

RE: INQUIRY INTO DRUG LAW REFORM – YARRA DRUG AND HEALTH FORUM SUBMISSION – MARCH 2017

Background

On 11 November 2015 the Parliament of Victoria's Law Reform, Road and Community Safety Committee received a reference to inquire into, consider and report on drug law reform.

The Terms of Reference for this inquiry are:

That pursuant to section 33 of the Parliamentary Committee Act 2003 this House requires the Law Reform, Road and Community Safety Committee to inquire into, consider and report on

1. The effectiveness of laws, procedures and regulation relating to the illicit and synthetic drugs and the misuse of prescription medication in minimising drug-related health, social and economic harm; and
2. The practice of other Australian states and territories and overseas jurisdictions and their approach to drug law reform and how other positive reforms could be adopted into Victorian law

Introduction

YDHF has approached this invitation to make a submission to the Inquiry with the belief that in order to create a truly enabling environment for drug policy reform a holistic response is needed both at Federal and State levels. Strong leadership is now required to correct the course that we are currently steering. For over two decades the level of debate in Australia has been narrow and invariably dominated by broad, baseless statements that seek to create a smoke-screen that overshadow evidence-informed policies and practices. Media feeds into the propaganda and drug war rhetoric that fuels hatred and fear, stifles progress and reinforces the stigma and discrimination that many people who use illicit drugs face on a daily bases.

YDHF believes that the current investment in punitive approaches, led mostly by heavy resourcing of police and prisons, along with the escalation of police powers and penalties, will not adequately reduce the harms and other impacts of illicit drugs in the community. Indeed there is strong evidence that individuals who are caught up in the criminal justice system find it difficult to get housing, employment etc which in turn causes more harm and a higher likelihood of relapse.

YDHF promotes a balanced approach to reducing drug related harms which is strongly aligned with the original principals of the National Drug Strategy. A realignment is needed to shift the emphasis away from the criminal justice system back toward the health and welfare sectors. Additionally, harm reduction programs should be expanded and mainstreamed. No longer should programs such as the provision of heroin as a treatment option and supervised injecting rooms be seen as 'radical' and a 'step too far'..

The policy narrative; the conversations we all have about illicit drugs and the people that use them, needs to focus on health, human rights and harm reduction.

This is the submission to this inquiry on behalf of the Yarra Drug and Health Forum (YDHF).

Australia's Drug Policy Investment

Over the past three decades Australia has adopted a national and holistic approach toward addressing drug related harms through the adoption of the National Drug Strategy (NDS). The mission of successive NDS has been to 'improve health, social and economic outcomes by preventing the uptake of harmful drug use and reducing the harmful effects of licit and illicit drugs in Australian society.'

The NDS was initially developed as a response to the threat posed by HIV which was partly being driven through injecting drug use and other high-risk behaviours. The NDS gained wide-spread support with 'harm minimisation' the cornerstone strategy involving a balance of three main approaches; supply reduction, demand reduction and harm reduction. The NDS gradually broadened its scope to include alcohol, tobacco and pharmaceutical drugs within its ambit.

Success of the NDS was based on several agreed principles:

- Over-arching policy of harm minimisation that recognises a balanced approach to reducing drug related harms through supply, demand and harm reduction
- Comprehensiveness of the approach that includes both licit and illicit drugs
- Promotion of partnerships between agencies; health, police, Dept of Education, Dept of Justice, NGOs, AOD Treatment Sector etc
- A cooperative, balanced approach b/n state & federal govts
- Acknowledging that we live in a drug taking society - most people use drugs - drugs serve a purpose and we will not necessarily eliminate use

However Australia, which was once a country that set the standard for effective drug policy implementation, has more recently turned its back on the success gained in the 1980's and 1990's and failed to capitalize on the progress made during that era. Once seen internationally as the leading light in progressive, evidence-informed health based responses aimed at reducing harms from illicit drugs, Australia is now viewed as somewhat of a backwater in progressing drug policy reforms. Illicit drug policy is now driven by the 'political capital' which is almost entirely driven by continually investing funding in police, courts and prison based responses to illicit drugs, despite their fruitless efforts to 'fix' the drug problem.

This is best exemplified by the imbalance in Australian governments' spending on illicit drug responses. What we spend on law enforcement, drug treatment and harm reduction to address illicit drugs reflects a skewed budget allocation commitment the majority of which is spent toward law enforcement, similar to the budget commitment of the United States. Total spending on illicit drug responses in Australia was approximately \$1.7 billion in 2009/10, with two thirds of this was spent on law enforcement. Treatment received about a fifth, prevention one tenth and harm reduction 2% (NDRI, 2010). The relatively small allocation of funding on drug prevention and harm reduction is an area that needs to be questioned and should be highlighted in any outcomes from this inquiry.

