LRRCSC - INQUIRY INTO DRUG LAW REFORM
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eros the adults only association

Eros Association SUBMISSION

Inquiry into Drug Law Reform

Victorian Law Reform, Road and Community Safety Committee

TERMS OF REFERENCE

1. *The effectiveness of laws, procedures and regulations relating to illicit and synthetic drugs and the misuse of prescription medication in minimising drug-related health, social and economic harm; and*
2. *The practice of other Australian states and territories and overseas jurisdictions and their approach to drug law reform and how other positive reforms could be adopted into Victorian law.*

Preamble

The Eros Association represents adult retailers across Australia, including some of the biggest adult retail franchises in the country. Adult retailers often meet the demand of various alternative markets, including (when and where legal), pipes including waterpipes, papers, tobacco, vaporisers, social tonics, alternative culture clothing and magazines and the expected wide variety of products intended for sexual purposes.

Eros Association members agree to a Code of Practice[1] and Code of Ethics[2] and are held to a high standard of business. Members are responsible adult retailers who are acutely aware of the sometimes controversial nature of their businesses. Most of our members are small businesses, many who have struggled with the downturn in brick and mortar sales.

The Eros Association has long fought for the rights of our members and the customers who visit their stores to access adult-only products in a safe environment with appropriate regulation. We have made a number of submissions when federal, state and territory governments have requested input into proposed legislation around issues such as social tonics, vaporisers, cannabis and paraphernalia law.

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Harm reduction and the role of business

Businesses have always played an important role in reducing risks associated with their products. A business is the first point of contact someone has when choosing to purchase and use any product and it is the responsibility of business to strive for high standards in product delivery.

[1] http://eros.org.au/category/business-services/ethics/
[2] ibid

The definition of harm reduction, provided by Harm Reduction International[3] is:

'Harm Reduction' refers to policies, programmes and practices that aim primarily to reduce the adverse health, social and economic consequences of the use of legal and illegal psychoactive drugs without necessarily reducing drug consumption. Harm reduction benefits people who use drugs, their families and the community.

There are a variety of levers available to government which can be used to reduce harms of psychoactive industries. Some examples of harm reduction in business, which aim to reduce drug-related health, social and economic harm:

- Regulation of alcohol industry, including
    - Age restrictions
    - Advertising restrictions
    - Licensing limitations
    - Strict manufacturing quality controls
    - Tax excise
    - Education campaigns which acknowledge consumption as a reality
- Regulation of tobacco industry, including
    - Age restrictions
    - Plain packaging
    - Health warnings
    - Advertising prohibition
    - Tax excise
    - Strict manufacturing quality controls
- Regulation of pharmaceuticals
    - Strict and diverse regulatory controls
    - Restricted sales through prescription model
    - Restricted sales through pharmacy-only model
    - Extensive information on effects
    - Specially trained professionals

New Zealand's Psychoactive Substances Act 2013[4] was intended to apply a harm reduction approach to the regulation of the new psychoactive industries. It provided the legal infrastructure to allow the testing, regulation and sale of low-risk psychoactive substances. This point will be further expanded upon under the NPS subheading.

[3] https://www.hri.global/what-is-harm-reduction
[4] http://www.legislation.govt.nz/act/public/2013/0053/latest/DLM5042921.html?src=qs

A number of jurisdictions across the world have chosen to regulate the market for cannabis, seeing it as a way to reduce the harms of cannabis consumption through using some of the many regulatory levers available to government. This point will be further expanded under the Cannabis subheading.

Various paraphernalia sale restrictions have been implemented since 2000. The premise that drug-related harms or levels of use can be reduced by restricting the sale of apparatus used for drug consumption is untested. Many apparatus are developed and sold to avoid some harms of consuming a substance. The ACT recently implemented restrictions on the sale and display of paraphernalia, an approach which acknowledges the controversial nature of these products and applies appropriate regulatory restrictions. This point will be further expanded under the Paraphernalia subheading.

Personal vaporisers have emerged as disruptive technology to the smoked tobacco market. They were first successfully developed for commercial sale by Chinese scientist Hon Lik in 2003. Mr Lik, a 52 year old pharmacist and heavy smoker was quite aware of the harms of smoking tobacco. He was motivated to invent a new device for inhaling nicotine, the main addictive and psychoactive component of tobacco, in order to reduce the health risks associated with his habit.
Numerous attempts have been made to allow the sale of nicotine for personal vaporisers but all have been stifled. The most recent attempt was denied by the TGA at the expense of those who would prefer to switch from widely available smoked tobacco to a personal vaporiser. This point will be further expanded in the Personal Vaporiser subheading.

