

Submission to the United Nations Committee on Civil and Political Rights

Proposing a List of Issues Relating to Australia's Human Rights Obligations and Drug Policies.

This submission has been prepared by the Australian Civil Society Committee on UN Drug Policy, including Harm Reduction Australia (HRA), the Australian Injecting and Illicit Drug Users League (AIVL), the International Indigenous Drug Policy Alliance (IIDPA), the International Drug Policy Consortium (IDPC), and the Alcohol and Drug Foundation (ADF); alongside the Capital Punishment Justice Project (CPJP), Harm Reduction International (HRI) and the Women and Harm Reduction International Network (WHRIN).

Executive Summary

Thank you for the opportunity to provide input to the development of the List of Issues Prior to Reporting for Australia's next review by the Committee. This submission has been prepared by Australian civil society organisations working in the areas of drug policy, public health, and human rights. It outlines concerns regarding Australia's obligations under the International Covenant on Civil and Political Rights (ICCPR) in relation to drug laws, policies, and their implementation.

This submission highlights key civil and political rights concerns arising from Australia's drug policies, laws, and their enforcement. Despite international commitments, Australia's current approach to drug control disproportionately infringes on rights protected under the International Covenant on Civil and Political Rights (ICCPR), including the right to life, freedom from arbitrary detention, fair trial rights, non-discrimination, and meaningful participation. Australian civil society organisations call for urgent reforms to ensure Australia's drug policies comply with its international human rights obligations.

We note that Australia does not currently have a Human Rights Act, despite this forming a key recommendation of the Parliamentary Joint Committee on Human Rights Inquiry into Australia's Human Rights Framework, reported in May 2024. The report noted Australia's approach to human rights as "inadequate to ensure rights and freedoms are properly respected, protected and promoted"¹.

Punitive drug laws risk Australia's complicity in human rights violations abroad. Although Australia has committed to the abolition of the death penalty worldwide, Australian Federal Police (AFP) cooperation with law enforcement agencies in retentionist countries risks contributing to death sentences for drug offences. The 2018 AFP National Guideline on

¹ Commonwealth of Australia (2024). *Parliamentary Joint Committee on Human Rights: Inquiry into Australia's Human Rights Framework*. May 2024. Accessed 25 April 2025: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Report

International Police-to-Police Assistance in Death Penalty Situations² must be rigorously reviewed to ensure Australia does not indirectly facilitate the imposition of the death penalty. Australia also has international obligations, particularly in the Asia-Pacific region, in working with countries on their approaches to arbitrary detention. Domestically, lack of national consistency in access to supervised injecting facilities, naloxone distribution, and drug checking services continues to contribute to preventable deaths, disproportionately affecting vulnerable populations including young people, Aboriginal and Torres Strait Islander peoples, and people experiencing homelessness.

This submission also outlines the impacts of Australian drug policies on arbitrary detention, conditions of detention, fair trial and due process, discrimination and racial disparities, the use of drug sniffer dogs and strip searching, violations of child custody rights, and the right of people who use drugs to participation in public life, freedom of expression and access to information, and freedom of assembly.

Introduction

The implementation of punitive drug policies in Australia continues to adversely impact the enjoyment of civil and political rights for people who use drugs (PWUD). These policies disproportionately affect marginalised communities, impede access to life-saving health services and medications, contribute to unnecessary incarceration, and in some instances risk complicity in the application of the death penalty abroad. Australia's approach has real consequences, including increased morbidity and mortality, and reduced quality of life. Australia's laws, regulations and policies must be urgently revised to comply with its ICCPR obligations.

The application of punitive drug laws continues to fuel mass incarceration in Australia. Aboriginal and Torres Strait Islander peoples are imprisoned at rates among the highest in the world, with drug offences a significant contributing factor. Further, the right to health is frequently compromised within correctional settings, where access to evidence-based harm reduction services such as needle and syringe programs, opioid substitution treatment, and hepatitis C treatment is inadequate or unavailable. Recent reports highlight serious health risks in detention, including transmission of blood-borne viruses and drug-related deaths. Measures to divert individuals from custody and provide treatment in the community remain underutilised, due to the inadequate regulations and stigma that allow inconsistent application, while peer education and overdose response programs are seriously under-resourced.

List of Issues Proposed

Our recommendations for issues to be proposed to Australia under the ICCPR are outlined by relevant articles below. We note that there is an upcoming review of the Australian National

² Australian Federal Police (2018). National Guideline on International Police-to-Police Assistance in Death Penalty Situations. Accessed 27 April 2025:
<https://www.afp.gov.au/sites/default/files/2023-08/12012023-AFPNG-International-Police-to-Police-Assistance-in-Death-Penalty-situations.pdf>

Drug Strategy, and encourage the Committee to raise the importance of ensuring human rights are centred in this new strategy.

Australia should be asked:

- What steps are being taken to ensure a human rights based approach, informed by peer-led organisations and communities, is at the centre of the upcoming review of the 2017-2026 Australian National Drug Strategy?
- How are people who use drugs, including Aboriginal and Torres Strait Islander people who use drugs, and people who have been incarcerated for drug-related and/or associated crimes, supported to reduce the harmful consequences of Australia's drug policies, human rights regulations (or lack of), and overdose response?

