

Update to the 2021 Civil Society Submission

Committee on Economic, Social and Cultural Rights – Australia

Australian Civil Society Committee on UN Drug Policy

13 January 2026

Introduction and context

This update is submitted to complement the Australian Civil Society Committee on UN Drug Policy's submission of 31 December 2021, in advance of Australia's forthcoming dialogue with the Committee on Economic, Social and Cultural Rights.

The Committee previously requested Australia to report on the following:

"Please report on the measures taken to improve the availability, accessibility and quality of harm reduction services, including those targeted at high-risk populations. Please also indicate any measures taken to decriminalize drug possession for personal use and to bring its legislative and policy framework into line with international standards and best practices, and to address the adverse impact of disproportionate enforcement of drug legislation on disadvantaged and marginalized individuals and groups, including indigenous peoples, in enjoying their Covenant rights. Please also report on the provision of palliative health-care services and on the measures taken to facilitate the provision of such services to those who require severe pain management, including those with previous or current history of drug misuse or dependence, in timely manner."¹

Civil society reiterates at the outset that Australia's federated system of governance has long operated as a structural barrier to the consistent realisation of economic, social and cultural rights in the context of drug policy. While not a new issue, its effects continue to be evident across harm reduction, decriminalisation, law enforcement, workforce protections, and access to palliative care. As the State party to the Covenant, the Commonwealth retains responsibility for ensuring that Covenant rights are realised consistently across all jurisdictions, notwithstanding the division of legislative and administrative powers.

Australia's Sixth Periodic Report² provides limited substantive engagement with the concerns raised by the Committee in paragraph 24, relying primarily on descriptions of existing programs rather than evidence of rights-based reform, structural change, or measurable progress. While Australia's Sixth Periodic Report presents examples of harm reduction and drug policy initiatives,

¹ Committee on Economic, Social and Cultural Rights. List of Issues in relation to the Sixth Periodic Report of Australia, para. 24

² Australian Government. Sixth Periodic Report of Australia under the International Covenant on Economic, Social and Cultural Rights.

civil society notes that several measures cited have since been curtailed, reversed, or failed to progress beyond pilot status, including the withdrawal of proposed drug law reforms in Queensland, underscoring the fragility of reforms in the absence of structural commitment.

Civil society further notes that, since Australia's last review, the Committee has initiated work on a new General Comment on the impacts of drug policies on economic, social and cultural rights.³ We further align with and support the findings of the Global Consultation Forum on the Impact of Drug Policies on the Economic, Social and Cultural Rights of People who Use Drugs – Consultation Report (INPUD, July 2024), which underscores the centrality of decriminalisation, harm reduction and meaningful participation of people who use drugs to the realisation of Covenant rights.⁴ This process reflects growing recognition that drug control laws and enforcement practices shape the enjoyment of a wide range of Covenant rights, including health, work, housing, social security, participation, and non-discrimination. Australia's response to paragraph 24 must therefore be assessed in light of this evolving authoritative interpretation of the Covenant.

Availability, accessibility and quality of harm reduction services

In its Sixth Periodic Report, Australia refers to needle and syringe programs, supervised injecting facilities, and the Take-Home Naloxone program as evidence of progress in harm reduction. However, the report remains largely descriptive and does not demonstrate how these measures collectively ensure the availability, accessibility, acceptability and quality of harm reduction services, as relevant to Article 12.

Australia urgently needs to expand access to drug consumption rooms (DCRs), with only two currently operating nationwide (in Sydney and Melbourne) despite clear and consistent evidence that they save lives and improve community amenity. Independent evaluations show that existing DCRs prevent fatal overdoses, reduce public drug use, and discarded injecting equipment, and do not increase crime or drug use, delivering benefits for both service users and local communities. Yet access remains highly inequitable, and the Melbourne DCR in North Richmond continues to face sustained political and public pressure to close, driven by stigma and misinformation rather than evidence. At a time of rising drug-related deaths, failing to protect and expand proven DCR models, including peer-led and mobile services, represents a missed opportunity to implement effective, cost-efficient, and compassionate public health policy.

Despite the establishment of the National Take-Home Naloxone (THN) Program, access to naloxone in Australia remains inconsistent and inadequate in the face of rising opioid-related

³ Committee on Economic, Social and Cultural Rights. Annotated outline: General Comment on the impacts of drug policies on economic, social, and cultural rights.

⁴ International Network of People who Use Drugs (INPUD). Global Consultation Forum on the Impact of Drug Policies on the Economic, Social, and Cultural Rights of People who Use Drugs. Consultation Report July 2024.

deaths. Persistent barriers include uneven participation of pharmacies in the scheme, supply shortages, limited public and frontline worker training, ongoing stigma towards people who use opioids, and fragmented legal protections in some jurisdictions. These gaps mean that many people at highest risk, particularly those leaving prison, people in regional areas, and community members likely to witness an overdose, are still unable to obtain or confidently administer naloxone. Without stronger, coordinated government action to expand free availability, training, and supportive legislation, Australia risks failing to fully realise the proven life-saving potential of the National THN Program.

