

## DRUG DECRIMINALISATION

### OUR POSITION

Drug use is a health issue. Turning Point and the Monash Addiction Research Centre support the personal possession and use of prohibited drugs being decriminalised, and associated criminal penalties replaced with a harm reduction approach that focusses on health interventions supported by greater investment in treatment services.

### RECOMMENDATIONS

1. Remove criminal penalties for the personal possession and use of all prohibited drugs.
2. Manage the personal possession and use of all prohibited drugs with education, treatment, and administrative sanctions in rare cases as necessary, as per the Portuguese model. To support this, recalibrate the drug budget so there is greater investment in treatment services.
3. Expunge convictions for non-violent offences relating to the personal possession and use of drugs and release those currently serving time for these offences.
4. Mandate drug diversion programs, remove limits on the number of cautions, and make drug diversion program treatment voluntary.

### BENEFITS

- Reduced demands on first responders and health professionals.
- Reduced acquisitive crime, incarceration rates, and pressure on the justice system.
- Reduced social costs, including improved employment prospects for many Australians.
- Reduced stigma associated with drug use and corresponding increase in help-seeking.
- Significant productivity gains and health and justice system cost savings.

### KEY POINTS

- Prohibition has failed to eliminate drug use and has instead resulted in an expanded drug market and more dangerous drug supply controlled by organised crime.
- Decriminalisation is the removal of criminal penalties. It is not the same as legalisation.
- Decriminalising the personal possession and use of drugs does not increase drug use, nor does it involve the removal of criminal penalties for the manufacture and trafficking of illicit substances.
- Portugal decriminalised the possession and use of all drugs in 2001. Since then, 'acquisitive' crime to procure drugs has decreased and overall rates of drug use in Portugal have not increased.
- There is widespread support for decriminalisation among health and law enforcement professionals.
- All Australian jurisdictions have drug diversion programs, but their effective and fair delivery depends on diversion programs being made mandatory, there being no limit on the number of cautions, and treatment being voluntary.

## DRUG DECRIMINALISATION

### BACKGROUND

#### Prohibition is a failed policy harming Australians

The global ‘war on drugs’ is one of the single greatest public policy failures in history. Its cost is measured in millions of lives and trillions of dollars. Prohibition was intended to prevent drug use and drug-related harms, but it has had the opposite effect. Not only has prohibition failed to eliminate the use of drugs – it has expanded drug markets and resulted in a more dangerous drug supply.<sup>1</sup> Drug-related deaths increased 60% worldwide between 2000 and 2015,<sup>2</sup> and the use of illicit drugs now accounts for 1.3% of the global disease burden.<sup>3</sup>

Enforcing our punitive drug laws requires significant government funding, which comes at the expense of evidence-based public health interventions.<sup>4</sup> Australia has one of the highest rates of drug dependence-related health burdens in the world,<sup>5</sup> yet law enforcement consumes 61–69% of the total drug budget and treatment a mere 20–23%.<sup>6</sup> The result is that every year up to 500,000 Australians go without the treatment they need,<sup>7</sup> while 80,000 are arrested for drug use.<sup>8</sup> Arrests of criminal drug manufacturers and traffickers are rare by comparison. In Victoria, for example, 93.5% of drug arrests in 2019–20 were of users,<sup>9</sup> and 80% were only for drug possession or use.<sup>10</sup> While rates of drug use in Australia remain stable, more people who possess and use drugs, even in small quantities, risk criminal conviction and imprisonment due to increasing detection rates.<sup>11</sup>

We know prisons are ineffective at rehabilitation and preventing re-offending, yet we keep building new prisons at great expense to lock up an ever-growing number of people who use drugs. We do this even though most people who use drugs don’t experience any problems related to their use and are a danger to no one. Mass imprisonment tears at our social fabric and is an egregious misuse of public money.<sup>12</sup> People who use drugs should be provided with any health and wellbeing supports they may need, not treated like criminals.