1. Right to Life (Article 6 ICCPR)

The criminalisation of drug use in Australia undermines the right to life protected under Article 6 of the ICCPR. Australia's continued cooperation with law enforcement agencies in countries that retain the death penalty for drug offences risks contributing to death sentences, a serious issue highlighted by the Committee's clear position that drug offences do not constitute "most serious crimes." Domestically, punitive drug laws create barriers to life-saving harm reduction services such as naloxone, supervised injecting facilities, and drug checking. The fear of arrest or prosecution deters individuals from seeking emergency assistance during overdoses, increasing preventable deaths. Stigma and discrimination results in barriers to accessing health services, and this in turn increases the risk of avoidable deaths associated with using and injecting drugs, including untreated HIV and hepatitis C, endocarditis and deep vein thrombosis. Australia must ensure its international cooperation practices and domestic drug policies prioritise the preservation of life as a paramount obligation under the ICCPR.

1.1 Access to Essential Medicines (Article 6 and Article 12 ICCPR)

The right to life under Article 6 and the right to health as derived from Article 6 and General Comment 36 are further undermined by restricted access to essential medicines. Australia's regulatory environment for controlled medicines, such as opioid analgesics and opioid agonist therapies (OAT), creates unnecessary barriers to treatment, especially in rural, remote, and Aboriginal and Torres Strait Islander communities.

Lack of access to pain relief for people who have a history of substance use, or people perceived to use substances, is a serious issue. People with legitimate and diagnosed chronic pain and health issues are denied access to pain relief through individual stigma and discrimination from health service providers and the services they work in, as well as through regulation and policy³.

³ Pain Australia (2022). Survey Report: Impact of Opioid Regulatory Reforms on People Living With Chronic Pain.

Accessed 27 April 2025:

<https://www.painaustralia.org.au/static/uploads/files/painaustralia-impact-of-opioid-regulatory-reforms-on-people-living-with-chronic-pain-wfopkycfkmng.pdf>

The introduction of medical cannabis has changed the lives of many people in being able to access a non-opioid pain relief, yet for people currently or even previously prescribed opioid agonist treatment, medical cannabis is routinely being denied. Other opioid options may be denied due to fear of overdose risk, and the sudden denial of scripts for a legal medication, medications that have been successfully relieving pain for many people in this community, can push people into accessing cannabis through illegal markets, or other opioid or similar options more likely to increase risk of overdose.

In Australia, the rate of unintentional drug-induced death for Aboriginal and Torres Strait Islanders continues to be far higher than for non-Indigenous Australians: in 2022, their rate of unintentional drug-induced deaths was 23.3 per 100,000 population, compared with 6.1 for non-Indigenous people⁴. Ensuring availability and accessibility of essential medicines, including opioid dependence treatment and take-home naloxone, is a core obligation to respect, protect, and fulfil the right to life, and must be implemented without discrimination.

Australia should be asked:

- How is Australia expanding national access to life-saving harm reduction services, including supervised injecting facilities, drug checking services, and take-home naloxone, in community and corrections settings?
- What measures are being implemented to ensure equitable access to essential controlled medicines for pain relief and dependence treatment across all communities?
- How is Australia responding to the contribution of stigma and discrimination towards people who use drugs to reducing access to pain medications, harm reduction services and other health and treatment options?
- How is Australia responding to access to opioid substitution treatment in community and corrections settings?

1.2 International cooperation on offences that carry the death penalty (Article 6 ICCPR)

Australia's obligations under Article 6 of the ICCPR require it to avoid actions that contribute to the arbitrary deprivation of life. Australia's clear commitment to the global abolition of the death penalty and to being "a leader in efforts to end use of the death penalty worldwide"⁵ is undermined by police-to-police cooperation with countries that retain the death penalty. In particular, serious concerns remain regarding Australia's cooperation in counter-narcotic operations with law enforcement agencies in retentionist countries, particularly in Asia where most of the known executions for drug offences take place.⁶ Australia must ensure that no

⁴ Penington Institute (2024). Australia's Annual Overdose Report 2024. Accessed 27 April 2025: <https://www.penington.org.au/australias-annual-overdose-report-2024/>

⁵ Department of Foreign Affairs and Trade (Cth), *Australia's Strategy for Abolition of the Death Penalty* (June 2018) 2, available at: <https://www.dfat.gov.au/sites/default/files/australia-strategy-abolition-death-penalty.pdf>.

⁶ See, eg, Wing-Cheong Chan, 'Death penalty for drug offenders in Southeast Asia: Weakening of resistance to change?' (2025) *International Journal for Crime, Justice and Social Democracy*.

assistance is provided that puts any person at risk of facing the death penalty. Actions that should be taken include strengthening both the guidance to the Australian Federal Police (AFP) on cooperation with law enforcement in retentionist countries and the oversight of such cooperation. Further, international cooperation, by all levels of the Australian Government, on criminal matters with retentionist countries should be conditioned on guarantees that the death penalty will not be sought or applied for anyone, regardless of nationality.

