



**Tasmanian Greens**  
**Decriminalising Personal Drug Use**  
Public Consultation  
(Online submission)

31 March 2023

**RE: Decriminalising Personal Drug Use Bill 2023**

Thank you for the opportunity for Harm Reduction Australia (HRA) to make a submission to the *Decriminalising Personal Drug Use Bill 2023*.

HRA is a national organisation committed to reducing the health, social and economic harms potentially associated with drug use. HRA is a membership-based organisation that represents the views of its members who are primarily people working in the health, welfare, and law enforcement sectors, but also include concerned family members, people who use drugs, policy makers, current and former politicians, and other individuals wanting to advocate for the continuation and expansion of harm reduction policies in Australia.

The Board and members of HRA are people who understand the complexities of risky and/or problematic drug use and are advocating for the safest, most effective ways to protect the wellbeing of individuals, families, and communities. HRA takes a non-judgmental approach to drug use within society and aims to ensure that drug policies in Australia first and foremost do no harm and provide real benefit to Australian society through evidence-based and humane responses to drug use.

To this end, HRA welcomes the *Decriminalising Personal Drug Use Bill 2023* and congratulates the Tasmanian Greens for bringing this important (and many would argue, overdue) conversation forward within the Tasmanian community. In Australia, with the exception of the recent decision to decriminalisation the personal use of all drugs in the ACT, we have largely continued with harmful, punitive, prohibitionist approaches to drug use that continue to cause unacceptable levels of health and social harm within the Australian community.

HRA does not accept that any and all illicit drug use is inherently problematic. Rather, we contend that it is the current laws and policies that criminalise drug use that are in themselves adding significantly to the burden of risk and harm that people who use drugs experience. For example, in Australia we have seen an increase in deaths from drug-related overdose and other harms which have now reached new

record levels due to ongoing fears associated with police intervention and criminalisation<sup>1</sup>. It is HRA's view that governments can no longer claim that the current system of drug control somehow acts as a deterrent. The calls for policy change are clear. The current system is not a deterrent of any kind, it is a system that has failed to achieve its desired outcomes and only continues because of the political investment and deeply vested interests that would suffer if an evidence-based assessment was made of the outcomes.

For example, prohibitionist policing practices have been shown to cause significant unintended harms. Passive alert detection or sniffer dog operations in several Australian jurisdictions targeting music event patrons (and other public places) have been causally linked to drug toxicity deaths from 'panic -swallowing' and post-traumatic stress disorders from being strip searched. There have been formal recommendations in various inquiry reports to stop such practices<sup>2</sup>. Unfortunately, however, these practices continue due to political investment in prohibitionist approaches and false claims by law enforcement officials that such practices are necessary to prevent young people using illicit drugs.

Furthermore, it is commonplace in Australia for law enforcement to claim that they focus their attention on supply-side disruption rather than targeting individuals who use drugs. Yet, despite these repeated claims, the evidence is clear that the overwhelming majority of arrests for drug offences in Australia are for personal drug use and possession. A recent Australian report highlighted that since 2010, over 700,000 people have been arrested for cannabis-related offending in Australia, with 90% of these arrests for personal use or possession<sup>3</sup>. Further, the same report showed that the current prohibitionist approach to cannabis use is costing the Australian community \$1.7bn a year in law enforcement costs<sup>4</sup>.

Despite the lack of evidence that the current prohibitionist approach is effective in reducing drug-related harms in the community, research has indicated that law enforcement continues to receive approximately 70% of the government budget allocated to addressing drug issues in the community<sup>5</sup>. In comparison, approaches that have demonstrated benefits to the community such as harm reduction (including needle & syringe programs (NSP), opioid dependence treatment (ODT), take-home naloxone (THN), medically supervised injecting facilities, pill testing/drug checking services, etc.) receive less than 5% of the government drug policy spend in Australia<sup>6</sup>.