Prevention and harm reduction programs have been shown to be effective across a range of measures (MCDS, 2004) yet consistently draw only scant attention from governments in terms of funding priorities. On the other hand, the social, health and economic return that is a consequence of the budget outlay and toward boosting the criminal justice system is questionable at best.

There has been however a movement growing and slowly building over the past decade questioning the cost-effectiveness of policies that commit billions of dollars toward enforcement of illicit drug prohibition yet have little or no impact in drug availability, cost and purity. Further questions are also being asked about a system that continues to pit police against drug consumers with arrest rates in many parts of the world, including Australia, significantly increasing and yet the number of people who use illicit drugs continues to rise.

Questions about a 'war on drugs' approach to justify the investment in drug prohibition, if not in words definitely in deeds, are being asked by many people, not only about the amount of public money being spent enforcing prohibition, but also on the many unanticipated consequences. The 'Counting the Cost' Report produced by Transform Drug Policy Foundation (Transform D. P.) in the UK states:

'Despite increased resources directed to supply-side enforcement, evidence suggests that drug prices, while remaining far higher than legal commodities, have decreased over the past three decades.

From 1990 to 2005, for instance, the wholesale price of heroin fell by 77 percent in Europe and 71 percent in the US.' Closer to home, the significant impact of the war on drugs on public resources is evident when you look at court system.

In Australia, ABS data confirms the tough law and order policies implemented by governments toward drug offences. The Australian Crime Commission report 'Australian Crime Commission (ACC) Illicit Drug Data Report 2012–13' (ACC, 2014) noted that:

'...there were a record number of national illicit drug seizures and arrests reported in 2012–13. A record 86 918 national illicit drug seizures were reported in 2012–13, a 66.4 per cent increase on the 52 231 seizures reported in 2003–04. While the weight of illicit drugs seized nationally decreased from the record 23.8 tonnes seized in 2011–12, the 19.6 tonnes seized this reporting period is the second highest on record and a 75 per cent increase on the weight of illicit drugs seized in 2003–04. The number of national illicit drug arrests has increased 27.2 per cent over the last decade, from 80 020 in 2003–04 to a record 101 749 in 2012–13.'

Measures of successful law enforcement interdiction activities are mostly determined in size and numbers of drug seizures. However questions must be asked as to whether this is an effective measurement of the success of policing. The report goes on to say that the majority of arrests (61%) were for cannabis offences. We have seen over countless decades police, border patrol and justice officials standing in front of piles of seized drugs and cash making statements such as 'this will lead to a significant reduction in drug availability' or 'this will make our streets safer'. Nothing could be further from the truth. More recently former Victoria Police Chief Commissioner Ken Lay remarked that 'we cannot arrest our way out of this issue' in reference to the impact of Ice in the community.

Yet there has been very little development in progressing policies that seek to reduce harms as alternatives to the perpetual and almost insatiable appetite for pouring more and more funding into increasing law enforcement numbers along with greater police powers and heavier sentences for drug offences persists.

According to the National Drug Strategy Household Survey conducted by the National Institute for Health and Welfare in 2013 (NIHW, 2013) about 8 million people aged 14 and over in Australia (42%) have ever used an illicit drug in their lifetime, and 2.9 million (15.0%) had used an illicit drug in the 12 months. Cannabis is the mostly widely used illicit drug. Successive reports by the United Nations indicate that in comparison to other countries Australians have higher rates of cannabis and amphetamine use.

Under our current laws 42% of Australians that admit to using an illicit drug, if only once, have therefore committed a criminal offence. If they had been apprehended and convicted the consequences could have been far-reaching, potentially impacting on job opportunities and international travel.

One aspect of the current debate about the drug prohibition that is often neglected are the profits made by criminal groups running illicit drug markets. ABS research indicates that in 2010 alone the Australian public spent around 7.1 billion dollars on cannabis, heroin, cocaine ecstasy and amphetamines. Overall profits are estimated to be in the vicinity of 5.8 billion. So where do these profits go? Most of the profit from the illicit drug trade go into the pockets of criminal groups. Heroin profits mostly end up overseas funding political wars and insurgents. In many cases the profits from illicit drug production end up financing other illegal activities such as weapon distribution and people trafficking. Along the way customs officials, police and politicians are paid off and those that stand in the way are summarily dealt with. In Mexico it is estimated that 60,000 people have died in drug related violence since 2006 (Bunker, 2014).

