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FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON THE DRUGS OF DEPENDENCE (PERSONAL USE)
AMENDMENT BILL 2021

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(Personal Use) Amendment Bill 2021

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**Select Committee on the Drugs of Dependence
(Personal Use) Amendment Bill 2021**



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About Uniting NSW.ACT

Uniting is the service and advocacy agency of the Uniting Church in NSW and the ACT, and is one of the largest not-for-profit community service providers in this region.

Every year, we work with over 100,000 people, many of whom are among the most disadvantaged and vulnerable in NSW and the ACT. We provide early learning, family support, disability services, aged care and services for people at risk of homelessness.

Since its beginnings, the Uniting Church has been committed to social justice and addressing contemporary social issues as an integral part of its life and mission. We bring this to life by inspiring people, enlivening communities and confronting injustice.

Alongside our direct service provision, we are committed to speaking up for changes needed to improve the lives of people experiencing poverty and disadvantage.

Why is Uniting NSW.ACT making a submission?

In 2016 the Synod of the Uniting Church of NSW and the ACT passed two resolutions to:

- support the decriminalisation of personal possession and use of small amounts of prohibited drugs and
- increase investment in drug and alcohol treatment services.

As the lead partner in the 67-organisation Fair Treatment campaign, Uniting NSW.ACT is a strong supporter of a more compassionate, health-based approach to drug use.

Uniting NSW.ACT supports decriminalisation of possession and use of small amounts of prohibited drugs and is advocating to change the law through the Fair Treatment campaign. Uniting NSW.ACT can see the attraction of a comprehensive decriminalisation model, namely one that applies to all drugs, does not apply civil sanctions, removes eligibility criteria, utilises a combination of alternatives to sanctions (including taking no action, confiscation and referral) and abolishes threshold quantities.

The Fair Treatment campaign for drug law reform is well aligned with Uniting's missional principles, drawn from the church's foundational beliefs: to inspire people, enliven communities and confront injustice. The campaign calls for society to question whether our drug laws reflect the essential worth and rights of every person. The campaign also seeks to promote the active participation of those affected by the injustice of our drug laws by giving voice to those with lived experience.

As a provider of services to many families and individuals impacted by drug dependency, we recognise that any change that moves NSW and the ACT closer to this decriminalisation model together with our other Fair Treatment campaign goals of increasing treatment and reducing stigma would significantly benefit all of our community, as well as improving the lives of the vulnerable and disadvantaged.

Our approach to this submission

Uniting NSW.ACT has released a discussion paper on options for changing the law around possession and use of drugs¹ and this submission is based on that paper.

We have addressed those items on the Terms of Reference that are relevant to our services and advocacy role, namely:

- a) best practice policy approaches and responses undertaken in other jurisdictions, including internationally, to reduce harm and societal impacts from drugs
- b) the health, criminal justice and social impacts of current policy and legislation approaches to drug use in the ACT
- d) opportunities and challenges for community-based and community-controlled organisations, programs and initiatives to reduce harm from drugs
- e) issues specific to the drug rehabilitation and service sector.

Drawing on this, the submission also briefly addresses the specifics of the Bill and the proposed regime.

Best practice policy approaches and responses undertaken in other jurisdictions, including internationally, to reduce harm and societal impacts from drugs

Approach in other jurisdictions

Australia has already begun to move towards decriminalisation of personal drug use and possession. In addition to partial legalisation of personal-level cannabis offences in the Australian Capital Territory, various cannabis offences were decriminalised de jure decades ago in South Australia, Western Australia (although subsequently repealed) and the Northern Territory.²

Six states or territories have a diversion program in place for illicit drugs. Below are a summary of the penalty regimes in place across Australia for use and possession of illicit drugs and availability of diversion programs.³

Internationally, decriminalisation has been implemented in 11 states in the USA, and another 25 countries – namely the Netherlands, Switzerland, France, Germany, Austria, Spain, Portugal, Belgium, Italy, Czech Republic, Denmark, Estonia, Ecuador, Armenia, India, Brazil, Peru, Columbia, Argentina, Mexico, Paraguay, Uruguay, Costa Rica, Norway and Jamaica. Canada and Uruguay, and Colorado, California, Nevada, and Washington in the USA, have also legalised recreational cannabis.⁴

¹ https://www.uniting.org/content/dam/uniting/documents/community-impact/research-and-innovation/discussion_paper_drug_possession.pdf

² Source: [DPMP Monograph 27 - 2019 - Criminal justice responses relating to personal use and possession of illicit drugs](https://ndarc.med.unsw.edu.au/resource/27-criminal-justice-responses-relating-personal-use-and-possession-illicit-drugs-reach); <https://ndarc.med.unsw.edu.au/resource/27-criminal-justice-responses-relating-personal-use-and-possession-illicit-drugs-reach>

³ Ibid.

