Australian Civil Society Committee on United Nations Drug Policy

15 February 2024

Australian Civil Society Committee on UN Drug Policy Submission to the Draft CESCR General Comment on the impacts of drug policies on economic, social and cultural rights

I. About the Australian context, and the Australian Civil Society Committee (ACSC) on UN Drug Policy

Australia is a high income country, with a high standard of living, a low rate of unemployment, where many people have disposable income[1], but many communities experience inequities exacerbated by drug policies; particularly Aboriginal and Torres Strait Islander Peoples. Geographically, Australia is an island-continent, with the sixth longest coastline in the world. Such factors make the logistics for illicit drug supply control impractical and ineffective. Yet, the resources for law enforcement continue to be allocated and have steadily increased over the past decade; and the amount spent on policing drug policies has always been significantly greater than the combined investment in drug treatment and harm reduction services[2].

The absence of any mention of human rights in the National Drug Strategy (NDS) is a notable gap, especially considering the context of Australia's commitment to human rights principles in other national strategies and initiatives. The inclusion of human rights in strategies such as the national Blood Borne Virus (BBV) elimination strategies underscores the recognition of the importance of human rights and harm reduction principles in public health approaches. However this discrepancy between the NDS and other national strategies implies a significant oversight in addressing the rights and well-being of individuals and communities affected by drug policies. By failing to integrate human rights principles, such as non-discrimination, access to health services, and dignity, into drug policy, Australia perpetuating inequities and injustices, particularly among marginalised communities such as Aboriginal and Torres Strait Islander Peoples.

This orientation of Australia's drug policies and the allocation of resources for the criminalisation of drugs and the people who use them, has not achieved its supposed aims:use of illicit substances in Australia continues to increase. The number of Australians who have used an illicit drug in their lifetime increased from 38% in 2007 to 43% in 2019[1]. Data from the Australian Criminal Intelligence Commission (ACIC) and the National Drug and Alcohol Research Centre (NDARC) Drug Trends Program show that despite interruptions of the COVID-19 pandemic drug markets in Australia continue to expand and evolve in complexity: as evidenced by the expansion of markets to rural and regional Australia, continued emergence of new psychoactive substances - often with heightened purity and/or unknown harm profiles[3].

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[1]Australian Bureau of Statistics, 2024. Employment and unemployment. Available from: https://www.abs.gov.au/statistics/labour/employment-and-unemployment#:~:text=Labour%20Force%2C%20Australia,employment%20increased%20to%2014%2C246%2C000.

[2] Ritter, McLeod, Shanahan, 2013. Monograph 24: Government drug policy in Australia - 2009-2010. Drug Policy Modelling Program. Available from: https://ndarc.med.unsw.edu.au/resource/24-government-drug-policy-expenditure-australia-200910

[3] National Drug and Alcohol Research Centre, 2024. Drug Trends National Reports. Available from: https://ndarc.med.unsw.edu.au/resource-type/drug-trends-national-reports

In addition to lives lost, the adverse impact on the health and wellbeing of Australians has been significant. Drug-related hospitalisations nationwide have increased from 2015-16 to 2020-21[4], while people using illicit drugs continue to experience mental ill health, incidents of family violence, and physical health issues at higher rates than the rest of the community. Estimates of the total cost of the harms associated with illicit drug use in Australia vary, but research suggests that costs are well in excess of $20 billion each year to the Australian economy.[6-8] Although less than 2% of the funding for drug-related responses goes to harm reduction in Australia, the evidence clearly shows this spending to save money[3]. These economic cost saving present further opportunity costs, not just for the individuals who are not living with HIV or hepatitis C as a result of using harm reduction services, but also for society[4]. Despite the demonstrated success of harm reduction initiatives, there has not been a corresponding increased investment in harm reduction services.

The Australian Civil Society Committee on United Nations Drug Policy (ACSC)

The aim of the Australian Civil Society Committee on United Nations Drug Policy (ACSC) is to bring together a collective of civil society representatives who engage with the UN Commission on Narcotic Drugs, and other drug policy-related UN sessions, and inform Australian Government drug policy engagement in UN forums. The ACSC includes representation from people who use drugs, young people, women, indigenous peoples, international NGO representatives, service providers, academics and a range of Australian non-government organisations.

The ACSC's objectives are to:

- Be a resource for the Australian Government to inform its international drug policy activities, with a particular focus on the Commission on Narcotic Drugs
- Liaise with Australian Civil Society Organisations in the planning for upcoming Commission on Narcotic Drugs and other drug policy-related UN sessions
- Convey perspectives and interests of Civil Society Organisations regarding UN drug policy to the Australian Government
- Update participating Civil Society Organisations on relevant drug policy developments and opportunities for engagement and input at the UN
- Provide substantive and other input on UN drug policy as requested by the Australian Government

The ACSC made a written submission to Australia's current review by the CESCR (2021) [**Appendix 1**] and subsequently presented as part of the CESCR 70° pre session/online CSO briefing on Wednesday 9 March 2022. The components of this submission were presented at the Harm Reduction International Conference in Melbourne in 2023, and members of the ACSC participated in the CESCR General Comment session, run by Dr Seree Nonthasoot on 18 April 2023, that took place at this conference.

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[3] https://pubmed.ncbi.nlm.nih.gov/22914579/

[4]https://ndarc.med.unsw.edu.au/resource-analytics/trends-drug-related-hospitalisations-australia-1999-2021

II. General obligation of State parties under the Covenant

The ACSC thanks the United Nations Committee on Economic, Social and Cultural Rights (CESCR) for the opportunity to provide feedback on the Draft Annotated Outline of the General Comment on the impacts of drug policies on economic, social, and cultural rights (the General Comment). The ACSC acknowledges the CESCR's instruction that for the purposes of consultation, the elements of participation, non-discrimination, and the intersectionality and interdependence of rights will be particularly helpful to include in the General Comment; and that the General Comment should seek to concretise what respect, protect, and fulfil means in the context of drug policies, and what a reasonable attention to availability, accessibility, acceptability and quality might be.

Our comment on meaningful participation

International treaties and member state legislative frameworks which criminalise drugs were developed in the 19th and 20th centuries, in a political and cultural context which rejected the involvement of most affected communities in these decisions[5]. As we slowly unwind these harmful frameworks, meaningful participation of those most affected is a responsibility of duty-bearers and those in power.

Specifically, meaningful participation is identified as a foundational principle of the International Guidelines on Human Rights and Drug Policy[6]:

> *"Everyone has the right to participate in public life. This includes the right to meaningful participation in the design,implementation, and assessment of drug laws, policies, and practices, particularly by those directly affected." (Guidelines, pg 6)*
>
> *"In accordance with this right, States should:*
>
> ***i.** Remove legal barriers that unreasonably restrict or prevent the participation of affected individuals and communities in the design,implementation, and assessment of drug laws, policies, and practices.*
> ***ii.** Adopt and implement legislative and other measures, including institutional arrangements and mechanisms, to facilitate the participation of affected individuals and groups in the design, implementation, and assessment of drug laws, policies, and practices." (Guidelines, pg 6)*

We note that those "directly affected" includes people who use drugs, as well as Indigenous Peoples, people of colour, young people, women, people in custodial settings, people of low socio-economic status, queer people and families and carers, among other marginalised and under-resourced groups.