Article 6(2) of the ICCPR is clear that countries that retain the death penalty may only impose it for “the most serious crimes”, a term which international human rights standards require be “read restrictively and appertain only to crimes of extreme gravity involving intentional killing.”⁷ Drug-related offences thus do not meet the threshold of “most serious crimes” under the ICCPR, and the United Nations Office on Drugs and Crime (UNODC) has confirmed that “[t]he three international drug control conventions, which form the foundation of the global drug control system that has been agreed by nearly every country in the world, cannot be used to justify the use of the death penalty for drug-related offences alone.”⁸ The use of the death penalty for drug-related offences is considered a human rights violation and “unlawful under international human rights laws and standards”, yet Amnesty International reported that 42% of all known executions carried out in 2024 were for drug-related offences, many within Australia’s geographic region.⁹

Cooperation provided or information shared by Australian authorities has in the past contributed to prosecutions resulting in the death penalty for drug-related offences. The most striking, well-known example of this is the information shared by the AFP with police in Indonesia, which ultimately led to the executions of two Australians, Andrew Chan and Myuran Sukumaran, on 29 April 2015, ten years to the date of this submission. As the guidance to the AFP currently stands, it is possible that requests for assistance will not always be correctly identified as having the potential to contribute to a prosecution for an offence that carries the death penalty.

The AFP commonly provides assistance to foreign law enforcement in relation to criminal matters. In matters that could involve crimes punishable by the death penalty, assistance provided by the AFP to foreign law enforcement agencies is governed by the AFP National Guideline on International Police-to-Police Assistance in Death Penalty Situations (hereafter the AFP National Guideline).¹⁰ In the common core document provided to the Committee as part of

⁷ UN OHCHR, ‘General Comment No. 36 on article 6: right to life’ (Report, September 2019) [35], available at: <https://www.ohchr.org/en/calls-for-input/general-comment-no-36-article-6-right-life>.

⁸ UNODC, ‘Statement attributable to the UNODC spokesperson on the use of the death penalty’ (Statement, 27 June 2019), available at: <https://www.unodc.org/unodc/en/press/releases/2019/June/statement-attributable-to-the-unodc-spokesperson-on-the-use-of-the-death-penalty.html>.

⁹ Amnesty International, *Unlawful and Discriminatory: The death penalty for drug related offences* (Report, 10 October 2023) 4, available at: <https://www.amnesty.org/en/documents/act50/7213/2023/en/>; Amnesty International, *Death Sentences and Executions 2024* (Report, 8 April 2025) 14, available at: <https://www.amnesty.org/en/documents/act50/8976/2025/en/>.

¹⁰ This is not a publicly available document. Versions have been released in response to freedom of information requests or to parliamentary inquiries, most recently in early 2024. Available at:

this review process, the Australian Government noted that the AFP National Guideline is “graduated to take into account the various circumstances in which assistance may be provided” and that it “restrict[s] the ability of the AFP to provide assistance *where charges have been laid* in the foreign country and the offences carry the death penalty”.¹¹

It is important to note that the AFP National Guideline applies to “situations where *an identified person/s*, regardless of nationality, may be exposed to the death penalty” and sets out different steps and levels of oversight depending on whether assistance is sought pre-arrest or post-arrest.¹² Ministerial approval is always required for the provision of assistance in post-arrest cases where an identified person(s) has been arrested or detained for, charged with, or convicted of, an offence which carries the death penalty. However, such close scrutiny is not applied to all instances of police-to-police assistance, raising serious concerns that AFP assistance provided at an early, pre-arrest, stage of a criminal investigation could expose people — potentially unidentified at the time of the request for and/or provision of assistance — to the real risk of the death penalty. Based on the current guidance, there appears to be no barriers to AFP members providing assistance when requests do not specify an identified person(s) — as the AFP National Guideline does not apply — leading to concerns that in such circumstances there may be no genuine consideration about whether someone who is subsequently identified, following the provision of AFP assistance, may be exposed to the death penalty. Further, the distinction between pre-arrest and post-arrest cases is artificial and potentially harmful, as it does not take into account different practices in criminal investigation processes across jurisdictions.

Providing some safeguards for circumstances where the AFP National Guideline does apply, it specifies that all requests for assistance in matters involving the death penalty “require” the oversight of the Sensitive Investigation Oversight Board and “decision by the relevant Deputy Commissioner”.¹³ It is difficult to know if this occurs because information about such AFP assistance is rarely made publicly available. However, in May 2023, concerns about adherence to this requirement were shown to be justified when responses by AFP representatives to questions in Senate Estimates revealed that, since the 2021 Myanmar military coup, the AFP had shared 296 pieces of intelligence in relation to drug exportation from Myanmar. Drug trafficking is not only eligible for the death penalty in Myanmar but carries a mandatory death sentence if

<https://www.afp.gov.au/sites/default/files/2024-01/AFP-NG-international-police-to-police-assistance-in-death-penalty-situations.pdf>.

¹¹ Australian Government. ‘Common core document forming part of the reports of State parties’ (Report, October 2023) [175], available at: tinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=2824 (emphasis added).

¹² Australian Federal Police, *AFP National Guideline on International Police-to-Police Assistance in Death Penalty Situations* (2024) 1, available at: <https://www.afp.gov.au/sites/default/files/2024-01/AFP-NG-international-police-to-police-assistance-in-death-penalty-situations.pdf>.