Notably, Australia's report does not mention drug checking services, despite the implementation of multiple state-based pilots since 2018 and growing evidence of their role in preventing overdose and reducing drug-related harm. Drug checking remains limited to small-scale or time-bound pilots, primarily in metropolitan areas, with no national framework to support broader and more consistent availability, including in regional and rural settings. This uneven access undermines both the right to health and the right to benefit from scientific progress and its applications under Article 15.

Civil society further notes that health-focused drug alerts are generated in most states and territories, drawing on various sources including toxicology, surveillance and drug-checking data to warn communities of heightened risks. While these alerts are an important public health function, their effectiveness is constrained by the limited availability of drug checking services themselves. Without broader, routine and geographically accessible drug checking, alerts remain reactive and uneven, limiting their capacity to support informed decision-making and harm prevention.

Australia's Opioid Treatment Program (OTP) is also in urgent need of reform, despite the Australian Government's own 2023 PBAC Post-Market Review clearly identifying systemic failures that continue to undermine access, equity, and quality of care. Persistent barriers include workforce shortages, limited pharmacy participation, poor access in rural and regional areas, fragmented regulations across jurisdictions, and outdated, punitive models of care that conflict with contemporary person-centred practice. While the 2023 PBS reform removed discriminatory daily dosing fees, the government has failed to act on broader recommendations to modernise service delivery, expand treatment options, and address entrenched stigma and discrimination. Continued inaction risks worsening documented unmet demand and preventable harm, despite strong evidence that a reformed, flexible, and rights-based OTP would save lives and strengthen Australia's response to opioid dependence.

Continued reliance on pilot programs, without pathways to permanence, national coordination or equitable geographic coverage, reflects a failure to progressively realise Covenant rights and perpetuates socioeconomic and regional disparities in access to lifesaving services.

The progress of harm reduction in Australia must also be understood in the context of chronic funding disparities, with harm reduction receiving approximately 1.6 per cent of total drug

policy expenditure nationally, despite strong evidence of cost-effectiveness and alignment with the right to health.⁵

Decriminalisation and alignment with international standards

There are no nationally consistent measures to decriminalise drug use or possession for personal use in Australia. While limited jurisdictional reforms exist, as documented in Australia's Sixth Report, these measures are limited in scope, unevenly applied across jurisdictions, and do not amount to comprehensive decriminalisation. The absence of nationally coordinated reform means that criminal penalties for personal drug use and possession continue to operate across most of Australia, with disproportionate impacts on people who use drugs, Aboriginal and Torres Strait Islander peoples, and other marginalised communities, contrary to Australia's obligations under the Covenant.

Criminalisation continues to have direct and indirect impacts on multiple Covenant rights, including the right to work, social security, adequate housing and health. Criminal records arising from low-level drug offences restrict access to employment, education, housing and income support, reinforcing cycles of poverty and social exclusion.

These concerns are reinforced by the Committee's ongoing work towards a General Comment on drug policies and economic, social and cultural rights, which recognises that criminalisation of drug use and possession has far-reaching consequences across multiple Covenant rights.

Civil society further emphasises that the impacts of criminalisation extend beyond people who use drugs as service users and directly affect those engaged as workers within health and social systems. In particular, criminalisation structurally undermines the safety, legitimacy and sustainability of peer and lived-experience workforces, demonstrating that decriminalisation is not only a health measure but a necessary condition for the effective realisation of multiple Covenant rights. Further, drug policy intersects directly with broader determinants of disadvantage, including housing instability, poverty and criminal justice involvement, and that these structural issues cannot be effectively addressed without reforming punitive drug laws that entrench exclusion and marginalisation.

Disproportionate enforcement and impacts on marginalised groups, including Indigenous peoples

While Australia's Sixth Report references broader Closing the Gap⁶ commitments, it does not substantively address the disproportionate enforcement of drug laws and their specific impacts on Aboriginal and Torres Strait Islander peoples, as requested by the Committee.

⁵ Ritter, A., Grealy, M., Kelaita, P. & Kowalski, M. (2024) The Australian 'drug budget': Government drug policy expenditure 2021/22. DPMP Monograph No. 36. Sydney: Social Policy Research Centre, UNSW. <https://doi.org/10.26190/unswworks/30075>

⁶ Australian Government and Coalition of Aboriginal and Torres Strait Islander Peak Organisations. *National Agreement on Closing the Gap*, Australia's national framework for partnership-based action to reduce structural

Discretionary policing practices, including the operation of diversion schemes, continue to result in First Nations people being significantly less likely to be diverted and more likely to experience criminal justice involvement for drug-related offences. These outcomes have cumulative impacts on the enjoyment of the rights to health, housing, social security and an adequate standard of living, and contribute to ongoing over-representation of Indigenous peoples in the criminal justice system.