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[5] Singham J, (2001). The History and Development of the leading international drug control conventions. Law & Government Division. Library of Parliament, Canada. Available from: https://sencanada.ca/Content/SEN/Committee/371/ille/library/history-e.pdf

[6] United Nations Development Program, 2019. International Guidelines on Human Rights and Drug Policy. Available from: https://www.undp.org/publications/international-guidelines-human-rights-and-drug-policy

States should be required to resource community-led organisations, and actively include them in development of laws, policies, processes relating to drugs. The necessary resourcing must also be made available to ensure that community-based organisations representing these groups are able to effectively, sustainably and meaningfully engage, connect with, upskill, consult with, include and represent these affected communities in research, policy development, service design and delivery.

III. Drug policy and economic, social and cultural rights

A. Determining the scope of drug control applicability (scheduling substances)

Safer supply of drugs

Unregulated and criminalised drug supplies cause harm to people who use drugs, through contaminants, adulterants, unknown dosages, and at times unknown substances. Criminalising the substance in turn criminalises people who use the substance, and increases the likelihood of being incarcerated, and coming into contact with other people engaging in criminal practices, and law enforcement. The provision of a safer supply of drugs is an emerging alternative to a criminal approach to illicit drug use. Overdose deaths due to unknown purities, use of drugs in unsafe and criminalised settings, potent substitutes, and adulterants are all the results of marginalised and unregulated drug supply. Providing people who use drugs with a safer supply of drugs recognises the right to health and safety of people who use drugs, who are otherwise forced to engage with a less safe drug supply due to criminalisation.

Safer supply refers to a range of policy approaches to reducing harm by enabling people access to an alternative to the unregulated drug market. Some approaches to safer supply include:

- *Community safer supply of tested drugs:* peer networks source drugs used in the community, test the drugs to ensure that they are free of contaminants or adulterants, and confirm their potency before distributing them to the drug using community. This approach benefits from the credibility that peer networks have with people who use drugs, who have otherwise had reason to be leery of state involvement in their drug use.
- *Prescribed safer supply:* arguably, existing prescribed alternatives to illicit drug use constitute a form of safer supply but prescribing options generally exclude the drug of choice - for example, individuals who may be using heroin in Australia will be offered the choice (at times) between methadone and buprenorphine. Prescribing people who use drugs their drug of choice is a more effective health intervention, as people will have a variety of legitimate reasons for using their drug of choice. Only offering substitutes may lead people to continue to use drugs in the unregulated supply. The prescribing of heroin without restrictions around dose, route of administration, or place of use for people dependent on heroin is an example of what this might look like.

Regulated supply

While safer supply measures and decriminalisation reduce the harm caused by criminalisation for people who use drugs, the criminalisation of the supply and manufacture of drugs continues to cause harm internationally by creating large organised criminal networks that manufacture and distribute drugs illicitly. Regulating the supply of psychoactive drugs that are currently illicit reduces harm by dismantling the criminal networks that manufacture and distribute them, and the criminalised pathways that people who use drugs access them through. The growing non-medical regulation of cannabis in many jurisdictions, particularly in North America, is a key example. By legalising the manufacture, distribution, and supply of cannabis, governments are able to significantly reduce the harm faced by people who use drugs, as well as those who have been and are criminalised and/or are exploited for their manufacture and transportation. The range of options for regulating supply of drugs is significant, some approaches are outlined here:

- Non-commercial models of drug supply create manufacturing and supply chains for drugs that do not involve commercial entities or for-profit actors. This may include wholesale production by not-for-profit organisations, distribution through peer networks, or smaller operations like cannabis social clubs. Non-commercial models may have a public health advantage in not linking the supply of potentially harmful substances to commercial actors whose profit incentives can be at odds with public health outcomes. These models may also have an equity benefit in empowering people who use and manufacture drugs and providing them ownership of this process. Challenges with these models include ensuring adequate regulation of products where necessary for public health outcomes, and developing a licit supply that will displace the existing illicit supply.
- Government involvement in the manufacture, distribution, and retail of drugs is another non-commercial option for a regulated supply of drugs. Governments can take monopolies of any part of the supply chain of a product. The key advantage of a government monopoly is the prioritisation of public health outcomes rather than commercial profit, while also providing a product at scale. This model may not be favoured by people who use drugs, however, who may be leery of ongoing state intervention.
- Commercial models of drug supply involve the manufacture, distribution, and sale of drugs through for-profit entities. For-profit cannabis supply has become common in many North American jurisdictions. While for-profit supply may have the benefit of economic participation for some people who use drugs or have been involved in the supply of drugs, corporate control of commercial entities and the subsequent impacts of commercial profit incentives on health outcomes may be suboptimal for communities and people who use drugs. Examples of harmful industries like alcohol and tobacco demonstrate that often commercial incentives are misaligned with public health outcomes.

Importantly, these models can be combined in different ways. As an example, a government may control the wholesale purchasing and distribution of cannabis from commercial producers and then distribute the product to not-for-profit retailers or cannabis clubs. The ACSC strongly recommends that the General Comment encourages Member States to work

with their local affected communities to determine best-practice models for safer, regulated supply in their local context.

B. Health, social and other services for people who use controlled substances

Impacts on people who use drugs

Drug policies in which people can be imprisoned without access to justice processes, or imprisoned for crimes including drug possession and drug dealing, deny people who use drugs adequate access to education, liberty, health care, blood borne virus prevention, harm reduction, and family, social and community processes and connections.

The illegality of drugs creates an imbalance in society that results in many people who use illicit drugs experiencing stigma and discrimination, denial of the same standards of healthcare as other people in society, denial of social and wellbeing connections, unequal participation in cultural activities, ongoing negative impacts while using drugs and following cessation of use through registration for life processes.

This results in people who use drugs being subjected to contracting blood borne viruses (including hepatitis B, hepatitis C and HIV), torture and inhumane treatment, including while incarcerated, sexual violence, including while incarcerated, extrajudicial executions and capital punishment, extrajudicial incarceration in the form of compulsory detention centres.