⁴ Alcohol and Drug Foundation position paper: Drug Law Reform/Decriminalisation: https://cdn.adf.org.au/media/documents/ADF_PositionPaper_druglawreform.pdf

Table 1: Maximum penalties for use and possession of illicit drugs for personal use in Australia, by offence type and jurisdiction

	Law	Personal use	Possession		
			Paraphernalia	Cannabis	Other illicit drug
ACT	Drugs of Dependence Act 1989 Criminal Code 2002 Medicines, Poisons and Therapeutic Goods Act 2008	1 yr prison &/or \$15,000 fine	No offence	Penalty notice of \$100 or 1 PU	2 yrs prison &/or 50 PU
NSW	Drug Misuse and Trafficking Act 1985	2 yrs prison &/or 20 PU	2 yrs prison &/or 20 PU	2 yrs prison &/or 20 PU	2 yrs prison &/or 20 PU
NT	Misuse of Drugs Act 2006	6 mths prison &/or 50 PU (only if person is reckless)	6 mths prison &/or 50 PU	Penalty notice of 2 or 50 PU	2 yrs prison &/or 200 PU
Qld	Drugs Misuse Act 1986	No specific use or self-administration offence	2 yrs prison	3 yrs prison (S) 15 yrs prison (I)	3 yrs prison (S) 15 yrs prison (I)
SA	Controlled Substances Act 1984	\$500 (cannabis) 2 yrs prison &/or \$2,000 (other)	2 yrs prison &/or \$2,000	Penalty notice of \$150-300 or \$500 fine	2 yrs prison and/or \$2,000
Tas	Misuse of Drugs Act 2001	2 yrs prison &/or 50 PU	50 PU	2 yrs prison and/or 50 PU	2 yrs prison &/or 50 PU
Vic	Drugs, Poisons and Controlled Substances Act 1981	5 PU (cannabis) 1 yr prison &/or 30 PU (other)	No offence	5 PU	1 yr prison &/or 30 PU
WA	Misuse of Drugs Act 1981	2 yrs prison &/or 2 yrs prison	3 yrs prison &/or \$3000	2 yrs prison &/or \$2,000	2 yrs prison &/or \$2,000

PU: Penalty Units. A "penalty unit" is a measurement used to calculate the dollar value of a fine; in each jurisdiction the value of a penalty unit is reviewed (and typically increases) periodically (on the first day of the financial year). The penalty unit is announced through special gazette. In Victoria, for example, the current value of a PU (as at the time of this report) is \$161.19. The maximum fine for a cannabis use offence is thus currently \$805.95, whereas for another illicit drug it is \$4,835.70. S and I: Summary or Indictable Offence.

Table 3: Summary of police and court diversion programs in Australia that can be used for use/possession, by type and state

	Police diversion for cannabis use/ possession	Police diversion for other illicit drug use/ possession	Police/court diversion for young offenders	Court diversion for minor drug or drug-related offences	Other non-AOD specific programs
ACT	√ *	√	√	√	√
NSW	√		√	√	
NT	√ *	√	√√	√	
Qld	√		√	√√	
SA	√ *	√	√	√	√√
Tas	√	√	√	√	
Vic	√	√	√√√√	√	√√√√
WA	√	√	√√	√√√√√	

Number of ticks shows number of programs offered in each state. * Civil Penalty Schemes.

