

Submission to: Parliamentary Joint Committee on Human Rights

Submission Regarding: Inquiry into Australia's Human Rights Framework

Submitted by: Students for Sensible Drug Policy Australia

Inquiry into Australia's Human Rights Framework

Dear Secretary,

Students for Sensible Drug Policy Australia (SSDP Australia) thanks the Parliament of Australia for the invitation to submit to this Inquiry and supports its decision to review *Australia's Human Rights Framework 2010* and the *National Human Rights Action Plan*. We (SSDP Australia) will comment generally on all terms of reference, while specifically focussing on the intersections between human rights and drug policy.

SSDP Australia is Australia's only national youth- and student-led community organisation that empowers and represents young people to bring change to drug policy. Young people are the most likely age group to use illicit drugs,¹ and the most likely to want drug policy reform,² yet we are the least likely to be involved in decision-making about drug-related policies and programs. We represent a grassroots network of students, young people, and their allies working towards meaningful drug policy reform grounded in evidence, compassion, and human rights.

Our network is made up of young people and students involved with our national organisation, and our affiliated clubs formed at university campuses around Australia, including the University of Melbourne and La Trobe University in Victoria, and the University of Western Australia and Edith Cowan University in Western Australia. We belong to an international network of young people and students working towards health and human rights-based drug policies, and since 2016, have maintained our involvement with the Australian Civil Society Committee on United Nations Drug Policy, the UNODC and VNGOC, Youth Rise,³ and other international youth coalitions.

SSDP Australia neither condemns nor condones drug use. As an organisation, we understand the complexities associated with drug use and policy matters, and are informed by the evidence of what works and does not work, and the expertise of the communities with lived and living experience of

¹ Australian Institute of Health and Welfare (AIHW) (2020) National Drug Strategy Household Survey (NDSHS) 2019. Drug Statistics series no. 32, PHE 270, Canberra AIHW. [Available here.](#)

² Lancaster C, Ritter A & Matthew-Simmons F (2013) Young people's opinions on alcohol and other drugs issues. National Drug and Alcohol Research Centre, University of New South Wales. [Available here.](#)

³ [Youth Rise.](#)

drug use. Students and young people who use drugs face challenges overcoming stigma and discrimination in accessing health, education, and platforms for advocacy. By empowering the collective capacity of students and young people to keep themselves safe and advocate for change, we hope to improve the lives of young people and shift political, policy, and community perspectives.

Given the contextual reality of many intertwining factors, we acknowledge the effectiveness of collaboration and teamwork across separate organisations towards achieving meaningful systemic change. In doing so, we fully endorse the recommendations of The Australian Research Centre into Sex Health and Society at La Trobe University,⁴ and Harm Reduction Australia,⁵ that made apt submissions to this Inquiry aligning centrally with the values and mission of SSDP Australia.

The Australian Research Centre into Sex Health and Society recommends that:

1. “A national bill or charter of rights be introduced in line with the Australian Human Rights Commission’s position paper, *A Human Rights Act for Australia*.”
2. New mechanisms for rights protections be introduced. This should include the introduction of a standalone right to bring legal proceedings when one’s human rights have been limited (or are at risk of being limited), without the need for an initial or existing cause of action, in line with chapter 11 of the Australian Human Rights Commission’s *A Human Rights Act for Australia*.
3. Resourcing for key agencies and organisations be increased to enable them to expand their advocacy on human rights issues including the provision of rigorous, detailed and quality input into rights processes (e.g., through parliamentary submissions). These organisations should include the Australian Human Rights Commission, community legal centres and legal aid organisations, and non-governmental organisations including national peak and peer user organisations for historically marginalised populations frequently subject to rights violations, including those organisations that represent people who use drugs, people with blood-borne viruses (such as hepatitis C and HIV), and LGBTIQ+ people.
4. The work of parliamentary rights scrutiny committees be undertaken more publicly insofar as this is possible, so that there is greater transparency and scrutiny of committee work, including through increased use of public inquiries.
5. Improvements be made to the process by which legal advisors are appointed. In particular, committees should not be reliant on a sole legal expert or advisor, and there must be greater transparency in the appointment process, through open calls for applicants and a transparent appointment process. In all instances, parliament should be able to select advisors from a broad

⁴ Australian Research Centre into Sex Health and Society (2022) ‘Australian Research Centre into Sex Health and Society’ *La Trobe University*, [Available here](#).

⁵ Harm Reduction Australia (2020) ‘Harm Reduction Australia.’ [Available here](#).

pool of experts (accounting for diversity and lived experience, among other things). Consideration should also be given to limiting terms of appointment for legal advisors and for rotating opportunities for advice in accordance with subject matter expertise.

