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STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
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Submission Cover Sheet

Inquiry into Penalties for Minor Offences and Vulnerable People

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Inquiry into Penalties for Minor Offences and Vulnerable People

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Introduction

The Alcohol, Tobacco and Other Drug Association ACT (ATODA) represents the alcohol, tobacco and other drug (ATOD) sector in the ACT. Members include specialist alcohol and other drug treatment organisations; distinguished drug experts with deep knowledge of the criminal justice system and population health; the group representing families and friends who have lost loved ones to drugs; and the peer-based organisation for people with lived experience of drug use in the ACT.

ATODA welcomes this Inquiry and its Terms of Reference. Given ATODA's remit and our sector's particular areas of expertise, this submission is specific to 1) impacts of fines on vulnerable people; 3) impacts of prosecution for vulnerable people for non-payment of fines; and 4) suitability of current ACT Government alternative measures to fines.

Other recent submissions by ATODA are relevant for the Committee's consideration in relation to this Inquiry, in particular ATODA's submissions to the Inquiry into the Drugs of Dependence (Personal Use) Amendment Bill 2021,¹ the Inquiry into Community Corrections,² the Inquiry into Dangerous Driving,³ and the Alexander Maconochie Centre (AMC) Healthy Prison Review.⁴

Terms of Reference Items 1 & 3: Impact of fines and prosecution for non-payment of fines on vulnerable people

In a health care context, vulnerability refers to people at risk of experiencing poor physical, psychological or social health.⁵ Vulnerability occurs on two levels, individual vulnerability and population vulnerability.⁵ Vulnerable populations are groups who experience significant disadvantage and require specific considerations and approaches to minimise harms.⁶ ATODA encourages the Committee to consider people who use drugs as part of the vulnerable people population within the scope of this Inquiry.

Particular groups the Standing Committee on Justice and Community Safety are interested in include Aboriginal and Torres Strait Islander peoples, young people, detainees, welfare recipients, people experiencing or at risk of experiencing homelessness and people with disabilities and/or mental health conditions.⁷ There is significant intersection between these identified groups and people who use drugs. The ACT Government Drug Strategy Action Plan (DSAP) 2022-2026 states that "that people who use ATOD can be significantly disadvantaged, and this disadvantage can be further compounded across certain populations".⁶ People who use drugs are at increased risk of experiencing homelessness and co-occurring mental health conditions, financial disadvantage, and are more likely to interact with the criminal, legal and justice systems.^{6, 8} Aboriginal and Torres Strait Islander peoples are overrepresented and disproportionately impacted by ATOD harms, with approximately one-third of ATOD service users in the ACT identifying as Aboriginal and Torres Strait Islander.⁸ These groups are also reflected in the affected populations identified in the DSAP 2022-2026, which notes that "tailored initiatives developed by working closely with affected populations are an important component of responses to improve the health and wellbeing of those [vulnerable] people".⁶ The DSAP specifies the populations requiring special consideration to be Aboriginal and Torres Strait Islander peoples, people with co-occurring issues and complex needs (including mental health and disability), young people, people in contact with the criminal justice system, women, and family and carers of people who use drugs.⁶ This list overlaps significantly with the population groups the Standing Committee has noted its particular interest in, as stated above.

People who use drugs experience persistent stigma and discrimination, which negatively impact access to health care and other services, employment opportunities, and relationships within the community.^{6, 9, 10} ATOD use often exists alongside experiences of broader socio-economic disadvantage and marginalisation. A 2018 survey found that of the 600-700 people accessing specialist ATOD services each day in the ACT, nearly one-third were homeless or at risk of homelessness; **70% were unemployed or not working**; and half had year 10 or less as their highest level of education.⁸ Considering that people who use drugs are at increased risk of experiencing harms as outlined, people who use drugs should be considered as a vulnerable population group within the scope of this Inquiry and be explicitly identified as such.

Vulnerable people encounter significant disadvantages and the provision of fines or criminal prosecution for non-payment of fines for minor offences can increase the disadvantages experienced by vulnerable people. The prosecution for non-payment of fines for vulnerable people could mean that vulnerable people who are unable to make a payment are subject to a prison term and potentially a criminal record. A criminal history is a significant barrier to employment, which limits reconnection with the community.⁹ It cements and increases disadvantage. Disproportionate financial penalties can also increase the socio-economic disadvantages experienced by vulnerable people and result in individuals making difficult choices between essential living costs such as prescription medicine, preventative healthcare, food for their family, a safe and secure living environment and payment of a fine. Being in the position of making such 'choices' increases vulnerability and can cement intergenerational disadvantage. Subjecting vulnerable people to the criminal justice system for minor offences is inconsistent with the principles of person-centred care and community wellbeing championed by the ACT Government.