Harm reduction measures

The criminalisation of drug use and people who use drugs has impaired individual's right to health, equity in access to health services, and equity in health outcomes. This criminalisation of drug use and subsequent stigma creates an environment where the health of people and communities who use drugs is not afforded the same level of care that other populations receive, particularly in states with socialised health systems, such as Australia. Harm reduction approaches attempt to reverse some of this by providing healthcare and interventions that reduce the harm associated with taking drugs while not making judgements about the behaviours themselves. Examples of harm reduction measures include:

- Needle and syringe programs (NSPs) provide sterile equipment to people who inject drugs, and are a key mechanism for reducing the spread of blood-borne viruses, and reducing other injecting drug related harm. These services should be provided free of charge and in areas accessible to communities that use drugs. In some cases this involves mobile outreach programs who are able to drop equipment to those who need it.
- Australia currently has two drug consumption facilities, which operate as medically supervised injecting sites. These are types of drug consumption rooms where a person is able to inject drugs under medical supervision. Non-medicalised versions of drug consumption rooms exist elsewhere in the world which may be more attractive to people who use drugs. The purpose of drug consumption rooms is to provide a safer place for people who use drugs to use, and to prevent harms including overdose.
- Drug-checking services empower individuals to understand the composition of the drugs that they plan to consume, and are able to reduce harms associated with an unregulated drug supply by verifying the contents of a sample, and in some cases

testing its potency. Australia currently has one fixed site drug-checking service in Canberra, with further services soon to commence operation in Queensland. There is ongoing opposition in other states and territories despite multiple Coronial recommendations.

- The distribution of opioid overdose-reversing drug naloxone to communities at risk of opioid overdose is another method of reducing harm that empowers people who use drugs and their networks, upholding the right to health. Naloxone is an easy to use drug that can save lives by being adequately distributed and available through the right networks and communities.
- Ongoing issues in Opioid Dependence Treatment Programs (ODTPs) in Australia include:
    - No access to heroin-assisted therapies outside one clinical trial.
    - Restricted medication choices, notably in prisons and public services.
    - Lack of medications for non-opioid drug dependence.
    - Huge shortages in the prescribing workforces in some states due in large part to structural stigma, frequently impacting access and the right to health.
    - Limited treatment options for younger demographics.

While harm reduction measures currently exist in Australia, they are not dispersed equitably, and are limited by current policies and funding mechanisms based on criminalisation. The ACSC strongly recommends that the General Comment recognises the importance of the implementation of harm reduction services in improving access to economic, social and cultural rights of local communities affected by drug policies that prioritise the criminalisation of people who use drugs.

C. Cultivation, production, distribution of controlled substances

Our Committee will aim to resubmit this submission with comment on this area shortly.

D. Health and other economic, social and cultural impacts of administrative and criminal sanctions related to controlled substances

The impact of drug criminalisation in Australia, and its enforcement, is far-reaching. To secure employment, it is commonplace or - in many sectors including all Government and Government-funded roles - mandatory for a job-seeker to provide a Police Record Check. The Australian Bureau of Statistics shows that of all of the offence types recorded in Australia, illicit drug offences are the most common principal offence in Australia (and the vast majority of those offences are for simple drug possession or consumption alone).[7] As well as having a significant and detrimental impact on individuals' health and wellbeing, the process of being criminalised by drug policies limits employment opportunities and financial security and therefore undermines the right to work and secure the social determinants of

[7] Australian Bureau of Statistics, 2024. Recorded Crime - Offenders. Reference period: 2022-23 financial year. Available from: https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/latest-release

health. While Australia is a wealthy country per capita, income wealth inequality is an issue[8] that is perpetuated by our drug policies.

International trends in research, policy, and legislation signal a global shift in how drug use is governed. It is clear to communities and decision-makers around the world that treating drug use as a criminal issue is creating and exacerbating harm. The increasing harms witnessed in Australia due to illicit drug use, despite ongoing criminalisation, demonstrate that a new approach is needed.

Prohibition has caused further harm for many people. Interactions with police, incarceration, costly legal proceedings, and criminal records due to personal drug use have all contributed to costs to the individuals, police, courts, and society as a whole. Nationally in 2019-2020 there were 166,231 drug arrests, of which 88% were for personal use[2]. In 2021, almost 35,000 individuals faced court for possession offences[4]. Additionally, 434 offenders with a possession offence as their most serious offence were imprisoned in 2021[10]. Each of these interactions with the justice system not only leads to costs to the individual and their families - including loss of education and employment opportunities that continue throughout the person's life - but also incurs a significant cost to governments and the broader community, impacting on police, courts, and correctional services.

The large majority of people who use drugs are not dependent, and for those that are, criminalisation is an ineffective and often harmful response. The benefits of an alternative approach to personal drug use are many: significantly easing the burden on police, taking individuals out of over-stretched court systems, lowering barriers to individuals accessing support and treatment, and reduced stigma towards personal drug use. The majority of Australians support a non-punitive response to personal drug use, and support for drug law reform is present across wide segments of the community[9].

Australia is experiencing a dilemma due to its increasing prison population. Australia's criminal justice system imposes a large and growing cost on taxpayers, as well as indirect costs on prisoners, their families and society as a whole.[10]

Aboriginal and Torres Strait Islander Peoples are vastly over-represented in all levels of the criminal justice systems[11] in and across Australia, and experience added barriers to treatment and many other services. In relation to drug policy specifically, Australia scored below the median in equity of access to harm reduction services, and scored poorly across equity of impact of criminal justice responses, with the enforcement of drug policy found to

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[8]Australian Government, The Treasury, 2024. Income and wealth inequality. https://treasury.gov.au/policy-topics/measuring-what-matters/dashboard/income-wealth-inequality#:~:text=In%202020%2C%20Australia's%20Gini%20coefficient,was%20available%20for%20that%20year.&text=Wealth%20is%20typically%20distributed%20less%20equally%20than%20income

[9]https://www.aihw.gov.au/getmedia/de5f3a66-e40e-4607-830b-7e1e43794404/aihw-phe-270-chapter9-perceptions.pdf.aspx

[10] Australian Government Productivity Commission, 2021. Research paper: Australia's prison dilemma. Available from: https://www.pc.gov.au/research/completed/prison-dilemma

[11]Australian Government Productivity Commission: Closing the Gap: Information Repository (2021). Socioeconomic Outcome Area 10. Available from: https://www.pc.gov.au/closing-the-gap-data/annual-data-report/2021/snapshot/socioeconomic/outcome-area10

largely disproportionately impact both certain ethnic groups, and low income groups, in the recent Global Drug Policy Index 2021[12].

Criminalisation of drug use contributes to significant impacts on the rights of Australians to health, economic participation, engagement with culture, and social participation. Examples of these violations in Australia include the right to health being significantly impacted by policies that penalise people for engaging in drug taking, including failing to provide adequate or accessible treatment.

As detailed in the International Guidelines on Human Rights and Drug Policy, the right to health as applied to drug policy includes access, on a voluntary basis, to harm reduction services, goods, facilities, and information; and the right to health as applied to drug policy includes access to evidence-based drug dependence treatment on a voluntary basis. Further to this, under current policies, people do not experience the right to enjoy the benefits of scientific progress and its applications. This right applies equally in the context of drug use and dependence, as well as in development and criminal justice responses to the illicit drug trade.[13]

People who use drugs in Australia face disparities in relation to equal access to drug treatment, including:

- Significant treatment gap persists, with unmet demand.
- Priority groups, like Indigenous communities and rural areas, face barriers.

Access to controlled medicines

Access to controlled medicines without discrimination is a key element of the right to health. This includes for use as opioid substitution therapy, for pain management, in palliative care, as anaesthesia during medical procedures, and for the treatment and management of various health conditions.