6. Parliament create a process by which peak and peer organisations, properly resourced, are invited to provide expert input/advice to parliamentary human rights scrutiny committees based on their specific expertise, including lived experience. This process would recognise that legal expertise is not the only expertise relevant to human rights scrutiny processes and allow for new ideas and a diversity of perspectives in the process. Relatedly, peak and peer organisations should be properly resourced to provide this input/advice and be able to receive training from relevant human rights organisations such as the Australian Human Rights Commission or other relevant bodies.
7. Wherever possible, and unless there is genuine urgency for a bill to be reviewed and brought before parliament, clear public timelines for rights scrutiny processes be established and reflected in standing orders so that legal advisors and other experts (such as peak and peer organisations, or other civil society organisations) have adequate time to review bills and provide advice, and so that relevant committees have more time to review and assess all relevant information when scrutinising bills for their human rights compatibility.
8. A review of the proportionality test (typically as aspect of limitations clauses in charters) be conducted, including its unintended consequences and collateral effects. The test, at least in terms of how some currently understand and apply it in the context of parliamentary human rights scrutiny, appears to condone the disproportionate impact of some legislation on certain segments of the population (e.g., women; people of diverse gender identities, sexual orientations and sex characteristics; people who do not adhere to dominant masculine norms; other groups, including racialised populations).
9. The documents and forms used for rights scrutiny processes be reviewed and revised where possible to better embrace the complexity of the questions that legislators face in determining the rights compatibility of legislation.
10. All parliamentarians, relevant parliamentary staffers, and relevant public servants receive training, provided by the Australian Human Rights Commission or another properly resourced and appropriate body. At a minimum, such training should cover the operation of parliamentary human rights scrutiny processes and the legal obligations of public authorities and public servants, including procedural and substantive obligations. If a national bill or charter of human rights is introduced, training should be extended to cover, at a minimum, the dimensions and operation of the bill/charter including any parliamentary human rights scrutiny processes and the legal obligations of public authorities, as well as public servants.”

We further support the Australian Research Centre into Sex Health and Society's key research findings. For instance, when decisions are made to restrict and impede rights, and when the assessment of which is significantly influenced by the perspective of the decision maker, individual attitudes towards the issue, and the people these policies affect, frame real life consequences that can either enable or disable fairness, equality, and justice. A critical policy analysis process should be undertaken by lawmakers when considering the implementation of rights-based assessments to ensure previous, often unintentional, violations of rights are not unwittingly carried out on particular groups in the community. We point to the policy analysis framework of Carol Bacchi,⁶ who proposed an accessible step-by-step procedure in which to unpack the history and underpinnings of various public policies to determine whether they do in fact achieve their desired aims. This is a straightforward, critical framework that should be utilised by decision makers when undertaking potential alterations to human rights law.

As noted by the Australian Research Centre into Sex Health and Society, recent reviews of Australia's human rights approaches to drugs and people who use them have highlighted poor policy and practice:

“In Australia, people who use alcohol and other drugs are also vulnerable to human rights violations. In recent years, the first-ever Global Drug Policy Index was developed and released. It assesses the performance of 30 countries, including Australia, on a range of drug policy measures. Each country receives an overall score out of 100, reflecting assessments on a range of measures, including human rights. Australia received an overall score of 65/100 under the Index, and placed fifth out of the 30 countries studied. Importantly, Australia received a score of just 59/100 on human rights approaches. It also fared poorly on related measures, as follows:

- 54/100 on proportionality of the criminal justice response
- 25/100 on equity of the impact of criminal justice responses
- 25/100 on imprisonment for non-violent drug offences
- 33/100 on decriminalisation
- 33/100 on equity of access to harm reduction
- 44/100 on equity of access to controlled medicines for pain and suffering”

SSDP Australia firmly believes that people who use drugs should be afforded the same rights as all people. This must be reflected in Australian federal and state/territory drug policy, and in particular, the *National Drug Strategy 2017-2026*, wherein there are zero references to human rights. We strongly agree with Harm Reduction Australia's submission in that:

⁶ Bacchi C (2009) *Analysis Policy: What's the problem represented to be?* Pearson.

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

Accordingly, SSDP Australia recommend that:

- the National Drug Strategy be reviewed through human rights principles, and amended in line with the rights of people who use drugs;
- the Ministerial Drug and Alcohol Forum be reconvened; and
- lived and living experience community organisations be appropriately funded to participate in all relevant reviews and policy development.

As discussed below, there are multiple breaches of human rights principles that can be observed in the way Australian governments respond to drugs.⁷ Stigma and discrimination further impede the realisation of rights for all people identified as belonging to a drug using community. The matter of stigma and discrimination associated with especially illicit drug use should be handled with delicacy when assessing potential changes in human rights legislation, given the nuances of stereotypical thinking that is effectively ‘normalised’ throughout the world. The Alcohol and Drug Foundation noted that the World Health Organisation listed illegal drug use as the most stigmatised condition across the globe and alcohol use as the fourth most stigmatised condition.⁸ Research also shows that stigma can operate like a ripple effect, not just affecting the person known as a ‘drug user,’ but by association, their entire family and support network.^{9,10}

This is of concern, particularly when evidence suggests that a person's family and friends play a key protective role in providing support and bringing about better treatment outcomes.^{11,12} Stigma and discrimination can discourage help seeking behaviour when people do not feel safe enough to reach

⁷ Hill, P (2020) ‘Australian Civil Society Committee on United Nations Drug Policy submission to the third UPR Review, focusing on Australia’s human rights obligations with respect to drug policies, laws, and their implementation’. [Available here.](#)