The absence of comprehensive, disaggregated national data on drug law enforcement outcomes further limits transparency and undermines Australia's ability to demonstrate compliance with its obligations under the Covenant.

Palliative care and access to pain management

Australia's Sixth Periodic Report refers to access to essential medicines and palliative care in general terms but does not adequately address barriers faced by people with a current or prior history of drug dependence, people in custodial settings, or those living in rural and remote communities.

Regulatory frameworks remain heavily oriented towards monitoring and diversion control, often resulting in delayed or inadequate pain management. Australia does not report on measures to identify or remedy undertreatment of pain, nor does it provide data on unmet need among marginalised populations, raising concerns in relation to the right to health and the obligation of non-discrimination.

Peer workforce, criminalisation and structural harm (not focused on in our 2021 submission, or Australia's Sixth Report)

The impacts of criminalisation described above are particularly acute for peer and living-experience workforces. Peer workers play a critical role in advancing the right to health through trusted, effective and culturally competent harm reduction services. However, under current legal frameworks, peer workers are often implicitly required to be identifiable through their lived/living experience of drug use, which may constitute an admission of past or ongoing criminalised behaviour.

As a result, peer workers frequently operate without adequate legal protections, employment security or workplace safeguards, exposing them to heightened risks of surveillance, discrimination and exclusion. These conditions undermine the right to just and favourable conditions of work, the principle of non-discrimination, and meaningful participation in public life and service delivery.

This structural vulnerability flows directly from the continued criminalisation of drug use and possession. Civil society submits that decriminalisation would materially improve protections for

inequality and improve outcomes for Aboriginal and Torres Strait Islander peoples across health, justice, housing and socio-economic domains.

peer workers, reduce legal exposure, and enable the sustainable integration of lived and living experience into health systems, consistent with the Covenant and the direction of the Committee's emerging General Comment.

Looking ahead: National Drug Strategy post-2027 (not included in 2021 submission, or Australia's Sixth Report)

Civil society draws the Committee's attention to the forthcoming National Drug Strategy from 2027 onwards. The current National Drug Strategy⁷ does not explicitly reference human rights or Australia's obligations under the Covenant.

The next Strategy presents a critical opportunity to embed a human-rights-based framework, including explicit recognition of proportionality, harm reduction, decriminalisation, and the meaningful inclusion of people with lived and living experience. Without this shift, the structural deficiencies identified by the Committee in paragraph 24 are likely to persist.

References

Australian Government. National Drug Strategy 2017–2026

Australian Government. Sixth Periodic Report of Australia under the International Covenant on Economic, Social and Cultural Rights.

Australian Government and Coalition of Aboriginal and Torres Strait Islander Peak Organisations. National Agreement on Closing the Gap

Committee on Economic, Social and Cultural Rights. List of Issues in relation to the Sixth Periodic Report of Australia, para. 24.

Committee on Economic, Social and Cultural Rights. Annotated outline: General Comment on the impacts of drug policies on economic, social, and cultural rights.

Harm Reduction International; International Drug Policy Consortium; INPUD. Briefing on the CESCR General Comment on drug policies.

International Centre on Human Rights and Drug Policy et al. International Guidelines on Human Rights and Drug Policy.

International Network of People who Use Drugs (INPUD). Global Consultation Forum on the Impact of Drug Policies on the Economic, Social, and Cultural Rights of People who Use Drugs. Consultation Report July 2024.

⁷ Australian Government, *National Drug Strategy 2017–2026*, Australia's national policy framework guiding drug prevention, treatment and harm reduction approaches

Ritter, A., Grealy, M., Kelaita, P. & Kowalski, M. (2024) The Australian 'drug budget': Government drug policy expenditure 2021/22. DPMP Monograph No. 36. Sydney: Social Policy Research Centre, UNSW. <https://doi.org/10.26190/unsworks/30075>

United Nations. International Covenant on Economic, Social and Cultural Rights.

United Nations Special Rapporteur on the Right to Health. Reports on access to controlled medicines and pain management.

Australian Civil Society Committee on United Nations Drug Policy

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

Introduction

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

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

The Committee's objectives are to:

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

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

A List of Issues

We are aware that the Committee on Economic, Social and Cultural Rights (CESCR) is already very familiar with the many ways in which drug policy, and its implementation, in many jurisdictions breach governments' obligations under various human rights instruments and standards.¹ For this reason, we will not dwell on the broader matter of international human rights law, but focus

¹ 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.

specifically on proposing a List of Issues that we request the Committee to consider forwarding to the Commonwealth Government. They are matters of concern to many sectors of the Australian community that we believe are not being adequately responded to by Australian governments.