Alternatives to criminalisation

Alternative approaches to criminalisation of personal drug use are numerous and developing in modern legislative contexts. These alternative approaches may better align with state's obligations to human rights by reducing the harms of criminalisation. A range of possible alternatives exist that can address a range of harms caused by criminalisation. Examples of these alternatives are outlined below.

Decriminalisation of personal use

Removing criminal penalties for personal drug use can significantly lessen the burden of state intervention on people who use drugs. The removal of criminal penalties can prevent an individual entering into the justice system, and hence avoid the harms that result from criminal penalties. Decriminalisation is most effective when enacted as a *de jure* removal of

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[12] The Global Drug Policy Index (2021). Country Overview: Australia. Available from: https://globaldrugpolicyindex.net/country-profile/australia

[13] United Nations Development Program, 2019. International Guidelines on Human Rights and Drug Policy. Available from: https://www.undp.org/publications/international-guidelines-human-rights-and-drug-policy

all criminal penalties relating to use and possession of drugs and paraphernalia from legislation. Australia currently has a spectrum of responses to personal drug use, ranging from *de jure* decriminalisation in the ACT, to decriminalisation of cannabis but not other substances in the Northern Territory, to limited police run diversion systems in most other states. The more limited a policy is (i.e. the more restrictions placed on an individual's ability to avoid criminal penalties), the more likely that scheme is to continue to burden people who use drugs through either involvement in the justice system, the threat of criminalisation, or administrative burden due to mandated treatment or other non-criminal penalties.

E. International cooperation and assistance

In the context of Australia's drug policy expenditure, a significant challenge lies in the disproportionate allocation of funding towards law enforcement rather than towards evidence-based public health interventions. The majority of funding directed towards law enforcement perpetuates a punitive approach to drug policy, which has been shown to be ineffective in addressing substance abuse issues and may exacerbate social and health disparities. Instead, there is a growing call for a more balanced allocation of resources that prioritises harm reduction, treatment, and prevention initiatives.

Australia is estimated to spend over $1 billion on drug-related law enforcement each year, while there has been a 314% increase in the weight of illicit drugs seized and a 96% increase in drug arrests over the last decade[14]. Despite the efforts of law enforcement to disrupt illicit drug trafficking and supply, illicit drug use and the harms associated with their use have continued to increase. Since 2015, the number of overdose deaths each year has exceeded the national road toll; over 35,000 Australians have lost their lives to overdose since 2001[5]. Further, the rate of overdose deaths among Aboriginal people is significantly higher than non-Aboriginal people (20 per 100,000 population, compared with 5.9 per 100,000 for non-Aboriginal people).[15]

In aligning drug policy with human rights principles, it is essential for Australia to adhere to international standards, particularly those outlined by the CESCR. The CESCR emphasises the importance of access to health care, non-discrimination, and the protection of marginalised populations. In this regard, there is an opportunity for the United Nations Office on Drugs and Crime (UNODC) to work with CESCR and Member States to make the necessary changes to ensure that drug policies are aligned with human rights obligations.

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[14] acic.gov.au/sites/default/files/2023-08/submission_-_australias_illicit_drug_problem_challenges_and_opportunities_for_law_enforcement.pdf

[15] Penington Institute, 2023. Australia's Annual Overdose Report. Available from: https://www.penington.org.au/australias-annual-overdose-report/

IV. Implementation

Measuring the impact/effectiveness of drug policies

There is a critical need for partnerships with affected communities, allowing them to lead data collection efforts, and empowering them to inform the formulation and implementation of human-rights compliant drug policies. Currently, data collection methods often overlook the experiences and perspectives of these communities, perpetuating existing disparities and hindering the development of targeted interventions. This is particularly pronounced with Indigenous and Pacific communities, where data is limited. By providing resources and support to Indigenous and Pacific communities to lead data collection initiatives, policymakers can ensure that the realities of drug use and its associated harms are accurately captured and understood. This collaborative approach not only promotes community ownership and engagement but also facilitates the development of culturally sensitive interventions that address the specific needs and challenges faced by these communities. Therefore, alongside policy reforms, there must be a concerted effort to prioritise and resource Indigenous and Pacific-led data collection initiatives, recognizing their invaluable role in shaping effective and rights-based drug policies.

V. The future of drug control

Thank you again for providing an opportunity to comment on the draft General Comment. This submission has outlined a range of alternative approaches to the criminalisation of drug use that support the rights of people and communities who use drugs. This information should help inform the development of the General Comment with regards to States' obligations to the Covenant.

We encourage UN systems to take the consideration of human rights in the context of drug policy incredibly seriously. For too long, these conversations have been systematically siloed in different UN institutions. The CESCR process, and increasingly engagement of human rights groups in UN drug policy proceedings (and vice versa), is very promising.

To move towards a better and more human-rights focused approach to drug policy, civil society groups including indigenous peoples must be adequately and appropriately resourced to meaningfully participate in these discussions by Member States and be increasingly involved and empowered in the policymaking process.

APPENDIX 1:

Original Submission to the United Nations Committee on Economic, Social and Cultural Rights, proposing a List of Issues focusing on Australia's human rights obligations with respect to drug policies, drug legislation, and their implementation

Australian Civil Society Committee on United Nations Drug Policy

Penny Hill
penny@ssdp.org.au

30 December 2021

Submission to the United Nations Committee on Economic, Social and Cultural Rights, proposing a List of Issues focusing on Australia's human rights obligations with respect to drug policies, drug legislation, and their implementation

Introduction

Thank you for providing an opportunity for Australian civil society to propose a List of Issues focusing on Australia's obligations with respect to economic, social and cultural rights as relating to drug policies, drug legislation, and their implementation.

The aim of the Australian Civil Society Committee on United Nations Drug Policy is to bring together civil society representatives who have attended, or are planning to attend, the UN Commission on Narcotic Drugs, and other drug policy-related UN fora, to inform the Government of the Commonwealth of Australia *"the Commonwealth Government*" drug policy engagement in UN forums.

The Committee's objectives are to:

- Be a resource for the Commonwealth Government to inform its international drug policy activities, with a particular focus on the Commission on Narcotic Drugs
- Liaise with Australian Civil Society Organisations in the planning for upcoming Commission on Narcotic Drugs and other drug policy-related UN fora
- Convey perspectives and interests of Civil Society Organisations regarding UN drug policy to the Commonwealth Government
- Update participating Civil Society Organisations on relevant drug policy developments and opportunities for engagement and input at the UN
- Provide substantive and other input on UN drug policy as requested by the Commonwealth Government.

To date we have had fruitful, mutually respectful, collaboration and engagement with drug policy officials in the Commonwealth Departments of Health, Home Affairs and Foreign Affairs and Trade, and have communicated with the Commonwealth Government's Attorney-General's Department, with respect to human rights and drug policy.