¹³ Australian Federal Police, *AFP National Guideline on International Police-to-Police Assistance in Death Penalty Situations* (2024) 2.

certain criteria are met, such as being a recidivist or part of a criminal organisation.¹⁴ Despite this, it was later confirmed that none of these 296 requests were elevated to the Sensitive Investigation Oversight Board for oversight.¹⁵ Of further concern, the Sensitive Investigation Oversight Board only comprises internal AFP members and their legal counsel, who, to our knowledge, are not death penalty experts or people with specific expertise about retentionist countries. This raises further questions about whether safeguard processes are sufficient, and if those in place are being followed.

The Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade's recent Inquiry into Australia's efforts to advocate for the worldwide abolition of the death penalty, which reported in December 2024, recommended "that the Australian Government undertake annual reviews of the mechanisms and operations of" the Sensitive Investigation Oversight Board, including reviewing the AFP National Guideline to ensure proper oversight of assistance in death penalty situations.¹⁶ The recommendation further called for consideration to be given to expanding the Board's membership to include external experts. This recommendation should be accepted in full and properly implemented to ensure Australia's commitment to the right to life and the abolition of the death penalty is genuinely reflected in all actions by the government and its representatives. The implementation of annual reviews would assist in monitoring the human rights impacts of law enforcement cooperation, which is critical to ensuring Australia's actions are consistent with its obligations under the ICCPR.

Further, in alignment with Australia's principled commitment to not only advocating for the global abolition of the death penalty, but to showing leadership on this matter, Australia should actively promote the abolition of the death penalty in its diplomatic, trade, and regional development engagements with retentionist countries.

Australia should be asked:

- What specific processes and training does Australia implement to ensure that AFP officers engaged in international police-to-police cooperation possess sufficient knowledge of partner countries' legal frameworks, particularly regarding offences that carry the death penalty, to enable them to accurately identify and appropriately manage all situations where assistance might contribute to the risk of the death penalty being applied?
- How does Australia ensure that human rights expertise, particularly regarding the death penalty, is adequately represented in oversight mechanisms for international police cooperation?

¹⁴ *Narcotic Drug and Psychotropic Substances Law*, arts. 20, 22-23, No. 1 of 1993 (Myanmar).

¹⁵ Australian Federal Police, Senate Standing Committee on Legal and Constitutional Affairs, *Response to Question on Notice: BE23-096 - Myanmar Mutual Assistance Request* (25 May 2023), available at: <https://www.afp.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-Committeeld6-EstimatesRoundld21-PortfolioId5-QuestionNumber95>.

¹⁶ Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into Australia's efforts to advocate for the worldwide abolition of the death penalty* (Report, December 2024) 58.

- What steps is Australia taking to ensure all international cooperation is conditional on assurances that the death penalty will not be imposed?
- How is Australia actively using its diplomatic, development, and trade relationships, particularly in Asia-Pacific to advocate for the full abolition of the death penalty?
- Has Australia conducted any impact assessments of its cooperation with international counter-narcotics programs to ensure they do not contribute to human rights violations, including the application of the death penalty?

2. Prohibition of Torture, Arbitrary Detention and Conditions of Detention (Articles 7, 9 and 10 ICCPR)

The over-incarceration of people who use drugs in Australia raises serious concerns under Article 9 (right to liberty and security) and Article 10 (humane treatment of persons deprived of liberty). Non-violent drug offences are a major driver of incarceration, particularly among Aboriginal and Torres Strait Islander peoples. Custodial settings often fail to meet basic standards of health care, violating detainees' rights to humane conditions and access to medical service, for example, the cases of Veronica Nelson, an Indigenous woman whose death in prison following being denied methadone was found to have a direct impact in her death¹⁷, and Tanya Day, an Indigenous woman who died in custody following arrest for public intoxication¹⁸. The absence of adequate harm reduction programs within prisons heightens the risk of disease transmission and overdose deaths, and when they are available (in the case of the provision of long-acting injectable buprenorphine), there are often long waiting lists to access this treatment. People who experience lack of access to harm reduction services while incarcerated experience life-long impacts of incarceration/institutionalisation and deaths from chronic health issues. Australia must implement measures to reduce unnecessary detention for drug offences and ensure that all detainees receive appropriate health care in line with human rights obligations.

Australia also provides support for counter-narcotics programs and regional cooperation initiatives in the Asia-Pacific region, some of which involve collaboration with countries that operate compulsory drug detention centres. In many cases, these centres detain people who use drugs — including children — without due process, legal safeguards, or access to healthcare. Arbitrary detention in such facilities violates a wide range of human rights, including the right to liberty (Article 9 ICCPR), protection against cruel, inhuman or degrading treatment (Article 7 ICCPR), and the right to a fair trial (Article 14 ICCPR). Australia's support for regional drug control programs must be assessed against its human rights obligations to ensure it is not complicit in human rights violations abroad.