OUTCOMES: Responsible business with applied harm reduction regulation will provide alternatives to black markets and less regulated/inconsistent markets. These alternatives will minimise drug-related health, social and economic harm by acknowledging the reality of drug use and working with, rather than against the community for better outcomes.

Novel Psychoactive Substances (NPS)

The term NPS refers to any and all substances that have either been recently created or have recently come to the attention of authorities. Different organisations and individuals refer to different substances as NPS, making the term incongruous and non-scientific.

Add to this the fact that the term ‘psychoactive substance’ is being politicised by legislation which is widely condemned by experts and it becomes difficult to say much about NPS on its own.

Broadly, psychoactive substances are any substance which, when ingested, have an effect on cognition. This can range from the mild (low doses of caffeine, alcohol, nicotine, cannabis, micro-doses of psychedelic substances etc.) to the physiologically safe but strong effects of higher doses of some psychedelic substances and further along to the physiologically unsafe, strong effects of higher doses of a variety of stimulants, depressants and other substances.

A recent paper in the International Journal of Drug Policy entitled, *A critical examination of the definition of ‘psychoactive effect’ in Australian drug legislation* seeks to investigate the legislative attempts to broadly prohibit substances considered ‘psychoactive’ as a policy and legislative response to NPS. Authors Dr. Monica J. Barratt, Kate Seear, Kari Lancaster pose a number of questions about this sort of legislative approach:

Focusing, first of all, on the first limb, we argue that this definition rests on the assumption that particular substances generate certain kinds of (stable, consistent and predictable) effects. A particular kind of causal relationship between NPS and bodies is presupposed, in which the category of NPS are understood to generate psychoactive effects in the form of ‘stimulation or depression of the person’s central nervous system resulting in hallucinations or in a significant disturbance in, or significant change to, motor function, thinking, behaviour, perception, awareness or mood’ (our emphasis). The logical sequence and wording is curious, and raises a series of questions about how drugs are understood to act upon bodies, different models of causality and the possible ‘multiple realities’ (Mol, 2002) of drug consumption.

This particular notion of causality raises a number of questions for us.

Can substances produce effects in isolation from the milieu within which they are consumed?

And are these effects stable and unchanging?

How are polydrug use (including simultaneous AOD consumption) and drug ‘effects’ within the context of polydrug consumption understood in this context?

What is the meaning of the introduction of the effects-qualifier ‘significant’ (for both disturbances and changes) but the absence of an effects-qualifier elsewhere (for hallucinations)?

Why is the effect ‘hallucination’ singled out when it could arguably be classified as a disturbance of perception, therefore encompassed within the second clause?

Where reference is made to 'significant' changes and disturbances, how is significance to be classified, assessed or operationalised?
And does this presuppose that certain (less than significant) effects are both possible and permissible?
If so, what assumptions, if any, underpin this notion of variable effects on a sliding scale, and might this trouble or conflict with claims made elsewhere (see below) about the seeming inevitably of harms in connection with NPS? What implications may be drawn where people understand themselves to experience different or alternative effects in association with their NPS consumption (including those not described here) or effects that they might understand or attribute to other factors, whether in combination or otherwise?[5]

The approach of prohibiting anything considered 'psychoactive' will have the same effects of prohibition of other drugs more broadly, causing health and social problems to be compounded by black markets, social stigma and prevailing myths.

The Eros Association has been aware of a number of mild to strong psychoactive substances being sold through a variety of stores since the late 2000's, including adult stores. We were quick to respond once aware of this trend, by implementing self-regulatory practices and facilitating a flow of information between consumers, retailers and ourselves.
We worked with authorities when health problems occurred to try and isolate the products responsible and have ensured that dangerous products were removed from member stores across Australia.
Though we have been transparent in this process, governments across Australia have introduced over 40 separate amendments in the seven years to their respective drug control legislation, in a tunnel-vision approach to prohibiting the market.
These approaches have lead to the market we see today, which is largely dominated by wholesalers who are deceptive, secretive and often operate illegally. We have been locked out of conversations that could have created self-regulatory approaches and quickly removed dangerous products from the market and have heard hundreds of anecdotes from retailers and consumers about criminal elements moving into the market.

