



Community  
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24 May 2023

Ken Lay AO APM  
Independent Consultation Chair  
Engage Victoria

**By email:** [MSISHaveYourSay@health.vic.gov.au](mailto:MSISHaveYourSay@health.vic.gov.au)

Dear Chair/Mr Lay,

**Re: Independent consultation: Injecting drug harm in City of Melbourne, community consultation**

We thank you for the opportunity to participate in the community consultation about injecting drug harms in the City of Melbourne ('the City') and the proposed medically supervised injecting service ('MSIS').

This letter sets out Fitzroy Legal Service's response to the community consultation survey.

### Who we are

Fitzroy Legal Service (FLS) provides legal services (advice, casework, community legal education, court appearances, systemic advocacy) in the following substantial areas of law – tenancy, employment, family violence, family law, crime, infringements, victims of crime. We have practitioners working across Victorian Courts, including family violence duty lawyers present at Heidelberg Magistrates Court, and cross jurisdictional duty lawyers present at the Neighbourhood Justice Centre. We provide services to approximately 5,000 Victorians per annum, and our Law Handbook Online is the most relied upon legal resource in the state. The inception of our service predates the establishment of the Victorian Legal Aid Commission, our history spans over 50 years, and our service is historically and currently supported by a prodigious pro bono/volunteer base.

FLS has operated a drug outreach lawyer (DOL) program for over 20 years, providing specialist legal services for Victorians whose engagement with the legal system is underpinned by drug use. This program provides health/social support and improved access to justice for highly marginalised community members through partnerships with YSAS, Uniting Care Regen, North Richmond Community Health, Living Room, Odyssey House, Quinn House, supporting clients through a wide catchment of metro Melbourne.

For clients of the DOL program, the criterion of engagement is that drug use/ substance dependence disorder, is an underlying driver of their engagement with criminal justice processes. The program currently operates across three local government areas – the City, the City of Yarra, and the City of Darebin. While there are minor variations across the local government areas, approximately 90% of DOL clients identify as having a mental illness, 50% primary homeless (rough sleeping), a further 25% secondary homeless (unstable or unsafe housing), 20% have diagnosed acquired brain injuries, with a further 20% with suspected acquired brain injuries,<sup>1</sup> and 25-30% are women. The majority of DOL clients are engaged in ‘low-level’ offending associated with dependence and visibility. For example, acquisitive shop theft, possession, use, and breaches of conditions imposed by the courts that they are ill equipped to meet (appointments with corrections officers, multiple attendances at court, reporting obligations at police stations, abstinence requirements). The majority of DOL clients have poly-substance use/ dependence issues.

Over the course of the DOL program, FLS has supported thousands of Victorians who use drugs and are experiencing harms associated with substance dependence disorder. The effectiveness of the program is grounded in the harm reduction principles that frame service delivery (empowerment, protective of human rights, non-judgmental, cross jurisdictional), strong cross-sector brokerage with health and social services developed over the time, and a commitment to flexible outreach lawyering that meets clients where they are to ensure, to the best of our ability, equitable and fair legal outcomes that are not adversely impacted by social/ health/ economic drivers. The DOL program has received long term funding from the Department of Families, Fairness and Housing (previously the Department of Health) in recognition of the close relationship between social determinants, health and legal outcomes for the relevant community.

FLS also provides services to Victorians impacted by drug use in a variety of ways through our other program areas, in particular, criminal law and family law/ child reunification/ family violence services. FLS provides services to people who live, work, study, sleep rough or experience homelessness, and who have a substance use disorder (including people who inject drugs) in the City.

### **The “issue” of injecting drug use in the City**

The City has long been, and remains, a hub for people experiencing extreme socio-economic hardship, homelessness, and complex vulnerability, (including notably people escaping victimisation and violence,

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<sup>1</sup> There are substantial costs associated with the assessment processes to establish whether or not a client has an acquired brain injury. However, lawyers often need to make an informal assessment based on observation and experience to ensure services are appropriately adapted to the needs of the client.

especially young people and women). Some obvious drivers include perceived safety (well-lit streets, continuous presence of community members, access to protection from police if necessary), centralised access by public transport from across Melbourne, concentrated access to support (health, crisis accommodation, food, blankets and bedding for rough sleepers, charitable giving by Melbournians on an ad hoc basis), access to a community of other people experiencing similar hardships.