A List of Issues

We are aware that the Committee on Economic, Social and Cultural Rights (CESCR) is already very familiar with the many ways in which drug policy, and its implementation, in many jurisdictions breach governments' obligations under various human rights instruments

and standards.[16] For this reason, we will not dwell on the broader matter of international human rights law, but focus specifically on proposing a List of Issues that we request the Committee to consider forwarding to the Commonwealth Government. They are matters of concern to many sectors of the Australian community that we believe are not being adequately responded to by Australian governments.

The implications of Australia being a federated nation

As the Committee would be aware, Australia is a federated nation, made up of six states and two internal territories. Responsibility for drug policy is divided between the Commonwealth Government and the governments of the eight states and territories. For example, the Commonwealth is responsible for implementing its legislation addressing the importation into the nation of controlled substances, whereas the states and territories are responsible for operating correctional facilities within their boundaries.

When it is pointed out to the Commonwealth Government that breaches of human rights occur through the implementation of drug policies at the state and territory level, too frequently the Commonwealth Government's response is that the issue is a state or territory responsibility, not a Commonwealth one. In our view, this attempt to waive responsibility is invalid, as the Australian Commonwealth Government is the signatory to the international human rights instruments, regardless of the federal nature of Australia, and is therefore responsible for their implementation across the whole of the nation[17]. We suggest that a Commonwealth Government response to the CESCR's List of Issues that claims that the matters raised are state or territory responsibilities, not those of the Commonwealth, would be incorrect and unacceptable.

We consider that the following List of Issues that the Committee could potentially raise with the Commonwealth Government are all important and are therefore not listed in any priority order.

Our suggested List of Issues

*In regard to **General Issues** in relation to the International Covenant on Economic, Social and Cultural Rights[18] preamble, "Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights"*

1. Disproportional breaches of the rights to privacy through drug law enforcement, and downstream impacts on criminalising and stigmatising people who use drugs

Australian civil society accepts that governments have a responsibility to prevent, detect, and prosecute serious drug offences, such as manufacturing and trafficking, and other crimes committed in drug markets.

- However, considerable concern exists in the community about the overreach of drug law enforcement at the street level, particularly through the use of drug detection (sniffer) dogs and strip searching of people (usually teenagers and young adults)

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[16] International Centre on Human Rights and Drug Policy, University of Essex, Joint United Nations Programme on HIV/AIDS (UNAIDS), United Nations Development Program & World Health Organization 2019, *International guidelines on human rights and drug policy*, the authors, Geneva, www.humanrights-drugpolicy.org.

[17] United Nations Human Rights Council 2015, *Role of local government in the promotion and protection of human rights – Final report of the Human Rights Council Advisory Committee,* A/HRC/30/49. Available from: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/30/49

[18] United Nations 1976, *International Covenant on Economic, Social and Cultural Rights*. Available from: https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx

suspected to be simply possessing drugs in public places. Members of the New South Wales Police Force, in particular, have been accused by members of the public and people in authority of the misuse of drug sniffer dogs and strip searching in the context of possession of drugs for personal use only.[19] [20] This policy, in addition to being a potential breach of privacy, can also criminalise and stigmatise people who use drugs, thus increasing barriers in accessing state services, including health and harm reduction services. *The issue is the Commonwealth Government needs to take the lead in ensuring that the state and territory police forces exercised their powers to use drug sniffer dogs, and to strip search people believed to be possessing drugs, in a responsible and proportionate manner rather than, as now, as instruments for harassing people who use drugs.*

- The penalties for supplying drugs are disproportionate when it comes to social supply, i.e. situations in which a person purchases a small quantity of drugs to share with others, e.g. with their partner or with a small number of friends, and the quantity purchased exceeds the threshold for the trafficking offence.[21] *The issue is that the Commonwealth Government needs to act to have all Australian jurisdictions legislate to have the penalties for drug possession for the purpose of social supply mirror those for possession for the personal use of drugs, rather than those for trafficking.*
- All Australian states and territories have legislated to create an offence of driving with any detectable level of certain prescribed drugs in the body. As the Human Rights Commissioner for the Australian Capital Territory pointed out when the legislation was being introduced there,[22] this is seriously disproportional, as it means that people are convicted of this offence even though there is no evidence that the driver was impaired. Furthermore, there is no sound body of research evidence demonstrating that roadside drug testing produces improved road safety outcomes.[23] *The issue is that the Commonwealth Government needs to act to have all Australian jurisdictions review their road safety legislation to minimise the prevalence of people driving while impaired by drugs, rather than driving with any detectable amount of the drugs in the body.*

In relation to the International Covenant on Economic, Social and Cultural Rights[24], Article 2(2): non-discrimination:

[19] Howard, D 2020, *Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants: report, January 2020*, State of NSW, Sydney, vol. 3, pp. 813-857.
[20] Malins, P 2019, 'Drug dog affects: accounting for the broad social, emotional and health impacts of general drug detection dog operations in Australia', *International Journal of Drug Policy*, vol. 67, pp. 63-71.
Sentas, V & Grewcock, M 2019, *Unlawful strip searches are on the rise in NSW and police aren't being held accountable*, The Conversation, 23 August 2019, https://theconversation.com/unlawful-strip-searches-are-on-the-rise-in-nsw-and-police-arent-being-held-accountable-121986.
[21] Bull, M, Coomber, R, Moyle, L, Durnian, L & O'Brien, W 2021, *Sentencing for social supply of illicit drugs in Australia*, Trends & Issues in Crime and Criminal Justice no. 638, Australian Institute of Criminology, Canberra.
[22] Watchirs, H 2010, *Roadside drug driving testing (advice)*, Human Rights Commission, Canberra.
[23] Ricketts, A 2018, 'Roadside drug testing: incoherent policy or uncertainty by design?', *Alternative Law Journal*, vol. 43, no. 1, pp. 30-4.
[24] United Nations 1976, *International Covenant on Economic, Social and Cultural Rights*. Available from: https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx

2. Inequities experienced by Australian Indigenous communities (also relevant to Article 12)

Indigenous peoples are vastly over-represented in all levels of the criminal justice systems[25] in and across Australia, and experience added barriers to treatment and many other services. In relation to drug policy specifically, Australia scored below the median in equity of access to harm reduction services, and scored poorly across equity of impact of criminal justice responses, with the enforcement of drug policy found to largely disproportionately impact both certain ethnic groups, and low income groups, in the recent Global Drug Policy Index 2021[26].

Several state police forces 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[27]. Given that Aboriginal and Torres Strait Islander peoples are incarcerated at the highest per capita level of any country in the world[28], coupled with the early implications of recently released NSW data, and the well documented racist origins and impacts of drug prohibition[29] [30], 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. This is intimately connected to the right to health *(Article 12 ICESCR)*, as this Committee has recognised that criminalisation 'prevents drug users from accessing harm reduction programmes and health-care services'.[31]

Furthermore, a 2021 Screen Australia and National Indigenous Television documentary project *"Incarceration Nation"* draws attention to the ways in which drug and alcohol issues intersect with over-policing and disproportionately high levels of incarceration[32], coupled with systemic barriers to accessing AOD treatment and health services[33]. The project continues to raise funds to highlight systemic abuses in the criminal justice system with the following core objectives: demanding accountability for law enforcement and prison staff to maintain dignity for detainees and prisoners; working with State Governments to commit 3% to diversionary and rehabilitation programs; and driving National Policy change to increase criminal responsibility age from 10 years[34].