Australia should be asked:

¹⁷ Coroner's Court of Victoria (2023). The passing of Veronica Nelson. Accessed 27 April 2025: <https://www.coronerscourt.vic.gov.au/finding-passing-veronica-nelson>

¹⁸ Human Rights Law Centre. Justice for Tanya Day. Accessed 27 April 2025: <https://www.hrlc.org.au/projects/justice-for-tanya-day/>

- What steps are being taken to address the over-incarceration of people for non-violent drug offences?
- What measures are in place to ensure access to adequate health care, including harm reduction services including needle and syringe programs, OAT and consumption rooms, in all places of detention?
- How is Australia reviewing and monitoring its regional counter-narcotics initiatives to ensure they do not contribute to the operation or funding of compulsory drug detention centres in the Asia-Pacific region, where individuals, including children, are detained without due process?
- What measures are being implemented to ensure that Australia's international cooperation on drug control fully complies with its human rights obligations, particularly regarding arbitrary detention and the rights of people who use drugs?

3. Fair Trial and Due Process (Articles 9 and 14 ICCPR)

The application of drug laws in Australia raises significant concerns regarding the right to liberty and security of person (Article 9) and the right to a fair trial (Article 14) under the ICCPR. Mandatory drug testing regimes, diversion programs that require admission of guilt without access to legal advice, and practices that impose increased sentences for drug offences without full procedural safeguards all contravene fair trial standards. People accused of drug offences must have access to independent legal counsel, be presumed innocent, and benefit from equality of arms during legal proceedings. Australia must guarantee that criminal justice responses to drug-related offences fully comply with fair trial and due process rights.

- **Diversion Programs and Legal Representation:** Diversion programs, such as those in Queensland and Victoria, aim to redirect individuals charged with minor drug offences away from the traditional criminal justice system. However, eligibility for these programs often requires an admission of guilt, sometimes without the benefit of prior legal advice. This practice can undermine the presumption of innocence and the right to legal counsel, potentially leading individuals to forgo a fair assessment of their case.
- **Mandatory Sentencing and Procedural Safeguards:** The implementation of mandatory sentencing schemes for certain drug offences¹⁹ has led to increased incarceration rates, particularly for minor offences. In Queensland, for instance, the use of prison-based sentences for minor drug offences has doubled, with sentence lengths quadrupling over time. Further, mandatory sentences deprive judges of any discretion to evaluate the circumstances of the crime and the defendant. Such practices compromise the principles of proportionality and individualised sentencing, essential components of a fair trial.

¹⁹ For e.g., <https://www.sentencingcouncil.qld.gov.au/about-sentencing/types-of-penalties/mandatory-penalties2>

- **Overrepresentation of Indigenous Peoples:** Aboriginal and Torres Strait Islanders continue to be disproportionately represented in the criminal justice system²⁰. Factors contributing to this include systemic biases, the misuse of police discretion, and the application of laws that fail to account for cultural and socioeconomic contexts. In some jurisdictions, bail-related laws and practices — including the use of outstanding warrants and stringent bail conditions — result in Aboriginal people being incarcerated on remand at disproportionately high rates, including before they have been found guilty of any offence²¹.
- **Access to Legal Representation and Legal Aid Cuts:** Access to independent legal representation is a cornerstone of the right to a fair trial under Article 14. However, funding for legal aid services across Australia has failed to keep pace with demand, particularly in criminal, youth, and regional courts. Community Legal Centres and Aboriginal and Torres Strait Islander Legal Services remain under-resourced, often unable to meet rising case loads. As a result, there has been a documented increase in self-representation, including in drug-related cases where individuals may face complex evidentiary or procedural issues without professional support. This undermines the principle of equality of arms and places vulnerable individuals—especially First Nations people, people who use drugs, and young people—at heightened risk of unjust outcomes.
- **Australia's Youth Justice System:** Australia's youth justice system raises particular concerns regarding the minimum age of criminal responsibility, which remains at just 10 years old — well below international standards recommended by the UN Committee on the Rights of the Child. Children as young as 10 are subjected to criminal proceedings and, in some cases, sentenced as adults for drug-related offences. This practice violates the principle of the best interests of the child and contravenes Australia's international human rights obligations under the ICCPR and the Convention on the Rights of the Child. Raising the minimum age of criminal responsibility and ensuring that children are never tried as adults is essential to upholding fair trial rights and protecting child rights in Australia.

Australia has also failed to ensure humane treatment for people in police custody and temporary detention, particularly in relation to access to health care. People in watchhouses or temporary holding facilities — including those detained pre-trial — may remain there for extended periods due to overcrowding or delays. In such settings, individuals often lack access to basic health

²⁰ Australian Bureau of Statistics (2025). Aboriginal and Torres Strait Islander Prisoners. Accessed 27 April 2025: <https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release#aboriginal-and-torres-strait-islander-prisoners>

²¹ Australian Institute of Health and Welfare & National Indigenous Australians Agency (2025). Aboriginal and Torres Strait Islander Health Performance Framework. Accessed 27 April 2025: <https://www.indigenoushpf.gov.au/measures/2-11-contact-with-the-criminal-justice-system#:~:text=As%20at%2030%20June%202022,compared%20with%209.3%25%20respectively>

services, including opioid substitution therapy (OST) and other essential medicines, in breach of Article 10 of the ICCPR. This has serious implications for people who use drugs, and especially for Aboriginal and Torres Strait Islander detainees, who are disproportionately affected.