Furthermore, law enforcement efforts in Australia continue to focus on drugs that in terms of overall risk, cause few harms in the community such as cannabis, cocaine and MDMA. These efforts have led to large numbers of arrests and life-ruining criminal records, with little reduction in the availability of those substances and with

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<sup>1</sup> AIHW: <https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/impacts/health-impacts>

<sup>2</sup> See: [https://coroners.nsw.gov.au/coroners-court/download.html/documents/findings/2019/Music\\_Festival\\_Redacted\\_findings\\_in\\_the\\_joint\\_inquest\\_into\\_deaths\\_arising\\_at\\_music\\_festivals\\_.pdf](https://coroners.nsw.gov.au/coroners-court/download.html/documents/findings/2019/Music_Festival_Redacted_findings_in_the_joint_inquest_into_deaths_arising_at_music_festivals_.pdf)

<sup>3</sup> <https://www.theguardian.com/australia-news/2022/dec/08/decriminalising-cannabis-could-save-australian-taxpayers-850m-a-year-report-finds>

<sup>4</sup> Ibid.

<sup>5</sup> <https://ndarc.med.unsw.edu.au/news/law-enforcement-takes-lions-share-illicit-drug-spend>

<sup>6</sup> Ibid.

little to no impact on demand. In contrast, the impact of these ongoing law enforcement efforts on individuals and families has been significant primarily due to the burden of stigma and discrimination associated with negative attitudes and labelling.

Even in the area of occasional (always highly publicised) so-called 'large-scale seizures' of drugs including heroin and amphetamine-type substances (ATS), there is now routine acknowledgement that despite frequent public claims to the contrary, such seizures do not have any lasting suppression effect on the potential harms associated with, the demand for or supply of illicit substances<sup>7</sup>. Indeed, it has been acknowledged that these large-scale law enforcement efforts are typically "a signal of increased rather than reduced supply"<sup>8</sup> and invariably come at a significant cost to the public purse.

Meanwhile, despite the lack of drug policy reform in the majority of Australian jurisdictions, the use of illicit drugs in Australia as well as support for drug policy reform among the general public are growing every year. For example, according to findings from the most recent National Drug Strategy Household Survey, almost half of those surveyed aged 14 and over, admitted to having used a drug illicitly in their lifetime and almost 80% agreed that possession of cannabis for personal use should not be a criminal offence<sup>9</sup>.

### **The Changing Global Picture:**

In addition to the moral arguments that are typically used to resist drug policy reform, it is often claimed that because Australia is a signatory to the 3 UN international conventions on drug policy, Australia cannot (and should not) shift from the current prohibitionist approach to drug use. The UN General Assembly Special Session (UNGASS) on the world drug problem, held in April 2016 in New York, however, resulted in agreement amongst member states including Australia on an Outcome Document.<sup>10</sup> Of particular relevance, this document encourages "alternative or additional measures with regard to conviction or punishment, in cases of an appropriate nature": paragraph 4(j). Further, during the UNGASS, the International Narcotics Control Board President further reiterated that *'there is no treaty obligation to incarcerate for minor offences such as possession of small quantities for personal use'*.

In the years since the 2016 UNGASS, we have seen an growing world-wide trend, whereby many countries, as well as UN agencies, are treating the issues of illicit drugs from a health and social perspective rather than choosing to continue to criminalise people. There are now a plethora of international standards and guidelines, as well as best practices from around the world, available to guide the

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<sup>7</sup> Australian Strategic Police Institute (ASPI). 2018. <https://www.aspistrategist.org.au/policing-illicit-drugs-big-hauls-are-easily-replaced/>

<sup>8</sup> Wan, WY., Weatherburn D., Wardlaw, G., Sarafidis, V., and Sara, G. 2014. Supply-side reduction policy and drug-related harm. National Drug Law Enforcement Research Fund, p. 2. Retrieved from BOSCAR website on 22 December 2022: [www.bocsar.nsw.gov.au/Documents/20141127\\_supplycontrol.pdf](http://www.bocsar.nsw.gov.au/Documents/20141127_supplycontrol.pdf)

<sup>9</sup> Australian Institute of Health and Welfare. (2019). National Drug Strategy Household Survey detailed report. Canberra: Australian Government.

<sup>10</sup> United Nations General Assembly (14 April 2016), *Our joint commitment to effectively addressing and countering the world drug problem*, A/S-30/L.1, <http://www.un.org/Docs/journal/asp/ws.asp?m=A/S-30/L.1>

development of appropriate and effective drug policy reform<sup>11</sup>. HRA believes that it is well overdue that Australia (at all levels of government and with all key stakeholders) commits to engaging in an evidence-based and human rights-informed dialogue on drug policy reform in the best interests of the entire Australian community.