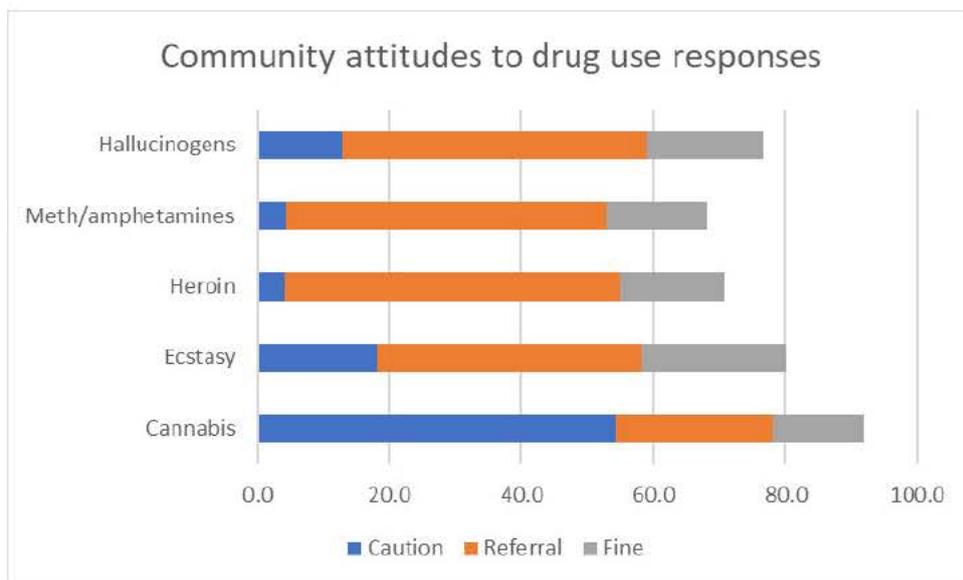
The Portuguese Experience ⁵

At least 25 countries have removed criminal penalties for personal possession of some or all drugs. A longstanding example of reform is Portugal – which in 2001, adopted reforms to remove penalties for personal drug use and adopt a more health-centred approach including improved treatment options. After almost 20 years, research analysis of several studies^{6, 7} has pointed to key improvements, including:

- Drug-related deaths and HIV infections have decreased
- Drug use has declined among those aged 15-24, and overall drug use has not increased
- Rates of dependency and injecting drug use have decreased
- The drug-related prison population has declined¹ and the burden on the criminal justice system eased.

Community attitudes

The 2019 National Drug Strategy Household Survey⁸ showed that there continues to be strong public support among Australians for measures amounting to the removal of criminal sanctions for possession for personal use of all prohibited drugs. As the below chart shows, 53-78% of the representative Australian sample in the survey supported personal use attracting a caution/warning, or referral to treatment or education program (with methamphetamine and cannabis at each end of the range). This rises to 68-92% if a fine is included as a response to personal drug use. Support for decriminalisation and legalisation grew between 2010 and 2019, particularly for cannabis.⁹



⁵ Transform Drug Policy Foundation (2020), "Drug decriminalisation in Portugal: setting the record straight" at <https://transformdrugs.org/drug-decriminalisation-in-portugal-setting-the-record-straight/>.

⁶ Transform Drug Policy Foundation (2020), op. cit.

⁷ Hughes & Stevens (2010), "What can we learn from the Portuguese decriminalization of illicit drugs?", *Brit. J. Criminol* at <https://kar.kent.ac.uk/29910/>.

⁸ 2019 National Drug Strategy Household Survey, <https://www.aihw.gov.au/reports/illicit-use-of-drugs/national-drug-strategy-household-survey-2019>

⁹ Hughes and Ritter (2018) *What does the research evidence tell us about what Australians think about the legal status of drugs? A 2018 update*, Sydney, National Drug and Alcohol Research Centre and Social Policy Research Centre.

The most common action supported for people in possession of selected drugs was for 'referral to treatment or an education program' except for cannabis where a 'caution/warning' was the most common action supported.

- Only a small proportion of people who use drugs experience drug use disorders or drug dependency - use that causes social, financial, psychological or physical problems. For those who do not develop drug dependency, the current reliance on criminal sanctions puts at risk careers and opportunities. For those who do develop drug dependency, the current approach creates barriers to help and support.
- Existing drug laws create unnecessary barriers, stopping people getting into treatment, increasing social stigma and heightening the isolation among those who need support. By responding with law and order rather than treatment and support, society is punishing people rather than enabling assistance where needed.
- Drug dependency is often linked to a variety of complex social circumstances, disadvantage and trauma. Responses to harmful drug use and addiction must address these underlying causes of use and stop blaming the victim.
- Treatment works. By refocussing the system on helping people, lives can be saved, money can be saved and law enforcement resources can be redirected.