Australia should be asked:

- How is Australia ensuring that people charged with drug offences receive full due process guarantees, including access to legal representation and a fair trial?
- What measures are in place to ensure that individuals participating in diversion programs receive adequate legal advice before admitting guilt?
- How does Australia justify the use of mandatory sentencing for drug offences in light of the right to a fair trial and individualised sentencing?
- What steps are being taken to address the overrepresentation of Indigenous Australians in the criminal justice system, particularly concerning drug-related offences?
- What steps is Australia taking to ensure equal access to legal representation in drug-related proceedings, including adequate funding of legal aid services to prevent involuntary self-representation?
- How does Australia ensure that people held on remand — especially Aboriginal and Torres Strait Islander people — are not subjected to arbitrary or discriminatory detention, including due to outstanding warrants or restrictive bail laws?
- What safeguards are in place to ensure that people held in watchhouses or other temporary detention facilities have timely access to essential health care, including OST?
- What steps is Australia taking to raise the minimum age of criminal responsibility to an internationally acceptable standard and to ensure that children are never tried as adults for drug-related offences?

4. Non-Discrimination and Racial Disparities (Article 26 ICCPR)

The discriminatory enforcement of drug laws in Australia violates the principle of equality before the law and protection against discrimination enshrined in Article 26. Aboriginal and Torres Strait Islander peoples are disproportionately subjected to stops, searches, arrests, and imprisonment for drug offences, reflecting systemic racial bias. The lack of mechanisms to monitor, prevent, and address racial profiling by police exacerbates inequality and entrenches social exclusion. Australia must collect disaggregated data, strengthen oversight mechanisms, and reform policing practices to eliminate racial disparities in the application of drug laws.

Australia should be asked:

- What steps is Australia taking to monitor, prevent, and remedy racial discrimination in drug law enforcement?
- Could Australia share any relevant data with the Committee?

4.1 Use of Drug Detection Dogs (Articles 9, 17, and 26 ICCPR)

The police deployment of drug detection dogs in public places raises additional concerns under Article 9 (freedom from arbitrary detention), Article 17 (protection against arbitrary interference with privacy), and Article 26 (non-discrimination). These practices often lead to invasive and unjustified searches, including strip searches, that disproportionately affect young people, Aboriginal and Torres Strait Islander communities, and other marginalised groups.

Evidence shows that the use of sniffer dogs to detect controlled substances frequently results in false positives, leading to arbitrary stops and humiliating strip searches²². In New South Wales (NSW), data reveals that a significant proportion of strip searches are conducted following indications from drug detection dogs, despite legal requirements that such searches be based on reasonable suspicion beyond a dog's indication.

The impact on children is particularly alarming. Between 2016 and 2023, NSW Police conducted strip searches on children as young as 10 years old. Notably, First Nations children accounted for approximately 45% of these searches, despite comprising a small percentage of the population. These practices not only violate children's rights but also contribute to the over-policing of Indigenous communities.²³

Despite continued investment in drug detection dog programs, available evidence suggests they are ineffective and costly. In New South Wales alone, sniffer dog operations cost taxpayers approximately \$46 million over the past decade, yet have yielded consistently low success rates in detecting illicit drugs. The NSW Ombudsman's 2006 review of the Police Powers (Drug Detection Dogs) Act found that the program had *"proven to be an ineffective tool for detecting drug dealers"* and that most searches resulted in either no drugs found or the detection of small quantities for personal use. The Ombudsman also raised serious concerns about the human rights implications, including privacy breaches and the traumatic impact of searches, especially when they escalate to strip searches of young people and Aboriginal and Torres Strait Islander individuals. There have been consistent calls by public bodies and civil society at the sub-state and national level for Australia to discontinue drug dog operations in favour of evidence-based and rights-compliant approaches to drug policy.

²² Gibbs D, Hughes C and Sutherland R (2023). Drug detection dogs often get it wrong, and it's a policing practice that needs to stop. UNSW Sydney. Accessed 27 April 2025: <https://www.unsw.edu.au/newsroom/news/2023/10/drug-detection-dogs-often-get-it-wrong--and-its-a-policing-practice>

²³ Redfern Legal Centre, 'The Need For Reform: Strip Searches of Children by NSW Police (March 2024). Accessed 27 April 2025: https://rlc.org.au/sites/default/files/2024-03/Strip%20Searches%20of%20Children%20by%20NSW%20Police_1.pdf

These developments underscore the need for Australia to ensure that the use of drug detection dogs and subsequent searches are conducted in a manner that is strictly necessary, proportionate, and non-discriminatory. Robust safeguards must be implemented to protect individual rights, particularly those of vulnerable populations, in compliance with Australia's obligations under the ICCPR.

Australia should be asked:

- What measures are being taken to ensure that the use of drug detection dogs complies with the principles of necessity, proportionality, and non-discrimination?
- What accountability mechanisms are in place for unlawful strip searches, particularly where individuals (including children) are subjected to invasive procedures based on incorrect sniffer dog indications and without legal grounds or consent?