Recognising the ill effects of criminalisation on people who use drugs, the United Nations Chief Executives Board for Coordination issued a statement in 2018 that highlighted the need to “promote prevention and treatment, including harm reduction; and enhance action by justice and law enforcement systems to stop organized crime and protect – rather than target – people who use

<sup>1</sup> Alex Wodak, ‘The abject failure of drug prohibition’ (2014) 47(2) *Australian & New Zealand Journal of Criminology* 190  
[https://idhdp.com/media/362648/anj524424\\_rev2-wodak.pdf](https://idhdp.com/media/362648/anj524424_rev2-wodak.pdf)

<sup>2</sup> United Nations, *Statement by UN High Commissioner for Human Rights Michelle Bachelet to the Harm Reduction International Conference* (Web Page) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24529&LangID=E>>

<sup>3</sup> Louisa Degenhardt et al, ‘The global burden of disease attributable to alcohol and drug use in 195 countries and territories, 1990–2016: a systematic analysis for the Global Burden of Disease Study 2016’ (2018) 5 *Lancet Psychiatry* 987.

<sup>4</sup> London School of Economics Expert Group on the Economics of Drug Policy, *Ending the Drug Wars* (Report, May 2014)  
<https://www.lse.ac.uk/ideas/publications/reports/ending-drugs>

<sup>5</sup> Op. cit. 3, 1564.

<sup>6</sup> A Ritter, R McLeod, and M Shanahan, Monograph No. 24: Government drug policy expenditure in Australia – 2009/10. DPMP Monograph Series. (2013) Sydney: National Drug and Alcohol Research Centre.

<sup>7</sup> A Ritter, J Chalmers, and M Gomez, ‘Measuring unmet demand for alcohol and other drug treatment: The application of an Australian population-based planning model’ (2019) s18 *Journal of Studies on Alcohol and Drugs, Supplement* 42–50.

<sup>8</sup> The Age, *Reducing drug harm through decriminalisation and regulation makes good sense* (Web Page, 21 March 2017)  
<https://www.theage.com.au/national/victoria/reducing-drug-harm-through-decriminalisation-and-regulation-makes-good-sense-20170321-gv335f.html>

<sup>9</sup> Australian Criminal Intelligence Commission, ‘Illicit Drug Data Report 2019–20’, (Report, October 2021) Commonwealth of Australia 168.

<sup>10</sup> Crime Statistics Agency, *Offences recorded: Tabular visualisation, C Drug offences* (December 2021)  
<https://www.crimestatistics.vic.gov.au/crime-statistics/latest-victorian-crime-data/recorded-offences-2>

<sup>11</sup> Caitlin Hughes et al, *Decriminalisation of drug use and possession in Australia – A briefing note* (Web Page, 2016) 6  
<https://ndarc.med.unsw.edu.au/sites/default/files/ndarc/resources/Decriminalisation%20briefing%20note%20Feb%202016%20FINAL.pdf>

<sup>12</sup> Queensland Productive Commission, *Imprisonment and Recidivism* (Summary Report, August 2019) 6  
<https://qpc.blob.core.windows.net/wordpress/2020/01/SUMMARY-REPORT-imprisonment-.pdf>

drugs.”<sup>13</sup> Decriminalising the personal possession and use of drugs would free up police resources to go after the real criminals.

### **Decriminalisation leads to better outcomes**

Decriminalisation is not the same as legalisation. Legalisation would see currently illegal drugs legalised and regulated like other substances that are used recreationally but which can be harmful, such as alcohol and tobacco. Decriminalisation is merely the removal of criminal penalties.

