HARM REDUCTION AUSTRALIA

Special Rapporteur on the Right to Health
Att: ohchr-srhealth@un.org

13 November 2023

Submission to the Special Rapporteur on Health re: Right to Health Framework on Harm Reduction

Thank you for the opportunity for Harm Reduction Australia (HRA) to make a submission towards your current work on a new right to health framework on harm reduction. HRA is excited by the ground-breaking nature of your work in this space including the fact that it constitutes the first-ever comprehensive review of harm reduction by a UN human rights expert.

To this end, while we have provided general comments on Australia's track-record in relation to harm reduction policies and practices including areas requiring further attention and/or investment, we also have a specific interest in the intersections between harm reduction, human rights, and drug policy. In this context, we have also taken this opportunity to provide some specific comments on global drug policy matters including the impact of prohibition and criminalisation on the health, rights and dignity of people who use drugs both within Australia and globally.

HRA is a national organisation committed to reducing the health, social and economic harms potentially associated with drug use and drug policy responses. HRA is a membership-based organisation that represents the views of its members who are advocates for the continuation and expansion of harm reduction policies in Australia. HRA takes a non-judgmental approach to drug use within society and aims to ensure that drug policies in Australia first and foremost do no harm and provide real benefit to Australian society through evidence-informed and humane responses to drug use. Further information on HRA can be found on our website here.

Harm Reduction, Health, and Human Rights in Australia

Harm reduction is both a philosophy and a pragmatic approach that is grounded in principles of dignity, justice and human rights and focuses on engaging with people without judgement, coercion, discrimination, or requiring that people stop using drugs as a precondition of support. It allows for a broader way of thinking about drug use in society including the idea of any positive change and seeing drug use not only in terms of harms and negative outcomes, but as something from which people can also derive benefits and pleasure. As such, harm reduction is principally concerned with upholding and protecting human rights and is therefore, a fundamental aspect of enshrining the right to the highest attainable standard of health for people who use drugs.

Australia is a signatory to the *Universal Declaration of Human Rights* and several other key international conventions including the *International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD, and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* which enshrine a range of fundamental protections including the right to the highest attainable standard of health.

Current Access to Harm Reduction in Australia

Australia has a strong and proud history of harm reduction being one of the world's first countries to introduce Needle & Syringe Programs (NSP) in the mid-late 1980s primarily in response to the advent of HIV/AIDS. Australia also has had a National Drug Strategy (NDS) for over 3 decades which is based on what is referred to as a 'balanced and pragmatic' 3-pillar harm minimisation response including: supply reduction, demand reduction and harm reduction. In relation to the impact, coverage, and availability of harm reduction, global research has shown that Australia is one of the only countries in the world where people who inject drugs have access to the WHO recommended standard for high coverage of needles & syringes of greater than 200/person per year[1].

There is also reasonable access to Opioid Dependence Treatment (ODT) which includes methadone, sublingual buprenorphine, and long-acting buprenorphine with over 55,000 people accessing the ODT program on a snapshot day in 2022.[2] ODT is available free of charge through public hospital-based clinics, however, the majority of people on ODT in Australia access the program through GPs and community pharmacy or private clinics which charge consultation and dispensing fees based on income level. On a positive note, the federal government has very recently introduced reforms to the ODT program which took effect on 1 July 2023 and has removed a fundamental discrimination that has been at the centre of the ODT program for decades. These reforms have removed prohibitive and discriminatory daily, uncapped, and unregulated dispensing/dosing fees that ODT consumers have had to pay for decades. As of 1 July 2023, the ODT program has become part of the s100 HSD Community Access Program whereby consumers only pay the standard Pharmaceutical Benefits Scheme (PBS) co-payment to access their medications. This will mean, that for most consumers, they will shift from paying between $30 - $70 (AUD) per week to paying $7 - $30 (AUD) per month[3].

ODT is also available in Australian prisons although there can be restrictions on who can access the program and prison-based ODT in Australia is increasingly focusing on long-acting buprenorphine rather than providing methadone or sublingual buprenorphine medications as options. Australia also has expanding access to a federally funded take-home naloxone (THN) program which makes naloxone available free of charge to individuals through harm reduction services and some pharmacies. Australia currently has only two drug consumption/medically supervised injecting facilities one in Sydney and one in Melbourne.

