thorneharbour health

POSITION SUMMARY

Drug decriminalisation

THORNE HARBOUR HEALTH'S POSITION

The personal possession and use of all drugs should be decriminalised. Public health interventions should be introduced to reduce drug-related harms.

RECOMMENDATIONS

1. Decriminalise the personal possession and use of all drugs.
2. Possession and use of drugs should be managed through the public health system using education, rehabilitation, and in rare cases as necessary, administrative sanctions, as per the Portuguese model.

BENEFITS

- Reduced drug-related harms.
- Improved access to treatment.
- Reduced pressure on the justice system.

BACKGROUND

- Lesbian, gay, bisexual, and trans and gender diverse (LGBT) people use drugs that are deemed to be illicit at significantly higher rates than the general population.
- Decriminalisation is the removal of criminal penalties for personal possession and use of drugs. It is not the same as legalisation.
- Lesbian, gay, bisexual and trans and gender diverse people use drugs at significantly higher rates than the general population, so these communities are disproportionately impacted by the criminalisation of personal drug use.
- Evidence shows drug decriminalisation does not increase drug use or reduce crime and drug-related harms.
- Personal drug use is a public health issue, not an issue for law enforcement.
- Drug decriminalisation has proven to be effective in several international jurisdictions.
- Portugal decriminalised the possession and use of all drugs in 2001. Rates of drug use in Portugal have not increased, and 'acquisitive' crime to acquire drugs has decreased.
- There is widespread community and expert support for drug decriminalisation.

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EVIDENCE BRIEF

Drug decriminalisation

KEY POINTS

- Criminalisation has failed to prevent drug use, driven drug manufacturing underground, led to more dangerous substances on the market, and contributed to mass incarceration.
- Drug decriminalisation is the removal of criminal penalties associated with the personal possession and use of drugs. It recasts drug use as a public health issue, not a matter for law enforcement.
- Lesbian, gay, bisexual, and trans and gender diverse (LGBT) people have higher rates of drug use than the general population. They are vulnerable to the harms associated with criminalisation and those associated with the historical criminalisation of minority sexualities.
- Countries that have adopted a policy of drug decriminalisation, such as Portugal, have seen a reduction in crime and drug-related harms, and improvements in access to treatment.

BACKGROUND

Prohibition has failed

Over the past fifty years, prohibition and the 'war on drugs' has not only failed to prevent the use of drugs, it has directly resulted in the expansion of drug markets and a more dangerous drug supply.[1] Globally, drug-related deaths increased 60% between 2000 and 2015.[2] Illegal drug use accounts for 1.3% of global burden of disease,[3] with Australia having one of the highest rates of drug dependence-related health burdens.[4]

In Australia, law enforcement is estimated to cost between 61—70% of the total drug budget,[5] with 80,000 arrests of drug users annually.[6] These punitive drug laws do not promote the health of people who use drugs, and their enforcement requires a substantial amount of government funding that generally comes at the expense of evidence-based public health interventions.[7]

In 2018, the United Nations Chief Executives Board for Coordination (CEB) issued a statement reflecting these concerns, highlighting 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 drugs."[8]

Decriminalisation works

Drug decriminalisation is not the same as legalisation. Decriminalisation involves removing criminal penalties. It is not the same as legalisation and regulation in the way that, for example, alcohol and tobacco are legal, regulated substances. Decriminalisation merely allows for the creation of infringements, or administrative sanctions, that are dealt with outside the criminal justice system. By removing offences for personal drug possession and use from the criminal justice system, authorities are better able to treat drug use as the public health issue it is, and design interventions that reduce drug-related harms.

A 2016 Briefing Note by the Drug Policy Modelling Program at the University of New South Wales states that the available "research evidence indicates that 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."[9]

Drug use in LGBTI communities

LGBT people use drugs at significantly higher rates than the general population.[10] There is a lack of research about drug use in people who are intersex and in people who are transgender.[11] LGBT people who use drugs are vulnerable to harms associated with criminalisation of drug use, which include stigma, discrimination, reduced use of health services, and exposure to the black market.[12] They are also vulnerable to harms associated with the after-effects of historical criminalisation of minority sexualities, such as the reluctance to report crime due to assumptions of police hostility; these persist despite evidence of increased support of LGBTI communities by police in Australia.[13] Although more research is needed, these harms can particularly affect sexually and gender diverse youth.[14]

CURRENT PRACTICE

Laws that address the possession and use of drugs are largely within the remit of the states and territories, not the Commonwealth. In most states and territories personal possession and use of certain drugs is a criminal offence punishable by up to two years in prison.[15] Civil penalty schemes apply for cannabis in South Australia, the Australian Capital Territory (ACT), and the Northern Territory. At the same time, there are a number of (mainly de facto) forms of decriminalisation for personal drug possession and use.