⁸ Alcohol and Drug Foundation (2021) ‘The power of words.’ [Available here.](#)

⁹ McCann T & Lubman D (2018) ‘Stigma experience of families supporting an adult member with substance misuse,’ *International Journal of Health Nursing*, 27. [Available here.](#)

¹⁰ McCann T & Lubman D (2018) ‘Helping seeking behaviours and facilitators for affected family members of a relative with alcohol and other drug misuse: A qualitative study,’ *Journal of Substance Abuse Treatment*, 93. [Available here.](#)

¹¹ Gethin A, Trimmingham T, Chang T et al. (2016) ‘Coping with problematic drug use in the family: An evaluation of the Stepping Stones program,’ *Alcohol and Drug Review*, 35. [Available here.](#)

¹² Orford P (1994) ‘Empowering family and friends: a new approach to the secondary prevention of addiction,’ *Alcohol and Drug Review*, 14. [Available here.](#)

out for assistance, be that from peers, services, or their general practitioner.^{13,14} These impacts can be clearly made visible by adopting critical and thoughtful approaches to perceiving and responding to drug use and human rights.

The way stigma and discrimination operates at an individual level is also eloquently detailed in the Harm Reduction Australia submission regarding the interplay between drug prohibition and racism:

“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.”

The infringement of human rights, especially for people who use drugs, their families, and communities commonly results in isolation and compromised physical, emotional, social and financial health. This dynamic of alienation can further magnify harms for already marginalised groups including people with diverse genders and sexualities, Aboriginal and Torres Strait Islander Peoples, migrant communities, and young people. The rights that are afforded - or not, as the case may be - to specific communities is further complicated when drug criminalisation intersects with existing social and economic disparities. This can ultimately accumulate in a lack of structural mobility for various groups, which SSDP Australia believes warrants a rights-based approach to re-imagine solutions.

SSDP Australia fully endorses Harm Reduction Australia’s recommendation that:

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

¹³ McCann T & Lubman D (2018) ‘Stigma experience of families supporting an adult member with substance misuse,’ *International Journal of Health Nursing*, 27. [Available here.](#)

¹⁴ McCann T & Lubman D (2018) ‘Helping seeking behaviours and facilitators for affected family members of a relative with alcohol and other drug misuse: A qualitative study,’ *Journal of Substance Abuse Treatment*, 93. [Available here.](#)

We also fully support Harm Reduction Australia’s recommendations for domestic reform:

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

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

3. National Human Rights Action Plan
 - We support the development of a national human rights indicator index to measure progress on human rights, and that this could consider aspects reviewed in the International Drug Policy Consortium’s 2021 Global Drug Policy Index¹⁵.
 - Implement domestic mechanisms to monitor Australia’s human rights performance.
 - Concluding observations of periodic reviews of Australia’s human rights performance must be tabled in Parliament, including allocating which Department at the appropriate level of Government is responsible for each recommendation, proposed actions to implement recommendations, and timeframes and measurable outcomes for implementation and responses.”

¹⁵ International Drug Policy Consortium (2021) ‘The Global Drug Policy Index 2021.’ [Available here.](#)

At the conclusion of this submission, we have included a report that SSDP Australia contributed to through our involvement with the Australian Civil Society Committee on United Nations Drug Policy.¹⁶ Our report on the third Universal Periodic Review (UPR) focussed on Australia’s human rights obligations with respect to drug policies, laws, and their implementation, advocating for evidence-based policy reforms anchored in the philosophies of harm reduction, which overlap with the core principles of key international human rights conventions to which Australia is a signatory.^{17,18,19} Further information about the report and the concerns expressed by the Australian Civil Society Committee are documented in Harm Reduction Australia’s submission to this Inquiry.

Specifically, we drew attention to the concerning list of examples of how Australian Commonwealth, state, and territory drug policies, laws, and their implementation, breach human rights obligations. These breaches include but are not limited to: the right to the highest attainable standard of health, the principle that medical treatment must be voluntary, the right to privacy, the right of freedom from arbitrary arrest and detention, and the principle of proportionality. As highlighted by Harm Reduction Australia in their submission to this Inquiry, SSDP Australia firmly supports the extension of human rights assessments from the core rights protected in domestic and international law, to include the PANEL principles of participation, accountability, non-discrimination and equality, empowerment, and legality.²⁰

Lastly, we would like to draw specific attention to domestic drug policies which require interrogation against human rights principles. As discussed in detail by Harm Reduction Australia, these include but are not limited to:

- the criminalisation of personal use and possession of drugs;
- the absence of harm reduction in prisons;
- the structural, cultural, physical, and other barriers to AOD treatment;
- the implementation of roadside drug testing;
- the lack of availability of drug consumption and safe injecting facilities;
- the use of drug detection dogs and strip searching;
- the lack of access to pill testing/drug checking; and
- the lack of clarity in ‘Good Samaritan’ laws with regard to overdose reversal.