In this context, the *Decriminalising Personal Drug Use Bill 2023* comes at a time when many in the harm reduction and wider global drug policy sector are declaring a new dawn in drug policy reform. International bodies, including the United Nations, are now routinely and openly declaring the war on drugs a failure, and denouncing prohibition as not only ineffective but fundamentally harmful and inhumane.

*“Experience has shown that force alone cannot reduce the drug supply or the criminality and corruption that it induces. We need to regulate drugs because they are risky. Drugs are infinitely more dangerous when produced and sold by criminals who do not worry about any safety measures. Legal regulation protects health. Consumers need to be aware of what they are taking and have clear information on health risks and how to minimize them.”*

Kofi Annan (1938-2018), former UN Secretary General

There is a growing global recognition of the need to urgently move towards the full decriminalisation/legal regulation of the use and supply of currently illicit substances for personal consumption, along with possession for personal use, to address the significant long-term health, financial and social harm that is caused by criminalising, arresting, convicting, and often incarcerating people who use drugs. Multiple reports from the Global Commission on Drugs (a group of eminent past heads of state and other dignitaries) have reiterated their collective view that drug prohibition has failed both the world and individual countries utterly and that significant drug policy reform is a matter of global emergency<sup>12</sup>.

### **Examples of Successful Reform & Lessons Learnt:**

One of the most frequently cited examples of the benefits of decriminalisation in the drug policy context, is Portugal. Over two decades ago, Portugal decriminalised the personal use and possession of small amounts (up to 10 days’ supply) of all drugs – a model of reform not dissimilar to the proposed Tasmanian Bill. Decades later, the benefits of decriminalisation in Portugal are overwhelmingly evident in multiple reports and independent evaluations that have demonstrated (among other outcomes) no major increases in drug use, significant decreases in arrests, criminal records and incarceration rates and significant public health benefits including reduced deaths<sup>13</sup>.

In the past decade, other countries and jurisdictions have also successfully implemented cannabis decriminalisation and/or legalisation including in parts of the US, Canada, Latin America, Europe, and Asia. In addition to cannabis reform, other

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<sup>11</sup>International Drug Policy Consortium, *IDPC Drug Policy Guide 3<sup>rd</sup> Edition*, (2016) <http://idpc.net/publications/2016/03/idpc-drug-policy-guide-3rd-edition>

<sup>12</sup> Global Commission on Drug Policy. 2021. Time to End Prohibition. <https://www.globalcommissionondrugs.org/reports/time-to-end-prohibition>

<sup>13</sup> Transform. 2014. Drug Decriminalisation in Portugal: Setting the Record Straight. Retrieved from: <https://www.unodc.org/documents/ungass2016/Contributions/Civil/Transform-Drug-Policy-Foundation/Drug-decriminalisation-in-Portugal.pdf>

countries including Uruguay and jurisdictions such as Vancouver in Canada and Oregon in the United States, have followed Portugal's lead and decriminalised small amounts of all drugs for personal use. For example, on 1 February 2022, Oregon began implementing the Drug Addiction Treatment Recovery Act (DATRA) commonly referred to as 'Measure 110' and became the first state in the U.S. to decriminalise small amounts of all drugs for personal use. Subsequently, a full implementation evaluation study is being conducted to both assess the impact of DATRA and to inform efforts in other states and countries considering decriminalisation measures.

Some of the key early lessons learnt from both the Portugal and Oregon decriminalisation experiences, however, are that there needs to be sufficient lead time when introducing reforms, not least of which, to allow for training of police and changes to law enforcement approaches and practices. Further, if the model involves replacing punitive laws with a system of administrative fines and/or referring people to drug treatment to avoid a criminal record, there needs to be sufficient time allowed and investment made in harm reduction and evidence-based drug treatment services. Positive changes from decriminalisation reforms can only materialise if the wider system is adequately prepared, funded and supported to accommodate the legislative and policy reforms. Further, the experience in both Portugal and Oregon also highlight the importance of ensuring that those who are most affected by the proposed reforms, that is, people who use drugs, are not just consulted as part of any implementation/evaluation process but importantly, are meaningfully engaged in the process of developing any proposed Bill<sup>14</sup>.