Australia provides a good level of free access to HIV anti-retroviral treatment for HIV, access to PrEP and PEP and associated HIV-related care and support. Since 2016, Australia has also provided subsidised (affordable) universal access to direct acting antivirals (DAA) for the treatment of hepatitis C virus (HCV). Access to HIV and HCV treatments has meant that Australia continues to have one of the lowest rates of HIV among people who inject drugs in the world and is making successful inroads towards the goal of eliminating HCV as a public health concern by 2030.

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[1] https://indicatorregistry.unaids.org/indicator/people-who-inject-drugs-prevention-programmes

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

[3] See more information here: https://www.harmreductionaustralia.org.au/treatment-equity/

Gaps in Coverage and Availability of Harm Reduction in Australia

Despite Australia's relatively positive domestic track-record and global standing on harm reduction, ongoing concerns remain in several key areas including the level of overall investment in harm reduction and ongoing gaps in critical programs and services.

As noted above, Australia's National Drug Strategy (NDS) is based on a 3-pillar approach, however, the relative levels of investment in these pillars is significantly disproportionate. For example, supply reduction which includes a primary focus on prohibitionist, law enforcement initiatives, receives the vast bulk of Australian Government investment in drug policy at approximately 65%, with demand reduction receiving approximately 30% and harm reduction less than 5% of total government investment (on last publicly available figures). This approach to funding for drug policy responses continues despite the fact that punitive, prohibitionist/law enforcement-based approaches to addressing drug use in society have been globally discredited as ineffective and inhumane.

Another issue of concern in relation to harm reduction and the right to health in Australia is the current total absence in the National Drug Strategy (NDS) of any reference to the importance of human rights as a fundamental concept that should underpin Australia's federal and state/territory drug laws, policies, and their implementation [4]. Indeed, in a recent submission on Australia's human rights obligations to UN CESCR, the Australian Civil Society Committee on UN Drug Policy, stated that:

> *"Having a national strategy on drugs that is blind to human rights considerations creates space for governments to breach citizens' human rights in the name of drug policy— and they do so."*[5]

In contrast, Australia's National Blood Borne Viruses and Sexually Transmissible Infections Strategies 2023-2030 are underpinned by several guiding principles including human rights[6]. It raises questions as to why there would be such diversity between these two Australian Government national strategies in relation to something as fundamental as human rights given that the NDS and the BBVSTI strategies address a range of cross-cutting issues and some of the same key populations, specifically people who use/inject drugs. Again, the Australian Civil Society Committee on UN Drug Policy in their submission highlighted:

> *"By noting their target populations "have the same rights to comprehensive and appropriate information and health care as other members of the community" the guiding principles enable to Strategies to weigh human rights against historical policy settings, and to value evidence above rhetoric."*[7]

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

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

[5] Ibid

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

[7] Ibid

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

1. **Criminalising Personal Drug Use & Possession:**
   Under Australia's current approach to drug policies and laws, with few exceptions[8] the personal use and possession of drugs other than alcohol and tobacco, are criminalised. The criminalisation of people who use drugs in Australia prevents access to harm reduction and results in direct harms associated with criminal convictions and incarceration. As the UN Chief Executives Board has emphasised that in many nations the penalties applied to people convicted of drug offences are too frequently disproportional [9]. Furthermore, the CESCR has repeatedly found that the criminalisation of drug use and possession for personal use operates as a barrier to the right to health and has recommended decriminalisation[10].

   Contrary to international standards, criminal penalties in relation to drug offences are often very harsh and apply to the minor offences of drug consumption and possessing small quantities of drugs for personal use and cultivating small quantities of cannabis. HRA believes that the Commonwealth Government needs to act in concert with jurisdictional governments to shift to a model of full decriminalisation or legalised regulation of drug possession for personal use and ancillary activities including cultivation and possession of drug use paraphernalia at both the Commonwealth and state/territory levels. This shift in laws and policy alone would significantly reduce the level of harm for the 1000s of Australians routinely charged and convicted for personal drug offences every year.