Through the creation of administrative sanctions or infringements, decriminalisation allows for offenders to be dealt with outside the criminal justice system. By removing offences for personal drug possession and use, law enforcement is better able to focus efforts on criminal drug manufacturers and traffickers, and individual drug users are more likely to seek help for substance use disorders or addiction, as well as any wraparound support they need.<sup>14</sup>

Decriminalisation reduces both individual and societal harms caused by prohibition. The Drug Policy Modelling Program at the University of New South Wales noted in a 2016 briefing paper that the decriminalisation of drug use “reduces the costs to society, especially the criminal justice system costs; reduces social costs to individuals, including improving employment prospects; does not increase drug use; and does not increase other crime.”<sup>15</sup>

### **Criminalisation unfairly impacts diverse and marginalised communities**

The criminalisation of the personal possession and use of drugs is historically rooted in explicit racism and remains a structural enabler of it.<sup>16</sup> In Australia, First Nations people are 3% of the population yet represent 29% of the prison population,<sup>17</sup> with a history of alcohol and other drug use commonly reported by First Nations prison entrants contributing to an incarceration rate 16 times that of non-First Nations people.<sup>18</sup>

People of diverse sexual orientations and gender identities are likewise disproportionately vulnerable to harms associated with the criminalisation of drug use, such as stigma, discrimination, and reduced use of health services,<sup>19</sup> as well as harms associated with the after-effects of historical criminalisation and oppression of minorities, such as the reluctance to report crime due to assumptions of police hostility.<sup>20</sup>

## **THE CASE FOR CHANGE**

### **We already have *de facto* decriminalisation**

In Australia, the possession and use of drugs is largely within the remit of state and territory, not Commonwealth law. At present, the personal possession and use of prohibited drugs is a criminal offence punishable by up to two years in prison in most states and territories.<sup>21</sup> However, drug

<sup>13</sup> Op. cit. 2. See also United Nations Chief Executive Board for Coordination, CEB/2018/2, issued 18/1/2019 <<https://www.unsceb.org/CEBPublicFiles/CEB-2018-2-SoD.pdf>>

<sup>14</sup> Isabella Benfer et al, ‘The impact of drug policy liberalisation on willingness to seek help for problem drug use: A comparison of 20 countries’ (2018) 56 *International Journal of Drug Policy* 162-175.

<sup>15</sup> Op. cit. 11, 1.

<sup>16</sup> Brian Earp et al, ‘Racial Justice Requires Ending the War on Drugs’ (2021) 21(4) *The American Journal of Bioethics* 4-19.

<sup>17</sup> ‘4512.0 - Corrective Services, Australia, December Quarter 2019’, Australian Bureau of Statistics 12/3/2020.

<sup>18</sup> Michael Doyle et al, ‘Alcohol and other drug use among Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander men entering prison in New South Wales’ (2015) 3(15) *Health & Justice* 1-10.

<sup>19</sup> Ele Morrison, ‘Drug Policy and criminalisation: more harm than good’ (2015) 13(1) *HIV Australia* <<https://www.afao.org.au/article/drug-policy-criminalisation-harm-good/>>

<sup>20</sup> Angela Dwyer, ‘Policing lesbian, gay, bisexual and transgender young people: a gap in the research literature’ (2011) 22(3) *Current Issues in Criminal Justice* 415.

<sup>21</sup> Op. cit. 11.

diversion programs, which aim to keep people out of the criminal justice system by redirecting them to education and treatment,<sup>22</sup> are currently available in all Australian jurisdictions.

Drug diversion programs are a form of in practice (de facto) decriminalisation for personal drug possession and use, as opposed to in law (de jure) decriminalisation, which would see drug use remain illegal, but criminal penalties for personal possession and use of drugs removed from the law. Currently, de jure decriminalisation of personal possession and use of prohibited drugs in Australia is limited to cannabis in South Australia and the Northern Territory, with the Australian Capital Territory having gone further and legalised cannabis possession, use and cultivation under certain circumstances.