¹⁶ Hill, P (2020) ‘Australian Civil Society Committee on United Nations Drug Policy submission to the third UPR Review, focusing on Australia’s human rights obligations with respect to drug policies, laws, and their implementation’. [Available here.](#)

¹⁷ Harm Reduction International (2022) ‘What is harm reduction?’ [Available here.](#)

¹⁸ United Nations (2015) ‘The Universal Declaration of Human Rights’. [Available here.](#)

¹⁹ Australian Human Rights Commission (2023) The International Covenant on Civil and Political Rights – Human Rights at your fingertips. [Available here.](#)

²⁰ Australian Human Rights Commission (n.d.) ‘Human rights based approaches’, Rights and Freedoms. [Available here.](#)

We are grateful to the Committee for their efforts in setting up this Inquiry and respect the complex challenges confronting this type of law reform. We recognise that mainstream understandings and skewed media dialogue can present barriers to change and obstruct policy change at odds with Human Rights Conversations. We hope the Committee will carefully consider the evidence presented to the Inquiry and that the final report will be able to help shape inspired change in the future.

SSDP Australia welcomes the opportunity to elaborate on this submission, and to provide a verbal presentation to Inquiry committee members.

Yours sincerely,



Nick Kent
Co-National Director
E: nick@ssdp.org.au
M: +61 490 813 093



Baillee Farah
National Research Coordinator
E: baillee@ssdp.org.au
M: +61 450 811 536

Students for Sensible Drug Policy Australia
E: hello@ssdp.org.au
W: <https://www.ssdp.org.au>

Australian Civil Society Committee on United Nations Drug Policy

Penny Hill
penny@ssdp.org.au

29 July 2020

Australian Civil Society Committee on United Nations Drug Policy submission to the third UPR Review, focusing on Australia's human rights obligations with respect to drug policies, laws, and their implementation

Introduction

Thank you for providing an opportunity for civil society to participate in the consultation regarding Australia's third Universal Periodic Review (UPR), with particular respect to the contents of the draft National Report dated 30 June 2020.

The aim of the Australian Civil Society Committee on United Nations Drug Policy is to bring together a collective of civil society representatives who have attended the UN Commission on Narcotic Drugs, and other drug policy-related UN sessions, to inform Australian Government drug policy engagement in UN forums.

The Committee'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.

To date we have had fruitful, mutually respectful collaboration and engagement with drug policy officials in the Commonwealth Departments of Health and Home Affairs. We are pleased to expand this engagement to the Attorney-General's Department with respect to human rights and drug policy.

The draft National Report

We commend the Attorney-General's human rights team for the development and dissemination of the draft National Report to be submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, relating to Australia. It provides useful introductory information about Australia's human rights framework, and goes on to demonstrate initiatives relevant to protecting and enhancing human rights in Australia in a wide range of domains.

We note the specific references to the human rights of Aboriginal and Torres Strait Islander peoples, prisoners, children, women, people with disabilities, asylum-seekers and refugees, etc. Please see below where we enlarge upon what has been drafted to date, drawing attention to some of the special considerations in these and related domains with respect to people who use drugs.

We note the text on page 29 under the heading 'Advancing human rights internationally' regarding the Government's initiatives to strengthen advocacy for the worldwide abolition of the death penalty. This is a particularly poignant area with respect to drug policy as 35 nations still execute people for drug offences, a totally unacceptable practice that clearly breaches international human rights law.¹ We commend the Government for the leadership it continues to take in international forums to move towards the global abolition of the death penalty.

Of particular note, and concern, is that Australian drug policy and legislation, and their implementation, are not mentioned at all in the draft National Report. We are unsure how this area has been overlooked and suggest in the strongest terms that it be rectified in the next draft. As outlined below drug policy and human rights are integrally linked through international law, and through the latest resolutions and statements by the United Nations bodies including the Commission on Narcotics Drugs and International Narcotics Control Board. Drug policy and human rights are also integrally linked because, intentionally or not, human rights abuses have often occurred in the name of the United Nations Drug Conventions. Moreover, the extant evidence shows that building human rights compliance drug policies is vital for more effective, humane, and just drug policies.

To assist in this task, we have documented below some of the key areas in which the human rights of people who use drugs in Australia matter, and specific instances where they are infringed upon, and action that can be taken by Australian governments (Commonwealth, state and territory) to more fully implement their human rights obligations as they apply to people who use drugs.

Federal vs jurisdictional responsibility

We sometimes hear the Commonwealth Government arguing that certain aspects of drug policy are matters for the states and territories, and not for the Commonwealth. This is certainly the case, but it is not so, however, when it comes to drug policies and their implementation. This is because the Commonwealth has obligations under international law to ensure that the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and other international instruments, are implemented as part of Australia's domestic law. For example, if a state or territory government breaches the human right of prison inmates 'to the enjoyment of the highest attainable standard of physical and mental health', Australia is, in turn, in breach of our nation's international human rights obligations. In such a case, we argue, the Commonwealth has both the right and responsibility to act to remedy the situation.

In our view, all public sector employees, regardless of which government or which agency, whose work actually or potentially impacts on the wellbeing of the populace, should know, understand and apply human rights law, principles and standards in their everyday work. We are not sure that the Public Service Commission nor the Attorney-General's Department are sufficiently proactive in ensuring that this is the norm.