   In Australian jurisdictions, the threshold quantities differentiating between a person being charged for possession of a drug for personal use, rather than possession for the purpose of trafficking, are far too low.[11] Typically, they are far below the levels that people who use drugs would normally purchase and possess for their own use, for example, in the Northern Territory where 0.5g[12] of MDMA equates to a trafficable amount, but the typical amount of MDMA consumed in a session is also reported to be 0.5g[13] - which means that people who use drugs often get charged with a trafficking offence. The Commonwealth government needs to act to have the

[8] Notably the recent announcements of a shift to a decriminalisation approach to small amounts of drugs for personal use and possession in the ACT and QLD.

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

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

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

[12] Northern Territory of Australia: Misuse of Drugs Act (2017). Available from: https://parliament.nt.gov.au/__data/assets/pdf_file/0018/452232/Misuse-of-Drugs-Act-2017-NT.pdf

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

threshold quantities in all Australian jurisdictions adjusted to match the realities of drug use, and possession of drugs for personal use.

All Australian jurisdictions have a reverse onus of proof for people charged with possession of drugs for the purpose of drug trafficking, which means that everyone who possesses drugs over a certain quantity threshold is presumed to be trafficking. This reverse onus of proof is unacceptable; it is contrary to basic principles of law in a democracy.[14] HRA believes the Commonwealth Government needs to act to ensure the offence of possession for the purpose of drug trafficking dealt with by the courts in the same way that they deal with other offences, namely with the prosecution being required to prove to the court that the offence was committed.

2. **Ongoing Stigma and Discrimination:**
The levels of stigma and discrimination routinely experienced by people who use/have used illicit drugs in the Australian community is both profound and pervasive. Australian research into alcohol and other drugs (AOD) stigma and discrimination has found that the experience of stigma and discrimination for people who use drugs is so pervasive that it is basically a daily experience. Further, a recent Victorian coronial inquiry into the death in custody of an Aboriginal woman who was also an illicit drug user found, in a legal global first, that drug-related stigma was a contributing factor in her death[15].

One of the ongoing issues in the context of human rights and anti-discrimination protections for people who use/have used illicit drugs in Australia, is that outside of circumstances that involve the delivery of services, education, employment, and commodities, people who use/have used illicit drugs are very often not protected at law in relation to any stigma and discrimination they may face. So, although some people may be protected at under anti-discrimination legislation if their rights are found to have been breached in the context of for example, experiencing discrimination due to being on a registered opioid dependence treatment program, discrimination on the basis illicit drug use is typically not protected at law. This is because the 'behaviour' involved is illegal and therefore, their rights are often not protected. This can extend to employment, education, health care, insurance, club memberships and trade unionism, autopsies and funeral services, the list is long.

It is now well-accepted that 'stigma kills' and this is particularly relevant in the context of illicit drug use where people are often made to feel separate from the remainder of the community. It should also be noted, that AOD treatment does not necessarily protect people who use or have used illicit drugs from rights violations with many reports documenting significant levels of stigma and discrimination for people engaged in AOD treatment and other harm reduction services due to the obvious power imbalances in these areas of health care[16].

3. **Intersection of Racism and Criminalisation:**
It is well-documented that Aboriginal and Torres Strait Islander people are profoundly over-represented in the Australian criminal justice system. In relation to illicit drug use, Aboriginal and Torres Strait Islander people are some 8 to 10 times more likely to be incarcerated than non-Indigenous people who use illicit drugs. Although the racial disparities experienced by Aboriginal and Torres Strait Islander people within

[14] Gray, A 2016, 'Presumption of innocence in Australia: a threatened species', *Criminal Law Journal*, vol. 40, no. 5, pp. 262-82.
[15] See media report here: https://www.abc.net.au/news/2023-01-31/veronica-nelson-victoria-aboriginal-death-in-custody/101900156
[16] See Lancaster, K., Seear, K., and Ritter, A. her: https://ndarc.med.unsw.edu.au/resource/reducing-stigma-and-discrimination-people-experiencing-problematic-alcohol-and-other-drug

public drunkenness offences have recently been abolished in Victoria, they still remain on the books in other jurisdictions in Australia. These offences along with the ongoing over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system breach the right not to be racially discriminated against and of course, act as a fundamental barrier to the right to health.