The implications of Australia being a federated nation

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

When it is pointed out to the Commonwealth Government that breaches of human rights occur through the implementation of drug policies at the state and territory level, too frequently the Commonwealth Government's response is that the issue is a state or territory responsibility, not a Commonwealth one. In our view, this attempt to waive responsibility is invalid, as the Australian Commonwealth Government is the signatory to the international human rights instruments, regardless of the federal nature of Australia, and is therefore responsible for their implementation across the whole of the nation². We suggest that a Commonwealth Government response to the CESCR's List of Issues that claims that the matters raised are state or territory responsibilities, not those of the Commonwealth, would be incorrect and unacceptable.

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

Our suggested List of Issues

In regard to General Issues in relation to the International Covenant on Economic, Social and Cultural Rights³ preamble, “Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights”

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

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

- However, considerable concern exists in the community about the overreach of drug law enforcement at the street level, particularly through the use of drug detection (sniffer) dogs and strip searching of people (usually teenagers and young adults) suspected to be simply possessing drugs in public places. Members of the New South Wales Police Force, in particular, have been accused by members of the public and people in authority of the misuse of drug sniffer dogs and strip searching in the context of possession of drugs for

² United Nations Human Rights Council 2015, *Role of local government in the promotion and protection of human rights – Final report of the Human Rights Council Advisory Committee*, A/HRC/30/49. Available from: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/30/49

³ United Nations 1976, *International Covenant on Economic, Social and Cultural Rights*. Available from: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

personal use only.⁴⁵ This policy, in addition to being a potential breach of privacy, can also criminalise and stigmatise people who use drugs, thus increasing barriers in accessing state services, including health and harm reduction services. *The issue is the Commonwealth Government needs to take the lead in ensuring that the state and territory police forces exercised their powers to use drug sniffer dogs, and to strip search people believed to be possessing drugs, in a responsible and proportionate manner rather than, as now, as instruments for harassing people who use drugs.*

- The penalties for supplying drugs are disproportionate when it comes to social supply, i.e. situations in which a person purchases a small quantity of drugs to share with others, e.g. with their partner or with a small number of friends, and the quantity purchased exceeds the threshold for the trafficking offence.⁶ *The issue is that the Commonwealth Government needs to act to have all Australian jurisdictions legislate to have the penalties for drug possession for the purpose of social supply mirror those for possession for the personal use of drugs, rather than those for trafficking.*
- All Australian states and territories have legislated to create an offence of driving with any detectable level of certain proscribed drugs in the body. As the Human Rights Commissioner for the Australian Capital Territory pointed out when the legislation was being introduced there,⁷ this is seriously disproportional, as it means that people are convicted of this offence even though there is no evidence that the driver was impaired. Furthermore, there is no sound body of research evidence demonstrating that roadside drug testing produces improved road safety outcomes.⁸ *The issue is that the Commonwealth Government needs to act to have all Australian jurisdictions review their road safety legislation to minimise the prevalence of people driving while impaired by drugs, rather than driving with any detectable amount of the drugs in the body.*

In relation to the International Covenant on Economic, Social and Cultural Rights⁹, Article 2(2): non-discrimination:

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

Indigenous peoples are vastly over-represented in all levels of the criminal justice systems¹⁰ in and across Australia, and experience added barriers to treatment and many other services. In relation to drug policy specifically, Australia scored below the median in equity of access to harm reduction services, and scored poorly across equity of impact of criminal justice responses, with the

⁴ Howard, D 2020, *Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants: report, January 2020*, State of NSW, Sydney, vol. 3, pp. 813-857.

⁵ Malins, P 2019, 'Drug dog affects: accounting for the broad social, emotional and health impacts of general drug detection dog operations in Australia', *International Journal of Drug Policy*, vol. 67, pp. 63-71.

Sentas, V & Grewcock, M 2019, *Unlawful strip searches are on the rise in NSW and police aren't being held accountable*, The Conversation, 23 August 2019, <https://theconversation.com/unlawful-strip-searches-are-on-the-rise-in-nsw-and-police-arent-being-held-accountable-121986>.

⁶ Bull, M, Coomber, R, Moyle, L, Durnian, L & O'Brien, W 2021, *Sentencing for social supply of illicit drugs in Australia*, Trends & Issues in Crime and Criminal Justice no. 638, Australian Institute of Criminology, Canberra.

⁷ Watchirs, H 2010, *Roadside drug driving testing (advice)*, Human Rights Commission, Canberra.

