

## **Australian Civil Society Committee on United Nations Drug Policy**

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### **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.<sup>1</sup> 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

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<sup>1</sup> 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.<sup>2</sup> 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'<sup>3</sup>, 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),<sup>4</sup> such issues have received limited attention within Australia<sup>5</sup>. 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'<sup>6</sup>.

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<sup>2</sup> 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*.

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

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

<sup>5</sup> 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>.

<sup>6</sup> 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.'<sup>7</sup>

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)<sup>8</sup>.

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)<sup>9</sup>.

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 people<sup>10</sup>. 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 system<sup>11</sup>. 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**

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[https://www.unodc.org/documents/commissions/CND/2019\\_Ministerial\\_Declaration/19-V1905795\\_E\\_ebook.pdf](https://www.unodc.org/documents/commissions/CND/2019_Ministerial_Declaration/19-V1905795_E_ebook.pdf).

<sup>7</sup> 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>.

<sup>8</sup> 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>.

<sup>9</sup> 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.

<sup>10</sup> United Nations Chief Executives Board (CEB) 2019.

<sup>11</sup> 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'<sup>12</sup>. 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 2018-2022<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup>*

### **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

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

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

<sup>14</sup> [Fifth National Hepatitis C Strategy 2018-2022](#).

<sup>15</sup> 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<sup>16 17 18 19</sup>. 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 drugs<sup>20</sup>.

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 Organization<sup>21</sup>. 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'<sup>22</sup>.

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 therapy<sup>23</sup>, 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

<sup>16</sup> 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](http://www.humanrights-drugpolicy.org)

<sup>17</sup> 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.

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

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

<sup>20</sup> 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.

<sup>21</sup> 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](http://www.humanrights-drugpolicy.org).

<sup>22</sup> [www.humanrights-drugpolicy.org](http://www.humanrights-drugpolicy.org)

<sup>23</sup> 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 safety<sup>24</sup>. The ACT Human Rights Commissioner has documented the many ways in which roadside drug testing breaches both the ACT *Human Rights Act* and Australia's broader international human rights obligations<sup>25</sup>.

- 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.<sup>26 27 28 29 30</sup>
- Refusing to permit the use of some drug treatment modalities that researchers demonstrated are of proven efficacy and cost-effectiveness<sup>31</sup> 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.<sup>32 33</sup> 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

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<sup>24</sup> 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.

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

<sup>26</sup> 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.

<sup>27</sup> 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.

<sup>28</sup> 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.

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

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

<sup>31</sup> 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.

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

<sup>33</sup> 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.<sup>34</sup> 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)<sup>35</sup>.
- The racial disparities experienced by Aboriginal people and Torres Strait Islanders within public drunkenness offences<sup>36</sup> (recently tabled for abolition in Victoria but still retained in Queensland<sup>37</sup>): 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 possession<sup>38</sup>. Given that Aboriginal and Torres Strait Islander peoples are incarcerated at the highest per capita level of any country in the world<sup>39</sup>, coupled with the early implications of recently released NSW data, and the well documented racist origins and impacts of drug prohibition<sup>40 41</sup>, 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

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<sup>34</sup> 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.

<sup>35</sup> 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](http://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf).

<sup>36</sup> 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/>

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

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

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

<sup>40</sup> 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.

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



age<sup>42</sup>: 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 implementation<sup>43</sup>: 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 issues<sup>44</sup>.*

Yours faithfully,



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

<sup>42</sup> 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.

<sup>43</sup> 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.

<sup>44</sup> 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)