[137]
Netherlands	Any drug	'Toleration' directives not to prosecute for personal possession under set thresholds, or sale of cannabis under certain conditions.[138]	1976[139]	Harm reduction;[140] separating sale of soft and hard drugs.[141]	Drug-checking services;[142] Drug Consumption Rooms, needle exchange programs.[143]	Drug-related deaths are significantly below European average (10.8 per million residents, compared to European average of 19.2 per million); Low HIV and Hepatitis C prevalence.[144] Very low methamphetamine use.[145]	-
Paraguay	Cannabis, cocaine and heroin	No penalties for personal possession under set thresholds, but the person must complete an administrative	1988[147]	-	Referrals to treatment by court (can be mandatory treatment).[148]		Incarceration for possession is still significant: convictions under drug law are 21.5% of sentences in Paraguay, of which a large proportion is for possession.[149] Drug-related offences are the

Jurisdiction	Type of Drug	Model	Introduced	Policy Basis	Accompanying Services	Drug Use & Health Impacts	Criminal Legal System Impacts
		procedure of registering with the court as a person who uses drugs.[146]					most common offence for incarcerated women. More than half of Paraguay's imprisoned female population has not been sentenced and many spend years in pre-trial detention.[150]
Peru	Any drug	No penalty below set thresholds, but does not apply if two different drugs are found.	1991[151]	-	Very limited funding for addiction services: between 2002 and 2010, only 8.53% of all drug-related budget resources were allocated to prevention or treatment.[152]		Police frequently detain people on suspicion of trafficking for long periods prior to a determination of personal use.[153] Arrests for drug possession and/or use are also a significant contributor to the extreme overcrowding of Peruvian prisons.[154] Women imprisoned for drug offences represent more than 60% of the female prison population in Peru (compared to just 12% at a global level).[155]
Portugal	Any drug	Possession of under 10-day supply referred to specialist commission. Options include no further action (majority of cases), non-mandatory referrals to education or treatment, and fines.[156]	2001[157]	Improving access to treatment[158] – very high rates of addiction[159] and drug-related communicable diseases.[160]	Referrals to counselling and treatment.[161] Expanded provision of needle exchange, HIV testing, opioid substitution therapy & other harm reduction initiatives.[162]	No increases in drug use;[163] use is below European average.[164] Substantial drop in HIV rates and drug-related deaths.[165]	Percentage of the prison population in Portugal incarcerated for drug offences decreased from 44% in 1999, to 24% in 2013.[166]
South Africa	Cannabis	Decriminalisation of personal possession, and use and cultivation in a private residence.[167]	2018[168]	Court decision under constitutional privacy rights;[169] clarifying legislation pending.[170]	-	-	Continuing ambiguities in enforcement, particularly due to lack of clarity about personal use thresholds.[171]
Spain	Any drug	Fines only for personal possession, from minimum A$900 to a theoretical	Never criminalised – gradual moves to harsher	-	Varied at subnational level: safe consumption spaces; opioid substitution	Subnational harm reduction initiatives in Barcelona has seen 76% decline in mortality	-

Jurisdiction	Type of Drug	Model	Introduced	Policy Basis	Accompanying Services	Drug Use & Health Impacts	Criminal Legal System Impacts
		maximum A$44,800[172]	administrative penalties.[173]		treatment; needle exchange; drug checking services. [174]	among drug users, 85% decline in AIDS deaths and 83% decline in overdose deaths. 77% fall in the number of syringes disposed in public. [175]	
Switzerland	Any drug	Possession and 'social supply' only subject to administrative penalty (A$150 fine, other penalties vary by canton). No penalties for personal possession of cannabis.[176]	2013 decriminalisation.[177] 1991 introduction of extensive harm reduction initiatives.[178]	Harm reduction, management of high addiction rates.[179]	Safe injecting rooms;[180] expanded addiction services; training on addiction for health and legal professionals;[181] prescription heroin for addiction management.[182]	New heroin users declined by 80% from 1991 to 2010; HIV infections decreased 65%.[183]	-
Trinidad and Tobago	Cannabis	Decriminalised possession up to 30g.[184] Harsh penalties for public use.[185]	2019[186]	Large court backlogs and remanded prison populations for cannabis possession.[187] Avoiding impacts of imprisonment on young people.[188]	National early warning system to identify changes in drug composition, supporting safer consumption.[189]	-	Expungement of criminal records for prior cannabis offences.[190]
USA - California	Cannabis	Legalisation of possession up to 28g & private cultivation.[191] Regulated commercial cultivation and sale.[192]	2016[193]	Decrease black market activity;[194] provide regulation and safety protections;[195] reduce racial disparities in drug arrests;[196] generate tax revenue & reduce law enforcement costs.[197]	Cannabis tax revenue used to support substance use disorder treatment, youth education and prevention programmes.[198]	Continuation of pre-existing trend for increasing cannabis use.[199] No increases among young people involved in the criminal legal system.[200]	
USA – Colorado	Cannabis	Legalisation of possession of up to	2012[203]	Reduce burden on law enforcement;	-	Surveys have found no increase in the number of	Decrease in cannabis arrests. Racial disparities in arrests