Several state police forces, including Victoria's, are not required to release community profiling data. In NSW, where this practice is managed via the Bureau of Crime Statistics and Research, significant disparities have been shown in the NSW Police Force's profiling of Aboriginal and Torres Strait Islander communities in the stop-and-search, arrest, and sentencing practices for cannabis possession. Given that Aboriginal and Torres Strait Islander peoples are incarcerated at the highest per capita level of any country in the world, coupled with the early implications of recently released NSW data, and the well documented racist origins and impacts of drug prohibition, there are serious questions to be asked about racialised policing of Australian drug laws and the lack of mechanisms in place to hold this practice to account[17].

Noting the above point, and that Aboriginal and Torres Strait Islander children accounted for 65% of the nearly 600 children aged ten to 13 years sent to prison in a twelve-month period, refusing to raise the age at which children can be sent to prison from ten to 14 years of age 42: also breaches both the right not to be racially discriminated against and the principle of proportionality[18].

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

There are currently no NSPs in Australian prisons. Countries that have implemented access to new injecting equipment in prisons, have shown that such programs can be run successfully and without occupational health and safety risks to prison staff. It is within this context that we express our view that the ongoing refusal of Australian Governments to provide evidence-based harm reduction services in prisons including access to new injecting equipment despite their available in the community, breaches the right to the highest attainable standard of health for Australian prisoners.

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

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

[18] Ibid

Further, inadequately implementing the international agreement that women (including those accused of or convicted of drug-related offences) should be provided with non-custodial alternatives to imprisonment unless the offences are serious or violent: breaches the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)[19].

HRA believes all these ongoing breaches in the Australian custodial context must be addressed urgently in the interests of health and human rights. We note with concern, however, that the NSW Government recently refused the UN sub-committee on the prevention of torture from visiting NSW prisons which raises serious concerns about human rights in our prison system. It has been reported that the *"Australia's human rights commissioner, Lorraine Finlay, has questioned why the NSW government was blocking officials from the UN inspecting its jails if it was confident about meeting minimum standards. She said the NSW move could jeopardise promises made by Australia as part of the UN's Optional Protocol to the Convention Against Torture (Opcat) that was ratified by the federal government under former prime minister Malcolm Turnbull in 2017."* [20] HRA strongly encourages UN investigation of these extremely concerning developments in the Australian context to ensure that as a minimum, people deprived of their liberty are treated with dignity and in accordance with human rights protections in Australian custodial environments.

5. **Increasing Overdose Deaths**
   Since 2002, the rate of drug-induced deaths steadily increased on average by 3.5 per cent per year. In 2021, there were 1,788 drug-induced deaths among Australians according to preliminary estimates by the Drug Trends program at the National Drug and Alcohol Research Centre (NDARC), UNSW Sydney. This equates to one death every four hours and majority of these deaths are due to illicit opioid use. Despite this alarming situation, Australia currently does not have a National Overdose Prevention Strategy and as documented elsewhere in this submission has ongoing problems with adequate access to opioid dependence treatment and other harm reduction programs that could help address this concerning situation.

6. **Safe Injecting Facilities/Drug Consumption Rooms:**
   As noted above, there is currently only two safe injecting facilities/medically supervised injecting rooms in entire country in Sydney and Melbourne (with decades between the first and second room being established). This is despite the overwhelming evidence that these facilities save lives and that more facilities are urgently needed in Australian cities. The ongoing lack of these facilities in the face of increasing overdose deaths in Australia cities is a breach of the right to life and has been shown in other international jurisdictions such as Canada to be a denial of the right to the highest attainable standard of health.

   These ongoing and unacceptable delays to the timely establishment of evidence-based, effective harm reduction services in the community raises important questions about why this is occurring. HRA believes that the delays to the establishment of these facilities has been significantly driven by negative, stigmatising, and discriminatory media coverage and negative public attitudes towards people who use/inject drugs. Repeated negative media articles and public statements (by

[19] United Nations General Assembly 2011, Resolution adopted by the General Assembly on 21 December 2010, 65/229: United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), http://www.unodc.org/documents/justice-and-prisonreform/Bangkok_Rules_ENG_22032015.pdf.
[20] Taken from: https://www.theguardian.com/australia-news/2022/oct/18/nsws-refusal-to-allow-un-inspectors-in-prisons-raises-questions-human-rights-commissioner-says

authorities including senior police, parliamentarians, councillors, and business owners) that promulgate strong NIMBY (not in my backyard) attitudes among the Australian community is, in our opinion, a human rights concern. We raise this because it is these ongoing negative, stigmatising, and discriminatory attitudes that promote a general belief in the community that it is OK to treat people who use illicit drugs at best with contempt and disregard, and in some cases, to violate their most basic and fundamental human rights. For these reasons, we believe these issues are highly relevant to this submission.