Injecting drug use has long been present both as an activity occurring in the City, and a health condition in relation to which support services are required and provided in the City.

We are unable to quantify the relative prevalence across the state and country of injecting drug use and substance dependence disorder as compared with the concentration of the same in the City. However, clearly perceptions that frame the *issue* of drug use tend to be highly concentrated on those communities whose drug use/ dependence is most visible to community and authorities as a result of a range of indicators. In our experience these include primary and tertiary homelessness, cognitive disabilities/ acquired brain injuries, experiences of long-term mental illness/ episodes of acute mental unwellness, membership of First Nations communities and persons of colour. We anticipate that prospective users of the MSIS would correspond by demographic with the DOL client base as referenced above.

Long term services in the City are in place to support people who inject drugs to prevent the spread of blood borne viruses through the mobile needle exchange.<sup>2</sup> These programs have operated for approximately two decades. Drop-in health services with an addiction specialist focus have also operated in the City over the same period,<sup>3</sup> as well as public hospitals with growing addiction specialist expertise.<sup>4</sup> Specialist crisis accommodation, including for people exiting prison and accommodation and supports for youth exiting state welfare, are also located either within or adjacent to the City.<sup>5</sup> These are in addition to long term crisis support services operated by charitable and faith-based organisations.<sup>6</sup>

Currently the greatest concentration of fatal overdoses is in the City LGA.<sup>7</sup> For the purposes of the terms of reference for this review, we submit this is the most relevant data. It is determinative in the sense that

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<sup>2</sup> For example, the Mobile Foot Patrol Cohealth & Living Room Needle Syringe Program Outreach Teams, the City.

<sup>3</sup> Living Room, Co-Health, Youth Projects.

<sup>4</sup> Royal Women's Hospital, St Vincents, Royal Melbourne Hospital.

<sup>5</sup> Flagstaff, Osnam House, Frontyard, and anecdotally, hotel accommodation for young people exiting welfare custody as wards of the State.

<sup>6</sup> Salvation Army and church-based food vans, material aid, outreach support.

<sup>7</sup> Over 2-year period July 1, 2020 - June 2022 the City has seen 29 fatal overdoses, Coroners Prevention Unit. 'Heroin Overdose Data Strengthens Case for New Melbourne Injecting Room', ABC Online, 18 April 2023, extracted 17 May 2023 <<https://www.abc.net.au/news/2023-04-18/heroin-overdose-data-strengthens-medically-supervised-injecting/102230610>>

there is indeed an ‘issue’ in relation to intravenous drug use in the city and associated fatalities.<sup>8</sup> This incontrovertibly supports the proposition that positive steps should be taken by state authorities (police, local government, and state government) consistent with Charter obligations protective of the right to life, and the human right not to be arbitrarily deprived of life.<sup>9</sup> The evaluation of the Richmond medically supervised injecting room (MSIR) evidences the incredible impact of such facilities in saving lives (6,000 overdose events in the MSIR during the trial, none fatal, and modelling suggesting that during its time in operation the MSIR has prevented up to 63 deaths).<sup>10</sup>

- **FLS City specific service delivery through the Drug Outreach Lawyer**

FLS has been providing legal outreach to clients of the Living Room in Hosier Lane for over eight years. The Living Room is a primary health service in the City run by Youth Projects. It provides free healthcare and support to improve the physical, mental and social well-being of people who are homeless, or at risk

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<sup>8</sup> See also ‘Melbourne’s CBD, drug outreach workers say the need for a supervised injecting room is rising’, Leanne Wong, ABC Online, 11 May 2023, extracted 17 May 2023 < <https://www.abc.net.au/news/2023-05-11/melbourne-supervised-drug-injecting-room-north-richmond-review/102328870>>; and increased call outs to the City for overdose related critical incidents, ‘Melbourne’s injecting room delay puts lives at risk as heroin overdoses spike in CBD’, 24 January 2023, The Guardian, extracted 17 May 2023 <<https://www.theguardian.com/australia-news/2023/jan/24/melbournes-injecting-room-delay-puts-lives-at-risk-as-heroin-overdoses-spike-in-cbd>>

<sup>9</sup> See extract from the Supreme Court of Victoria’s Charter Bench Book – ‘The European Court of Human Rights has found that, in certain circumstances, the right to life imposes a positive obligation on a State to protect life, or take steps to do so (*Osman v United Kingdom* (1998) VIII Eur Court HR 3124 [115]). The scope of this positive obligation must not impose a disproportionate or impossible burden on the relevant authorities (*Keenan v The United Kingdom* (2001) III Eur Court HR 93 [90]).’