⁸ Ricketts, A 2018, 'Roadside drug testing: incoherent policy or uncertainty by design?', *Alternative Law Journal*, vol. 43, no. 1, pp. 30-4.

⁹ United Nations 1976, *International Covenant on Economic, Social and Cultural Rights*. Available from: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

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

enforcement of drug policy found to largely disproportionately impact both certain ethnic groups, and low income groups, in the recent Global Drug Policy Index 2021¹¹.

Several state police forces are not required to release community profiling data. In NSW, where this practice is managed via the Bureau of Crime Statistics and Research, significant disparities have been shown in the NSW Police Force's profiling of Aboriginal and Torres Strait Islander communities in the stop-and-search, arrest and sentencing practices for cannabis possession¹². Given that Aboriginal and Torres Strait Islander peoples are incarcerated at the highest per capita level of any country in the world¹³, coupled with the early implications of recently released NSW data, and the well documented racist origins and impacts of drug prohibition^{14 15}, there are serious questions to be asked about racialised policing of Australian drug laws and the lack of mechanisms in place to hold this practice to account. This is intimately connected to the right to health (*Article 12 ICESCR*), as this Committee has recognised that criminalisation 'prevents drug users from accessing harm reduction programmes and health-care services'.¹⁶

Furthermore, a 2021 Screen Australia and National Indigenous Television documentary project "*Incarceration Nation*" draws attention to the ways in which drug and alcohol issues intersect with over-policing and disproportionately high levels of incarceration¹⁷, coupled with systemic barriers to accessing AOD treatment and health services¹⁸. The project continues to raise funds to highlight systemic abuses in the criminal justice system with the following core objectives: demanding accountability for law enforcement and prison staff to maintain dignity for detainees and prisoners; working with State Governments to commit 3% to diversionary and rehabilitation programs; and driving National Policy change to increase criminal responsibility age from 10 years¹⁹.

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

¹¹ The Global Drug Policy Index (2021). *Country Overview: Australia*. Available from:

<https://globaldrugpolicyindex.net/country-profile/australia>

¹² <https://www.theguardian.com/australia-news/2020/jun/10/nsw-police-pursue-80-of-indigenous-people-caught-with-cannabis-through-courts>

¹³ <https://theconversation.com/factcheck-qanda-are-indigenous-australians-the-most-incarcerated-people-on-earth-78528>

¹⁴ Manderson, D 1993, *From Mr Sin to Mr Big: a history of Australian drug laws*, Oxford University Press, Melbourne.

¹⁵ 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](https://doi.org/10.1146/annurev-lawsocsci-102510-105445)

¹⁶

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

¹⁷ <https://documentaryaustralia.com.au/project/incarceration-nation/>

¹⁸ <https://antar.org.au/news/new-documentary-incarceration-nation-essential-viewing-all-australians>

¹⁹ <https://documentaryaustralia.com.au/project/incarceration-nation/>

In relation to the International Covenant on Economic, Social and Cultural Rights²⁰, Article 12: health:

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

As the UN Chief Executives Board has emphasised,²¹ in many nations the penalties applied to people convicted of drug offences are too frequently disproportional, and this is certainly the case across Australia. Furthermore, the CESCR has repeatedly found that the criminalisation of drug use and possession for personal use operates as a barrier to the right to health, and has recommended decriminalisation²². However:

- Contrary to international standards, criminal penalties, often very harsh, apply to the minor offences of drug consumption, possessing small quantities of drugs for personal use, and cultivating small quantities of cannabis. *The issue is that the Commonwealth Government needs to act to have drug possession for personal use and ancillary activities including cultivation and possession of drug use paraphernalia decriminalised at both the Commonwealth and state/territory levels.*
- In Australian jurisdictions, the threshold quantities differentiating between a person being charged for possession of a drug for personal use, rather than possession for the purpose of trafficking, are far too low.²³ Typically, they are far below the levels that people who use drugs would normally purchase and possess for their own use, for example, in the Northern Territory where 0.5g²⁴ of MDMA equates to a trafficable amount, but the typical amount of MDMA consumed in a session is also reported to be 0.5g²⁵ - which means that people who use drugs often get charged with a trafficking offence. *The issue is that the Commonwealth government needs to act to have the threshold quantities in all Australian jurisdictions adjusted to match the realities of drug use, and possession of drugs for personal use.*
- All Australian jurisdictions have a reverse onus of proof for people charged with possession of drugs for the purpose of drug trafficking, which means that everyone who possesses drugs over a certain quantity threshold is presumed to be trafficking. This reverse onus of proof is unacceptable; it is contrary to basic principles of law in a democracy.²⁶ *The issue is that the Commonwealth Government needs to act to have the offence of possession for the purpose of drug trafficking dealt with by the courts in the same way that they deal with other offences, namely with the prosecution being required to prove to the court that the offence was committed.*

²⁰ United Nations 1976, *International Covenant on Economic, Social and Cultural Rights*. Available from: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

²¹ 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>.