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

7. **Use of Sniffer Dogs & Strip Searches in Public Spaces & Events:**
The use of drug sniffer dogs and strip searches, particularly of young people breaches the right to privacy and the principle of proportionality as well as acting a significant barrier to harm reduction and therefore, the right to health. For example, prohibitionist policing practices have been shown to cause significant unintended harms with young people being searched in public places and vulnerable young people being traumatised by being subjected to bodily searches in police and custodial environments[21]. Passive alert detection or sniffer dog operations in several Australian jurisdictions targeting music event patrons (and other public places) have been causally linked to drug toxicity deaths from 'panic -swallowing', fear of accessing harm reduction services (such as drug checking programs) and post-traumatic stress disorders from being strip searched.

   There have been formal recommendations in various inquiry reports to stop such practices[22]. Unfortunately, however, these practices continue due to political investment in prohibitionist approaches and false claims by law enforcement officials that such practices are necessary to prevent young people using illicit drugs. Recent reports in Australia have shown that drug detection/sniffer dogs are not only highly unreliable making errors 75% of the time but are waste of public funds and result in harmful unintended consequences[23].

8. **Lack of Access to Drug Checking/Pill Testing:**
The ongoing absence of drug checking/pill testing services (with the one notable exception of the recent fixed site pilot service in the Australian Capital Territory (ACT) despite overwhelming evidence and expert and coronial opinion justifying its implementation[24] is a breach of the right to the highest attainable standard of health. Multiple corner's reports have now recommended the funding and implementation of drug checking/pill testing services at music festivals and events but jurisdictional governments across Australia (except the ACT government) refuse to implement these life-saving harm reduction programs. In 2023, warnings are already being

[21] https://www.smh.com.au/politics/nsw/girls-aged-12-and-13-strip-searched-by-nsw-police-20231016-p5ecig.html

[22] See: https://coroners.nsw.gov.au/coroners-court/download.html/documents/findings/2019/Music_Festival_Redacted_findings_in_the_joint_inquest_into_deaths_arising_at_music_festivals_.pdf

[23] https://www.smh.com.au/politics/nsw/drug-detection-dogs-are-wrong-more-than-right-data-reveals-20230926-p5e7pp.html

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

issued about the potential for further deaths associated with a much hotter than usual summer music festival season ahead, and therefore, the need to provide evidence-based drug checking harm reduction services to reduce this potential[25].

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

There are also health and human rights implications associated with the use of biological testing especially supervised and/or random urine drug screen analysis in the context of drug treatment. While it is not used in all drug treatment settings, where used, it is typically done for punitive purposes and is experienced as degrading, invasive and inhumane by many people subjected to it. There is, however, increasing evidence to show that such analysis is not only expensive and therfore a not cost-effective use of available resources, but does not provide a higher level of accuracy than using self-report on drug use[26].

Despite a large and growing ODT program in Australia, there continues to be problems with access to treatment with up to 100,000 people estimated as eligible for drug treatment but unable to access a suitable treatment program at any given time. There are also ongoing issues with access to appropriate medication-assisted treatments for drugs other than opioids. Recent research has shown that methamphetamines are now the most commonly used drugs reported by people accessing harm reduction programs such as NSP and drug consumption rooms, but Australia still has no pharmacotherapy-based treatment options for people regularly using methamphetamines.

Finally, there are also issues associated with the refusal to permit the use of some drug treatment modalities that research globally has repeatedly demonstrated are of proven efficacy and cost-effectiveness[27] and are already used in other countries including diacetylmorphine or heroin-assisted treatment of opioid dependence and in our view, these constitute breaches the right to the highest standard of health and is an area that needs to be addressed.