The COVID-19 pandemic

The draft National Report provides information on the Government response to the current COVID-19 pandemic, focusing on domestic measures. We acknowledge the work of the Commonwealth and State and Territory governments in reducing the impact of COVID-19 on people who use drugs. We welcome the increases in some welfare payments, and more flexible access to various health and

¹ Sander, G, Girelli, G & Cots Fernandez, A 2020, *The death penalty for drug offences: global overview 2019*, Harm Reduction International, London, <https://www.hri.global/death-penalty-2019>.

social measures, including opioid substitute treatment, alcohol and other drug counselling and housing support, during this difficult time. We advocate for these measures to stay in place following the pandemic to ensure increased access to services for people who use drugs. We also note that this would be in line with best practice learnings from abroad, about the desirability and benefits of implementing these drug policy measures in the post COVID-19 world.² We suggest that these matters be considered for inclusion in the next draft of the National Report. However, we are now aware that 'hard lockdowns' have had significant negative impacts on people who use drugs and their families within public housing in Melbourne. It is therefore crucially important that potentially similar lockdowns that may occur within Australia in the future be implemented in such a manner that recognises human rights obligations.

As civil society representatives, we are deeply concerned about the actual and potential impacts of the COVID-19 pandemic on prisoners and others in places of detention. We see no national leadership in protecting the rights to life and good health of people in these situations. The UN has stressed the urgency of the matter: 'UN rights chief urges quick action by governments to prevent devastating impact of COVID-19 in places of detention'³, and while across the globe 639,000 people or 5.8% of the global prison population has been released (many for drug or drug-related offences),⁴ such issues have received limited attention within Australia⁵. This is despite recent outbreaks of COVID-19 within the Australian prison system. We request that the National Report be explicit about the measures being taken to protect these particularly vulnerable populations and the communities to which prisoners and people on remand are released.

Australia and the Indo-Pacific region

We acknowledge the Commonwealth Government's renewed interest in the Indo-Pacific region, including its plans to increase development assistance funding there. This reflects a commitment to implementing core international human rights principles by assisting the people in developing nations. However, Australia should advocate for, and support, *health-based responses* to drug issues in the Indo-Pacific region. Currently, Australia is engaged in activities aimed to reduce drug trafficking and supply of drugs through various Pacific nations, yet does not provide health-based responses to drugs in the broader region.

International law requires Australian drug policies to be human rights compliant

Over many years, the UN drug treaty system has been framed as focussing on the health and well-being of populations: 'The Parties, Concerned with the health and welfare of mankind...' (1961 Single Convention on Narcotic Drugs, Preamble). The Ministerial Declaration from the 2019 Commission on Narcotic Drugs meeting (CND62) includes 'We reiterate our commitment to respecting, protecting and promoting all human rights, fundamental freedoms and the inherent dignity of all individuals and the rule of law in the development and implementation of drug policies'⁶.

² EMCDDA. (2020). EMCDDA Trendspotter briefing - Impact of COVID-19 on drug services and help-seeking in Europe. Lisbon: EMCDDA; Chiang, J., Agliata, J. & Guarinier, M. (2020). COVID-19 - Enacting a 'new normal' for people who use drug. *International Journal of Drug Policy*.

³ <https://news.un.org/en/story/2020/03/1060252>

⁴ Harm Reduction International. (2020). COVID-19, Prisons and Drug Policy: Global Scan March-June 2020. Harm Reduction International.

⁵ E.g. Russell, L 2020, 'Why prisons in Victoria are locked up and locked down', *The Conversation*, 23 July 2020, <https://theconversation.com/why-prisons-in-victoria-are-locked-up-and-locked-down-143178>.

⁶ Commission on Narcotic Drugs (CND) 2019, *2019 Ministerial Declaration: 'Strengthening our actions at the national, regional and international levels to accelerate the implementation of our joint commitments to address and counter the world drug problem'*, Commission on Narcotic Drugs, Sixty-second session, Vienna, 14–22 March 2019, United Nations Economic and Social Council, Vienna,

The 2019 annual report of the International Narcotics Control Board is more specific: 'Recommendation 4: The Board appeals to all States parties to pursue drug control policies that respect and protect all human rights and are consistent with international human rights instruments. Drug abuse and drug-related activities cannot be lawfully addressed without ensuring the protection of human rights and compliance with the international drug control conventions.'⁷

Furthermore, in 2018 the United Nations Chief Executives Board (CEB) explicated one of the 'Shared principles' underpinning nations' drug policies and their implementation as 'Acknowledge that the international drug control conventions, international human rights treaties and other relevant instruments and the 2030 Agenda are complementary and mutually reinforcing ('the UN Common Position'). *National drug control programmes, strategies and policies should be designed and implemented by States in accordance with their human rights obligations*' (our emphasis)⁸.

In 2018, the United Nations High Commissioner for Human Rights wrote: 'The cross-cutting approach of the outcome document of the thirtieth special session of the General Assembly, of 2016, on the world drug problem, constitutes a new and better linkage of the objective of drug control—protection of the health and welfare of humanity—with the key priorities of the United Nations system, including the Sustainable Development Goals. *States should make greater efforts to more comprehensively implement the outcome document in accordance with their human rights obligations*' (our emphasis)⁹.