See also *PHS Community Services Society v Attorney-General (Canada)* 2008 BCSC 661 (27 May 2008) wherein the Supreme Court of British Columbia declared that laws which made safe self-injecting rooms illegal were unconstitutional and incompatible with the rights to life, liberty and security of the person in the Canadian Charter of Human Rights and Freedoms.

See also *Coronial Inquest into the passing of Veronica Nelson (‘Veronica Nelson Inquest’)*, COR 2020 0021, Coroner’s Court of Victoria, per Coroner McGregor: ‘Section 9 of the Charter provides that every person has the right to life and the right not to be arbitrarily deprived of life. It is relevant to the extent that it requires public authorities to take measures to prevent and protect individuals against the arbitrary deprivation of life. As s32(2) of the Charter permits consideration of international jurisprudence to interpret the scope of Charter rights, I note the European Court of Human Rights has found that the right to life includes an obligation on the State to ensure that the health and wellbeing of people in detention are adequately secured by, among other things, providing requisite medical assistance, prompt and accurate diagnosis and care and regular supervision. It is also relevant to consider whether Veronica’s right to life was limited in a discriminatory manner.’ [91] 29 – 30.

<sup>10</sup> *Review of the Medically Supervised Injecting Room – Final Report Key Findings and Recommendations*, February 2023, Centre for Evaluation and Research Evidence

of homelessness. Referrals come from Living Room workers and, pre-COVID, from our drug outreach lawyer visiting the service on a fortnightly basis.

The DOL program has assisted many hundreds of people attending the Living Room on issues ranging from tenancy advice to complex criminal proceedings. For example, in the quarter July - September 2020, our drug outreach lawyer assisted Living Room clients on 22 different legal issues. Of these, 11 were related to infringements (7 involving COVID-related infringements), 7 related to criminal proceedings (with 6 of the 7 on bail) and the remaining involved family violence and intervention orders.

Over the past two years, FLS has provided substantial case work support and case management services to over 100 clients from Living Room alone. Our observation through our work in the City is that there is a significant presentation of women sleeping rough for safety reasons, as well as significant presentations of young people and Aboriginal people.

### **Drug-related activity in the City/ Need for a State Government response to injecting drug-related harms in the City**

In addition to the above, the City as a concentrated entertainment precinct is a location where substantial illicit drug taking as well excessive alcohol consumption takes place.<sup>11</sup> These issues present different regulatory and operational, management, safety concerns to police, council and state authorities that are unlikely to be substantially assisted by the introduction of a MSIS. However, it is important to state that it is our firm view that the quantifiable risks to the general public in terms of violence, sexual assault, and other serious social harms (for example, drink driving, affray, drink spiking) associated with the entertainment precinct far outweigh the social concerns around visibility of an impoverished community with complex needs experiencing substance use disorder and who may inject drugs.

We note the drug-related activity as listed in the survey. We note that several of these “activities” are medical emergencies and/or health and social support needs of people who inject drugs/ experience substance use disorder. Noting our experience that most DOL clients have poly-substance dependence, the general physical health condition of the community likely to access the MSIS is poor (likely to be

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<sup>11</sup> Notably, the highest rate of ambulance call outs nationwide (both within and outside of the home) is characterised as alcohol related. *Alcohol, tobacco and other Drugs, 2015 -2022 snapshot, 26 April 2023, Australian Institute of Health and Welfare, Australian Government, extracted 17 May 2023 <<https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/data-by-region/alcohol-and-other-drug-related-ambulance-attendances>>*

exacerbated beyond the baseline data for those sleeping rough and/ or experiencing or escaping violence).