Jurisdiction	Type of Drug	Model	Introduced	Policy Basis	Accompanying Services	Drug Use & Health Impacts	Criminal Legal System Impacts
		28g, consumption and private cultivation.[201] Regulated commercial sale.[202]		increase tax revenue;[204] provide for regulation of cannabis quality and sale.[205]		people who have used cannabis in the past month.[206]	continue: African-Americans are arrested on cannabis charges at double the rate of white people.[207]
USA - Oregon	Any drug Cannabis	Possession below set thresholds is non-criminal, attracts $100 fine or health assessment.[208] Legalisation of possession, use and purchase of cannabis; regulated cultivation and sale.[209]	2021 – all drugs[210] 2014 – cannabis[211]	Responding to public health crisis in addiction and substance use.[212] Oregon was significantly above the US average for rates of substance use disorders,[213] rates of drug use,[214] and spending on prisons.[215]	New Addiction Recovery Centres and addiction phone support services. [216]	Cannabis legalisation – continuation of pre-existing trend for increasing cannabis use.[217] Wider decriminalisation – data not yet available.	-
Uruguay	Any drug Cannabis	Decriminalisation of personal possession and use, no set thresholds. [218] Legalised purchase, consumption and use of cannabis if registered with the government.[219]	1974 – all drugs[220] 2013-17 - cannabis[221]	Cannabis legalisation to reduce interactions between consumers and suppliers of other drugs.[222]	Expansion of public health treatment for problematic cannabis use; expansion of education campaigns.[223]	Increase in the share of the population that used cannabis in the past year – from 9.3% in 2012 to 14.6% in 2018.[224]	Drug offences still account for 11% of prison population, due to lack of defined thresholds for personal possession.[225]

1. Alejandro Corda, *Imprisonment for Drug Related Offenses in Argentina* (Transnational Institute), p11; Santiago Safar, *El Fallo Arriola: Punto de Partida para la Edificación de una Jurisprudencia Razonable en Torno a la Tenencia de Estupefacientes para Consumo Personal 20* (Seminar Paper, Universidad Nacional de La Plata).
2. Luis Andres Henao, 'Argentina Decriminalizes Small-Scale Marijuana Use' (News Article, Reuters, 26 August 2009).
3. Luis Andres Henao, 'Argentina Decriminalizes Small-Scale Marijuana Use' (News Article, Reuters, 26 August 2009).
4. David Gagne, 'Argentina to Expand Drug Treatment Program for Minor Crimes Nationwide' (News Article, Insight Crime, 29 May 2017).
5. Harm Reduction International, *Global State of Harm Reduction 2018* (Report, 2018) 101.
6. Harm Reduction International, *Global State of Harm Reduction 2018* (Report, 2018) 99.
7. Harm Reduction International, *Global State of Harm Reduction 2018* (Report, 2018) 100.
8. Tristan Clavel, "Argentina's First Drug Use Data in Years Confirms Booming Local Market", *InsightCrime* (Web Page, 30 June 2017); Observatorio Argentino de Drogas [Argentine Observatory of Drugs], *Consumo de sustancias psicoactivas y mercado laboral estudio nacional en población de 12 a 65 años*; Observatorio Argentino de Drogas [Argentine Observatory of Drugs], *Estudio nacional en población de 12 a 65 años sobre consumo de sustancias psicoactivas informe final* [National study on psychoactive substance use in the population aged 12 to 65 years] (Final Report, 2010).
9. Josefina Salomón, "Argentina Drug Decriminalization Could Throw Official Stats Overboard", *InSight Crime* (Web Page, 6 August 2018).
10. Linklaters and Penal Reform International, 'Sentencing of Women Convicted of Drug-Related Offences' (Report, February 2020), 38.
11. Release (2016), *A Quiet Revolution: Drug decriminalisation across the globe*, p14.
12. Statement by H.E. Mr. Arsen Torosyan, Minister of Health of the Republic of Armenia, *Ministerial Segment of the Sixty-Second Session of the Commission on Narcotic Drugs* (Vienna, 15 March 2010), 2.
13. Release (2016), *A Quiet Revolution: Drug decriminalisation across the globe*, p14.; U.S. Department of State, *Armenia, International Narcotics Control Strategy Report*, March 2012, 107.
14. Statement by H.E. Mr. Arsen Torosyan, Minister of Health of the Republic of Armenia,

Ministerial Segment of the Sixty-Second Session of the Commission on Narcotic Drugs (Vienna, 15 March 2010), 2; 'Drug Decriminalisation Across the World' *Talking Drugs* (Web Page, Accessed 6 May 2021).