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[25] Australian Government Productivity Commission: Closing the Gap: Information Repository (2021). *Socioeconomic Outcome Area 10.* Available from: https://www.pc.gov.au/closing-the-gap-data/annual-data-report/2021/snapshot/socioeconomic/outcome-area10

[26] The Global Drug Policy Index (2021). *Country Overview: Australia.* Available from: https://globaldrugpolicyindex.net/country-profile/australia

[27] https://www.theguardian.com/australia-news/2020/jun/10/nsw-police-pursue-80-of-indigenous-people-caught-with-cannabis-through-courts

[28] https://theconversation.com/factcheck-qanda-are-indigenous-australians-the-most-incarcerated-people-on-earth-78528

[29] Manderson, D 1993, *From Mr Sin to Mr Big: a history of Australian drug laws*, Oxford University Press, Melbourne.

[30] Provine, D 2011, 'Race and Inequality in the War on Drugs', *Annual Review of Law and Social Science*, vol. **7,** np**.** 1, pp. 41–60, doi:10.1146/annurev-lawsocsci-102510-105445

[31] https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/NOR/CO/6&Lang=En

[32] https://documentaryaustralia.com.au/project/incarceration-nation/

[33] https://antar.org.au/news/new-documentary-incarceration-nation-essential-viewing-all-australians

[34] https://documentaryaustralia.com.au/project/incarceration-nation/

The issue is that the Commonwealth Government does not require jurisdictional Police Forces to release community profiling data, and needs to act to ensure this data is collected and released.

In relation to the International Covenant on Economic, Social and Cultural Rights[35]***, Article 12: health****:*

3. Criminalisation of people who use drugs as a barrier to the enjoyment of the right to health

As the UN Chief Executives Board has emphasised, [36] in many nations the penalties applied to people convicted of drug offences are too frequently disproportional, and this is certainly the case across Australia. Furthermore, the CESCR has repeatedly found that the criminalisation of drug use and possession for personal use operates as a barrier to the right to health, and has recommended decriminalisation[37]. However:

- Contrary to international standards, criminal penalties, often very harsh, apply to the minor offences of drug consumption, possessing small quantities of drugs for personal use, and cultivating small quantities of cannabis. *The issue is that the Commonwealth Government needs to act to have drug possession for personal use and ancillary activities including cultivation and possession of drug use paraphernalia decriminalised at both the Commonwealth and state/territory levels.*
- In Australian jurisdictions, the threshold quantities differentiating between a person being charged for possession of a drug for personal use, rather than possession for the purpose of trafficking, are far too low.[38] 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[39] of MDMA equates to a trafficable amount, but the typical amount of MDMA consumed in a session is also reported to be 0.5g[40] - which means that people who use drugs often get charged with a trafficking offence. *The issue is that the Commonwealth government needs to act to have the threshold quantities in all Australian jurisdictions adjusted to match the realities of drug use, and possession of drugs for personal use.*
- All Australian jurisdictions have a reverse onus of proof for people charged with possession of drugs for the purpose of drug trafficking, which means that everyone who possesses drugs over a certain quantity threshold is presumed to be trafficking. This reverse onus of proof is unacceptable; it is contrary to basic principles of law in

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[35] United Nations 1976, *International Covenant on Economic, Social and Cultural Rights*. Available from: https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx

[36] 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.

[37] 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

[38] 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.

[39] 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

[40] 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.

a democracy.[41] *The issue is that the Commonwealth Government needs to act to have 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.*

4. Lack of harm reduction services

Some decades ago, Australia was a global leader in developing and implementing public health and criminal justice system innovations aiming to reduce the harms linked to the consumption of psychoactive substances, and to societal responses thereto. In recent times, as experience and the evidence base for drug harm reduction has grown, Australian governments have failed to innovate in the area of harm reduction, and have failed to adopt key harm reduction interventions that have been demonstrated, in other nations, to be both efficacious and cost-effective.[42] Some successes have occurred recently, including the expansion of take-home naloxone programs through a Commonwealth Government pilot[43] (albeit only available to three out of eight states/territories, with funding only available to pharmacies), and access to hepatitis C treatments[44], but overall, government-supported harm reduction progress has stalled. Problematic examples include the following:

- The total absence of needle syringe programs (NSPs) in prisons and other correctional facilities[45]. In that regard, it is worth noting that the CESCR has already recommended that States expand harm reduction programmes 'particularly in prisons'[46].
- Active opposition from almost all governments to drug checking programs at fixed sites and large-scale events where drugs are consumed (ie: music festivals), despite two successful pilots in the ACT, coronial recommendations in Victoria & NSW, and an ongoing risk to the community from novel psychoactive substances, particularly affecting young people[47].
- Insufficient provision of drug consumption rooms, with only two operating across the whole nation[48].

The issue is that the Commonwealth Government needs to take the lead in supporting innovation in harm reduction services, including urging and facilitating the states and territories to implement these public health-focused harm reduction interventions of proven efficacy and cost-effectiveness. The Commonwealth Government needs to take the lead in supporting innovation in harm reduction services in line with its own National Drug Strategy 2017-2025, in which harm reduction is stated as a supposed equal pillar within the balanced

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[41] Gray, A 2016, 'Presumption of innocence in Australia: a threatened species', *Criminal Law Journal*, vol. 40, no. 5, pp. 262-82.

[42] Harm Reduction International (HRI) 2020, *Global State of Harm Reduction: 2020*, 7th edn, HRI, London.

[43] Australian Government Department of Health (2021). *Take-home naloxone pilot.* Available from: https://www.health.gov.au/initiatives-and-programs/take-home-naloxone-pilot

[44] Burnet Institute and Kirby Institute. (2021). *Australia's progress towards hepatitis C elimination*. Available from: https://burnet.edu.au/system/asset/file/5001/BurnetKirby-hepC-2021-report.pdf

[45] Duvnjak, A., Wiggins, N. & Crawford, S. 2016. *Why are we waiting? The urgent need for NSPs in Australian prisons.* HIV Australia 14(1), pp. 4-5. Available from: https://acuresearchbank.acu.edu.au/item/8vz2w/why-are-we-waiting-the-urgent-need-for-nsps-in-australian-prisons

[46] CESCR, 2020. *Concluding Observations to Ukraine's 7th Periodic Review*, https://uhri.ohchr.org/en/document/f538cf71-f6d1-4e89-b96b-3818e5de8c6a

[47] The Guardian, 2019. *Drug deaths inquest: Glady Berejiklian says she is 'closing the door' on pill testing.* Available from: https://www.theguardian.com/australia-news/2019/dec/11/drug-deaths-inquest-gladys-berejiklian-says-she-is-closing-the-door-on-pill-testing

[48] Roxburgh, A., Jauncey, M., Day, C., Bartlett, M., Cogger, S., Dietze, P., Nielsen, S., Latimer, J. & Clark, N. 2021. *Adapting harm reduction services during COVID-19: lessons from the supervised injecting facilities in Australia.* Harm Reduction Journal, 18 (20)

approach of harm minimisation. This must include urging states and territories to implement these public health-focused harm reduction interventions - and more actively coordinating and facilitating the implementation of these initiatives of proven efficacy, cost-effectiveness and high levels of support within the affected communities. The Commonwealth's own take-home naloxone pilot must be expanded to cover all jurisdictions, and fund peer-led programs.