Under de facto forms of decriminalisation, marginalised people can avoid criminal penalties, subject to police discretion, or be referred to education and treatment programs if they meet certain eligibility criteria.[16] However, criminal penalties can still be enforced for non-compliance with diversionary programs, or if an individual has committed multiple offences.

While population-wide drug use rates are stable in Australia, increasing detection rates mean more people who use drugs risk criminal conviction and imprisonment for possessing and using small quantities of drugs.[17] This enforcement model is inconsistent with the views of the large majority of Australians. According to the National Drug Strategy Household Survey 2013, of the 24,000 people surveyed the proportion who support decriminalisation for people found in possession of selected drugs for personal use was as follows: 88.1% for cannabis; 74.4% for ecstasy; 64.2% for heroin; and 66% for meth/amphetamines.[18]

The Portuguese experience

Various decriminalisation schemes have been established throughout the world, most notably in Portugal.[19] In 2001, the Portuguese government removed all criminal penalties for the personal possession and use of drugs. While the trafficking of such drugs remains a criminal offence, individuals caught with small quantities are subject to administrative penalties, rather than criminal ones. The exact penalties applied are decided by the Commissions for the Dissuasion of Drug Addiction (CDTs), however, the vast majority of cases referred to it are suspended, meaning no penalties are applied.[20]

CDTs are comprised of three appointees: a legal expert, a health professional and a social worker, who are supported by a multi-disciplinary team. CDTs offer “targeted advice and interventions, in conjunction with a network of wide-ranging (e.g. employment, psychological, medical, housing) local support.”[21]

People who are dependent on particular drugs can also access safe forms from government-approved providers, allowing them to safely manage and ultimately stop their use. While people who are dependent on drugs are encouraged to seek treatment, they are rarely sanctioned if they choose not to.[22] The aim is for people to begin treatment voluntarily, as this improves the chances of treatment being successful.

Portugal’s policy of drug decriminalisation has been successful in many ways. The harms associated with drug use have decreased, with more people seeking and accessing treatment. Overall rates of drug use have not increased, but rates of acquisitive crime—that is, crimes committed to help the individual ultimately acquire drugs—have dropped.[23]

Widespread support for drug decriminalisation

Support for drug decriminalisation notably includes:

- The United Nations Chief Executives Board (CEB), chaired by the UN Secretary General and representing 31 UN agencies;[24]
- Mick Palmer, AO, APM, former Commissioner of the Australian Federal Police (1994–2001), together with three former police commissioners and assistant commissioners, two former heads of corrective services, a former supreme court judge and a former director of public prosecution;[25]
- The Fair Treatment partnership for drug law and policy reform – led by the Uniting Church Synod Of NSW and ACT – with 62 current partners (from NSW, ACT, Australia and overseas), including specialist researchers, health professionals, law enforcement professionals, health, social equity, and civil liberties organisations, and the wider community;[26] and
- The Australian Medical Association, which “supports the introduction of innovative policy models and trials, in a controlled manner, funded and evaluated appropriately, that might reduce harms and improve outcomes for users and society at large. For example: needle exchanges, pill testing, prisoner interventions and services, novel treatments and degrees of decriminalisation for some drugs etc.”[27]

CONCLUSION

Decriminalising the personal possession and use of all drugs will reduce drug-related harms. It is widely supported, and treats drug use as the public health issue it is, rather than as a problem for law enforcement. This approach improves investment in, and access to, drug treatment and rehabilitation, and reduces the personal and public financial and social costs associated with criminal penalties.

RECOMMENDATIONS

1. Decriminalise the personal possession and use of all drugs.
2. Possession and use of drugs should be managed through the public health system using education, rehabilitation, and in rare cases as necessary, administrative sanctions, as per the Portuguese model.

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