15. U.S. Department of State, *Armenia, International Narcotics Control Strategy Report*, 1 March 2012, 106.
16. U.S. Department of State, *Armenia, International Narcotics Control Strategy Report*, 1 March 2012, 107.
17. Talking Drugs, 'Drug Decriminalisation Across the World' (Web Page, Accessed 6 May 2021).
18. *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019* (ACT).
19. Michael Pettersson, Consultation Draft (Prepared by Parliamentary Counsel's Office), *Drugs of Dependence (Personal Use) Amendment Bill 2021*.
20. *Drugs of Dependence (Personal Cannabis Use) Amendment Act 2019* (ACT).
21. Standing Committee on Health, Ageing and Community Services, *Inquiry into Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018* (June 2019), p49-51.
22. Australian Capital Territory, *Parliamentary Debates,* Legislative Assembly, 25 September 2019, 10.38 (Ms Stephen-Smith).
23. Michael Inman, '*What has changed in the year since cannabis possession was legalised in the ACT?*', ABC News (Online), Jan 31, 2021.
24. Michael Inman, '*What has changed in the year since cannabis possession was legalised in the ACT?*', ABC News (Online), Jan 31, 2021.
25. European Monitoring Centre for Drugs and Drug Addiction (2014), *Drug Policy Profile: Austria*, p10; *Narcotic Substance Act 1011040 1998*, Articles 27, 35.
26. European Monitoring Centre for Drugs and Drug Addiction (2014), *Drug Policy Profile: Austria*, p5.
27. European Monitoring Centre for Drugs and Drug Addiction (2014), *Drug Policy Profile: Austria*, p5.
28. European Monitoring Centre for Drugs and Drug Addiction (2014), *Drug Policy Profile: Austria*, p7.
29. European Monitoring Centre for Drugs and Drug Addiction, *2014 National Report to the EMCDDA: Austria – New Development and Trends*, p82.
30. European Monitoring Centre for Drugs and Drug Addiction (2019), *Belgium Country Drug Report 2019*, p5.

31. European Monitoring Centre for Drugs and Drug Addiction (2019), *Belgium Country Drug Report 2019*, p5.
32. Tom Decorte, *Cannabis Regulation in Europe: Country Report- Belgium*, (Transnational Institute, Report, February 2019), p11.
33. Letzia Paoli et al., 'Assessing the harms of cannabis cultivation in Belgium' (2015) 26(3) *International Journal of Drug Policy, 277.*
34. European Monitoring Centre for Drugs and Drug Addiction, *Belgium Country Drug Report* (Report, 2019), p7.
35. European Monitoring Centre for Drugs and Drug Addiction, *Belgium Country Drug Report* (Report, 2019), p6.
36. Government of Bermuda, 'Public awareness factsheet: Misuse of Drugs Amendment Act 2017'.
37. Cannabis Licensing Bill 2022 (Bermuda).
38. *Misuse of Drugs (Decriminalisation of Cannabis) Amendment Act 2017*, (Bermuda) S2.
39. Government of Bermuda, 26 February 2018 press release, 'Public Awareness Campaign: Decriminalisation of Cannabis'.
40. Government of Bermuda, 26 February 2018 press release, 'Public Awareness Campaign: Decriminalisation of Cannabis'.
41. Department for National Drug Control (2021), 'National Household Survey', p30.
42. Annual Bermuda Drug Information Network Meeting Update 2020, 6 November 2020, p21.
43. *National System of Public Policies on Drugs (Law No. 11, 343)* 2006 (Republic of Brazil), A28.
44. *National System of Public Policies on Drugs (Law No. 11, 343)* 2006 (Republic of Brazil).
45. Spencer Brown, 'The Lowdown on Getting High in Brazil: The Evolution of Brazilian Drug Law' (2008) 14(2) *Law and Business Review of the Americas* 426.
46. Recovery Blog, 'Brazil to Allow Drug Users to be Committed Involuntarily', *Orlando Recovery Centre* (Blog Post, May 2020).
47. Paul Miraglia, 'Drugs and Drug Trafficking in Brazil', *Foreign Policy at Brookings* (Policy Summary, July 2016), p8.
48. Ciara Long, 'Should Brazil Legalize Marijuana', *Bright Magazine* (1 February 2018).
49. Paul Miraglia, 'Drugs and Drug Trafficking in Brazil', *Foreign Policy at Brookings* (Policy Summary, July 2016), 8.

50. *Cannabis Act S.C 2018*; *Cannabis Regulations SOR/2018-144*.
51. *Cannabis Act S.C 2018*.
52. Task Force on Marijuana Legalization and Regulation, 'The Final Report of the Task Force on Cannabis Legalization and Regulation' (Report, 30 November 2016), p11.
53. Task Force on Marijuana Legalization and Regulation, 'The Final Report of the Task Force on Cannabis Legalization and Regulation' (Report, 30 November 2016), p4.
54. Michelle Rotermann, *Looking back from 2020, how Cannabis use and related behaviours changed in Canada*, Statistics Canada (Report, 21 April 2021), p6.
55. Ian Austen, '2 years after legalizing Cannabis, has Canada kept its promises?', *New York Times* (23 January 2021).
56. Ley Num. 20.000, Artículo 50º, Biblioteca del Congreso Nacional de Chile, 2005.
57. Ley Num. 20.000, Artículo 4º, Biblioteca del Congreso Nacional de Chile, 2005.
58. *Ley 20000; Sustituye La Ley N# 19.336 que Sanciona el Trafico Ilicito de Estupefacientes y Sustancias Sicotropicas* 2005.
59. First Constitutional Procedure: Chamber of Deputies (Room Discussion, 19 April 2001), p4 (per Mr Orpis).
60. Servicio Nacional para la Prevención y Rehabilitación del Consumo de Drogas y Alcohol (SENDA), 'Observatorio Chileno de Drogas', Décimo Tercer Estudio Nacional de Drogas en Población General de Chile, 2018, (2019).
61. Transnational Institute, 'The impact of drug laws on the prison situation in Chile' (Article, 1 January 2010).
62. Marcos Munoz Robles, 'Law N#20.000 of drugs in Chile: An example of Prohibition criminalized' (2018) 26(1) *Sociedad Hoy* 99-116, 114.
63. El Quinto Poder, 8 November 2013, 'Las políticas de drogas en el debate presidencial'.
64. Marcos Munoz Robles, 'Law N#20.000 of drugs in Chile: An example of Prohibition criminalized' (2018) 26(1) *Sociedad Hoy* 99-116, 108.
65. Talking Drugs, 'Colombia', web page accessed 21 September 2022; Transnational Institute, *Milestones on drug law reform in Colombia 1994-2012*.
66. Guzmán D.E, Yepes R.U, *Prohibition, a Backwards Step: the personal dose in Colombia*, TNI & WOLA Series on Legislative Reform on Drug Policies Nr. 4, 2010. Pg. 3.
67. Guzmán D.E, Yepes R.U, *Prohibition, a Backwards Step: the personal dose in Colombia*, TNI & WOLA Series on Legislative Reform on Drug Policies Nr. 4, 2010. Pg. 3.
68. Transnational Institute (2012), *Bogota's medical care centres for drug addicts (CAMAD)*.