While drug diversion programs result in cost savings,<sup>23</sup> high compliance, and decreased post-offending,<sup>24</sup> the big drawback is people can still face criminal penalties. People fall through the cracks of diversion programs for a range of reasons. For example, Victoria's drug diversion program has prescribed treatment and a maximum of two police cautions, and cautioning decisions are left to the discretion of police officers or the court.<sup>25</sup> Mandatory treatment ignores the fact that people may be struggling with addiction and unable to reduce their drug use, or simply not ready for treatment. Mandatory treatment, coupled with cautioning discretion and limits, results in inconsistent and unfair outcomes – the opposite of what the justice system should seek to promote.

Drug diversion programs should be mandated and limits on cautions removed. Importantly, while diversion programs should be mandated, the treatment recommended by them should not be mandatory, because we know that treatment entered voluntarily, where participants are motivated and their autonomy is respected, leads to better outcomes.<sup>26</sup>

### **Widespread support for decriminalisation**

The decriminalisation of personal drug possession and use is supported by:

- The Royal Australian College of General Practitioners,<sup>27</sup> and Royal Australasian College of Physicians.<sup>28</sup>
- Mick Palmer AO APM, former Commissioner of the Australian Federal Police, as well as three other former police commissioners and assistant commissioners, two former heads of corrective services, a former supreme court judge and a former director of public prosecution.<sup>29</sup>
- The Fair Treatment partnership for drug law and policy reform, which has over 60 organisational partners from Australia and overseas representing researchers, health, policy, legal and law enforcement professionals, social workers, drug users and diverse communities.<sup>30</sup>
- The United Nations Chief Executives Board for Coordination, representing 31 UN agencies.<sup>31</sup>

<sup>22</sup> Op. cit. 11, 5-6.

<sup>23</sup> Joanne Baker and Derek Goh, *The Cannabis Cautioning Scheme three years on: An implementation and outcome evaluation* (Report, Sydney, New South Wales, January 2004) Bureau of Crime Statistics and Research.

<sup>24</sup> Op. cit. 11.

<sup>25</sup> 360Edge, *What is drug diversion?*, (Web Page, December 17 2020) <<https://360edge.com.au/drug-diversion-should-be-evidence-based/>>

<sup>26</sup> David Farabee, Michael Prendergast and M. Douglas Anglin, *The Effectiveness of Coerced Treatment for Drug-Abusing Offenders* (Web Page) <[https://www.uscourts.gov/sites/default/files/62\\_1\\_1\\_0.pdf](https://www.uscourts.gov/sites/default/files/62_1_1_0.pdf)>

<sup>27</sup> Shannon Deery, 'GPs back reform of drug law', *Herald Sun* (23 February 2022)

<sup>28</sup> Royal Australasian College of Physicians, 'RACP Submission: Victorian Parliament Law Reform, Road and Community Safety Committee Inquiry into Drug Law Reform' (March 2017).

<sup>29</sup> Mick Palmer et al, *Can Australia respond to drugs more effectively and safely?: Roundtable report of law enforcement and other practitioners, researchers and advocates* (Report, Australia, September 2015)

<<http://australia21.org.au/wp-content/uploads/2017/02/Can-Australia-respond-to-drugs-more-effectively-and-safely-Roundtable-report.pdf>>

<sup>30</sup> Uniting Church, *Fair Treatment Campaign* (Web Page) <<https://nswact.uca.org.au/social-justice/the-social-justice-forum/fair-treatment-campaign/>>

<sup>31</sup> United Nations Chief Executive Board for Coordination, CEB/2018/2, issued 18/1/2019 <<https://www.unsceb.org/CEBPublicFiles/CEB-2018-2-SoD.pdf>>

## The Portuguese experience

Portugal removed all criminal penalties for the personal possession and use of drugs in 2001.<sup>32</sup> The trafficking of such drugs remains a criminal offence, however, individuals caught with small quantities are subject to administrative, not criminal, penalties. The Commissions for the Dissuasion of Drug Addiction (CDTs) decide on the exact penalties, however, most cases referred to it are suspended, and penalties are not applied.<sup>33</sup> CDTs consist of a legal expert, health professional, and social worker, supported by a multi-disciplinary team, and offer “targeted advice and interventions, in conjunction with a network of wide-ranging (e.g., employment, psychological, medical, housing) local support.”<sup>34</sup>

People who are dependent on drugs can also access safe forms from government-approved providers. This allows them to safely manage and ultimately stop their use. While people experiencing drug dependence are encouraged to seek treatment, those who do not are rarely sanctioned, because the aim is for people to begin treatment voluntarily, which improves the chances of treatment being successful.