Furthermore, Australians are not immune from the violence perpetrated by those running the drug trade. Consider the horrendous violence and lives lost, including innocent people, during Melbourne's infamous amphetamine wars played out through the 'Underbelly' period. It is estimated that 35 people died over a ten year period as Melbourne's underworld fought over the lucrative methamphetamine market (ABC, 2014).

Mr Mick Palmer, former Commissioner of the Australian Federal Police during the Tough on Drugs period, said that police in Australia had minimal impact on the drug trade. Like many other former police, he has questioned the efficacy of the emphasis on law:

'The reality is that, contrary to frequent assertions, drug law enforcement has had little impact on the Australian drug market. This is true in most countries in the world.' (Age, 2012).

Despite increased spending on enforcement, health outcomes are deteriorating. Opioid overdose deaths in Australia are increasing rapidly once again, in 2010 there were 613 recorded deaths from opioid use (Roxburgh, 2010) nearly double that of 2001, with the majority (69%) of accidental opioid deaths due to opioids other than heroin.

In terms of stifling illicit drug production, there is little impact on the production of drugs, heroin production in Burma, source of almost all of the heroin reaching Australia, has been rising steadily for several years, fuelled by poverty and corruption (DW, n.d.). In Victoria alone over 170 people died from heroin related death in 2016.

Official corruption linked to failed drug prohibition is also a significant problem in many countries, including Australia. The second highest ranking member of the NSW Crime Commission, Mark Standen was convicted for offenses relating to a \$300 million drug operation (SMH, 2011).

International Movement for Change

Internationally, The Global Commission on Drug Policy - involving 19 major international political and business figures including Richard Branson and Kofi Annan – reported in June 2011 that global drug prohibition had failed and a debate around the world was needed about a new policy approach (GCDP, 2011).

The Commission went on to say that their recommendations are:

‘End the criminalization, marginalization and stigmatization of people who use drugs but who do no harm to others. Challenge rather than reinforce common misconceptions about drug markets, drug use and drug dependence.’

Further across the globe, countries are deviating from the prohibition line. Uruguay has introduced a state licensed marijuana sales and commercial cultivation designed to undermine the lucrative illicit drug trade. Producers are licensed by government authorities and cannabis is sold through government outlets for as little as one dollar. It is anticipated that the marijuana black market will be nullified and driven out of business (NEJC, 2012). Yet in Australia, cannabis is still an illicit substance in all States and Territories. Some states, such as South Australia, have downgraded penalties for minor possession and use to civil ‘expiation’ type offences. The remaining states have ad-hoc systems of cautioning and penalty notices.

Drug law reform, once the domain of a few isolated ‘radical’ groups such as drug user organisations and political pressure groups is now becoming mainstreamed. Even within the United Nations and other key global drug policy makers the momentum is swinging toward more evidence-informed policies that place health and human rights foremost in any response to drug issues.

The United Nations' leading health agency, the World Health Organization, has called on countries around the world to end the criminalisation of people who use drugs. The call was made in a report published in 2014 that looked at policy responses for dealing with HIV among key populations – men who have sex with men, people who inject drugs, people in prisons and other closed settings, sex workers and transgender people.

The WHO's unambiguous recommendation is clearly grounded in concerns for public health and human rights. Whilst the call is made in the context of the policy response to HIV specifically, it clearly has broader ramifications, specifically including drug use other than injecting. In the report, WHO says countries ‘....should work toward developing policies and laws that decriminalize injection and other use of drugs and, thereby, reduce incarceration...’ (WHO, 2014).

It is pointless ignoring this trend. Countries cannot hold back the tide. The best they can do is to understand the problem and follow the evidence of what works.

A debate about drug policy is happening in other countries. Some countries are reforming their approach. In November 2012, Colorado and Washington states passed ballot initiatives by 55/45 to tax and regulate cannabis like tobacco and alcohol (Flatow, 2013). It is expected that more states will follow, Alaska has already signalled their intention to follow.

In New Zealand the issue of the changing synthetic cannabis market has led to legislation that allows these substances to be tested and approved for legal sales. While the legislation is not operational due to issues with testing processes and there are no psychoactive substances legally available at the moment, the notion of testing and regulating drugs according to their risk has been laid (Bell, 2015).

In the UK there is also a growing movement of change. Senior politicians and business leaders such as Deputy Prime Minister Nick Clegg and Richard Branson have joined forces and are united in their condemnation of the 'war on drugs' labelling it a big 'con'. They have, however, gone a step further, laying a path for discussions about reviewing how drugs are assessed and classified (RT, 2015).

