

The Priority population left behind- People who use drugs in New South Wales (NSW), Australia

V. Parwani
Senior Solicitor

HIV/AIDS Legal Centre NSW,
Surry Hills, Australia

The HIV AIDS Legal Centre Inc (HALC) is a specialist legal centre in Sydney, Australia, that provides free legal services for people with HIV related legal matters.

BACKGROUND

According to Australia's 8th National HIV Strategy 2018-2022, people who use drugs continue to be disproportionately affected by HIV and are therefore a priority population. Conversely, people living with HIV (PLHIV) remain a priority population for a national response to crystal methamphetamine and other drug use.

The research clearly indicates that seroconversion and drug use are intertwined in such a way that criminalisation of drug use leads to adverse outcomes for treatment uptake, adherence, and prevention of HIV. Criminal penalties for simple possession of drugs also have the unintended consequence of negatively impacting the well-being and quality of life for PLHIV.

On 1 November 2021, International Drug Users' Day, UNAIDS called for

“ urgent action against the criminalization of people who use drugs, for the redress of criminalization's negative effects on HIV, viral hepatitis and other health issues, for the respect of human rights and for more funding for community-led harm reduction programmes. ”

THE HARMS ASSOCIATED WITH DRUG USE IN NSW

Despite people who use drugs being identified as a priority population in National HIV strategies and the United Nations noting that criminalisation of key at-risk populations can have a significant impact on treatment intake and adherence for PLHIV, possession of small amounts of prohibited drugs continues to be a criminal offence in NSW. The government uses sniffer dogs and invasive strip searches to target young people and marginalised communities, continually dragging them through the Court system where they are charged with offences carrying penalties of up to 2 years of imprisonment or \$11,000 AUD in fines.

The Special Commission of Inquiry (the Inquiry) into crystal methamphetamine and other amphetamine-type stimulants (ATS) was established by the NSW Government in November 2018 and noted that:

“ Contact with the criminal justice system, including having a criminal conviction for simple possession, is directly associated with adverse impacts on employment, earning prospects, access to housing, access to treatment, relationships and wellbeing. The criminalisation of simple possession is a powerful source of stigma, which has a serious impact on the physical and mental health of people who use drugs, as well as their willingness to seek help al., 2015, 6). ”

Research shows that these disproportionately affect PLHIV and other priority populations. The 2015 Gay Community Periodic Survey found that:

- HIV-positive men remain more likely to report any drug use (77.1%) compared with HIV-negative men (62.3%).
- HIV-positive men are disproportionately more likely to report injecting drug use (20.2%) compared with HIV-negative men (3.3%)
- 31.2% of HIV-positive men reported use compared with 10.2% of HIV-negative.

A systematic review of 106 eligible peer-reviewed scientific studies describing the association between criminalisation of drug use and HIV prevention and treatment-related outcomes among people who inject drugs confirmed that that criminalisation of drug use has a negative effect on HIV prevention and treatment.

Despite the evidence, the Inquiry's recommendations, and the plea from UNAIDS that possession of drugs for personal use be decriminalised and that drug use be treated as a public health issue rather than a criminal law one, the NSW government has not accepted any of the Inquiry's recommendations to date.

EFFECTIVE LEGAL REPRESENTATION CAN MITIGATE HARMS

To reduce the harm caused by drug criminalisation on PLHIV, the HIV/AIDS Legal Centre NSW (HALC) frequently represents PLHIV charged with simple possession offences in the NSW Local Courts. HALC makes submissions to the Courts to mitigate the sentence that the Court might otherwise impose. Despite the offences having been proven, HALC has had significant success in having no convictions recorded for these matters where the Court either dismisses the charges entirely or imposes a conditional release order where the defendant is required to have a period of good behaviour after which they will not have a criminal record.

Alternatively, where a PLHIV might have a mental health condition or cognitive impairment which may have contributed to their drug use, HALC seeks to having those matters dealt with under provisions of the Mental Health and Cognitive Impairment Forensic Provisions Act 2020 which allow for the case to be diverted away from the criminal law system and dealt with by way of a treatment plan to be administered by mental health practitioners.

Last month, the Australian Capital Territory (ACT) announced that it will decriminalise possession of small amounts of drugs, making it the first Australian jurisdiction to do so. While HALC continues to advocate for a similar approach to drug use in NSW, until such time as significant reforms are made to the State's drug laws and policy, HALC will continue to represent PLHIV in drug possession matters to mitigate the harms associated with drug criminalisation.



¹ Hull, P., Mao, L., Kolstee, J., Duck, T., Prestage, G., Zablotska, I., de Wit, J., & Holt, M. (2015). Gay Community Periodic Survey: Sydney 2015. Sydney: Centre for Social Research in Health, UNSW Australia. International Harm Reduction Association (IHRA). 2009.

² DeBeck K, Cheng T, Montaner JS, Beyrer C, Elliott R, Sherman S, Wood E, Baral S. HIV and the criminalisation of drug use among people who inject drugs: a systematic review. Lancet HIV. 2017 Aug;4(8):e357-e374. doi: 10.1016/S2352-3018(17)30073-5. Epub 2017 May 14. PMID: 28515014; PMCID: PMC6005363.