69. El Espectador, 'Jeringas para heroina y salvar vidas', 13 April 2014.
70. Transnational Institute (2014), *About drug law reform in Colombia*.
71. Release (2016), *A Quiet Revolution: Drug decriminalisation across the globe*, p19.
72. Release (2016), *A Quiet Revolution: Drug decriminalisation across the globe*, p19.
73. Law Library of Congress (2016), Decriminalization of Narcotics, p10.
74. Amador & Cortres (n.d.), Políticas de drogas y salud pública en Costa Rica, p2.
75. Law Library of Congress (2016), Decriminalization of Narcotics, p10
76. Vice News, 6 April 2017, The Costa Rica Model: Why Decriminalization of Drug Use Sometimes Isn't Enough.
77. Amador & Cortres (n.d.), Políticas de drogas y salud pública en Costa Rica, p2.
78. Coletta Youngers, Teresa Garcia Castro and Maria Manzu (2020), 'Women Behind Bars for Drug Offences in Latin America: What the Numbers Make Clear', p13.
79. Transnational Institute (n.d.), 'Drug Law Reform: Costa Rica'.
80. Transnational Institute (n.d.), 'Drug Law Reform: Costa Rica'.
81. See European Monitoring Centre for Drugs and Drug Addiction, *Croatia Drug Report 2013*, p 14; and Diogenis, *Drug Policy and Drug Legislation in South East Europe*, p118.
82. See Talking Drugs, *Drug Decriminalisation Across the World*.
83. See European Monitoring Centre for Drugs and Drug Addiction, *Croatia Drug Report 2013*, p 14.
84. Diogenis, *Drug Policy and Drug Legislation in South East Europe*, p121.
85. Council of Europe Committee on Legal Affairs and Human Rights, *Drug policy and human rights in Europe: a baseline study*, 5 November 2019; and European Monitoring Centre for Drugs and Drug Addiction, *Croatia Drug Report 2017*, p 14.
86. European Monitoring Centre for Drugs and Drug Addiction, *Croatia Drug Report 2017*, p 14.
87. See European Monitoring Centre for Drugs and Drug Addiction, *Croatia Drug Report for 2018*, p4; and *Croatia Drug Report for 2019*, p6.
88. Council of Europe Committee on Legal Affairs and Human Rights, 'Drug policy and human rights in Europe: a baseline study', 5 November 2019, p 16.
89. Council of Europe Committee on Legal Affairs and Human Rights, 'Drug policy and human rights in Europe: a baseline study', 5 November 2019, p16.

90. European Monitoring Centre for Drugs and Drug Addiction, *Czech Republic: Country Drug Report 2017*, p 4.
91. Gudmunson (2019), *The impact of drug policy reforms on drug offences and organized crime: A case study of the Czech Republic from 1990-2016*, p5.
92. Transnational Institute, 'Czech Republic exemplifies smart and humane drug policy', 3 July 2012.
93. European Monitoring Centre for Drugs and Drug Addiction, *Czech Republic: Country Drug Report 2017*, p 2.
94. European Monitoring Centre for Drugs and Drug Addiction, *Czech Republic: Country Drug Report 2017*, p 11.
95. European Monitoring Centre for Drugs and Drug Addiction, *Czech Republic: Country Drug Report 2017*, p 10.
96. Open Caucasus, 'Georgia tightens noose on cannabis after Constitutional Court legalises use', 6 December 2018.
97. Human Rights Watch, 'Harsh punishment: the human toll of Georgia's abusive drug policies', 13 August.
98. Agenda News, 'Norms envisaging imprisonment for marijuana use now null and void in Georgia' 24 December 2016.
99. Tamar Mgebrishvili, 'The effects of decriminalization of cannabis in Georgia on user behaviors', Journal of Substance Use Vol 26, 2021, 160-164.
100. Jerusalem Post, 13 March 2021, 'Fines for cannabis use skyrocket amid COVID pandemic – report'.
101. Jerusalem Post, 13 March 2021, 'Fines for cannabis use skyrocket amid COVID pandemic – report'.
102. Times of Israel, 24 June 2020, 'Cannabis legalization bills pass early readings; ultra-Orthodox MKs walk out'.
103. Haaretz, 1 April 2019, 'Marijuana Decriminalization Goes Into Effect in Israel. What Does That Mean?'
104. Walla News, 13 March 2021, 'As Israel plunged into the corona, the number of fines for cannabis users skyrocketed'.
105. Times of Israel, 13 June 2019, 'PM said to back law to legalize public pot-smoking, home-growing for private use.
106. *The Dangerous Drug Amendment Act 2015* (Jamaica), s 7F (3); and *The Dangerous Drugs Act 1948* [Second updated act] (Jamaica) s 7C.