5. Lack of equality of access to drug treatment

Equality of access to the treatment of health problems is a fundamental human right. Furthermore, the prohibition of non-discrimination under Article 2 ICESCR forbids indirect discrimination through laws that appear neutral but have a disproportionate impact on certain populations[49]. Unfortunately, this right is breached in Australia with respect to drug treatment:

- There are significant and enduring gaps in access to alcohol and other drug treatment across Australia. Of note, work by Ritter and colleagues (2019)[50] has shown that approximately 200,000 to 230,000 people are currently in treatment, which represents a met demand of between 26.8% and 56.4%. There shows a significant gap in alcohol and other drug treatment available to meet the demand in Australia.
- There are added gaps in and barriers to access to treatment for specific priority groups and regions. Of note are barriers in rural and regional communities[51] [52]. Here research has shown added barriers to service provision in regional areas include high rates of stigma and discrimination as well as limited service options within communities and insufficiency of other associated services e.g. housing, employment, welfare, mental health[53].
- All eight Australian states and territories provide opioid agonist therapy (also known as opioid substitution therapy) to opioid dependent people in the community, reflecting this treatment modality's proven efficacy and cost-effectiveness. In some jurisdictions this treatment is available to most of the opioid dependent people in prison, but in some Australian states, initiation into opioid agonist therapy is not permitted in prison.[54]
- The international evidence concerning the effectiveness of heroin assisted drug treatment is strong.[55] However, despite this evidence base and extensive

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[49] CESCR, 2009. *General Comment 20: Non-discrimination in economic, social, and cultural rights*. https://www.refworld.org/docid/4a60961f2.html

[50] Ritter, A., Chalmers, J., & Gomez, M. (2019). Measuring unmet demand for alcohol and other drug treatment: The application of an Australian population-based planning model. Journal of Studies on Alcohol and Drugs, Supplement, (s18), 42-50.

[51] Howard, D. (2020). Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants. Volume 1. Sydney, NSW Government.

[52] Hughes, C., Goudie, S., Halsey, M & Goldsmith, A. (in press). Patterns of alcohol and other drug use and access to services in regional South Australia. CCPR Technical Report Number 1, Centre for Crime Policy and Research, Flinders University.

[53] Ibid.

[54] Australian Institute of Health and Welfare (AIHW) 2021, *National Opioid Pharmacotherapy Statistics Annual Data collection (NOPSAD)*, web report, cat. no: HSE 266, AIHW, Canberra, https://www.aihw.gov.au/reports/alcohol-other-drug-treatment-services/national-opioid-pharmacotherapy-statistics/contents/summary.

[55] Strang, J, Groshkova, T, Uchtenhagen, A, van den Brink, W, Haasen, C, Schechter, MT, Lintzeris, N, Bell, J, Pirona, A, Oviedo-Joekes, E, Simon, R & Metrebian, N 2015, 'Heroin on trial: systematic review and meta-analysis of randomised trials of diamorphine-prescribing as treatment for refractory heroin addiction', *British Journal of Psychiatry*, vol. 207, no. 1, pp. 5-14.

international experience in providing heroin assisted treatment to opioid dependent people who have failed to benefit from conventional therapies[56], this is not available in Australia. The result is that many of the people experiencing the greatest difficulties with opioid dependence are being refused treatment that could assist them to regain their health and enhance their well-being.

The issue is that the Commonwealth Government needs to take the lead in ensuring that drug dependent people throughout the nation, including people imprisoned and deprived of liberty, are provided with ready access to the treatment of drug use disorders, including by means of opioid agonist therapies and heroin assisted treatment.

6. Inadequate access to essential medicines

Australia as a signatory to the UN Single Convention on Narcotic Drugs has committed to ensuring access to essential medicines for pain relief for all Australians in need, and access to medicines has been recognised as an essential element within the right to health[57]. To achieve such access to controlled medicines (so-called Schedule 8 drugs), Australians rely on functional partnerships between federal, state, prescribers (largely doctors) and retailers, pharmaceutical industry (for manufacture), health insurance bodies and collaborative partnerships to address specific barriers. The principles guiding these partnerships are detailed in the National Medicine Policy: https://www1.health.gov.au/internet/main/publishing.nsf/content/national-medicines-policy. States and Territories are responsible for the regulatory components of access to medicines.

However, ongoing and substantial barriers to access with resulting underuse of analgesics for severe pain, exist in particular groups. These include:

- those in more remote or regional communities where there is often an accompanying lack of expertise in the prescribing and clinical monitoring of opioids for pain relief[58] [59],
- those with previous or current history of drug misuse or dependence who now require pain management for cancer or other serious pain;
- those in Aboriginal or Torres Strait Islander communities many of whom are underserved in all areas of health care, including palliative care[60] [61];
- those who reside in prison; the homeless or itinerant[62];
- and many in non-English Speaking communities

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[56] Ibid.

[57] UN Special Rapporteur on the Right to Health, 2013. *Report on access to medicines*, A/HRC/23/42, https://undocs.org/A/HRC/23/42

[58] Jokanovic N, Tan EC, van den Bosch D, Kirkpatrick CM, Dooley MJ, Bell JS. Clinical medication review in Australia: A systematic review. Res Social Adm Pharm. 2016 May-Jun;12(3):384-418. doi: 10.1016/j.sapharm.2015.06.007. Epub 2015 Jul 9. PMID: 26250049.

[59] Tait P, Chakraborty A, Tieman J. The Roles and Responsibilities of Community Pharmacists Supporting Older People with Palliative Care Needs: A Rapid Review of the Literature. Pharmacy (Basel). 2020 Aug 12;8(3):143. doi: 10.3390/pharmacy8030143. PMID: 32806701; PMCID: PMC7558267

[60] Woods JA, Newton JC, Thompson SC, Malacova E, Ngo HT, Katzenellenbogen JM, Murray K, Shahid S, Johnson CE. Indigenous compared with non-Indigenous Australian patients at entry to specialist palliative care: Cross-sectional findings from a multi-jurisdictional dataset. PLoS One. 2019 May 2;14(5):e0215403. doi: 10.1371/journal.pone.0215403. PMID: 31048843; PMCID: PMC6497232.