5. Family Separation Due to Drug Policies (Article 23 ICCPR)

Australia's child protection laws and practices raise concerns under Article 23 of the ICCPR, which recognises the family as the fundamental unit of society entitled to protection by society and the State. In several jurisdictions, parents who use drugs or who test positive for drugs — often without evidence of harm or risk to their children — face the removal of their children or restrictions on their parental rights. The use of positive drug tests as a proxy for unfitness to parent, without a proper assessment of parenting capacity or the best interests of the child, undermines the right to family life and may constitute arbitrary interference with family unity.

The disproportionate removal of children from Aboriginal and Torres Strait Islander families, including on drug-related grounds, reflects and perpetuates historical injustices and systemic discrimination. International human rights bodies have stressed that the mere status of drug use, without evidence of harm or neglect, cannot justify separation of families.

Australia must ensure that child protection interventions are based on individualised assessments, protect family unity wherever possible, and eliminate discriminatory practices that disproportionately affect marginalised communities.

Australia should be asked:

- What steps are being taken to ensure that decisions regarding child custody are based on evidence of harm and not solely on a parent's drug use or positive drug test?
- How is Australia ensuring that child protection interventions respect the right to family life and are non-discriminatory, particularly with respect to Aboriginal and Torres Strait Islander families?

6. Right to employment and participation in public life (Article 25 ICCPR)

Australia's drug laws are included in policies and laws that reduce access to paid and voluntary employment, and therefore opportunities for many people to participate in the lives of their local communities. The use of criminal record checks, working with children checks, and working with vulnerable people checks is common in processes that allow paid and volunteer employment, including places such as churches and schools where parents and local community members volunteer. These types of checks, are intended to safeguard the protection of young and vulnerable people, but can increase stigma and discrimination, and reduce opportunities for many people, with disproportionate impacts on people who use drugs, including Aboriginal and Torres Strait Islander people, and women who have experienced domestic and family violence who also have their own or partner's experience of drug use.

Information relating to drug convictions including possession offences, as well as ongoing and untried involvement with legal cases, experience with child protective services, and experience with domestic and family courts and cases, can be used to deny people paid and voluntary employment within these processes.

Australia should be asked:

- What is being done to decrease stigma and discrimination that impacts on people's access to participation in the community, including voluntary and paid employment, when they have had involvement in civil, criminal, child protective and family law matters?

7. Access to Information and Civil Society Participation (Articles 19, 21, and 25 ICCPR)

Meaningful public participation, including the participation of civil society and key affected communities in drug policy development is essential to upholding Australia's obligations under Article 19 (freedom of expression and access to information), Article 21 (freedom of assembly), and Article 25 (right to take part in public affairs) of the ICCPR.

However, the current drug policy environment in Australia presents significant barriers to realising these rights. Civil society organisations, including peer-led organisations and affected communities are frequently excluded from policy development, consultation processes, and implementation discussions—despite their relevant evidence-based knowledge, direct lived-experience and essential contribution to social, health, and harm reduction services. These exclusions are reinforced by structural stigma, inconsistent funding, and a lack of formalised mechanisms for participation. Australia must institutionalise participatory mechanisms that ensure civil society actors, particularly those directly affected by drug policies, to have genuine opportunities to shape laws and policies that impact their lives.

Article 19 of the ICCPR protects the right to seek, receive, and impart information, including public health and other scientific information. In the context of drug policy, this encompasses access to:

- Evidence-based drug education in a range of contexts, including for health professionals and in schools
- Evidence-based peer education, including adequately funded programs and services led by people with lived-experience
- Access to drug checking services and other drug surveillance results
- Information sharing, such as alerts about novel and high-risk substances, for example, via early warning systems

Failing to provide, or actively restricting, access to this information infringes upon the right to expression and may jeopardise other fundamental rights, including the right to life (Article 6) and freedom from cruel, inhuman or degrading treatment (Article 7), especially where exposure to unknown or adulterated substances could have been prevented.

Article 21 extends to the freedom to assemble and organise collectively—a right critical to the survival and advocacy efforts of peer networks and health justice movements. Yet, many peer-led drug user organisations in Australia operate in precarious environments, with short-term funding, policy hostility, or police scrutiny undermining their ability to organise or participate freely. Their absence from national drug policy frameworks—including decisions about harm reduction, early warning systems, and law enforcement—stands in contrast to Australia’s stated human rights commitments.

Under Article 25, all citizens must be given genuine opportunities to participate in public life, including in decisions that affect their health, freedom, and well-being. This includes ensuring that people who use drugs, particularly from marginalised communities, are not just consulted, but are embedded in policy design, governance, and evaluation structures.

Australia should be asked:

- What mechanisms are in place to ensure the meaningful participation of civil society, including people who use drugs, in drug policy development and implementation?
- What legal and policy frameworks exist to guarantee the public’s right to access accurate, timely, and evidence-based information about the contents and risks of unregulated drugs, including data from drug checking services and early warning systems?
- What measures are in place to ensure that health information is shared equitably across all states and territories, particularly with people at highest risk of harm, such as young people, people who use drugs, and Aboriginal and Torres Strait Islander communities?
- What efforts have been made to include people who use drugs in the governance and dissemination of health information related to drug markets, in line with their right to participate in public affairs (Article 25) and freedom of expression (Article 19)?