107. *The Dangerous Drugs Act 1948* [Second updated act] (Jamaica) s 7E, First Schedule s 2.
108. Ministry of Justice (Jamaica), *Fact Sheet prepared by the Ministry of Justice on the Dangerous Drugs (Amendment) Act 2015 (Jamaica)*, pp 10.
109. Ministry of Justice (Jamaica), *Fact Sheet prepared by the Ministry of Justice on the Dangerous Drugs (Amendment) Act 2015 (Jamaica)*, point 20-35.
110. *The Dangerous Drug Amendment Act 2015* (Jamaica), s 7; and *The Dangerous Drugs Act 1948* [Second updated act] (Jamaica) s 7C, citing 7F(3).
111. Statement by Minister of Justice on reforms to the laws relating to Ganja, 11 June 2014, p 6-7.
112. S Davenport and B Pardo, "The Dangerous Drugs Act Amendment in Jamaica: Reviewing goals, implementation, and challenges" (2016) 37 *International Journal of Drug Policy*, 60.
113. National Council on Drug Abuse, Talk Di Truth; and Ministry of Health & Wellness, "NCDA urges 'Good Ganja Sense'", 2021.
114. Ministry of Justice (Jamaica), Fact Sheet prepared by the Ministry of Justice on the Dangerous Drugs (Amendment) Act 2015 (Jamaica), point 8.
115. National Council on Drug Abuse, '2016 National Drug Use Prevalence Survey', 2017, p 104-5.
116. The Gleaner, 8 October 2015, "Reformed ganja law reaping results, says Justice Minister".
117. M Golding, 'Jamaica's Dangerous Drugs Amendment Act 2015', p 2.
118. European Monitoring Centre for Drugs and Drug Addiction, National Drug Report 2020 : The Drug Phenomenon in the Grand Duchy of Luxembourg, 5.
119. Elizabeth Shumacher, 'Luxembourg legalizes growing of cannabis in EU first', 22 October 2021, DW.
120. European Monitoring Centre for Drugs and Drug Addiction, National Drug Report 2020 : The Drug Phenomenon in the Grand Duchy of Luxembourg, 5.
121. European Monitoring Centre for Drugs and Drug Addiction, National Drug Report 2020 : The Drug Phenomenon in the Grand Duchy of Luxembourg, 6.
122. European Monitoring Centre for Drugs and Drug Addiction, National Drug Report 2020 : The drug phenomenon in the Grand Duchy of Luxembourg.
123. European Monitoring Centre for Drugs and Drug Addiction, 'Luxembourg Country Drug Report 2019', 7.

124. *Authority on the Responsible Use of Cannabis Act, 2021*; The Guardian, 13 December 2021, 'Malta to legalise cannabis for personal use in European first'.

125. European Monitoring Centre for Drugs and Drug Addiction, 'Cannabis Legislation in Europe: An Overview' (Report, Publications Office of the European Union, June 2018), 21; Government of Malta, 'Towards the Strengthening of the Legal Framework on the Responsible Use of Cannabis' (White Paper, March 2021), 11; *Drug Dependence (Treatment not Imprisonment) Act 2014* (Malta).

126. European Monitoring Centre for Drugs and Drug Addiction, 'Cannabis Legislation in Europe: An Overview' (Report, Publications Office of the European Union, June 2018), 22.

127. Kristina Abela, 'PM Plans Law Banning Arrests for Cannabis for Personal Use' (News Article, Times of Malta, 18 February 2021).

128. Government of Malta, 'Towards the Strengthening of the Legal Framework on the Responsible Use of Cannabis' (White Paper, March 2021), 17.

129. Government of Malta, 'Towards the Strengthening of the Legal Framework on the Responsible Use of Cannabis' (White Paper, March 2021), p11.

130. European School Survey Project on Alcohol and Other Drugs, '2019 Malta National Report' (Report, Foundation for Social Welfare Services, 2019), p7.

131. Government of Mexico, Decree amending the General Health Law, the Federal Criminal Code and the Federal Code of Criminal Procedures (20 August 2009).

132. Government of Mexico, Decree amending the General Health Law, the Federal Criminal Code and the Federal Code of Criminal Procedures (20 August 2009).

133. Justin Shapiro, "What are they smoking!? Mexico's Decriminalization of small-scale drug possession in the wake of a law enforcement failure" (University of Miami Inter-American Law Review, 1 October 2010).

134. J Arredondo et al, "Measuring improvement in knowledge of drug policy reforms following a police education program in Tijuana, Mexico" (Harm Reduction Journal, 2017).

135. Justin Shapiro, "What are they smoking!? Mexico's Decriminalization of small-scale drug possession in the wake of a law enforcement failure" (University of Miami Inter-American Law Review, 1 October 2010), p134.