Australia's Stagnant Stance

In the midst of this international tide of change Australia governments have shunned change and adopted a policy narrative away from more evidence-informed health based responses toward a more political propaganda narrative, as demonstrated by former Prime Minister John Howard:

'...the path to success does not lie in giving in to the drug barons; it does not lie in giving in to the harm minimisation philosophy...'

Howard again in response to the call for a trial of Heroin prescribing:

'...heroin trial would send a very bad signal...it would say to the community it represents the first step...towards a far more liberal approach to drug activity and the drug trade...'

The consistent narrative over the past decade both at State and Federal levels has been narrow and blinkered. The debate about the effectiveness of drug policy has invariably been severely limited, with little informed and considered discussion. Public statements that echo Howard's narrative as above are consistently applied at the political level, with no regard of the consequences of risk for those using their drug of choice, albeit illicit. This narrative approach has led to the increased stigmatisation and discrimination of people who use illicit drugs, most of whom are considered by many as collateral damage in the war on drugs.

Furthermore, the *debate* about the need for evidence-informed drug policy and increased resource commitment in the harm reduction and primary prevention areas has been somewhat stifled.

Consequently, there has been a significant lack of investment in these key areas, especially harm reduction, given the progress in many other parts of the world. Harm reduction programs that reflect evidence-informed practice and achieve a range of beneficial outcomes, yet don't receive strong policy support at either Federal or State government levels, include:

- Supervised injecting facilities in areas of high-need
- Heroin or opiate replacement programs for long term heroin dependent users

- Provision of drug testing kits at dance parties and other events
- Increasing access to Naloxone including equipping emergency service personnel and people in custody
- Increasing access to NSP i.e. prisons
- Universal access to medicinal cannabis

A good example of the narrowness and stifling of harm reduction policy information was the recent situation in Melbourne where Victoria Police failed to release information about a risky illicit substance that was being distributed in night clubs.

The police response to this incident, abrogating any duty to warn the public about the dangers of this substance, was based on their view that all illicit drugs are dangerous and should not be taken so we have no duty to warn in specific instances.

However, there has been some movement here to breathe fresh air into the policy vacuum. Nationally in 2012 Australia21, a non-profit company whose core business is research and development on issues of strategic importance to Australia in the 21st Century, released 2 reports on drugs drawn up after meetings with prominent members of the community.

One of the reports was titled *'Alternatives to Prohibition: Illicit Drugs: How we can stop killing and criminalising young Australians'* (Douglas, 2012) and proposed that:

'If we are to reduce the pernicious effects of black market drugs on the Australian community, control of the drug supply system must ultimately be diverted from criminal to civil and government authorities. We must evolve a new approach that acknowledges the powerful economic forces of the drug market, but which is acceptable to the community, and is achievable politically.'

This notion of increased spending on treatment and education is supported by Australian National Household Surveys (AIHW, 2013) that show the community wants governments to spend more on education and treatment than law enforcement. They also want policies that reduce deaths, disease, crime and corruption.

Progressing Illicit Drug Policy in Australia

Yarra Drug and Health Forum firmly believes that drug policy reform is both justified and badly needed in Australia. As most laws and policies that relate to illicit drugs are government by State laws, the recommendation outlined here are proposed for changes to Victorian legislation such as the Drugs, Poisons and Controlled Substances Act. Some policy changes will also be required at the Federal level.

YDHF has a firm position in relation to several aspects of illicit drug policy. The overall aim of these positions is to protect the health of the community and to reduce harms related to illicit drug use to a minimum. Drug policy should be focused on reduction of harm and improvement of health. Our current policy approach toward illicit drugs fails in this regard.

While the YDHF supports the actions taken in Australian jurisdictions over the past two decades to reduce penalties for personal drug use, we have not gone anywhere far enough. Those strategies that divert drug users away from the criminal justice system and into education and/or treatment services have been of some benefit however to achieve significant reduction in harms for people whose only offence is the use of an illicit drug then decriminalisation of drug use should be adopted.

Yarra Drug and Health Forum also supports harm reduction services including providing people who use drugs with support and services is more humane and effective than punishing them. Users of drugs need access to a range of health services to protect their physical and mental health, and to drug treatment to reduce or cease drug use when it is possible for them to do so.

Those harm reduction services that YDHF supports include programs that provide access to sterile injecting equipment as needle and syringe programs are effective (and cost-effective) in minimising the spread of blood-borne viruses.

Most importantly, strong leadership is needed at the political level to change the narrative and context in which illicit drug use is viewed by the community. The implementation of life-saving and harm reducing policies would be far less politically challenging if a conversation is adopted that focuses on evidence based policies that save lives and improve the health of everyone in the community.