10. **Roadside Drug Testing:**
HRA believes that roadside drug testing of drivers where police have no reasonable suspicion that the driver is impaired by a drug/s, but rather, charges people with the offence of having any detectable level of a proscribed drug in the body rather than impaired driving: breaches the right of freedom from arbitrary arrest and detention. It also breaches the core human rights principle of proportionality as there is no evidence that roadside drug testing increases road safety. Despite the ongoing implementation of roadside drug testing in Australia over several years, and the thousands of people losing their licenses and receiving severe penalties, there has

[25] https://www.smh.com.au/national/nsw/greens-want-debate-on-pill-testing-after-music-festival-deaths-20231012-p5ebra.html and https://www.sbs.com.au/news/article/debbies-son-overdosed-shes-thinks-this-states-push-for-drug-testing-is-a-no-brainer/52f49metn

[26] See: https://onlinelibrary.wiley.com/doi/10.1111/add.16200

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

not been a single study conducted to evaluate the impact of this on road safety[28]. In the alternative, the ACT Human Rights Commissioner has documented the many ways in which roadside drug testing breaches both the ACT Human Rights Act and Australia's broader international human rights obligations.

Furthermore, medicinal cannabis has been legal in Australia since 2016, but currently people accessing these medications are not legally able to drive and face losing their driver's licence and frequently therefore, their livelihoods, due to random roadside drug testing that has no ability to distinguish between presence and impairment. HRA believes this is a fundamental human rights issue that is currently preventing people from accessing the highest attainable standard of health due to Australia's harmful and punitive approach to roadside drug testing.

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

Harm Reduction, Drug Policies and Breaches to International Human Rights Law:

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

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

> *"Data and experience accumulated by UN experts have shown that the "war on drugs" undermines health and social wellbeing and wastes public resources while failing to eradicate the demand for illegal drugs and the illegal drug market.' The statement also emphasised the responsibility of the UN system, the international community and individual UN member states to reverse the devastation."*[29]

One of the key human rights mechanisms at the global level for monitoring and scrutinising human rights violations is the Universal Periodic Review (UPR). In relation to the intersection

[28] McDonald, D 2009, 'The policy context of roadside drug testing', Journal of the Australasian College of Road Safety, vol. 20, no. 1, pp. 37-43.
[29] Excerpt from 'Global State of Harm Reduction' Report 2022 by Harm Reduction International (HRI) see: https://hri.global/flagship-research/the-global-state-of-harm-reduction/the-global-state-of-harm-reduction-2022/

between harm reduction, human rights and drug policy, key international harm reduction and drug policy civil society organisations have point out the UPR is:

> *"… an important tool for holding countries that are part of the United Nations ... accountable for respecting, promoting, and fulfilling the human rights of people who use drugs, as well as fulfilling the pledges countries have made through the Sustainable Development Goals (SDGs). The UPR has the potential to improve human rights everywhere, for everyone."*[30]

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

1. Global Level:

1.1. Criminalising Personal Drug Use & Possession:

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

There is a growing global recognition of the need to urgently move towards the full decriminalisation/legal regulation of the use and supply of currently illicit substances for personal consumption, along with possession for personal use, to address the significant long-term health and financial consequences and the human rights violations that are caused by criminalising, arresting, convicting, and often incarcerating people who use drugs. Multiple reports from the Global Commission on Drugs (a group of eminent past heads of state and other dignitaries) have reiterated their collective view that drug prohibition has failed both the world and individual countries utterly and that significant drug policy reform is a matter of global emergency[31].

One of the most frequently cited examples of the benefits of decriminalisation in the drug policy context, is Portugal. Over two decades ago, Portugal decriminalised the personal use and possession of small amounts (up to 10 days' supply) of all drugs. Decades later, the benefits of decriminalisation in Portugal are overwhelmingly evident in multiple reports and independent evaluations that have demonstrated (among other outcomes) no major increases in drug use, significant decreases in arrests, criminal records and incarceration rates and significant public health and human rights benefits including reduced deaths[32].