136. Justin Shapiro, "What are they smoking!? Mexico's Decriminalization of small-scale drug possession in the wake of a law enforcement failure" (University of Miami Inter-American Law Review, 1 October 2010), p134.

137. Dan Werb et al, 'Mexico's Drug Policy Reform: Cutting Edge Success or Crisis in the

Making?' Int J Drug Policy (September 2014), p2.

138. J Arredondo et al, "Measuring improvement in knowledge of drug policy reforms following a police education program in Tijuana, Mexico" (Harm Reduction Journal, 2017), p3.

139. European Parliament, Directorate-General for Internal Policies, 'A review and assessment of EU drug policy', (2016), *Policy Department C: Citizens' Rights and Constitutional Affairs*, 1-219: 135; Government of the Netherlands, 'Difference between hard and soft drugs'.

140. Leuw (1991), 'Drugs and Drug Policy in the Netherlands', Crime and Justice Vol. 14.

141. Netherlands Drug Policy 1995, 'Drugs Policy in the Netherlands: Continuity and change', English translation available here; Allison E. Don, 'Lighten Up – Amending the Single Convention on Narcotic Drugs,' (2014) *Minnesota Journal of International Law* 279, p14.

142. Government of the Netherlands, 'Why are coffee shops allowed to sell soft drugs in the Netherlands'.

143. Trimbos Institute, 'The Drug Information and Monitoring System (DIMS): Factsheet on drug checking in the Netherlands', (2019).

144. European Parliament, Directorate-General for Internal Policies, 'A review and assessment of EU drug policy', (2016), *Policy Department C: Citizens' Rights and Constitutional Affairs*, 1-219: 143.

145. European Parliament, Directorate-General for Internal Policies, 'A review and assessment of EU drug policy', (2016), *Policy Department C: Citizens' Rights and Constitutional Affairs*, 1-219: pp133-4.

146. European Parliament, Directorate-General for Internal Policies, 'A review and assessment of EU drug policy', (2016), *Policy Department C: Citizens' Rights and Constitutional Affairs*, 1-219: 145.

147. Release (2016), *A Quiet Revolution: Drug decriminalisation across the globe*, p27.

148. Release (2016), *A Quiet Revolution: Drug decriminalisation across the globe*, p27.

149. Release (2016), *A Quiet Revolution: Drug decriminalisation across the globe*, p27.

150. Transnational Institute & Friedrich Ebert Stiftung (2016), Paraguay: The cannabis breadbasket of the Southern Cone (2016), p12.

151. Coletta Youngers, Teresa Garcia Castro and Maria Manzu (2020), 'Women Behind Bars for Drug Offences in Latin America: What the Numbers Make Clear', p15.

152. Release (2016), *A Quiet Revolution: Drug decriminalisation across the globe*, p 27.

153. Soberón, R. (2014), 'Drugs Users in Peru: Policies Rights and Problems,' in: *In Search of*

Rights: Drug Users and State Responses in Latin America, Colectivo de Estudio Drogas y Derechos, 2014, p 124.

154. Transnational Institute, *Peru – Decriminalization – Overview of drug laws and legislative trends in Peru*; Soberón, R. (2010), 'Legislation on drugs and the prison situation in Peru' in: *Systems Overload: drug laws and prisons in Latin America*, pp 77-8.

155. Soberón, R. (2010), 'Legislation on drugs and the prison situation in Peru' in: *Systems Overload: drug laws and prisons in Latin America*, p 71.

156. Colectivo de Estudios Drogas y Derecho (2017), 'Irrational Punishment: Drug Laws and Incarceration in Latin America', *Research Consortium on Drugs and the Law Regional Report 2017*, p 43.

157. Drug Policy Alliance, *Drug Decriminalization in Portugal Learning from a Health and Human-Centered Approach* (Report, 20 February 2019), p 4.

158. Naina Bajekal, 'Want to Win the War on Drugs? Portugal Might Have the Answer', *TIME* (online, 1 August 2018);.

159. Glenn Greenwald, 'Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies' (Report, CATO Institute, 2009) 7-9.

160. Susana Ferreira, 'Portugal's radical drugs policy is working. Why hasn't the world copied it?', *The Guardian* (online 5 December 2017).

161. Alex Stevens and Caitlin E Hughes, 'What can we learn from the Portuguese decriminalization of illicit drugs?' (2010) 50 (6) *British Journal of Criminology* 999, 1001.

162. Drug Policy Alliance, *Drug Decriminalization in Portugal Learning from a Health and Human-Centered Approach* (Report, 20 February 2019), p 4.

163. Susana Ferreira, 'Portugal's radical drugs policy is working. Why hasn't the world copied it?', *The Guardian* (online 5 December 2017); Parliamentary Joint Committee on Law Enforcement, Parliament of Australia, *Inquiry into crystal methamphetamine (ice) Final Report* (Final report, 27 March 2018) [6.59]-[6.61].

164. Alex Stevens and Caitlin E Hughes, 'A resounding success or a disastrous failure: Re-examining the interpretation of evidence on the Portuguese decriminalisation of illicit drugs.' (2012) 31(1) *Drug and Alcohol Review* 105.

165. Transform Drug Policy Foundation, *Drug decriminalisation in Portugal: setting the record straight*, (Report, June 2014), p2.