Terms of Reference Item 4: Suitability of current ACT Government alternative measures to fines

Specific to offences in relation to ATOD use, the ACT is progressing nation-leading reforms to personal possession of a range of identified drugs (ACT Drugs of Dependence (Personal Use) Amendment Act 2022).¹¹ The reform presents a case study for how alternative measures to fines can be implemented in the ACT. Following the reform coming into effect in October 2023, the number of people who use drugs interacting with the criminal justice system should reduce, as the possession of small amounts of certain illicit drugs will be decriminalised, meaning people may be issued a caution, a \$100 fine or referred to a drug diversion program rather than face criminal prosecution.¹¹ Diversion to the health sector is the most appropriate response for a minor offence of this nature, and ATODA commends the ACT Government for this reform. ATODA notes the importance of the drug diversion program providing the opportunity to explore the options for treatment and harm reduction support with no obligation to commence treatment. The ACT benefits from a high performing ATOD sector where individuals who do take up some form of treatment intervention can access holistic, adaptable, evidence-based services underpinned by relevant clinical guidelines and a dedicated skilled workforce.

Given this Committee's particular interest in fines, it is worth noting that fines remain a feature of this new approach to personal possession of illicit drugs, which incurs the risks outlined above and reiterated in the ACT Government's submission to the Select Committee Inquiry on the Drugs of Dependence (Personal Use) Amendment Bill 2021.¹² The submission noted that vulnerable people are often not able to make payments due to significant disadvantage, and that the fines-based approach can result in increased numbers of individuals who are unable to make payments who are then at risk of prosecution

for non-payment and subject to court proceedings.¹² The ability to discharge a fine by attending a drug diversion program is a practical example of the ACT Government's consideration of these impacts. However there is a risk that prosecution for non-payment of a fine due to non-attendance at a drug diversion program will result in those individuals progressing through the courts and the criminal justice system. This was an unintended result of the introduction of the Cannabis Offence Notice in South Australia in the 1980s whereby police issued more offence notices, people defaulted, and more people went through the courts for cannabis offences that previously.¹² ATODA characterises this as a 'net widening' effect that has a detrimental impact on the individual and the ACT courts, and is keen to ensure that this is not a result of the implementation of the decriminalisation of personal possession in the ACT. ATODA urges the Committee to investigate the feasibility of alternate pathways for people unable to pay a fine associated with noncompliance with a Simple Drug Offence Notice to ensure those individuals remain out of the criminal justice system.

It is important to test how the ACT Drugs of Dependence (Personal Use) Amendment Act 2022 will operate in practice in relation to reducing the impact of minor offences on vulnerable people, including in relation to potential net widening. Accordingly, ATODA would welcome funding for a thorough evaluation of the implementation of the ACT Drugs of Dependence (Personal Use) Amendment Act 2022, to ensure this legislative reform achieves its intended goal of reducing drug-related harms, reducing stigma, supporting treatment pathways for people who use drugs through the health system, and reducing contact with the criminal justice system. The evaluation will contribute to the evidence base about the suitability of diversionary schemes of this nature and whether more individuals were prosecuted for non-payment of fines subsequent to non-attendance at an ATOD education session.

More broadly at a systems level, ATODA endorses ACTCOSS's recommendations to reduce the disproportionate impact of fines on all vulnerable people and provide alternate pathways.

Recommendations

ATODA recommends:

- That the ACT Government recognise people who use drugs as a vulnerable population group;
- That the ACT Government explore alternative pathways for non-payment of fines other than criminal prosecution; and
- That the ACT Government fund a thorough evaluation of the ACT Drugs of Dependence (Personal Use) Amendment Act 2022, including in relation to diversion being an effective alternative measure to fines and any unintended net widening

ATODA appreciates the opportunity to provide this submission to the Committee, and is available to provide any additional detail that may be required.

About ATODA

The Alcohol Tobacco and Other Drug Association ACT (ATODA) is the peak body for the alcohol, tobacco and other drug sector in the Australian Capital Territory (ACT). ATODA's vision is a healthy, well and safe ACT community with the lowest possible levels of alcohol, tobacco and other drug related harms. Underpinning ATODA's work is a commitment to health equity, the social and cultural determinants of health, and the values of collaboration, participation, diversity, human rights, social justice and reconciliation between Aboriginal and Torres Strait Islander people and other Australians.

ATODA's purpose is to lead and influence positive outcomes in policy, practice and research, as the peak body for the alcohol, tobacco and other drug sector in the ACT. These outcomes flow from initiatives in prevention, early intervention, harm reduction, treatment, peer services, and continuing care.

ATODA provides collaborative leadership for intersectoral action on the social determinants of harmful drug use, and on societal responses to drug use and to people who use drugs. ATODA works to provide alcohol, tobacco and other drug related expertise in the areas of policy; sector workforce development and capacity building; research, data and evaluation; health services planning; coordination and partnerships; training and education; communication; information and resources.

Note: While the term AOD (alcohol and other drug) is commonly used to refer to the alcohol, tobacco and other drug sector, ATODA's preference is to use the term ATOD. This acknowledges the role that specialist service providers in this sector play in providing tobacco cessation support, and because tobacco use is the leading preventable cause of the burden of disease in Australia, contributing far more than alcohol or all illicit drugs combined.

References

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