²² See, amongst others: CESCR, Concluding Observations on the 6th Periodic Review of Norway, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/NOR/CO/6&L_ang=En; CESCR (2020), Concluding Observations on the 7th Periodic Review of Ukraine, <https://uhri.ohchr.org/en/document/f538cf71-f6d1-4e89-b96b-3818e5de8c6a>; CESCR (2020), Concluding Observations on the 3rd Periodic Review of Benin, <https://uhri.ohchr.org/en/document/b68e7215-1425-47f7-8e10-d635cf970d2>

²³ Hughes, CE, Cowdery, N & Ritter, A 2015, 'Deemed supply in Australian drug trafficking laws: a justifiable legal provision?', *Current Issues in Criminal Justice*, vol. 27, no. 1, pp. 1-20.

²⁴ Northern Territory of Australia: Misuse of Drugs Act (2017). Available from:

https://parliament.nt.gov.au/_data/assets/pdf_file/0018/452232/Misuse-of-Drugs-Act-2017-NT.pdf

²⁵ Price, O., Peacock, A. & Sutherland, R. (2021). Northern Territory Drug Trends 2021: Key Findings from the Ecstasy and Related Drugs Reporting System (EDRS) Interviews. Sydney: National Drug and Alcohol Research Centre, UNSW Sydney.

²⁶ Gray, A 2016, 'Presumption of innocence in Australia: a threatened species', *Criminal Law Journal*, vol. 40, no. 5, pp. 262-82.

4. Lack of harm reduction services

Some decades ago, Australia was a global leader in developing and implementing public health and criminal justice system innovations aiming to reduce the harms linked to the consumption of psychoactive substances, and to societal responses thereto. In recent times, as experience and the evidence base for drug harm reduction has grown, Australian governments have failed to innovate in the area of harm reduction, and have failed to adopt key harm reduction interventions that have been demonstrated, in other nations, to be both efficacious and cost-effective.²⁷ Some successes have occurred recently, including the expansion of take-home naloxone programs through a Commonwealth Government pilot²⁸ (albeit only available to three out of eight states/territories, with funding only available to pharmacies), and access to hepatitis C treatments²⁹, but overall, government-supported harm reduction progress has stalled. Problematic examples include the following:

- The total absence of needle syringe programs (NSPs) in prisons and other correctional facilities³⁰. In that regard, it is worth noting that the CESCR has already recommended that States expand harm reduction programmes ‘particularly in prisons’³¹.
- Active opposition from almost all governments to drug checking programs at fixed sites and large-scale events where drugs are consumed (ie: music festivals), despite two successful pilots in the ACT, coronial recommendations in Victoria & NSW, and an ongoing risk to the community from novel psychoactive substances, particularly affecting young people³².
- Insufficient provision of drug consumption rooms, with only two operating across the whole nation³³.

The issue is that the Commonwealth Government needs to take the lead in supporting innovation in harm reduction services, including urging and facilitating the states and territories to implement these public health-focused harm reduction interventions of proven efficacy and cost-effectiveness. The Commonwealth Government needs to take the lead in supporting innovation in harm reduction services in line with its own National Drug Strategy 2017-2025, in which harm reduction is stated as a supposed equal pillar within the balanced approach of harm minimisation. This must include urging states and territories to implement these public health-focused harm reduction interventions - and more actively coordinating and facilitating the implementation of these initiatives of proven efficacy, cost-effectiveness and high levels of support within the affected communities. The Commonwealth’s own take-home naloxone pilot must be expanded to cover all jurisdictions, and fund peer-led programs.

²⁷ Harm Reduction International (HRI) 2020, *Global State of Harm Reduction: 2020*, 7th edn, HRI, London.

²⁸ Australian Government Department of Health (2021). *Take-home naloxone pilot*. Available from: <https://www.health.gov.au/initiatives-and-programs/take-home-naloxone-pilot>

²⁹ Burnet Institute and Kirby Institute. (2021). *Australia’s progress towards hepatitis C elimination*. Available from: <https://burnet.edu.au/system/asset/file/5001/BurnetKirby-hepC-2021-report.pdf>

³⁰ Duvnjak, A., Wiggins, N. & Crawford, S. 2016. *Why are we waiting? The urgent need for NSPs in Australian prisons*. HIV Australia 14(1), pp. 4-5. Available from: <https://acuresearchbank.acu.edu.au/item/8vz2w/why-are-we-waiting-the-urgent-need-for-nsps-in-australian-prisons>