What do good drug laws look like?

Characteristics of good drug laws:

Uniting NSW.ACT believes that, among other things, good laws generally display the following characteristics:

- **Transparent.** The law should be unambiguous and easy to understand. Discretionary powers, like those held by police at the point of identifying a possible offence, should be few in number and limited in scope. This is because they may lead to ambiguity or inconsistency in practice.
- **Equitable.** The law should apply fairly and consistently in practice. It should not apply in idiosyncratic fashion (for example, unpredictably to particular people or groups, or under certain circumstances). Differential responses for specific groups should be as few and as limited in scope as possible and should be consistent with the other principles cited here.
- **Focussed.** Laws should have a clear purpose, and not apply to a broader range of people or behaviours than is necessary to achieve that purpose.
- **Proportionate.** Laws should only rely on the coercive power of the state to the extent necessary to achieve their purpose and only if there is no less onerous way of achieving the same purpose. Laws should also employ means that are actually likely to achieve their intended purpose and be reasonable considering the competing interests at stake.

We believe these principles are consistent with a set of broader beliefs about what makes good social policy in general, which flow from our experience as the main social service and advocacy arm of the NSW and ACT Synod of the Uniting Church in Australia.

- **Dignity of the human person.** Law and policy should recognise the essential dignity and worth of every person and treat all with respect. It should affirm the rights and needs of all persons, especially those whose rights are violated or threatened or who are excluded from full participation in communal life.
- **Concern for the most disadvantaged.** The poor, the marginalised and victims of injustice should be the focus of our particular concern and our greatest priority. Inequality has a corrosive impact on individuals and the whole community. The disadvantaged should have access to, not just necessities, but opportunities to live a flourishing life.
- **The common good.** Law and policy should enhance the good of all and contribute to communal wellbeing. A morally adequate response to inequality means going beyond acts of compassion and relieving individual need, to challenging systems that limit opportunity and perpetuate inequality.
- **Solidarity.** Decision making and active participation should be promoted among those affected by injustice, especially the vulnerable. Those who are on the edges of society, marginalised, subject to violence and abuse, and experiencing injustice, must be heard.
- **The needs of the whole person.** All dimensions of human existence – physical, social, psychological, spiritual and economic – must be considered. Differences in culture, language, gender, sexual orientation, race and religion must be recognised and respected.
- **Cost-effectiveness.** Resources must be wisely invested to maximise long-term social impact. On this basis, prevention and early intervention, and interventions which address the root cause of problems, are particularly supported.

We consider that these beliefs should also be applied to the legislation governing the possession and personal use of illegal drugs in NSW and the ACT.

Who should decriminalisation apply to?

Various states and territories have adopted de facto decriminalisation schemes like police diversion programs.¹⁰ These approaches have generally removed sanctions in a piecemeal fashion, by relying on so-called “eligibility criteria”. They are designed to ensure that sanctions are only applied for specific combinations of criteria. Existing schemes in Australia typically rely on a combination of several criteria to define eligibility.

Common criteria found in existing schemes include age (whether the person is a youth or an adult), whether the person admits to the offence, whether the person has previously been found in possession more than a certain number of times (typically once or twice), and the quantity of the substance.¹¹ Criteria and thresholds vary depending on the drug and the jurisdiction.

Eligibility criteria are inconsistent with the principle of *transparency*. While they may be superficially appealing because they appear to mitigate the undesirable effects of the criminal law in some cases, they make the law more complex to draft and enforce and can have unintended consequences in practice.

¹⁰ Hughes, et al. (2019) *Criminal justice responses relating to personal use and possession of illicit drugs: The reach of Australian drug diversion programs and barriers and facilitators to expansion.*, Sydney, National Drug and Alcohol Research Centre, UNSW

¹¹ Hughes, et al. (2019). *op. cit.*

Eligibility criteria are also inconsistent with the principle of *equity*. Their complexity, coupled with the fact that some eligibility criteria may not be knowable with certainty at the point when a person is found in possession, means it may not be clear whether the person has committed a crime or not. They therefore make the job of front-line police more difficult and open the possibility of idiosyncratic application of the law to some people but not others. There is evidence that eligibility requirements can exclude those most marginalised, and those most in need of diversion, from access to treatment and rehabilitation.¹²

Finally, eligibility criteria are also inconsistent under many circumstances with the principle of *proportionality*. As noted above, many schemes only withhold criminal sanctions for the first few occasions a person is found in possession. This is presumably on the grounds that if a person is repeatedly found in possession after having been provided with an alternative and a more lenient response, then it is appropriate for the full force of the criminal law to operate. The underlying assumption, in other words, is that the most appropriate way of dealing with drug use is still a criminal response and that eligibility criteria are a compromise for certain circumstances.