166. Naina Bajekal, 'Want to Win the War on Drugs? Portugal Might Have the Answer', *TIME* (online, 1 August 2018); Transform Drug Policy Foundation, *Drug decriminalisation in Portugal: setting the record straight*, (Report, June 2014) 2-3.

167. Drug Policy Alliance (2017), *It's Time for the U.S. to Decriminalize Drug Use and Possession*, p24.

168. *Prince v Minister of Justice* [2017] ZAWCHC 30 at [34].

169. Charles Parry, Bronwyn Myers, Jonathan Caulkins, 'Decriminalisation of recreational cannabis in South Africa', *The Lancet*, vol. 393, 10183, May 04 2019.

170. *Minister of Justice and Constitutional Development and Ors v Prince* [2018] ZACC 30 at [10].

171. See Parliament of the Republic of South Africa, *Cannabis for Private Purposes Bill (B19-2020)*.

172. Head, Martin, 'Dagga: Why people are being arrested for possession, despite legislation', *The South African* (Newspaper Article, December 13, 2018.

173. Constanza Sánchez and Michael Collins, 'Better to Ask Forgiveness Than Permission: Spain's Sub-national Approach to Drug Policy' (Policy Brief 12, Global Drug Policy Observatory, June 2018), pp7-8.

174. Constanza Sánchez and Michael Collins, 'Better to Ask Forgiveness Than Permission: Spain's Sub-national Approach to Drug Policy' (Policy Brief 12, Global Drug Policy Observatory, June 2018), p4, 7.

175. Constanza Sánchez and Michael Collins, 'Better to Ask Forgiveness Than Permission: Spain's Sub-national Approach to Drug Policy' (Policy Brief 12, Global Drug Policy Observatory, June 2018), 3; Òscar Parés Franquero and José Carlos Bouso Saiz, 'Innovation Born of Necessity: Pioneering Drug Policy in Catalonia' (Global Drug Policy Program, Open Society Foundations, March 2015), 28-29.

176. Òscar Parés Franquero and José Carlos Bouso Saiz, 'Innovation Born of Necessity: Pioneering Drug Policy in Catalonia' (Global Drug Policy Program, Open Society Foundations, March 2015), 30-1.

177. Talking Drugs, 'Drug Decriminalisation Across the World' (Web Page, Accessed 6 May 2021).

178. Talking Drugs, 'Drug Decriminalisation Across the World' (Web Page, Accessed 6 May 2021).

179. Riaz Khan et al, 'Understanding the Swiss Drug Policy Change and the Introduction of Heroin Maintenance Treatment' (2014) 20(4) *European Addiction Research*, 200.

180. Riaz Khan et al, 'Understanding the Swiss Drug Policy Change and the Introduction of Heroin Maintenance Treatment' (2014) 20(4) *European Addiction Research*, 200; Justin Healey, *Drug Law Reform Debate* (The Spinney Press, 2014) 19.

181. Miriam Wolf and Michael Herzig, 'Inside Switzerland's Radical Drug Policy Innovation'

Innovation Review (Web Page, 22 July 2019).

182. Senate of Canada, 'Switzerland's Drug Policy, Prepared for the Senate Special Committee on Illegal Drugs' (Web Page, 14 January 2002).

183. Riaz Khan et al, 'Understanding the Swiss Drug Policy Change and the Introduction of Heroin Maintenance Treatment' (2014) 20(4) *European Addiction Research*.

184. Miriam Wolf and Michael Herzig, 'Inside Switzerland's Radical Drug Policy Innovation' *Innovation Review* (Web Page, 22 July 2019).

185. *Dangerous Drugs (Amendment) Act* (Trinidad and Tobago) 2019, s 6.

186. *Dangerous Drugs (Amendment) Act* (Trinidad and Tobago) 2019, s 7.

187. *Dangerous Drugs (Amendment) Act* (Trinidad and Tobago) 2019.

188. Trinidad and Tobago, *Parliamentary Debates*, House of Representatives, 11 December 2019 (Honourable Faris Al-Rawi, Attorney General) 30.

189. Trinidad and Tobago, *Parliamentary Debates*, House of Representatives, 11 December 2019 (Honourable Faris Al-Rawi, Attorney General) 31.

190. Inter-American Drug Abuse Control Commission, Information Bulletin: Data From the Early Warning System for the Americas Vol 1(1), (April 2020) 2.

191. *Dangerous Drugs (Amendment) Act* (Trinidad and Tobago) 2019, s 7.

192. California Courts – The Judicial Branch of California, 'Proposition 64: The Adult Use of Marijuana Act' (Web Page).

193. J. Richard Couzens and Tricia A. Bigelow, California Courts Memo (2017), 'PROPOSITION 64: "Adult Use of Marijuana Act" Resentencing Procedures and Other Selected Provisions', p.6.

194. 'California Proposition 64, Marijuana Legalization (2016)', *Ballotpedia* (Web Page).

195. Adrian Moore and Spence Purnell, 'California's Proposition 64: Marijuana Legalization', *Reason Foundation* (Article, 17 October 2016).

196. Drug Policy Alliance (2016), 'Why California Should Vote Yes on Prop. 64 to Legalize the Adult Use of Marijuana'.

197. Nadra Nittle, 'Legalizing pot: Is Prop. 64 really a civil rights issue?', *CalMatters* (Article, 23 June 2020); Gavin Newsom, Keith Humphreys, Abdi Soltani, *Pathways Report Policy Options For Regulating Marijuana In California* (Blue Commission on Marijuana Policy Report, 22 July 2015) p. ii.