### **A Note of Caution:**

While HRA broadly welcomes the Bill in so far as it proposes the decriminalisation of small amounts of drugs for personal use, we would like to raise a note caution in relation to threshold amounts. Part 2, Schedule 2 of the proposed Bill, sets out 'personal possession limits' for controlled substances/plants. In this Part, to avoid a criminal offence, the person *'must not possess an amount of a controlled drug or controlled plant product in excess of the personal possession limit'*. In this context, HRA wishes to highlight the significance of threshold quantities to the effectiveness of the proposed decriminalisation measure. Specifically, we are concerned that some of the currently proscribed threshold amounts (e.g., 1g heroin, 1.5g cocaine, methamphetamine) are too low, the table is confusing in relation to the distinction between dry weight and the active chemical for some substances and not others (i.e., psilocybin) and, substances such as opioid analogues other than diacetylmorphine, as well as, other dark net derivatives, might need further discussion in the context of Tasmania with a significant level of opioid use other than heroin and an emerging online drug market.

In the context of this brief submission, HRA would not consider it appropriate to advise the Tasmanian Greens on the precise threshold limits or other inclusions for the Bill. What we would like to highlight, however, is the importance of ensuring that

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<sup>14</sup> Netherland, J., et al. 2022. Journal of Urban Health: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8809225/> and Madden, A., Tanguay, P., and Chang, J. 2021. Decriminalisation: Progress or Political Red Herring? INPUD: <https://inpud.net/drug-decriminalisation-progress-or-political-red-herring-2/>

threshold amounts are set in consultation with people who use drugs in Tasmania, their representative organisations, and other relevant experts with specific knowledge of drug consumption patterns in the Tasmanian community. We would also encourage consideration of the purchasing patterns of people who use drugs in Tasmania to recognise that young people in particular often collectively purchase drugs for personal use.

Under the current Bill, people could find themselves in breach of the proposed new drug laws despite only using substances purchased for personal use. It is our considered view that both the threshold amounts/limits and the precise crafting of the table and its related clauses, are critical to the proposed Bill and its success as a decriminalisation and harm reduction measure, as we have seen other reform measures that have been compromised as a result of misjudging/under-estimating threshold amounts.

Once again, HRA would like to take this opportunity to congratulate the Tasmania Greens on the leadership you are showing in taking a humane and progressive approach to drug policy matters in Tasmania. We support your efforts towards drug law reform in Tasmania and look forward to following the progress of the proposed Bill through the relevant parliamentary processes. Given HRA's expertise, we would welcome the opportunity to speak to this submission should there be an opportunity associated with this call for submissions. Please do not hesitate to contact us should you require any further information.

Yours sincerely

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## **Attachments**

### **HRA Statements & Documents**

<https://www.abc.net.au/news/2022-12-22/drug-properties-being-found-by-cantest/101798128>

<http://www.smh.com.au/comment/the-war-on-drugs-is-a-war-against-our-own-children-friends-and-families-20151125-gl7kkl.html>

[http://www.huffingtonpost.com.au/gino-vumbaca/the-war-on-drugs-has-become-an-embarrassment-of-orwellian-proportions\\_b\\_9233694.html](http://www.huffingtonpost.com.au/gino-vumbaca/the-war-on-drugs-has-become-an-embarrassment-of-orwellian-proportions_b_9233694.html)

[http://www.huffingtonpost.com.au/gino-vumbaca/health-warnings-on-drugs-shouldnt-be-provided-by-police/?utm\\_hp\\_ref=au-homepage](http://www.huffingtonpost.com.au/gino-vumbaca/health-warnings-on-drugs-shouldnt-be-provided-by-police/?utm_hp_ref=au-homepage)

<http://www.harmreductionaustralia.org.au/wp-content/uploads/2016/11/HRA-Statement-of-Drug-Policy-Hysteria.pdf>

### **Other Relevant Documents/Sites:**

*Full version: 'Police Statement of Support for Drug Policy Reform'* during the United Nations Commission on Narcotic Drugs (CND) in Vienna on 18 March 2019, the Centre for Law Enforcement and Public Health (CLEPH):  
<https://cleph.com.au/application/file...>

Global Commission on Drug Policy website:  
<https://www.globalcommissionondrugs.org/>

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

International Drug Policy Consortium, *The UNGASS on the world drug problem: Report of proceedings*, (September, 2016), <http://idpc.net/publications/2016/09/the-ungass-on-the-world-drug-problem-report-of-proceedings>

Pennington Institute. 2022. Cannabis in Australia Report:  
<https://www.pennington.org.au/cannabis/cannabis-in-australia/#:~:text=%E2%80%9CMore%20than%20a%20third%20of,did%20200%20million%20people%20worldwide.%E2%80%9D>