A more consistent application of the principle of proportionality would mean treating repeated incidents of being found in possession as evidence of a more serious underlying health or social problem. However, this also assumes there are no structural biases towards certain cohorts being more likely to be targeted for search, bringing in the principle of *equity*. In any event, it is certainly not proportionate or equitable to assume a criminal response is more warranted for frequent instances of possession.

However, many of the factors that currently appear as eligibility criteria in decriminalisation schemes around Australia are relevant in determining the appropriate response to the specific circumstances of people who exhibit drug dependency or may be at particular risk of drug dependency.

Should decriminalisation apply to all prohibited drugs?

The principle of *equity* supports the decriminalisation of the personal use of all prohibited drugs. Decriminalisation for some drugs but not others is a compromise with a weak rationale and is inconsistent with the principle of *proportionality*.

It is possible to remove criminal sanctions for possession or use of some prohibited drugs but not others. This is already happening to an extent in Australia: as noted earlier, NSW has a *de facto* scheme to decriminalise cannabis, and the ACT introduced *de jure* decriminalisation in 1992 with its Simple Cannabis Offence Notice system (a fine-instead-of-conviction). This was widened in late 2019 when the ACT legislated for the partial legalisation of personal-level cannabis possession, consumption and cultivation. Both jurisdictions retain criminal sanctions for “harder” drugs like heroin.¹³

The recent Special Commission of Inquiry into the Drug “Ice” Report (**the Ice Inquiry**) recommended that the NSW Government implement a model for the decriminalisation of the use and possession for personal use of prohibited drugs.¹⁴ However, we note that public opinion is consistently more favourable towards decriminalisation of cannabis than other substances.¹⁵

¹² Hughes, et al. (2014) *Evaluation of Australian Capital Territory Drug Diversion Programs*.

¹³ Hughes, et al. (2016) *Decriminalisation of drug use and possession in Australia – A briefing note.*, Sydney, Drug Policy Modelling Program, NDARC, UNSW Australia. .

¹⁴ <https://www.dpc.nsw.gov.au/publications/special-commissions-of-inquiry/the-special-commission-of-inquiry-into-the-drug-ice/>

¹⁵ Hughes and Ritter (2018) *op. cit.*

One possible rationale for decriminalisation of some drugs but not others appears to be the assumption that substances such as cannabis are less harmful or problematic and can therefore be decriminalised with less risk. However:

- the more serious social and health problems associated with the use of opioids and methamphetamine mean a health- and wellbeing-oriented response is *more* appropriate than a criminal response for these substances than it is for cannabis.
- by retaining criminal sanctions for “harder” drugs, legislative barriers preventing those who need help the most are retained.

A second rationale appears to be that removing criminal sanctions itself has risks. This may be either because criminal sanctions are presumed to be an effective and appropriate deterrent, or because the act of removing currently-existing sanctions could send a signal that drug use is now permissible. The experience of countries such as Portugal that have decriminalised use/possession is that this does not occur.