- Has the Australian Government evaluated the human rights impact of its failure to provide coordinated, real-time health information about drug risks—and if so, what were the findings and what action has been taken?

Conclusion and Recommendations

In light of the serious concerns outlined above, Australian civil society organisations respectfully request that the Committee on Civil and Political Rights raise the following questions with Australia:

- What steps are being taken to ensure a human rights based approach, informed by peer-led organisations and communities, is at the centre of the upcoming review of the 2017-2026 Australian National Drug Strategy?
- How are people who use drugs, including Aboriginal and Torres Strait Islander people who use drugs, and people who have been incarcerated for drug-related and/or associated crimes, supported to reduce the harmful consequences of Australia's drug policies, human rights regulations (or lack of), and overdose response?
- How is Australia expanding national access to life-saving harm reduction services, including supervised injecting facilities, drug checking services, and take-home naloxone?
- What measures are being implemented to ensure equitable access to essential controlled medicines for pain relief and dependence treatment across all communities?
- How is Australia responding to the contribution of stigma and discrimination towards people who use drugs to reducing access to pain medications, harm reduction services and other health and treatment options?
- How is Australia responding to access to opioid substitution treatment in community and corrections settings?
- What specific processes and training does Australia implement to ensure that AFP officers engaged in international police-to-police cooperation possess sufficient knowledge of partner countries' legal frameworks, particularly regarding offences that carry the death penalty, to enable them to accurately identify and appropriately manage all situations where assistance might contribute to the risk of the death penalty being applied?
- How does Australia ensure that human rights expertise, particularly regarding the death penalty, is adequately represented in oversight mechanisms for international police cooperation?
- What steps is Australia taking to ensure all international cooperation is conditional on assurances that the death penalty will not be imposed?
- How is Australia actively using its diplomatic, development, and trade relationships, particularly in Asia-Pacific to advocate for the full abolition of the death penalty?

- Has Australia conducted any impact assessments of its cooperation with international counter-narcotics programs to ensure they do not contribute to human rights violations, including the application of the death penalty?
- What steps are being taken to address the over-incarceration of people for non-violent drug offences?
- What measures are in place to ensure access to adequate health care, including harm reduction, in all places of detention?
- How is Australia reviewing and monitoring its regional counter-narcotics initiatives to ensure they do not contribute to the operation or funding of compulsory drug detention centres in the Asia-Pacific region, where individuals, including children, are detained without due process?
- What measures are being implemented to ensure that Australia's international cooperation on drug control fully complies with its human rights obligations, particularly regarding arbitrary detention and the rights of people who use drugs?
- How is Australia ensuring that people charged with drug offences receive full due process guarantees, including access to legal representation and a fair trial?
- What measures are in place to ensure that individuals participating in diversion programs receive adequate legal advice before admitting guilt?
- How does Australia justify the use of mandatory sentencing for drug offences in light of the right to a fair trial and individualised sentencing?
- What steps are being taken to address the overrepresentation of Indigenous Australians in the criminal justice system, particularly concerning drug-related offences?
- What steps is Australia taking to ensure equal access to legal representation in drug-related proceedings, including adequate funding of legal aid services to prevent involuntary self-representation?
- How does Australia ensure that people held on remand — especially Aboriginal and Torres Strait Islander people — are not subjected to arbitrary or discriminatory detention, including due to outstanding warrants or restrictive bail laws?
- What safeguards are in place to ensure that people held in watchhouses or other temporary detention facilities have timely access to essential health care, including OST?
- What steps is Australia taking to raise the minimum age of criminal responsibility to an internationally acceptable standard and to ensure that children are never tried as adults for drug-related offences?
- What measures are being taken to ensure that the use of drug detection dogs complies with the principles of necessity, proportionality, and non-discrimination?
- What accountability mechanisms are in place for unlawful strip searches, particularly where individuals (including children) are subjected to invasive procedures based on incorrect sniffer dog indications and without legal grounds or consent?
- What steps are being taken to ensure that decisions regarding child custody are based on evidence of harm and not solely on a parent's drug use or positive drug test?

- How is Australia ensuring that child protection interventions respect the right to family life and are non-discriminatory, particularly with respect to Aboriginal and Torres Strait Islander families?
- What is being done to decrease stigma and discrimination that impacts on people's access to participation in the community, including voluntary and paid employment, when they have had involvement in civil, criminal, child protective and family law matters?
- What mechanisms are in place to ensure the meaningful participation of civil society, including people who use drugs, in drug policy development and implementation?
- What legal and policy frameworks exist to guarantee the public's right to access accurate, timely, and evidence-based information about the contents and risks of unregulated drugs, including data from drug checking services and early warning systems?
- What measures are in place to ensure that health information is shared equitably across all states and territories, particularly with people at highest risk of harm, such as young people, people who use drugs, and Aboriginal and Torres Strait Islander communities?
- What efforts have been made to include people who use drugs in the governance and dissemination of health information related to drug markets, in line with their right to participate in public affairs (Article 25) and freedom of expression (Article 19)?
- Has the Australian Government evaluated the human rights impact of its failure to provide coordinated, real-time health information about drug risks—and if so, what were the findings and what action has been taken?