In partnership with various health partners we confirm the following basic features common for community members with drug use disorders:

- people with drug and alcohol use disorders have increased rates of infections and reduced immune system functioning (including as a result of hepatitis C and HIV);<sup>12</sup>
- cardiovascular and disease rates are significantly high in people who use methamphetamine,<sup>13</sup> heroin,<sup>14</sup> and alcohol use disorder can lead or contribute to cardiovascular disease and/or high blood pressure;<sup>15</sup>
- kidney damage is strongly associated with methamphetamine<sup>16</sup> and heroin use and intravenous drug users are at greater risk of acute kidney injury;<sup>17</sup>
- research indicates that people with mild and borderline intellectual disabilities are at a higher risk than the general population of developing a substance use disorder;<sup>18</sup>
- alcohol and drug use disorders are one of the leading causes of acquired brain injury;<sup>19</sup>
- it is more common than not that a person will have cooccurring substance use disorder and a psycho-social disability;<sup>20</sup>

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<sup>12</sup> H. Friedman, C. Newton & T.W. Klein, 'Microbial infections, immunomodulation and drugs of abuse,' *Clinical Microbiology Reviews* 16, no. 2 (2003): 209-219.

<sup>13</sup> S. Darke, J. Duflou, J. Lappin & S. Kaye. 'Clinical and Autopsy Characteristics of Fatal Methamphetamine Toxicity in Australia.' *Journal of Forensic Sciences* 63, no. 5 (2018): 146-471.

<sup>14</sup> W.H. Frishman, A. Del Vecchio, S. Sanal & A. Ismail. 'Cardiovascular Manifestations of Substance Abuse: Part 2: Alcohol, Amphetamines, Heroin, Cannabis and Caffeine.' *Heart Disease (Hagerstown, Md.)* 5, no. 4 (2003): 253-71.

<sup>15</sup> Alcohol and Drug Foundation, 'Alcohol' <<https://adf.org.au/drug-facts/alcohol/>>, 26 February 2020).

<sup>16</sup> AMA Position Statement Methamphetamine 2015; Turning Point Methamphetamine Treatment Guidelines 2019; Gurel, Ali. 'Multisystem Toxicity after Methamphetamine Use.' *Clinical Case Reports* 4, no. 3 (2016): 226-27.

<sup>17</sup> AMA Position Statement Methamphetamine 2015; Turning Point Methamphetamine Treatment Guidelines 2019; Gurel, Ali. 'Multisystem Toxicity after Methamphetamine Use.' *Clinical Case Reports* 4, no. 3 (2016): 226-27.

<sup>18</sup> M. Mallappallil, J. Sabu, E.A. Friedman & M. Salifu. 'What Do We Know about Opioids and the Kidney?' *International Journal of Molecular Sciences* 18, no. 1 (2017): 223; J. Scott, D.M. Taylor & C.R.K. Dudley. 'Intravenous Drug Users Who Require Dialysis: Causes of Renal Failure and Outcomes.' *Clinical Kidney Journal* 11, no. 2 (2017): 270-74

<sup>19</sup> Health Vic, 'Acquired brain injury and alcohol and drug use' Victorian State Government (web page); Better Health, 'Acquired brain injury' Victorian State Government (web page).

<sup>20</sup> Select Committee on Mental Health, Parliament of Australia, *A National Approach to Mental Health – From Crisis to Community* (First Report, 30 March 2006) ch 13; Victorian Department of Human Services, *Dual Diagnosis: Key directions and Priorities for Service Development* (Report, 01 May 2007, Victorian State Government).