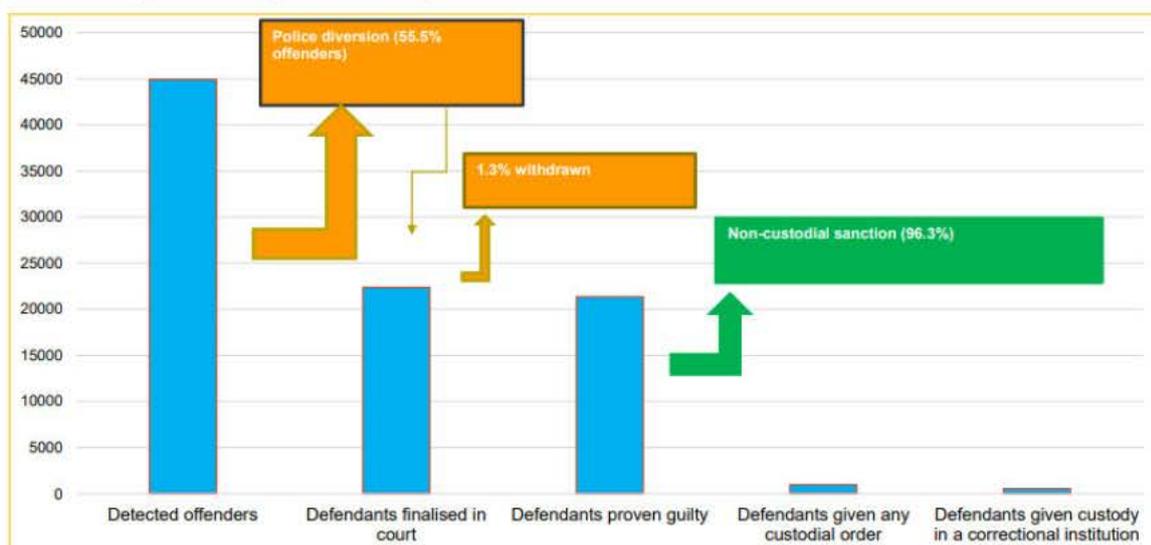
The principles of *focus* and *proportionality* would tend to support having a range of non-criminal responses available for drug use, each tailored to the specific circumstances of the person using drugs. These tailored responses should be based on evidence of the particular physiological and health impacts of each substance, and of the most effective treatment or combination of treatments. It may be valuable, for example, for diagnosis, referral and treatment programs to be structured and operate in a way that recognises the different kinds of social stigma attached to the use of different drugs.

Public sentiment is often much less sympathetic towards the use of perceived “hard” drugs like heroin and methamphetamine. Consequently, those exhibiting drug dependency are often less likely to seek treatment, even though they are often more isolated and vulnerable, and require support more urgently, than others. Appropriate and effective responses for people in these circumstances is not just a matter of proportionality and focus; it is also consistent with valuing of the dignity of the human person, and a concern for the most disadvantaged.

What would happen to someone caught with personal quantities of illicit drugs?

The main response to the possession and use of prohibited drugs in Australian jurisdictions is negative sanctions: criminal penalties, fines, community service orders and other coercive measures.

Annual average movement of use/possess offenders through the Australian criminal justice system and points of diversion



A health- and welfare-oriented response to drug dependency calls for responses that do not rely on the criminal justice system.

Australian Bureau of Statistics data on police detections, court actions and imprisonment involving people detected for drug use and possession in Australia over the five-year period 2010-11 to 2014-15 found that under applicable diversion schemes:

- more than half (55.5%) of people detected with illicit drugs were dealt with under police diversion schemes
- the majority of the balance were found guilty in court action
- almost all of those found guilty (96.3%) received a non-custodial sanction.¹⁶

Alternatives to criminal sanctions :

Taking no action (either in all circumstances or in identified circumstances only): this approach has majority support (54%) for cannabis use in the 2019 National Drug Strategy Household Survey, but much lower support for other drugs¹⁷. Somewhat counterintuitively however, the scheme appears to have resulted in net-widening, where the total number of people dealt with formally for cannabis offences is now higher than it was prior to the introduction of the scheme.¹⁸

Confiscation: could be applied in all circumstances (like the Ice Inquiry recommends) or alternatively where there is an unacceptable risk of harm to the person or third parties.

Referral to education or treatment: Uniting supports the position of the Ice Inquiry that education/treatment should be voluntary and appropriately tailored - most people who use drugs do not want, nor need, referral to treatment. This approach as an alternative to criminal sanctions for possession or use would need to be accompanied by increased investment to ensure there were appropriate education and treatment options to meet demand and suit individual circumstances.

Civil sanctions: such as a fine or community service order. Such sanctions are expected to operate as a general deterrent, however, are not consistent with a belief that policy should reflect concern for the most disadvantaged, nor the principle of equity, because they have a greater adverse impact on those who are most vulnerable. The Ice Inquiry supported voluntary engagement with treatment/education, but backed by civil sanctions for non-compliance. If coercive measures such as fines and orders were to be adopted, they should not be the sole, or even the primary, way of ensuring engagement with treatment.