In terms of policies that YDHF supports and believe should be introduced into Victoria as a matter of extreme importance these include:

- The introduction of supervised injecting facilities to reduce hazardous street based drug use and to provide a reliable avenue to health services for regular intravenous drug users. YDHF believes that the Medically Supervised Injecting Centre in Sydney is a well tested model and similar facilities are required in parts of Melbourne.
- Proposed Trial of Controlled Availability of Opioids (Heroin Trial). YDHF supports the findings of the Feasibility Research into the Controlled Availability of Opioids and other evidence from overseas on this issue. YDHF believes that new and better ways must be developed to reduce the harm caused by opiate dependency.
- Testing of pills. YDHF fully supports this approach in the greater interest of harm minimisation and in the attempt to prevent deaths from party drugs such as those which have occurred recently in Sydney, Melbourne and Adelaide. The use of police Passive Alert Detection Dogs (PADD) should be carefully evaluated with particular reference to the increased harms that this approach may be causing.
- Provision of clean injecting equipment in the Victorian prisons system. YDHF is cognisant of the evidence that injecting drug use exists in prisons and that NSP provision will reduce the risk of the transmission of blood borne viruses and not create a risk to prison staff.
- Medical use of cannabis: YDHF recommends that cannabis for medical purposes be made available for a much broader audience when it is judged by medical staff to be useful and efficacious for the purpose.
- Decriminalisation of illicit drugs as per the model currently implemented in Portugal

Adoption of Portugal Model

The final point above, the decriminalisation of illicit drugs as per the model currently implemented in Portugal, is particularly critical to reducing the harms from illicit drugs as well as improving health-based outcomes.

When Portugal decriminalised all drug use in 2001, all legal provisions related to the use and possession of illicit drugs for personal consumption were removed from law (Greenwald, 2009). While there are still some administrative penalties that provide options for authorities to impose fines and community service, penalties such as imprisonment and more punitive penalties no longer exist. All penalties are now decided by a 'Commissions for the Dissuasion of Drug Addiction' - panels made up of a range of health, justice and social worker officials. In most cases these panels do not impose penalties, they recommend treatment for drug use, however all drug treatment is voluntary.

An evaluation of the Portugal approach conducted by the European Monitoring Centre for Drugs and Drug Addiction found that:

Drug Use and Health:

- Levels of drug use are below the European average
- Drug use has declined among those aged 15-24 - the population most at risk of initiating drug use
- Lifetime drug use among the general population has increased slightly - in line with trends in comparable nearby countries. However, lifetime use is widely considered to be the least accurate measure of a country's current drug use situation
- Rates of past-year and past-month drug use among the general population – which are seen as the best indicators of evolving drug use trends – have decreased
- Between 2000 and 2005 (the most recent years for which data are available) rates of problematic drug use and injecting drug use decreased
- Drug use among adolescents decreased for several years following decriminalisation, but has since risen to around 2003 levels
- Rates of continuation of drug use (i.e. the proportion of the population that have ever used an illicit drug and continue to do so) have decreased
- Prevalence rates of blood borne-virus have declined over the past ten years
- Deaths due to drug use have dropped significantly

Crime and Justice:

- Drug offences have dropped by two thirds since the period of introduction of the decriminalisation policy
- The number of people incarcerated due to drug offences declined
- A reduction in serious crimes related to the acquisition of property to fund drug use

Conclusion

In conclusion, evidence-informed policies should be a priority. The expansion of harm reduction programs that seek to reduce the risks of drug use both to individuals and communities should be prioritised.

We must change the language of how we discuss illicit drugs from war-like catch phrases and propaganda to considered, evidence-informed and humane. We must no longer label life-saving measures such as needle and syringe programs, supervised injecting facilities, prescribed heroin and testing kits for ‘party drugs’ as ‘sending the wrong message’. The message that we should be sending is that we will make every effort to reduce the risks of drug use especially expansion of methadone programs, greater access to treatment, needle and syringe programs in prisons.

American Nobel Prize winner Ralph J. Bunche (the first African-American winner) once said; ‘...*there are no warlike people--just warlike leaders...*’ (Kegley, 2014). Leadership needs to change to address this issue and we can start by asking that the language and the discussions our leaders use changes. While we continue to frame the discussion and language about illicit drugs in terms of ‘winners’, ‘losers’, ‘fighting’, ‘never giving up’, ‘waiving the white flag’ – language of the drug war – we will continue to count the cost of this war in lives lost and waisted and communities destroyed.

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