³¹ CESCR, 2020. *Concluding Observations to Ukraine’s 7th Periodic Review*, <https://uhri.ohchr.org/en/document/f538cf71-f6d1-4e89-b96b-3818e5de8c6a>

³² The Guardian, 2019. *Drug deaths inquest: Gladys Berejiklian says she is ‘closing the door’ on pill testing*. Available from: <https://www.theguardian.com/australia-news/2019/dec/11/drug-deaths-inquest-gladys-berejiklian-says-she-is-closing-the-door-on-pill-testing>

³³ Roxburgh, A., Jauncey, M., Day, C., Bartlett, M., Cogger, S., Dietze, P., Nielsen, S., Latimer, J. & Clark, N. 2021. *Adapting harm reduction services during COVID-19: lessons from the supervised injecting facilities in Australia*. Harm Reduction Journal, 18 (20)

5. Lack of equality of access to drug treatment

Equality of access to the treatment of health problems is a fundamental human right. Furthermore, the prohibition of non-discrimination under Article 2 ICESCR forbids indirect discrimination through laws that appear neutral but have a disproportionate impact on certain populations³⁴.

Unfortunately, this right is breached in Australia with respect to drug treatment:

- There are significant and enduring gaps in access to alcohol and other drug treatment across Australia. Of note, work by Ritter and colleagues (2019)³⁵ has shown that approximately 200,000 to 230,000 people are currently in treatment, which represents a met demand of between 26.8% and 56.4%. There shows a significant gap in alcohol and other drug treatment available to meet the demand in Australia.
- There are added gaps in and barriers to access to treatment for specific priority groups and regions. Of note are barriers in rural and regional communities^{36 37}. Here research has shown added barriers to service provision in regional areas include high rates of stigma and discrimination as well as limited service options within communities and insufficiency of other associated services e.g. housing, employment, welfare, mental health³⁸.
- All eight Australian states and territories provide opioid agonist therapy (also known as opioid substitution therapy) to opioid dependent people in the community, reflecting this treatment modality's proven efficacy and cost-effectiveness. In some jurisdictions this treatment is available to most of the opioid dependent people in prison, but in some Australian states, initiation into opioid agonist therapy is not permitted in prison.³⁹
- The international evidence concerning the effectiveness of heroin assisted drug treatment is strong.⁴⁰ However, despite this evidence base and extensive international experience in providing heroin assisted treatment to opioid dependent people who have failed to benefit from conventional therapies⁴¹, this is not available in Australia. The result is that many of the people experiencing the greatest difficulties with opioid dependence are being refused treatment that could assist them to regain their health and enhance their well-being.

The issue is that the Commonwealth Government needs to take the lead in ensuring that drug dependent people throughout the nation, including people imprisoned and deprived of liberty, are

³⁴ CESCR, 2009. *General Comment 20: Non-discrimination in economic, social, and cultural rights*.

<https://www.refworld.org/docid/4a60961f2.html>

³⁵ Ritter, A., Chalmers, J., & Gomez, M. (2019). Measuring unmet demand for alcohol and other drug treatment: The application of an Australian population-based planning model. *Journal of Studies on Alcohol and Drugs, Supplement*, (s18), 42-50.

³⁶ Howard, D. (2020). Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants. Volume 1. Sydney, NSW Government.

³⁷ Hughes, C., Goudie, S., Halsey, M & Goldsmith, A. (in press). Patterns of alcohol and other drug use and access to services in regional South Australia. *CCPR Technical Report Number 1*, Centre for Crime Policy and Research, Flinders University.

³⁸ Ibid.

³⁹ Australian Institute of Health and Welfare (AIHW) 2021, *National Opioid Pharmacotherapy Statistics Annual Data collection (NOPSAD)*, web report, cat. no: HSE 266, AIHW, Canberra, <https://www.aihw.gov.au/reports/alcohol-other-drug-treatment-services/national-opioid-pharmacotherapy-statistics/contents/summary>.

⁴⁰ Strang, J, Groshkova, T, Uchtenhagen, A, van den Brink, W, Haasen, C, Schechter, MT, Lintzeris, N, Bell, J, Pirona, A, Oviedo-Joekes, E, Simon, R & Metrebian, N 2015, 'Heroin on trial: systematic review and meta-analysis of randomised trials of diamorphine-prescribing as treatment for refractory heroin addiction', *British Journal of Psychiatry*, vol. 207, no. 1, pp. 5-14.

⁴¹ Ibid.

provided with ready access to the treatment of drug use disorders, including by means of opioid agonist therapies and heroin assisted treatment.