¹⁶ Hughes, et al. (2019). *op. cit.*

¹⁷ 2019 National Drug Strategy Household Survey, <https://www.aihw.gov.au/reports/illicit-use-of-drugs/national-drug-strategy-household-survey-2019>

¹⁸ https://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2004/bocsar_mr_r54.aspx

Recommendation 11 of the NSW Ice Inquiry was that, in conjunction with increased resourcing for specialist drug assessment and treatment services, the NSW Government implement a model for the decriminalisation of the use and possession for personal use of prohibited drugs, which includes the following elements:

- removal of the criminal offences of use and possession for personal use of prohibited drugs
- at the point of detection, prohibited drugs to be confiscated and a referral made to an appropriately tailored voluntary health/social and/or education intervention
- no limit on the number of referrals a person may receive
- no civil sanctions for non-compliance.¹⁹

The health, criminal justice and social impacts of current policy and legislation approaches to drug use

The approach to dealing with licit and illicit drug use in Australia has been dealt with under the National Drug Strategy since 1985. The Strategy purports to recognise that drug use is a health and social issue while acknowledging the role of law enforcement to detect and deter drug crime.²⁰

However, current approaches that focus on policing and imprisoning people who use illicit drugs increase stigma and create barriers to people seeking treatment. Removal of criminal penalties lessens the marginalisation of already vulnerable people; provides greater scope for diversionary approaches such as referral to counselling; and reduces barriers to seeking treatment.

Street-level drug-related law enforcement strategies are largely premised on the deterrent influence on the demand for illicit substances, however evidence of a deterrent effect is mixed and can vary across policing strategies and studies. Street-level drug-related law enforcement has been criticised for disproportionately targeting possession, with any deterrent effect outweighed by an increase in potentially risky behaviours to avoid detection and the negative impact of having a criminal record.²¹

Drug use disorders and drug dependency should be recognised as primarily a health issue and treated like any other chronic health condition.

Drug use disorders and drug dependency are often linked to complex social circumstances including early childhood trauma, physical and sexual abuse, poor mental health and social disadvantage. Effective responses to harmful drug use must address these underlying causes.

¹⁹ <https://www.dpc.nsw.gov.au/publications/special-commissions-of-inquiry/the-special-commission-of-inquiry-into-the-drug-ice/>

²⁰ AIHW National Drug Strategy Household Survey 2019

²¹ National Drug and Alcohol Research Centre, University of New South Wales: A trial of Criminal Infringement Notices as an alternative to criminal penalties for illicit drug offences in New South Wales, Australia: Estimated savings

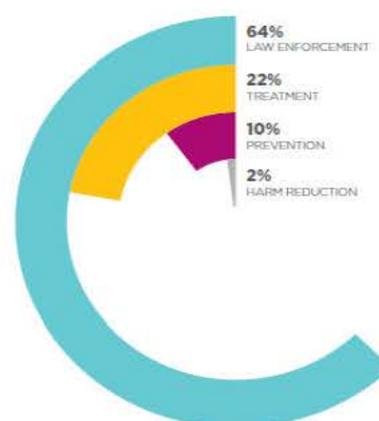
Costs of drug law enforcement

The chart shows that Australia spends a disproportionate amount on law enforcement of illicit drugs, compared with treatment, prevention and harm reduction.²² Community attitudes increasingly support a greater proportion of expenditure on drug education programs than law enforcement.²³

Evidence provided to the Australian Parliament inquiry into crystal methamphetamine²⁴ was that decriminalisation 'has the potential to reduce the burden on police and the criminal justice system' and 'removes the negative consequences (including stigma) associated with criminal convictions for drug use'.

According to the National Drug and Alcohol Research Centre, decriminalisation policies can lead to less use of police, courts and prisons. For example, in California, the total law enforcement cost before and after the decriminalisation of cannabis were '\$17 million in the first half of 1975 (before decriminalisation) to \$4.4 million in the first half of 1976 (after decriminalisation)'. Another benefit, according to the Global Commission on Drug Policy, is that police in a jurisdiction with decriminalisation 'have reported improved community relations as a result of the reform'.

Australia spent \$1.7 billion on illicit drugs during 2009/2010.



Cost savings from police drug diversion programs:

Police drug diversion programs exist in all eight jurisdictions for the use and/or possession of cannabis, through either civil penalty or cautioning schemes.

