

## Directions Health Services Position Paper

### Decriminalisation to reduce harm and positively impact on drug use

Evidence demonstrates that criminal penalties do not reduce drug use. In the past decade, Australia's incarceration rate for illicit drug offences has increased by 64 per cent and our drug-induced death rate has recently hit the highest number in 20 years, with 1,808 deaths registered in 2016.<sup>1</sup>

Criminal penalties can have long lasting harmful consequences that are in addition to, and separate from, any harm associated with the drug use itself.

The most significant harms stem from bringing people into contact with the criminal justice system. If found guilty, the person will have a criminal record that will impact their ability to continue their education, secure employment, or even undertake voluntary work. They may be incarcerated, at significant expense to the public purse, and for most people this is unlikely to result in rehabilitation.

Other harmful consequences include poverty, homelessness and relationship breakdown.

Most importantly, individuals who use substances illicitly may be deterred from being honest about their substance use and seeking help and may experience discrimination from health and other service providers due to the stigma associated with the 'criminalisation' of drug use.

The harm experienced from criminalisation not only affects the individual concerned, it impacts the financial security, integrity and well-being of families and can have significant negative intergenerational consequences.

The harms of criminalisation also extend to the community, for example, the community bears the high cost of policing, legal proceedings and incarceration, and the consequential extended delays for other matters in the court system. These costs are borne despite the fact there is no evidence criminalisation deters or reduces illicit drug use.

There is strong evidence early intervention and diversion into treatment, rather than the justice system, saves taxpayer dollars by reducing criminal recidivism; improving health, wellbeing and life outcomes; significantly reducing costs associated with the judicial process and incarceration; and reducing participants' future reliance on welfare and service supports.

Decriminalisation has the potential to reduce crime rates in every jurisdiction by providing an opportunity for earlier intervention in a person's offending before offences become more serious.

The current system is not working to reduce drug use or keep the community safer.

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<sup>1</sup> ABS, *Causes of Death in Australia, 2016* (June 2018)

<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/3303.0~2016~Main%20Features~Drug%20Induced%20Deaths%20in%20Australia~6>

## **Decriminalisation is a harm minimisation strategy**

Decriminalisation of illicit drugs is a harm minimisation strategy that involves removing criminal legal penalties and sanctions for offences involving use and possession of small amounts of illicit drugs for personal use.

Civil or administrative sanctions, such as a fine or other conditions, may still be imposed, and any illicit drugs found by police confiscated. Importantly, the person would not have a criminal record simply for personal use or possession of small quantities of illegal substances that will impact their ability to gain employment or participate in other community activities. Manufacturing and sale of illicit substances would remain a criminal offence.

Legalisation differs from decriminalisation in that it also includes regulation of production and supply of legalised substances, in addition to removal of criminal penalties for use and personal possession, as is the case with tobacco and alcohol. Legalisation, which is not being recommended in this paper, would potentially resolve the current safety issues associated with taking illicit substances in which the chemical composition is unknown.

## **Decriminalisation options**

Decriminalisation can occur through a *de jure* model, which requires passing legislation or a court decision. It can also be implemented through a *de facto* model, which does not involve formally changing legislation and largely relies on the discretion and practice of administrative and law enforcement bodies.

Decriminalisation of illicit drugs reframes the use of illicit drugs from a criminal issue to a health issue. A detrimental effect of our current prohibition approach to all illicit drugs has been that many people who use drugs have been afraid to seek the help and support they need due to a fear of being persecuted and the stigma that has been created around this issue. Currently only a small portion of people with problematic drug use receive the assistance they need.

## **Australian drug policy in practice**

Australia's National Drug Strategy, first implemented in 1985, is built around three pillars of harm minimisation:

1. *Supply reduction* through reducing the availability of drugs through legislation and law enforcement
2. *Demand reduction* through prevention and treatment
3. *Harm reduction* through strategies that reduce the harms experienced by the people who use drugs and the community

However, in practice, policy and funding has heavily focused on the 1<sup>st</sup> pillar and very little is expended on the 3<sup>rd</sup> pillar. The Australian government allocates \$1.7 billion in response to illicit drugs. Sixty six percent (66%) of this (\$1.1 billion) is spent on law enforcement. Thirty two percent (32%) is allocated to treatment (\$361 million), and two percent (2%) to harm reduction (\$36 million).

Australia has the highest rate of policing drug use in the world. In the last 12 months, 81 per cent of drug offences were for personal use, not supply. Aboriginal and Torres Strait Islander people and other disadvantaged populations are disproportionately represented.

## Outcomes of decriminalisation

In 2001, the Portuguese Government decriminalised all drugs across the country in response to one per cent of their population being dependent on heroin, as well as other drug use that was severely impacting their communities. The Government removed all criminal penalties for personal drug use and possession, created more jobs and financed microloans for people impacted by drug use, as well as setting up Drug Dissuasion Commissions.

These Commissions have been instrumental in Portugal's decriminalisation model as they have discretion to decide the response to each individual, dependant on their level of use. Administrative sanctions range from issuing fines through to periodic reporting and referral to treatment. A whole of government response was implemented. Expenditure on law enforcement and incarceration was reinvested in administrative infrastructure, treatment programs and social reintegration.

Portugal's model has been acknowledged worldwide as being hugely successful in reducing the stigma and isolation experienced by people who use drugs. Since the introduction of decriminalisation, the number of people in Portugal seeking treatment has increased by 60%.<sup>2</sup> They have also seen, in almost every category of drugs, a reduction in drug usage overall. The lifetime prevalence rates in the pre-decriminalisation era of the 1990s were higher than the post-decriminalisation rates.<sup>3</sup>

Where decriminalisation has been implemented in other countries, the experience has been similar to Portugal, in that it has not been associated with any significant increase in drug use.<sup>4</sup>

## Directions Health Services supports decriminalisation

Australia needs to change the way in which drug use and drug dependence is viewed and shift away from a criminal approach to a health-first approach. Australia needs to introduce a holistic, harm-minimisation based approach in order to have a chance at decreasing the high rate of incarceration and overdose deaths.

This can be achieved by removing the stigma people who use drugs experience due to criminalisation and increasing availability of harm reduction and treatment services. It is essential to eliminate the economic, social and physical barriers people face when accessing vital health treatment and associated support services.

To ensure the policy will be effective in reducing the harms individuals, families and communities experience, and achieve an increase in treatment uptake, this must be accompanied by the required investment in treatment and other support programs.

Implementing a health-first approach to drug dependence is in line with community expectations and preferences. The latest National Drug Strategy Household Survey found greater support for education and treatment and lower support for law enforcement measures

A de jure (legal) model of decriminalisation would be preferable to a de facto (practice) model, as it removes the risk of uncertain or inequitable application, which may disadvantage particular population groups. However, regardless of the model adopted, Australian states and territories would reap significant social and financial benefits from implementing either model of decriminalisation, coupled with a health-centred approach to illicit drug use.

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<sup>2</sup> Caitlin Elizabeth Hughes and Alex Stevens, 'What can we learn from the Portuguese Decriminalization of Illicit Drugs' (21 July 2010) *Brit J Criminol*, 980.

<sup>3</sup> Glenn Greenwald, 'Drug Decriminalization in Portugal: Lessons for creating fair and successful drug policies' (2009) *Cato Institute*, 8.

<sup>4</sup> National Drug & Alcohol Research Centre, Decriminalisation of drug use and possession in Australia – A briefing note, 2016  
<https://ndarc.med.unsw.edu.au/sites/default/files/ndarc/resources/Decriminalisation%20briefing%20note%20Feb%202016%20FINAL.pdf>