6. Inadequate access to essential medicines

Australia as a signatory to the UN Single Convention on Narcotic Drugs has committed to ensuring access to essential medicines for pain relief for all Australians in need, and access to medicines has been recognised as an essential element within the right to health⁴². To achieve such access to controlled medicines (so-called Schedule 8 drugs), Australians rely on functional partnerships between federal, state, prescribers (largely doctors) and retailers, pharmaceutical industry (for manufacture), health insurance bodies and collaborative partnerships to address specific barriers.

The principles guiding these partnerships are detailed in the National Medicine Policy:

<https://www1.health.gov.au/internet/main/publishing.nsf/content/national-medicines-policy>.

States and Territories are responsible for the regulatory components of access to medicines.

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

- those in more remote or regional communities where there is often an accompanying lack of expertise in the prescribing and clinical monitoring of opioids for pain relief^{43 44},
- those with previous or current history of drug misuse or dependence who now require pain management for cancer or other serious pain;
- those in Aboriginal or Torres Strait Islander communities many of whom are underserved in all areas of health care, including palliative care^{45 46};
- those who reside in prison; the homeless or itinerant⁴⁷;
- and many in non-English Speaking communities

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

To date, there has been a lack of attention given to measuring the extent of unmet need for pain relief through essential controlled medicines in Australia. The focus of the Real Time Prescription

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

⁴³ Jokanovic N, Tan EC, van den Bosch D, Kirkpatrick CM, Dooley MJ, Bell JS. Clinical medication review in Australia: A systematic review. *Res Social Adm Pharm*. 2016 May-Jun;12(3):384-418. doi: 10.1016/j.sapharm.2015.06.007. Epub 2015 Jul 9. PMID: 26250049.

⁴⁴ Tait P, Chakraborty A, Tieman J. The Roles and Responsibilities of Community Pharmacists Supporting Older People with Palliative Care Needs: A Rapid Review of the Literature. *Pharmacy (Basel)*. 2020 Aug 12;8(3):143. doi: 10.3390/pharmacy8030143. PMID: 32806701; PMCID: PMC7558267

⁴⁵ Woods JA, Newton JC, Thompson SC, Malacova E, Ngo HT, Katzenellenbogen JM, Murray K, Shahid S, Johnson CE. Indigenous compared with non-Indigenous Australian patients at entry to specialist palliative care: Cross-sectional findings from a multi-jurisdictional dataset. *PLoS One*. 2019 May 2;14(5):e0215403. doi: 10.1371/journal.pone.0215403. PMID: 31048843; PMCID: PMC6497232.

⁴⁶ Shahid S, Taylor EV, Cheetham S, Woods JA, Aoun SM, Thompson SC. Key features of palliative care service delivery to Indigenous peoples in Australia, New Zealand, Canada and the United States: a comprehensive review. *BMC Palliat Care*. 2018 May 8;17(1):72. doi: 10.1186/s12904-018-0325-1. PMID: 29739457; PMCID: PMC5938813.

⁴⁷ Hudson BF, Flemming K, Shulman C, Candy B. Challenges to access and provision of palliative care for people who are homeless: a systematic review of qualitative research. *BMC Palliat Care*. 2016 Dec 3;15(1):96. doi: 10.1186/s12904-016-0168-6. PMID: 27912748; PMCID: PMC5135820

Monitoring (RTPM) is to prevent misuse and diversion, but this monitoring makes no attempt to measure under-treatment, lack of access, unnecessary complexities in prescribing and dispensing which result in insurmountable barriers for patients.

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

Recommendations for list of questions

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

General Issues

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

ICESCR Article 2

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

ICESCR Article 12

- Please indicate whether the Commonwealth Government intends to decriminalise minor drug consumption, drug possession and social supply, along with cultivation of small quantities of cannabis at both Commonwealth and state/territory levels
- Please explain why all Australian jurisdictions have a reverse onus of proof for people charged with possession of drugs for the purpose of drug trafficking, and how the Commonwealth Government intends to ensure that this offence is dealt with by Australian courts by the prosecution being required to prove to the court that the offence was committed

- Please indicate how the Commonwealth Government intends to ensure that state and territory governments ensure that threshold quantities are adjusted to match realistic levels that people who use drugs would normally purchase and possess for their own use
- Please indicate how the Commonwealth Government intends to take the lead through urging states and territories to support the expansion and innovation of harm reduction services in line with its own National Drug Strategy 2017-2025
- Please indicate how the Commonwealth Government intends to ensure that people who use drugs and drug dependent people throughout Australia are provided, including in prisons and other places of deprivation of liberty, with the best standard of care through ready access to treatment and harm reduction services, including needle and syringe programs, opioid agonist therapies, heroin assisted treatment, and take-home naloxone programs
- Please indicate how the Commonwealth Government intends to demonstrate leadership towards ensuring the expansion of prescription monitoring systems capture representative data on undertreatment of pain due to lack of adequate and sustained access to controlled medicine

Conclusion

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



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