Importantly, the UN Common Position calls for alternatives to conviction and punishment, including the decriminalisation of drug possession for personal use, as well as calls for changes in laws, policies and practices that threaten the health and human rights of people¹⁰. Furthermore, Australian public opinion continues to move in the direction of preferring that people who use drugs should not be criminalised; that drug use should be seen as a public health issue, not one for the criminal justice system¹¹. Increasingly, people are seeing that a sound alternative to criminalisation of people who use drugs is a focus on their human rights.

Given this, drug policy must be explicitly noted in the draft National Report and within its commitments. Similarly, human rights considerations must be integrated into Australia's National Drug Strategy.

The Australian National Drug Strategy

https://www.unodc.org/documents/commissions/CND/2019_Ministerial_Declaration/19-V1905795_E_ebook.pdf.

⁷ International Narcotics Control Board 2020, *Report of the International Narcotics Control Board for 2019*, United Nations, Vienna, <https://www.incb.org/incb/en/publications/annual-reports/annual-report-2019.html>.

⁸ 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>.

⁹ United Nations High Commissioner for Human Rights 2018, *Implementation of the joint commitment to effectively addressing and countering the world drug problem with regard to human rights. Report of the Office of the United Nations High Commissioner for Human Rights*, Human Rights Council, Thirty-ninth session, 10–28 September 2018, Agenda items 2 and 8, 14 September 2018, A/HRC/39/39.

¹⁰ United Nations Chief Executives Board (CEB) 2019.

¹¹ Australian Institute of Health and Welfare 2020, *National Drug Strategy Household Survey 2019*, Drug Statistics series no. 32, PHE 270, AIHW, Canberra, <https://www.aihw.gov.au/reports/illicit-use-of-drugs/national-drug-strategy-household-survey-2019/>.

It is difficult to understand why Australia's National Drug Strategy does not contain a single reference to the importance of a human rights underpinning of Australian national and state/territory drug laws, policies, and their implementation. Indeed, the Strategy document does not once use the term 'human rights'¹². 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.

In contrast, Australia's National Blood Borne Viruses and Sexually Transmissible Infections Strategies 2018-2022¹³ are underpinned by guiding principles including human rights. 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 the Strategies to weigh human rights against historical policy settings, and to value evidence above rhetoric. An example of the benefits of this approach is that now the Fifth National Hepatitis C Strategy 2018-2022 acknowledges the evidence supporting needle and syringe programs in custodial settings and recommends their introduction in Australian prisons.¹⁴ Thus the ongoing failure to implement a program of regulated access to sterile injecting equipment in Australian prisons can be clearly seen as a human rights failure.

Drug policy and the UPR

Australia's third cycle UPR has the potential to make important contributions to Australian drug policy. As a consortium of international NGOs put it:

... human rights and drug control have existed in parallel universes for decades, and drug policies receive little scrutiny from human rights mechanisms. This has contributed to repressive policies and receive little scrutiny from human rights mechanisms.

This has contributed to repressive policies and practices for the control of drugs, which have led to or enabled a wide range of human rights violations and abuses worldwide. These violations and abuses disproportionately impacts the most vulnerable people in society, perpetuating cycles of poverty, violence, discrimination and marginalisation, while failing to reduce drug-related harms and risks.

The Universal Periodic Review (UPR), alongside other international and national human rights mechanisms, 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.¹⁵

Key Australian drug policies breach international human rights law

Considering these obligations of governments to design and implement drug laws and policies that are human rights compliant, the way the UN conventions are interpreted by many nations (including

¹² [Ministerial Drug and Alcohol Forum (Australia)] 2017, *National Drug Strategy 2017-2026*, Department of Health, Canberra.

¹³ [National Blood Borne Viruses and Sexually Transmissible Infections Strategies 2018-2022](#).

¹⁴ [Fifth National Hepatitis C Strategy 2018-2022](#).

¹⁵ 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-the-universal-periodic-review-work-for-people-who-use-drugs>.

Australia) creates numerous breaches of the UN human rights conventions^{16 17 18 19}. Examples include applying the death penalty for people convicted of drug offences, involuntary treatment, and stigmatising and criminalising personal-level drug consumption and possession, hence criminalising people who use drugs²⁰.

Until recently there was little practical guidance available to governments and civil society on how human rights law applies to drug policies. Many people understood the high-level human rights principles, but not how they should be operationalised on the ground. This changed in 2019 with the release of the *International guidelines on human rights and drug policy* document, co-authored by the International Centre on Human Rights and Drug Policy, University of Essex; Joint United Nations Programme on HIV/AIDS (UNAIDS); United Nations Development Program; and World Health Organization²¹. The Guidelines '... are a reference tool for policy-makers, diplomats, lawyers and civil society organisations working to ensure human rights compliance in drug policy. They aim to fill the gap in foundational standard-setting processes through which contemporary human rights norms have been applied to various aspects of drug policy'²².