Following decriminalisation in Portugal, overall rates of drug use have not increased, harms associated with drug use have decreased, and more people have sought and accessed treatment. HIV diagnoses linked to injecting drug use dropped from 50% to 1.7%.<sup>35</sup> Rates of acquisitive crime, namely crime committed to ultimately help acquire drugs, also decreased.<sup>36</sup> Portugal’s success has now been replicated in other jurisdictions around the world.<sup>37</sup>

## CONCLUSION

The so-called ‘war on drugs’ is a war on people. It is a war on people who are harmed or die because the black market created by prohibition and controlled by organised crime has resulted in a more dangerous drug supply. It is a war that continues to inflict significant collateral damage.

First responders and healthcare workers manage avoidable overdoses and illness because people don’t know the purity of the drugs they are taking and unknowingly consume toxic additives or dangerous substitutes added by criminal manufacturers.

Minorities, especially people of colour, are unfairly targeted, over-policed and disproportionately incarcerated under laws they are less equipped to defend themselves against and that are historically rooted in racism.

Scarce resources are wasted policing drug users who are a danger to no one, instead of hardened criminals who really should be behind bars.

We must end this failed, harmful war. It is time to decriminalise the personal possession and use of all prohibited drugs.

<sup>32</sup> Glen Greenwald, Drug decriminalization in Portugal: Lessons for creating fair and successful drug policies (White Paper, September 2009) <[https://object.cato.org/sites/cato.org/files/pubs/pdf/greenwald\\_whitepaper.pdf](https://object.cato.org/sites/cato.org/files/pubs/pdf/greenwald_whitepaper.pdf)>

<sup>33</sup> Ana Sofia Santos et al, 2012 National report (2011 data) to the EMCDDA: “Portugal” new developments, trends and in-depth information on selected issues (Report, European Monitoring Centre for Drugs and Drug Addiction 2012) 102. <[http://www.emcdda.europa.eu/attachements.cfm/att\\_214060\\_EN\\_Portugal\\_NR2012.pdf](http://www.emcdda.europa.eu/attachements.cfm/att_214060_EN_Portugal_NR2012.pdf)>

<sup>34</sup> Arianna Silvestri, Gateways From Crime To Health: The Portuguese Drug Commissions (Report, Winston Churchill Memorial Trust, 2014) 11-12 <<https://www.wcmt.org.uk/fellows/reports/drug-use-health-issue-learning-portuguese-policies>>

<sup>35</sup> Harvey Slade, ‘Case study: drug decriminalisation in Portugal: setting the record straight’, (Report, 2020) Transform Drug Policy Foundation.

<sup>36</sup> Caitlin Hughes and Alex Stevens, ‘What can we learn from the Portuguese decriminalisation of Illicit Drugs?’ (2010) 50(6) *British Journal of Criminology* 1010.

<sup>37</sup> Niamh Eastwood, Edward Fox and Ari Rosmarin, ‘A quiet revolution: Drug decriminalisation across the globe’ (Report, March 2016) 6.



## RECOMMENDATIONS

1. Remove criminal penalties for the personal possession and use of all prohibited drugs.
2. Manage the personal possession and use of all prohibited drugs with education, treatment, and administrative sanctions in rare cases as necessary, as per the Portuguese model. To support this, recalibrate the drug budget so there is greater investment in treatment services.
3. Expunge convictions for non-violent offences relating to the personal possession and use of drugs and release those currently serving time for these offences.
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