- the co-occurrence of substantial mental health conditions and drug use/ substance dependence disorder is extremely high.<sup>21</sup>

Injecting drug use is the most stigmatised health condition globally.<sup>22</sup> As such, it is normalised that the pressing health needs of people who use drugs/ experience substance use disorder are deprioritised, invalidated, invisibilised.<sup>23</sup> However, based on the available data and knowledge, it is clear that there are critical health, wellbeing and practical support concerns concentrated amongst the community members who would benefit from the introduction of a MSIS into the City. It is also worth noting that it is accepted law that substance use disorder, listed as a mental health condition in the DSM V, is a protected attribute under the *Equal Opportunity Act*, and positive measures must be taken to protect the right to equivalent health services and care for those experiencing the condition, notwithstanding the criminal justice frame that currently sits beside the condition.<sup>24</sup>

Economically, criminal justice responses continue to be preferred over public health responses for the communities of people impacted by substance use disorder/ drug use. Recent research on the social and economic costs of illegal opioid use, including misuse of pharmaceuticals, calculated the total cost at \$15.76 billion.<sup>25</sup> The tangible and intangible costs of premature mortality account for the vast majority of this expenditure, \$2.62 billion and \$10.12 billion respectively.<sup>26</sup> Aside from costs of premature mortality, the biggest expenditure is criminal justice responses at \$936 million.<sup>27</sup> This is despite there being no credible longitudinal evidence domestically or internationally that surveillance, law enforcement, and imprisonment lead to lower levels of drug use or harmful drug use.<sup>28</sup> Public expenditure on medically supervised injecting centres is a critical priority in reducing harm and facilitating effective interventions that not only save lives, but improve the lives of people who use drugs/ experience substance use disorder.

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<sup>21</sup> Select Committee on Mental Health, Parliament of Australia, *A National Approach to Mental Health – From Crisis to Community* (First Report, 30 March 2006) ch 13; Victorian Department of Human Services, *Dual Diagnosis: Key directions and Priorities for Service Development* (Report, 01 May 2007, Victorian State Government).

<sup>22</sup> *Veronica Nelson Inquest* [501] 179.

<sup>23</sup> *Veronica Nelson Inquest*, per Coroner McGregor citing and adopting the methodological tools of the medical and justice conclave in relation to stigma - 57[164] to 59[167].

<sup>24</sup> *Ibid.* [346]118.

<sup>25</sup> 'Alcohol Tobacco and other Drugs in Australia', last updated 26 April 2023, *Australian Institute of Health and Welfare*, Australian Government extracted 23 May 2023 < <https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/impacts/economic-impacts#social>>

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

## Fitzroy Legal Service views about a medically supervised injecting service in the City

Data regarding overdose call outs and deaths in the City indicate there is an incontrovertible need for a MSIS in the locale.

FLS has been a strong supporter for the establishment of the MSIR in North Richmond for many years prior and during its trial period. We have provided services within the centre since its inception, and have provided casework and allied support to approximately 120 clients over the past year alone.

The strength of the MSIR service is not only in reversing overdoses and preventing deaths in the local area. The team of health, dental, housing, family violence, social wellbeing and legal services play a remarkable role in uplifting the conditions of life of the people accessing these services, and providing a sense of worthiness and belonging.

For many DOL clients, abstinence is not a realistic goal. However, there are substantial numbers of clients of the MSIR for whom stabilisation, and improved overall health and functioning, has been a goal that has been reached. For our lawyers and for our community, all possibilities for improved living conditions and opportunities end when clients die as a result of overdose. This is a strong feature of the DOL program – the loss of clients to overdose. As a service we support unequivocally all measures that support the right to life of our clients.

*Case study 1 - Dane (not his real name) was a client referred to the program through the Richmond MSIR. The criminal matters that the DOL was assisting with had been through many twists and turns but had finally reached a position to be finalised, including as a result of the flexibility of the lawyer acting, and the strong supportive material obtained from his workers based at the MSIR. A week before the Court proceeding, the DOL was walking toward the outreach at the injecting room when they saw Dane making his way to the entrance of the centre. He greeted the DOL with enthusiasm, excited about the prospect of finally finishing his matters. Half an hour later, Dane overdosed in the centre. It turned out he had not used for over a month and was therefore susceptible. Fortunately, however, he was in the care of the MSIR staff and any harm (or even death) was completely avoided. Dane was homeless and had nowhere else to use. If the MSIR did not exist, there was every chance that Dane would not have survived this relapse.*