The Eros Association strongly believe that the best way to reduce harms associated with drug use is for business, government and service agencies to work together to

[5] *A critical examination of the definition of 'psychoactive effect' in Australian drug legislation,* Monica J. Barratt, Kate Seear, Kari Lancaster, International Journal of Drug Policy <http://www.ijdp.org/article/S0955-3959(16)30306-1/abstract>

regulate low-risk products, ensure strict regulation is adhered to and allow the expertise of service agencies to provide high quality information on psychoactive substance markets to those who want it, while aiming generally at dissuading new consumers.

New Zealand's Psychoactive Substances Act 2013 provided the framework for a regulated industry which could be applied to any low-risk psychoactive substance.

Manufacturers were expected to prove that their product is a low-risk product. Once demonstrated, products would be able to be purchased through licensed premises.
An amendment to the legislation, prohibiting animal testing[6] effectively stifled the intention of the legislation and the potential for industry to cooperate with it.
The New Zealand Drug Foundation published the following discussion over whether or not products could come to market without being tested on animals. This discussion provides a good insight into the sort of questions that could be used to base a Victorian approach to psychoactive regulation.

The Science Media Centre asked Dr Tingle, Associate Professor in Toxicology, University of Auckland about his personal opinion on whether a testing regime that does not use animal testing will be able to prove whether psychoactive products are low risk. Here is his analysis of the issues.

"The (Interim) Psychoactive Substances Expert Advisory Committee -- of which I am a member -- was established in 2013 and tasked with advising on a suitable testing regimen capable of demonstrating 'low risk of harm'. Intrinsic to that were two key questions:

1. What is an acceptable low risk of harm? and

2. Is there an existing internationally-recognised system for other products (e.g. medicines, food or cosmetics) that could be used as a basis for psychoactive substances?

"The answers to these questions were broadly that for a compound to be considered to have a low risk of harm it should:

Be unlikely to cause death after a low single dose
Have no cumulative effect on repeated exposure

[6] https://www.drugfoundation.org.nz/psychoactive-substances-bill/animal-testing

Not be genotoxic (potential for cancer many years later)
Not be teratogenic (no harm to unborn child: NOT a user by choice!)
Have a low addiction potential: indirect toxicity through modification of behaviour
"The Psychoactive Substances Act 2013 details the duty of the advisory committee relating to the use of animals in assessing a low risk of harm. This Act establishes in law that alternatives to animal tests must be used if they exist and are suitable.

"So, do 'alternative' tests exist that have been validated? Yes; the OECD has ~80 guidelines for the testing of chemicals and there are in vitro ('alternative') tests for: genotoxicity; skin irritation; corrosion; sensitisation; absorption; estrogenic activity; photosensitivity. There are NO VALIDATED alternatives for systemic toxicity or teratogenesis.

"Would it be possible to show a substance presents a low risk to human health without animal testing? If we accept that a limited battery of the biological end points above is sufficient -- for example, genotoxicity (but not cancer, for which there are no in vitro alternatives), irritation and photosensitivity -- then YES, we may avoid animal testing.

"If, however, we accept that low risk of harm should cover systemic toxicity (e.g. toxicity after oral or inhalation exposure) and teratogenesis, then the answer is NO.

"Will that always be the case? Possibly, BUT if a new alternative test becomes available that is suitable, under the existing legislation, it must be used and any animal data for that endpoint becomes redundant.

"Putting my toxicology hat on, for the testing regimen proposed by the Psychoactive Substances Expert Advisory Committee, it is highly likely that substances/products must pass all animal testing in order to demonstrate a low risk of harm and thus gain approval of dose. Given that no manufacturer/sponsor would wish to have a negative result, their desire will be driven by the use of doses that do not produce adverse effects in any animal, thus the animal welfare impact will be as low as possible under test conditions.

"Another current issue is that of which species. Putting my animal ethics hat on -- for historical reasons, mice and rats have been used most frequently and are the major species for many safety pharmacology testing, with rabbits, dogs and some lower primates being other common species used. HOWEVER, the Psychoactive Substances Act 2013 requires that for any animal test 'the trial is based on the relevant International Conference on Harmonisation Guidelines'. The guidelines state that 'In choosing an animal species and strain for reproductive toxicity testing should be given care to select

a relevant model'. This means decisions must be made on scientific, not current political grounds. Undertaking a test in an inappropriate species merely because of political pressure would also be a breach of the Animal Welfare Act, if an Animal Ethics Committee were to approve it.