Some examples of how Australian Commonwealth, state and territory drug policies, laws and their implementation breach human rights obligations are as follows:

- Refusing to provide prisoners who are living with the opioid use disorder with the most effective medical treatment, namely opioid substitution therapy²³, in some state prison systems but not in others: breaches the right to the highest attainable standard of health and is also a form of torture (according to the *International Guidelines*).
- Refusing to provide evidence-based preventive health services in prison (for example ready access to sterile injecting equipment): breaches the right to the highest attainable standard of health.
- The Commonwealth government's policy (not yet implemented) on the mandatory urine testing of welfare recipients, and the associated mandatory drug treatment: breaches the principle that medical treatment must be voluntary, and the right to privacy.
- Roadside drug testing of drivers in situations where police have no reasonable suspicion that the driver is impaired by the drug, with the offence being 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, and breaches the core human rights principle of

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 High Commissioner for Human Rights 2018, *Implementation of the joint commitment to effectively addressing and countering the world drug problem with regard to human rights. Report of the Office of the United Nations High Commissioner for Human Rights*, Human Rights Council, Thirty-ninth session, 10–28 September 2018, Agenda items 2 and 8, 14 September 2018, A/HRC/39/39.

¹⁸ Lines, R 2017, *Drug control and human rights in international law*, Cambridge University Press, Cambridge, UK.

¹⁹ Room, R., & Reuter, P. (2012). How well do international drug conventions protect public health? *The Lancet*, 379(9810), 84-91.

²⁰ International Drug Policy Consortium (IDPC) 2016, *IDPC drug policy guide*, 3rd edn, IDPC, [London], <http://idpc.net/publications/2016/03/idpc-drug-policy-guide-3rd-edition>, pp. 10-12.

²¹ 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.

²² www.humanrights-drugpolicy.org

²³ 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.

proportionality as there is literally no evidence that roadside drug testing increases road safety. Despite hundreds of thousands of tests being conducted each year in Australia, and the thousands of people losing their licenses and receiving severe penalties, there has not been a single study conducted to evaluate the impact of this on road safety²⁴. 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 obligations²⁵.

- The use of drug sniffer dogs and strip searches, particularly of young people: breaches the right to privacy and the principle of proportionality. Repeated studies have shown that in spite of stated intentions the vast majority of people stopped or searched through drug detection dogs or strip searches are people who use drugs not people who supply drugs, that deployment has limited deterrent effect and that deployment often leads to more harmful modes of drug consumption or possession, such as hasty consumption and internal concealment, damages police-community relations and leads to significant trauma for searched.^{26 27 28 29 30}
- Refusing to permit the use of some drug treatment modalities that researchers demonstrated are of proven efficacy and cost-effectiveness³¹ and are used abroad (e.g. diacetylmorphine-assisted treatment of opioid dependence): breaches the right to the highest standard of health.
- Criminalising the consumption of drugs, the possession of small quantities of drugs and the cultivation of small quantities of cannabis for personal use, contrary to the guidance given by the top-level UN agencies cited above: breaches the principle of proportionality. Of note, Australia has had a long history of using drug diversion programs for people who use or possess small quantities of drugs, in the goal of providing referrals to education or treatment instead of criminal sanction. Australia has also amassed a large evidence-base on the health, social and economic benefits of providing non-criminal alternatives for simple use and possession offences.^{32 33} Yet, a recent analysis showed that 45% of all offenders detected with a principal offence of use or possession for personal use use/possession in Australia continue to be charged and proceed to court, and that the rate of providing non-criminal

²⁴ 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.

²⁵ Watchirs, H 2010, *Submission to Discussion Paper: Drug Driving in the Territory: an overview of issues and options*, ACT Human Rights Commission, Canberra.

²⁶ Agnew-Pauley, W. E., & Hughes, C. E. (2019). Trends and offending circumstances in the police use of drug detection dogs in New South Wales 2008–2018. *Current Issues in Criminal Justice*, 31(1), 4-23.

²⁷ Hughes, C. E., Moxham-Hall, V., Ritter, A., Weatherburn, D., & MacCoun, R. (2017). The deterrent effects of Australian street-level drug law enforcement on illicit drug offending at outdoor music festivals. *International Journal of Drug Policy*, 41, 91-100.

²⁸ 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*, 67, 63-71.

²⁹ NSW Ombudsman. (2006). *Review of the Police Powers (Drug Detection Dogs) Act 2001*. Sydney: Office of the New South Wales Ombudsman.

³⁰ Grewcock, M., & Sentas, V. (2019). *Rethinking Strip Searches by NSW Police*. Sydney: UNSW.

³¹ 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.

³² Payne, J., Kwiatkowski, M., & Wundersitz, J. (2008). *Police drug diversion: A study of criminal offending outcomes*. Canberra: Australian Institute of Criminology.

³³ Shanahan, M., Hughes, C., & McSweeney, T. (2017b). *Police diversion for cannabis offences: Assessing outcomes and cost-effectiveness*. Trends and Issues in Crime and Criminal Justice No. 532. Canberra: Australian Institute of Criminology.

penalties is reducing over time.³⁴ This report also revealed significant disparities in the likelihood of receiving non-criminal penalties across Australian states and territories. All of this shows a significant need to revisit and reform current criminal justice responses to use and possession to ensure more proportionate and humane responses that are in line with current international guidelines.