*Case study 2 - Nate is an Aboriginal man, currently homeless, and has a suspected ABI. He had recently been released from prison after a successful application for bail with the DOL. He has returned to homelessness and did not have a phone but he attended our outreach partner's service on a frequent basis so the DOL relied on staff to pass on messages regarding court and his legal matters. Despite Nate's eagerness to be involved in the specialty court, he was resistant to attending court due to an understandable fear of being placed in custody - a fear based on a long history of institutionalisation (e.g. child protection orders as a child and significant periods of incarceration as an adult). As a result, he failed to attend his first ARC hearing which the DOL successfully adjourned requesting some additional time to speak with the client and avoided a warrant. The day*



*of the second ARC hearing, again the DOL attended Court but Nate was not there. The Court was not inclined to adjourn the matter without the client again. The DOL called the outreach partner to find out if they had heard from Nate and staff advised that the client was at the outreach but was resistant to attending Court as he feared being imprisoned and he was embarrassed about his clothes which he had been wearing for many days rough sleeping. After a great deal of encouragement from the Outreach staff and advising from the DOL (which actually involved the DOL leaving court to attend the Outreach), Nate was given a fresh set of clothes to wear from the Outreach staff and attended Court with the DOL. The Magistrate explained to him how the ARC list is different to the mainstream court system, focussing on the rehabilitation of the person rather than punishment. Nate left the proceeding enthused by the process and continues to attend with the support of the DOL and our partner.*

It is expected the planned premises will incorporate a similar model to that of the MSIR in Richmond. The experience of the DOL program and FLS health justice partnerships generally is that co-located services and supports can have substantial positive impacts on the lives of clients. For the proposed MSIS in the City, we would expect that the overdose prevention function will be replicated, and harm reduction health and allied services may have profound positive impacts for affected community, including those living studying and working in the City who are in proximity to unmet need. The capacity of these holistic models to support the most vulnerable in engagement with criminal justice systems and to improve global health outcomes for service users is very substantial from FLS perspective.

### **Community needs and expectations that should be considered in establishing a medically supervised injecting service trial in the city**

It is critical that the introduction of the MSIS is accompanied by strong educative messaging around the health needs of people who use drugs/ experience substance use disorder, some of the underlying drivers of the condition, inclusive of family violence, mental health, acquired brain injury, homelessness, and the capacity of the service to respond holistically to those needs.

It is also critical that there is enhanced literacy around the duty on the state to take positive steps to preserve the right to life, and the extraordinary statistics attesting to loss of life by way of overdose (which have annually exceeded the deaths on our roads for many years).

Finally, the community needs to understand that these issues are not created by the MSIS, but form a humane evidence-based necessary response to unnecessary deaths. Stigma towards people who inject drugs has recently been the subject of extensive discussion in the Coronial Inquest into the Death of

Veronica Nelson, and in fact was found to be a causative factor in Veronica's tragic and unnecessary passing.<sup>29</sup>

The responsibility on authorities (council, state, police) to play an active role in resisting stigma and reframing the right to health and life as belonging to all people is critical.<sup>30</sup> This extends to media representations, development and enforcement of local laws, operational approaches by members of the police force, development of guidelines around how persons accessing the health service should be treated.

### Impacts of a medically supervised injecting service trial on the City

In our view the impacts of a MSIS trial in the City will be extremely positive. A centralised service delivery and cross referral point for people who use drugs/ experience substance use disorder can only benefit the highly vulnerable cohort residing in the City, and may have the added benefit of reversing overdoses/ reducing deaths by overdose for Victorians living in other regions as has been the experience in the MSIR in Richmond. It can also be expected that instances of public injecting activity will decrease. It would also be hoped that there will be increased safety generally for people who use drugs in accessing the premises for the purposes of injecting, both from a health perspective and a social perspective. That women may experience enhanced safety is an extremely significant consideration from our point of view.