In the past decade, other countries and jurisdictions have also successfully implemented decriminalisation and/or legalisation of cannabis and other drugs including in parts of the US, Canada, Latin America, Europe, and Asia. Some of the key early lessons learnt from these decriminalisation experiences, particularly in relation to human rights implications, however, are that there needs to be sufficient

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

[31] Global Commission on Drug Policy. 2021. Time to End Prohibition. https://www.globalcommissionondrugs.org/reports/time-to-end-prohibition

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

lead time when introducing reforms, not least of which, to allow for training of police and changes to law enforcement approaches and practices. Further, if the model involves replacing punitive laws with a system of administrative fines and/or referring people to drug treatment to avoid a criminal record, there needs to be sufficient time allowed and investment made in harm reduction and evidence-based drug treatment services.

Positive changes from decriminalisation reforms can only materialise if the wider system is adequately prepared, funded and supported to accommodate the legislative and policy reforms. Further, the experience in both Portugal and Oregon also highlight the importance of ensuring that those who are most affected by the proposed reforms, that is, people who use drugs, are not just consulted as part of any implementation/evaluation process but importantly, are meaningfully engaged in the process of developing any proposed changes[33].

1.2. Use of the Death Penalty for Drug Offences:

Currently, 35 countries retain the death penalty for drug offences and in 2021, 122 people were executed globally, 237 death sentences were given and over 3000 people were on death row – all for drug offences. While across 2021 and into 2022 there was some cause for optimism, with a slowing down in the numbers of executions, more recently this has changed with a sharp increase in executions in Iran and two executions for drug offences in Singapore already in 2023. As HRI notes in its report on this subject, *"it is imperative to note that this number is likely to represent only a fraction of all drug-related executions carried out globally"*[34]. HRA wanted to highlight this ongoing and developing problem as part of this submission as part of further encouraging global leadership towards abolishing the use of the death penalty for any reason including drug offences.

1.3. Compulsory & Coercive Drug Detention Centres:

The continued existence of compulsory drug detention centres, where people who use and are suspected of using drugs and other vulnerable populations are detained without due process in the name of "treatment" or "rehabilitation", is a serious human rights concern. These compulsory drug detention centres (many of which are based in countries in the Asian region) raise multiple health, harm reduction, and human rights issues including the potential for increased exposure to HIV, hepatitis B and C and TB infections[35]. Although criteria for detention does vary within and among countries, detention often takes place without the benefit of sufficient due process, legal safeguards or judicial review. The deprivation of liberty without due process is an unacceptable violation of internationally recognised human rights standards. Furthermore, detention in these centres has been reported to involve physical and sexual violence, forced labour, sub-standard conditions, denial of health care, and other measures that violate the right to health and wider human rights. It is HRA's strong view, that these compulsory and coercive detention environments should be closed immediately and those detained must be released.

HRA's position on these centres is supported by a growing number of international and national organisations, governments and other entities including the UN family

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

[34] See: https://hri.global/flagship-research/death-penalty/the-death-penalty-for-drug-offences-global-overview-2021/

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

that has issued a joint UN statement calling on States that operate compulsory drug detention and rehabilitation centres to:

> *"…close them without delay and to release the individuals detained. Upon release, appropriate health care services should be provided to those in need of such services, on a voluntary basis, at community level. These services should include evidence-informed drug dependence treatment; HIV and TB prevention, treatment, care and support; as well as health, legal and social services to address physical and sexual violence and enable reintegration. The UN stands ready to work with States as they take steps to close compulsory drug detention and rehabilitation centres and to implement voluntary, ambulatory, residential and evidence-informed alternatives in the community."*[36]

2. Conclusion:

There are now a plethora of international standards and guidelines, as well as best practices from around the world, available to guide the development of appropriate and effective drug policy[37]. HRA believes that it is well overdue for Australia (at all levels of government and with all key stakeholders) to commit to engaging in an evidence-based and human rights-informed dialogue on drug policy reform in the best interests of the entre Australian community.

Finally, HRA is a highly regarded organisation in relation harm reduction, human rights, and drug policy matters in large part due to the significant expertise that resides within the HRA Board and our Advocates. Given this expertise, HRA would welcome the opportunity to provide further information and/or answer any questions arising from this submission.

Yours sincerely

Dr Annie Madden AO
Executive Director
Harm Reduction Australia
E: executivedirector@harmreductionaustralia.org.au

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

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