"Finally, to the argument that 'if people want to test these compounds they should just do it on themselves'. Fair enough: human in vivo is the most appropriate of any model. However, any submission under the Psychoactive Substances Act must contain testing data conducted to the highest standard, and should be conducted under Good Clinical Practice. In New Zealand, this would require ethical approval from a Health and Disability Ethics Committee. If this is to be first time in human study, then an HDEC is highly likely to want to see some pre-clinical evaluation to assure them that volunteers will not suffer adverse effects. Without that assurance, the absence of animal testing shifts the ethical dilemma to human ethics committees and they are thus unlikely to approve any such study. If a manufacturer tries to circumvent ethical approval (either at the level of animal or human) then no regulatory committee is going to accept their data."[7]

Victoria has the opportunity to learn a lot from the New Zealand approach, both on what worked, what hasn't and what the advantages are of such a model of regulation for reducing harms of drug use.

OUTCOMES: Investigate New Zealand Psychoactive Substances Act 2013 which seeks to regulate 'low risk' substances. This does not have to be focused solely on those drugs which do not have a legal classification yet. It could be used as the backbone for markets for substances like cannabis and MDMA too.

Personal vaporisers (E-cigarettes)

Personal vaporisers pose a unique challenge to the industry for smoked tobacco. If they are allowed to be a sold in a similar fashion to tobacco (age restrictions, no advertising etc.), then they pose a direct competitive threat to the stranglehold that tobacco companies currently have on the market.
Current approaches aim to restrict the sale, display and use of vaporisers in a way that provides a competitive advantage to the market for tobacco.

[7] https://www.drugfoundation.org.nz/psychoactive-substances-bill/animal-testing

Prominent health organisations internationally, such as the Royal College of Physicians (RCP) in the UK have looked into the available evidence and concluded in the report '*Nicotine without smoke: tobacco harm reduction*'[8] that e-cigarettes are around 95% less harmful than smoking tobacco.
The RCP also made the following recommendations around regulation of personal vaporisers:

- ***E-cigarettes are not a gateway to smoking*** *– in the UK, use of e-cigarettes is limited almost entirely to those who are already using, or have used, tobacco.*

- ***E-cigarettes do not result in normalisation of smoking*** *– there is no evidence that either nicotine replacement therapy (NRT) or e-cigarette use has resulted in renormalisation of smoking. None of these products has to date attracted significant use among adult never-smokers, or demonstrated evidence of significant gateway progression into smoking among young people.*

- ***E-cigarettes and quitting smoking*** *- among smokers, e-cigarette use is likely to lead to quit attempts that would not otherwise have happened, and in a proportion of these to successful cessation. In this way, e-cigarettes can act as a gateway from smoking.*

- ***E-cigarettes and long-term harm*** *- the possibility of some harm from long-term e-cigarette use cannot be dismissed due to inhalation of the ingredients other than nicotine, but is likely to be very small, and substantially smaller than that arising from tobacco smoking. With appropriate product standards to minimise exposure to the other ingredients, it should be possible to reduce risks of physical health still further. Although it is not possible to estimate the long-term health risks associated with e-cigarettes precisely, the available data suggest that they are unlikely to exceed 5% of those associated with smoked tobacco products, and may well be substantially lower than this figure.*

The report acknowledges the need for proportionate regulation, but suggests that regulation should not be allowed significantly to inhibit the development and use of harm-reduction products by smokers. A regulatory strategy should take a balanced approach in seeking to ensure product safety, enable and encourage smokers to use the product instead of tobacco, and detect and prevent effects that counter the overall goals of tobacco control policy.[9]

[8] https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0
[9] https://www.rcplondon.ac.uk/news/promote-e-cigarettes-widely-substitute-smoking-says-new-rcp-report

Victorian vape stores have come under an increasing amount of regulatory pressure, with very little/no consultation with business or community. These restrictions have the unintended effect of increasing the health, social and economic harms of tobacco by stifling competitive alternatives with noted lower harm profiles.

OUTCOMES: Victoria could explore the regulation of nicotine for vaporiser use, side-stepping national approaches that are harming Victorians. The Victorian Government could support vaporisers as a competitive, lower risk alternative to tobacco.

Cannabis

There is a small, but growing global movement toward regulated markets for cannabis products. An appropriate regulatory approach for Victoria would likely be different to those implemented in the USA, as our state has a greater focus on regulation of potentially risky products and activities when compared to the United States.