It is critical that those in a position of leadership rely on reliable evidence in making assessments around impacts. The visibility of the homeless community and people who use alcohol and other drugs has been consistent for many decades in the City (dating at least back to the Depression era in the 1930s).<sup>31</sup> Stigma and discrimination towards community members experiencing hardship and/or disabilities is no longer socially acceptable. They are members of our community deserving of as much respect and

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<sup>29</sup> *Veronica Nelson Inquest* [676]235

<sup>30</sup> *Veronica Nelson Inquest*, per Coroner McGregor, 'Stigma is the result of social power relations, that drive four processes: (a) distinguishing and labelling differences; (b) associating negative attributes to those identified differences; (c) separating and distancing of 'us' and 'them'; (d) culminating in status loss and discrimination. Stigma occurs when elements of labelling, stereotyping, status loss and discrimination occur together in a power situation that allows them.' 57[164] - [165] 'stigma is a multi-level phenomenon that can be embedded in organisational structures and policies, and in laws and media representations (structural stigma); manifest during interactions between people (interpersonal stigma); and individuals can internalise social messages about them or people like them, resulting in feelings of lower self-worth (internalised stigma); stigma towards people with multiple stigmatised identities (intersectional stigma) results in multiple and severe disadvantage; intersectional stigma in relation to people who inject drugs (especially women who inject drugs) and First Nations people is well-described; and stigma has been accepted as a fundamental cause of population health inequalities.' 58[166]

<sup>31</sup> For example, the Dudley Flats of the Great Depression <[https://en.wikipedia.org/wiki/Dudley\\_Flats](https://en.wikipedia.org/wiki/Dudley_Flats)>

consideration as anyone else (arguably more so given the complexity of disabilities and socio-economic hardships presenting).

It is critical that statistical evidence regarding criminal offending is monitored with a critical lens. That evidence should not include charges of possession and use (which likely indicate the safe injecting centre is in fact in use), while 'public order' offences and breaches of bail should be interrogated closely for discriminatory impacts relating to intersecting protected attributes (disability, race, gender) as well as homelessness. It may be appropriate to consider whether Victoria Police should play a more structured role in ensuring safe access for people who use drugs/ with substance use disorder to the new site, to ensure that there are clear communications and accountabilities across government departments that serve to protect the right to life and enhance the functionality of the government funded service.<sup>32</sup>

### Supporting safety if a medically supervised injecting service trial was established

There are two existing services from which learnings should be garnered – the Medically Supervised Injecting Centre operated by Uniting Care in Kings Cross, and the MSIR operated by North Richmond Community Health in Richmond. There are international examples that would also inform learning.

We are acutely aware at FLS that periods during which there is strong visible police presence in the vicinity of the Richmond MSIR deters use of the premises. It is difficult to see how that serves any community health or safety objectives whatsoever. It is also difficult to see how surveillance, and any associated arrests for use and possession, based on intelligence gathered through attendance at the medically supervised injecting services is consistent with:

- the harm reduction commitments of Victoria Police<sup>33</sup>
- the State commitment to take action to stem the loss of life through overdose through provision of relevant health services
- the human right to equitably access appropriate and adapted health services in relation to the mental health condition and protected attribute of substance use disorder

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<sup>32</sup> At minimum it is critical that all police likely to encounter users of the service have thorough training on the function of the service and its role in protecting the health safety and right to life of Victorian citizens, as well as obligations attached to the police as public authorities to consider the right to life and equality before the law in operational and incidental discretionary decision making.

<sup>33</sup> See Victoria Policy Strategy '*Prevent, Disrupt, Connect, Care, Drug Strategy 2020 – 2025*', extracted 22 May <<https://www.police.vic.gov.au/drug-strategy>> . See also Victoria Police Manual directives relating to policing in the vicinity of needle syring programs, and the medical supervised injecting room, (which may be subject to review and reconsideration for inclusion of charter and equal opportunity considerations subsequent to the findings in the *Veronica Nelson Inquest*.)

*Case study 3 - Mike was arrested for possessing heroin while waiting to enter the MSIR. Mike was extremely distressed about the incident as he felt being arrested for possessing drugs, which he intended to use under the medical supervision at MSIR as that supervision provided him and his family with a degree of comfort about his safety. The DOL team liaised with MSIR to view their CCTV footage (in addition to the Police footage) and secure witness statements should the matter proceed to a contested hearing. The DOL summary case conferenced the matter with Prosecution, pointing to their own policy and strategy in favour of a harm minimisation approach. The Prosecution agreed that the charge should have never been issued and withdrew the charge. While the outcome was positive, on each such occasion, substantial public resources are directed by police towards preventing vulnerable persons accessing health services adapted to their specific health condition, and subsequently, by prosecutors, lawyers, community workers and sometimes magistrates in reviewing decisions that should in our view never have been made. The goal of the MSIR is ultimately preservation of life. Prohibitive policing practices not only affect the individual, but have a flow on effect in terms of dissuading use of the health service, which in any other circumstance, would be a highly private and confidential space.*