198. 'California Proposition 64, Marijuana Legalization (2016)', *Ballotpedia* (Web Page); California Secretary of State (2016), 'Official Voter Information Guide', p.98.

199. 'California Proposition 64, Marijuana Legalization (2016)', *Ballotpedia* (Web Page); Drug Policy Alliance (2017), 'The Adult Use of Marijuana Act (Proposition 64): Frequently Asked Questions', p. 2-3.

200. Angela Dills et al, 'The Effect of State Marijuana Legalizations: 2021 Update' (Policy Analysis No 908, CATO Institute, 2 February 2021), pp4-6.

201. Emily Kan et al., 'Marijuana Use Among Justice-Involved Youths After California Statewide Legalization, 2015–2018' (2020) 110(9) *American Public Health Association Law & Ethics* 1389-1390.

202. Colorado Amendment 64, 3 June 2011, clause 3; The Denver Post, 6 November 2012, 'Coloradans say yes to recreational use of marijuana'.

203. Hua et al. (2020), 'The relationship of cannabis decriminalization in Colorado and cannabis use in individuals with alcohol use disorders', *Journal of Cannabis Research* Volume 2, p2.

204. Angela Dills et al, 'The Effect of State Marijuana Legalizations: 2021 Update' (Policy Analysis No 908, CATO Institute, 2 February 2021), p2.

205. Campaign to Regulate Marijuana Like Alcohol, 'Bolster Colorado's Economy', archived web page.

206. Colorado Amendment 64, 3 June 2011, clause 1; The Denver Post, 6 November 2012, 'Coloradans say yes to recreational use of marijuana'.

207. Santhi Chilukuri, "The Impacts of Recreational Marijuana Legalization on Colorado Policy Analysis on Amendment 64" (University of Kentucky, 2017) 17.

208. New York Times, "Reefer Madness or Pot Paradise? The Surprising Legacy of the Place Where Legal Weed Began" (30 June 2019).

209. Scott Atkins and Clayton Mosher, 'Oregon just decriminalized all drugs – here's why voters passed this groundbreaking reform', *The Conversation* (online, 11 December 2020).

210. What's Legal Oregon, 'Educate Before You Recreate' (Web Page); State of Oregon, 'Marijuana and Hemp (Cannabis) Frequently Asked Questions' (Web Page); Marijuana Policy Project, 'Summary of Oregon's Measure 91' (Web Page).

211. State of Oregon, Oregon Health Authority, 'Drug Addiction Treatment and Recovery Act', (Web Page, 4 May 2021).

212. 'Oregon Legalized Marijuana Initiative, Measure 91 (2014)', *Ballotpedia* (Web Page).

213. Ericka Cruz Guevarra, 'Oregon Governor Declares Addiction, Substance Abuse Public Health Crisis' *Oregon Public Broadcasting* (online, 28 March 2018).

214. Substance Abuse and Mental Health Services Administration (Survey, 2017-2018) '2017-2018 National Survey on Drug Use and Health: Model-Based Prevalence Estimates (50 States and the District of Columbia)', 46-47.

215. Substance Abuse and Mental Health Services Administration (Survey, 2017-2018) '2017-2018 National Survey on Drug Use and Health: Model-Based Prevalence Estimates (50 States and the District of Columbia)', 2-3.

216. Vera Institute of Justice, 'Prison spending in 2015', *The Price of Prisons* (Web Page, May 2017).

217. Oregon Health Authority, 'Drug Addiction Treatment and Recovery Act' (Web Page, 4 May 2021); Health Justice Recovery Alliance, 'Frequently Asked Questions'.

218. Angela Dills et al, 'The Effect of State Marijuana Legalizations: 2021 Update' (Policy Analysis No 908, CATO Institute, 2 February 2021).

219. Law 14,294, Article 31 (in Spanish); (English translation).

220. The Guardian, 20 July 2017, 'Uruguay pharmacies start selling cannabis straight to consumers'; Regulatory Decree 120/014, Article 2: (in Spanish).

221. Law 14,294, Article 31 (in Spanish); (English translation).

222. The Guardian, 20 July 2017, 'Uruguay pharmacies start selling cannabis straight to consumers'; Law 19,172 (in Spanish).

223. John Walsh and Geoff Ramsey, '*Uruguay's Drug Policy: Major innovations, major challenges*', Foreign Policy at Brookings, pp2-3.

224. Law 19,172, Article 9 & 10.

225. BBC News, 19 December 2019, 'Uruguay: cuánto ha cambiado realmente el mercado de las drogas en el país con la legalización de la marihuana'.

226. Giorgina Garibotto, *Carceles y Drogas en Uruguay; Reformas a las leyes de Drogas en America Latina* (Report, February 2015), p84.

Artwork

The artwork used in this document was originally designed by Gary Saunders for the Victorian Aboriginal Legal Service.

Thanks

We would like to thank Lilian Gonzalez, VALS Policy Volunteer, for contributing extensive research and drafting to this paper. We also thank the law firm which provided pro-bono research assistance for the jurisdictional comparisons in Parts 3 and the Appendix of this paper.

Contact

The Policy, Communications and Strategy team at valspolicy@vals.org.au.