Thought significant opposition still exists to a market for cannabis, much of the opposition rests on prohibition being a better strategy for managing the social, economic and health harms of cannabis. Ministers are often quick to note that cannabis has risks associated with it, but fail to explain how the policy of prohibition has been successful in reducing those risks.
Ministers have also failed to demonstrate how the harms of policing cannabis prohibition outweigh any positives.

The Eros Association believe that a regulated approach to the cannabis market will serve to lower the health, social and economic harms of cannabis use more effectively than prohibition. The onus needs to be on those who continue to support prohibition to demonstrate why it is a better option, rather than on the growing number of voices calling for a different approach.

Rather than seeking to build another entirely new regulatory framework around cannabis alone, the New Zealand-style psychoactive substance regulatory model could be explored as a method of regulating cannabis, which is already known to be low-risk having significantly less potential for harm than alcohol or tobacco.

OUTCOMES: Cannabis could be regulated separately (inefficient) or as part of a ‘low risk’ psychoactive substance market, which could be used for a variety of psychoactive substances and provide common grounds for their regulation.

Paraphernalia law

Laws banning paraphernalia are promoted as if they will reduce a variety of harms and prevalence of use of drugs, yet evidence suggests that the laws end up shifting consumers to DIY paraphernalia or easily purchasing products online.

The *Drugs, Poisons and Controlled Substances Amendment (Prohibition of Display and Sale of Cannabis Water Pipes) Bill 2011* banned the retail sale of waterpipes (not including the hookah) in Victoria. During discussion on this Bill, it was noted by multiple members of parliament that the Bill would be unlikely to stop the trade of waterpipes, instead moving the trade online and pushing consumers to construct their own home-made waterpipes.

Some quotes from sitting members at the time the Bill was passed, relating to their own doubts about the effectiveness of such legislation. Jenny Mikakos MP stated, *"But as we have heard in previous contributions, these types of devices are abundant in terms of their availability through the internet and other sources. Also, people compromise and use whatever they have at hand to smoke their cannabis… Young people use plastic drink bottles and hoses as makeshift bongs, so simply making the sale and display of bongs illegal is not enough… Drug and Alcohol Research and Training Australia director Paul Dillon said that while the legislation would remove confusion about the illegality of cannabis, he did not believe outlawing bongs would result in a significant decline in the drug's use."*

Laws banning paraphernalia are not effective at any of their intended purposes, shifting markets online and pushing consumers to make home-made products which can have other negative effects.

The Australian Capital Territory passed the *Crimes Legislation Amendment Bill 2014*[10] which, among other things, banned the overt display, but not sale of "drug pipes".

The legislation allows for retailers to sell 'drug pipes', so long as they are not overtly displayed in the premises. Products can be viewed upon request by a consumer.

An occupier of a retail or wholesale outlet commits an offence if the occupier displays to customers at the outlet a drug pipe within, or adjacent to, the outlet.

[10] http://www.austlii.edu.au/au/legis/act/bill/clab2014284

drug pipe - (a) means - (i) a device, or components that together make a device, for the purpose or apparent purpose of smoking, or drawing or inhaling smoke or fumes from, a controlled drug; or (ii) a device that is intended to be used for the purpose or apparent purpose of smoking, or drawing or inhaling smoke or fumes from, a controlled drug, but that requires an adjustment or modification to be used for that purpose; and (b) includes a device commonly known as - (i) a hash pipe; or (ii) an ice pipe; or (iii) a bong.[11]

This legislation reduces the visibility of products that may be used in conjunction with the consumption of an illicit drug. Prohibiting sale has no measureable effect on the drug market and appears to create incentives for online retailers and DIY construction of devices for the consumption of drugs.

Properly constructed, high quality devices are less likely to result in people consuming extra, toxic by-products or substances and as such, the sale of such devices ought to be allowed in order to provide consumers with safer, alternative options. It is quite clear that the pursuit of prohibition as a method of drug control has failed by nearly every manner it can be measured.

Banning paraphernalia is not effective at reducing harms and may exacerbate some. Paraphernalia prohibitions cause Victorians to use poor equipment or purchase equipment online (send business overseas).

OUTCOMES: Proximity prohibition laws (paraphernalia) do not reduce harms. Instead they harm community and small business, fostering less healthy consumption habits among people who use drugs. A compromise approach, allowing retailers to sell but not overtly display products such as waterpipes would avoid unnecessary harms and help small business.

[11] http://www.austlii.edu.au/au/legis/act/num_act/claa20153o2015320/s32.html