- 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)³⁵.
- The racial disparities experienced by Aboriginal people and Torres Strait Islanders within public drunkenness offences³⁶ (recently tabled for abolition in Victoria but still retained in Queensland³⁷): breaches the right not to be racially discriminated against.
- Several state Police Forces, including Victoria's, are not required to release community profiling data. In NSW, where this practice is managed via the Bureau of Crime Statistics and Research, significant disparities have been shown in the NSW Police Force's profiling of Aboriginal and Torres Strait Islander communities in the stop-and-search, arrest and sentencing practices for cannabis possession³⁸. Given that Aboriginal and Torres Strait Islander peoples are incarcerated at the highest per capita level of any country in the world³⁹, coupled with the early implications of recently released NSW data, and the well documented racist origins and impacts of drug prohibition^{40 41}, 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. The Australian community is looking to the Commonwealth Government to act in these domains, as evidenced by the 'Black Lives Matter' movement across our nation. Breaches the right not to be racially discriminated against.
- 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

³⁴ Hughes, C., Seear, K., Ritter, A., & Mazerolle, L. (2019). Criminal justice responses relating to personal use and possession of illicit drugs: The reach of Australian drug diversion programs and barriers and facilitators to expansion. DPMP Monograph No. 27. Sydney: National Drug and Alcohol Research Centre, UNSW.

³⁵ 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-prison-reform/Bangkok_Rules_ENG_22032015.pdf.

³⁶ McNamara, L. and Quilter, J. 2015, 'Public intoxication in NSW: the contours of criminalisation', *The Sydney Law Review*, vol. 37, no. 1, pp. 1-35, <https://ro.uow.edu.au/lhapapers/1931/>

³⁷ *Summary Offences Act 2005 (Qld)*, s. 10; <https://www.gotocourt.com.au/criminal-law/qld/intoxicated-persons/>

³⁸ <https://www.theguardian.com/australia-news/2020/jun/10/nsw-police-pursue-80-of-indigenous-people-caught-with-cannabis-through-courts>

³⁹ <https://theconversation.com/factcheck-qanda-are-indigenous-australians-the-most-incarcerated-people-on-earth-78528>

⁴⁰ 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.

⁴¹ Manderson, D 1993, *From Mr Sin to Mr Big: a history of Australian drug laws*, Oxford University Press, Melbourne.

age⁴²: breaches the right not to be racially discriminated against and the principle of proportionality.

- Many jurisdictional 'Good Samaritan' laws provide grey areas in legislation as they do not cover people who have used certain drugs, and/or who are intoxicated. However, these are people who commonly provide responses to overdose, particularly through the use of naloxone, in accordance with the Commonwealth Government's efforts in scaling-up overdose responses using naloxone across the nation. Breaches the right to highest attainable standard of health, and the right to life itself.
- Not allowing pregnant women to access supervised injecting facilities in Sydney and Melbourne mitigates potential referral to antenatal care: breach of the right to good health.
- Not allowing pill testing services despite overwhelming evidence and expert/Coronial opinion justifying its implementation⁴³: breach of the right to the highest attainable standard of health.

Conclusion, and a proposal

We have provided the above examples of ways in which the governments of Australia consistently, and almost certainly knowingly, breach our international human rights obligations through the design and implementation of their drug policies and laws. As civil society representatives, we call on the Commonwealth Government Attorney General's Department to undertake a systematic audit of drug policies in Australia to more fully document the extent to which these policies do, or do not, accord with our nation's human rights obligations, and to include a commitment to doing so in its National Report to the UPR. It is suggested that the audit use the *International Guidelines on Human Rights and Drug Policy* as its framework. Doing so would be a commendable response to the call by Zeid Ra'ad Al Hussein, the former UN High Commissioner for Human Rights, at the 37th session of the Human Rights Council, March 2018:

I urge all States to examine the effectiveness and human rights impact of their current approaches to the so-called 'War on Drugs'. I urge more comprehensive implementation of the Outcome Document of the United Nations General Assembly Special Session on the World Drug Problem of 2016, including its 15 operational recommendations on human rights and related issues⁴⁴.

Yours faithfully,



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

⁴² NATSILS, AMA, Amnesty International, Change The Record, Human Rights Law Centre 2020, JOINT MEDIA RELEASE: [Australian governments continue to fail kids by refusing to raise the age at which children can be locked in prison](#), 27 July 2020.

⁴³ 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.

⁴⁴ 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.

Appendix: Current membership

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 Committee formed to bring together a collective of 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)
- David McDonald (Australian Illicit and Injecting Drug Users League, 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)
- Judy Chang (International Network of People who Use Drugs)
- Marianne Jauncey (Medically Supervised Injecting Centre, Uniting)
- 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)
- Penny Hill (Vienna Non-Governmental Organization Committee on Drugs, Harm Reduction Australia, International Drug Policy Consortium, Burnet Institute)
- Ruth Birgin (International Network of Women who use Drugs, Women and Harm Reduction International Network)

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

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