[61] Shahid S, Taylor EV, Cheetham S, Woods JA, Aoun SM, Thompson SC. Key features of palliative care service delivery to Indigenous peoples in Australia, New Zealand, Canada and the United States: a comprehensive review. BMC Palliat Care. 2018 May 8;17(1):72. doi: 10.1186/s12904-018-0325-1. PMID: 29739457; PMCID: PMC5938813.

[62] Hudson BF, Flemming K, Shulman C, Candy B. Challenges to access and provision of palliative care for people who are homeless: a systematic review of qualitative research. BMC Palliat Care. 2016 Dec 3;15(1):96. doi: 10.1186/s12904-016-0168-6. PMID: 27912748; PMCID: PMC5135820

These sections of the Australian population frequently lack access to health care providers and dispensing systems able to target the prescription of essential controlled medicines for the relief of severe pain, cancer or non-cancer in nature.

To date, there has been a lack of attention given to measuring the extent of unmet need for pain relief through essential controlled medicines in Australia. The focus of the Real Time Prescription Monitoring (RTPM) is to prevent misuse and diversion, but this monitoring makes no attempt to measure under-treatment, lack of access, unnecessary complexities in prescribing and dispensing which result in insurmountable barriers for patients.

The issue is that the Commonwealth Government must demonstrate leadership toward ensuring the states and territories expand prescription monitoring systems to capture representative data on undertreatment of pain. A working group should be convened to identify the data measured due to lack of adequate and sustained access to controlled medicines for monitoring.

Recommendations for List of questions

In light of the information provided above, we suggest that the Committee includes the following question to the List of Issues that will be presented to the Australian authorities.

General Issues

- Please indicate whether the Commonwealth Government intends to take the lead to ensure that state and territory police forces exercise their power in regard to strip searches and the use of drug sniffer dogs in responsible and proportionate manners, and in a way that does not stigmatise people who use drugs
- Please indicate whether the Commonwealth Government intends to lead state and territory governments to legislate and decriminalise to ensure proportionality, in that the penalties for drug possession for social supply mirror those of personal possession
- Please indicate if and when the Commonwealth Government intends to ensure that all Australian jurisdictions review their road safety legislation to minimise the prevalence of people driving while impaired by drugs, as opposed

ICESCR Article 2

- Please explain how the Commonwealth Government intends to address the over-representation of Aboriginal and Torres Strait Islander peoples in Australian criminal justice systems
- Please indicate whether the Commonwealth Government intends to ensure that jurisdictional community profiling data is collected and released in relation to drug-related stop-and-search, arrest, and sentencing practices
- Please indicate how the Commonwealth Government intends to ensure equal access to alcohol and other drug treatment and harm reduction programs for priority populations. including Aboriginal and Torres Strait Islander peoples and people in contact with the criminal justice system

ICESCR Article 12

- Please indicate whether the Commonwealth Government intends to decriminalise minor drug consumption, drug possession and social supply, along with cultivation of small quantities of cannabis at both Commonwealth and state/territory levels

- Please explain why all Australian jurisdictions have a reverse onus of proof for people charged with possession of drugs for the purpose of drug trafficking, and how the Commonwealth Government intends to ensure that this offence is dealt with by Australian courts by the prosecution being required to prove to the court that the offence was committed
- Please indicate how the Commonwealth Government intends to ensure that state and territory governments ensure that threshold quantities are adjusted to match realistic levels that people who use drugs would normally purchase and possess for their own use
- Please indicate how the Commonwealth Government intends to take the lead through urging states and territories to support the expansion and innovation of harm reduction services in line with its own National Drug Strategy 2017-2025
- Please indicate how the Commonwealth Government intends to ensure that people who use drugs and drug dependent people throughout Australia are provided, including in prisons and other places of deprivation of liberty, with the best standard of care through ready access to treatment and harm reduction services, including needle and syringe programs, opioid agonist therapies, heroin assisted treatment, and take-home naloxone programs
- Please indicate how the Commonwealth Government intends to demonstrate leadership towards ensuring the expansion of prescription monitoring systems capture representative data on undertreatment of pain due to lack of adequate and sustained access to controlled medicine

Conclusion

Thank you again for providing an opportunity to submit this list of potential issues for the Committee's consideration relating to Australia's compliance with its international human rights obligations vis-à-vis drug policy, drug legislation, and their implementation. We hope that Australia is also encouraged to continue to foster and expand access to evidence-based drug treatment and harm reduction services across the Asia Pacific region. We will be happy to enlarge on the points raised above if the CESCR would find that helpful.

Signature
Penny Hill
For the Australian Civil Society Committee on UN Drug Policy

Australian Civil Society Committee on United Nations Drug Policy

Appendix: Current membership of the Australian Civil Society Committee on UN Drug Policy

At the 2019 Commission on Narcotic Drugs the Australian civil society representatives included representatives of people who use drugs, peak bodies, clinicians, youth representatives, academia, and service providers.

The purpose of the Committee is to bring together Civil Society representatives who have/are planning to attend the Commission on Narcotic Drugs and other drug policy-related UN sessions to inform Australian Government drug policy engagement in UN forums.

The current Australians in Civil Society who are members of the Committee and their affiliations are:

- Benjamin Phillips (New York Non-Governmental Organization Committee on Drugs, International Policy and Special Projects)
- Caitlin Hughes (International Society for the Study of Drug Policy, Centre for Crime Policy and Research, Flinders University, National Drug and Alcohol Research Centre, UNSW)
- Carrie Fowlie (Hepatitis Australia, Civil Society Task Force on Drugs)
- Chloe Bernard (Australia's 2020 UNODC Youth Forum Representative)
- David McDonald (Australasian Professional Society on Alcohol and other Drugs, Australian National University)
- Erin Lalor (Alcohol and Drug Foundation)
- Gloria Lai (International Drug Policy Consortium Asia Regional Programme)
- Jane Dicka (Harm Reduction Victoria, INPUD Pasifika Representative)
- Judy Chang (International Network of People who use Drugs)
- Lauren Bradley (Australian Federation of AIDS Organisations)
- Naomi Burke-Shyne (Harm Reduction International)
- Nick Kent (Students for Sensible Drug Policy Australia)
- Nico Clarke (Medically Supervised Injecting Centre, North Richmond Community Health former Medical Officer Management of Substance Abuse World Health Organisation)
- Odette Spruijt (Australasian Palliative Link International, Western Pacific Palliative Care Advocacy Network)
- Penny Hill (Harm Reduction Australia, International Drug Policy Consortium, Burnet Institute, Vienna Non-Governmental Organization Committee on Drugs)
- Ruth Birgin (International Network of Women who use Drugs, Womens Harm Reduction International Network)

Some of these current members also hold formal civil society roles related to UN drug policy related bodies including:

- Civil Society Task Force on Drugs (Oceania Representative)
- International Drug Policy Consortium (Regional Representative)
- New York Non-Governmental Organization Committee on Drugs (Treasurer)
- Vienna Non-Governmental Organization Committee on Drugs (Deputy Secretary)
- International Society for the Study of Drug Policy (Vice-President)

References