*Case study 4 - Clare was referred to the DOL shortly after she was arrested and charged with possessing a drug of dependence (heroin) as she was about to enter the MSIR. The DOL initially liaised with the informant seeking they consider exercising their discretion to not pursue the charge. The DOL argued that to charge her for possessing heroin she intends to use at the MSIR will not prevent a dependence on heroin but rather compel drug use in a far less safe environment without supports, therefore increasing her risk of death. The informant opted to pursue the charge and the matter was listed to be heard in the Magistrates' Court. The DOL was later more successful in discussions with prosecution, with the result of the charge being withdrawn. In those discussions, the DOL pointed to the legislation which provides the option for police to exercise discretion in the vicinity of the MSIR, the harm reduction section of the Victoria Police Drug Strategy and the Victoria Police Manual - Drug programs and services. The DOL argued that targeting people for drug possession outside the MSIR, being drugs held for purpose of using at MSIR, is against the Victorian drug strategy and the VPM - the latter which states that "the vicinity of MSIC is not targeted solely for the purpose of enforcing drug use or possession laws". Without the partnership with the MSIR, this person (along with multiple others similarly charged) would most likely have had the charge proceed to court, entered a plea of guilty, and unjustly have charges added to their criminal record simply for the reason of seeking to use safely.*

### **Supporting amenity surrounding a medically supervised injecting service**

The most common feedback received through staff at FLS relates to the lack of safe affordable housing, the lack of spaces to store belongings, and the lack of common spaces to spend time in company with others.

Under current local laws, the presence of four or more people identified as 'homeless' is considered a hot spot, and a direction to disperse can be given.<sup>34</sup> A failure to comply with such a move on direction can result in arrest and charge.

Two challenges, storage of belongings and a place to commune, can be addressed. The development of lockers for people to store belongings need not be centralised, and can be dispersed across the city at different locations. Similarly, spaces for people without housing to spend time together can be dispersed and managed.

It would be expected that a number of charitable purpose organisations may be willing to participate in such a scheme, with limits on numbers at any given time. While the housing crisis continues, and attendant vulnerability to extreme harm exists, these small humanising measures should be actioned as soon as possible. The new MSIS may well act as a hub to disseminate such information. Such measures would go a great distance to improving amenity and liveability for residents of the City, including rough sleepers, in the vicinity of the MSIS and generally.

### **Additional comments**

As will be evident, FLS is a strong supporter of the trial and enthusiastic in relation to the possibilities that may open up through such a service. We are available to provide further input and support at any stage should that be of assistance.

### **Conclusion**

FLS is grateful for the opportunity to provide feedback to the community consultation process. Our perspectives are grounded in long term flexible service delivery to community members who will be likely to utilise their service. The DOL team has deep respect for our DOL clients, the struggles they have had to endure, and continue to encounter in daily living, while the war on drugs continues, and the drivers or social determinants of their condition remain unaddressed.

FLS has also had countless opportunities to participate and bear witness to improvements in the lives of clients through harm reduction framed, cross sector service delivery partnerships, including mental

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<sup>34</sup> See City of Melbourne *Activities Local Laws 2019*, associated City of Melbourne *Homelessness Protocol*, and regulations regarding retrieval of confiscated items, extracted 24 May 2023 <<https://www.melbourne.vic.gov.au/about-council/governance-transparency/acts-local-laws/Pages/local-laws-2019.aspx>>

health, legal, housing, dental, and options for various iterations of healing, stabilisation, recovery. People who use drugs have children, families, mothers, fathers, friends, community.

When a person who uses drugs dies unnecessarily, all opportunities end, and so many people are injured so very profoundly and permanently by the loss. We commend the introduction of the MSIS on the basis that every life is sacred, and every person has the right to strive to live a life of dignity and contribution. While death by overdose continues to exceed the road toll, it is extraordinary to contemplate why there is even a debate to be had.

Yours faithfully,

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