In 2019, the NSW Government introduced provisions allowing police to issue Criminal Infringement Notices (CIN), which are on-the-spot fines for possession of a small quantity of prohibited drugs. Possession of cannabis was already covered by a Cannabis Cautioning Scheme.

A study undertaken of the trial of the scheme across music festivals in NSW from 25 January 2019 to 1 August 2019²⁵ found that:

- 300 CINs were issued in that period for illicit drug use and/or possession; this represents 2.8% of the total number of people proceeded against for illicit drug possession
- issuing 300 CINs, rather than processing these cases through the court system, resulted in an estimated saving of \$0.2 million
- if CINs had been issued for all illicit drug users processed in court in that period, it would have produced an estimated saving of \$5.8 million.

²² Government drug policy expenditure in Australia - 2009/10; Alison Ritter, Ross McLeod, Marian Shanahan: <https://ndarc.med.unsw.edu.au/resource/24-government-drug-policy-expenditure-australia-200910>

²³ AIHW National Drug Strategy Household Survey 2019

²⁴ https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Crystalmethamphetamine45/Final_Report

²⁵ National Drug and Alcohol Research Centre, Ibid.

The Parliamentary Inquiry also heard that another consideration in favour of decriminalisation is that it 'improves the employment prospects and relationships with significant others for those detected with drugs' because: ...individuals who avoid a criminal record are less likely to drop out of school early, be sacked or to be denied a job. They are also less likely to have fights with their partners, family or friends or to be evicted from their accommodation as a result of their police encounter.

Health and social impacts

Australia's Joint Committee on Law Enforcement visited Portugal in 2017 to investigate its model as part of its inquiry into crystal methamphetamine. It concluded that:

The Portuguese government implemented decriminalised drug laws alongside a substantial investment and expansion of treatment services aimed at drug users (such as opiate substitution and needle exchange programs). For this reason, the positive health outcomes cannot be fully explained by decriminalisation. However, evidence suggests decriminalisation allowed drug users to actively seek treatment options without the fear of criminal penalties. According to the Cato Institute, enabling drug users to seek treatment services in a decriminalised framework 'enables the management and diminution of drug-related harms' and resulted in an increase in the number of people seeking treatment in a post-decriminalised setting. This setting has drastically reduced drug-related harms.

Benefits for law, justice and community safety

The evidence is clear from worldwide experience that these two proposed reforms - expanding drug treatment and reforming personal use laws - implemented together, are likely to yield substantial positive outcomes for the whole community. This is why these reforms are fully endorsed by our partner organisations including expert legal, enforcement, health/medical and research professionals. The benefits to the community would include:

- better health outcomes - more people with drug dependency could receive immediate, appropriate treatment
- freeing significant police and criminal justice resources to address drug trafficking and other crime
- reduced avoidable deaths²⁶
- lower rates of recidivism²⁷
- reduced rates of drug-related crime²⁸ and incarceration of vulnerable communities (First Nations, mental health sufferers, low income earners)
- reduced drug harms among younger people and those who are dependent (without significant impact on overall drug use).²⁹

²⁶ Based on data from Portugal. Data for year 2001 taken from Hughes & Stevens (2012), "A resounding success or a disastrous failure: Re-examining the interpretation of evidence on the Portuguese decriminalisation of illicit drugs", *Drug and Alcohol Review*, vol. 31, p. 107; data for year 2012 taken from Instituto da Droga e da Toxicodependência (2013), 'Relatório Anual 2012 - A Situação do País em Matéria de Drogas e Toxicodependências', p. 64.

²⁷ Weatherburn et al (2020), "The long-term effect of the NSW Drug Court on recidivism" in *Crime and Justice Bulletin* at <https://www.bocsar.nsw.gov.au/Publications/CJB/2020-The-Long-term-effect-of-the-NSW-Drug-Court-on-recidivism-CJB232.pdf>

²⁸ Data for 1999 taken from Instituto da Droga e da Toxicodependência (2004), *Relatório Anual 2003 - A Situação do País em Matéria de Drogas e Toxicodependências*, p. 141; data for year 2012 taken from Instituto da Droga e da Toxicodependência (2013) op. cit., p. 105.

²⁹ Balsa et al (2013), "III Inquérito nacional ao consumo de substâncias psicoativas na população portuguesa 2012: Relatório Preliminar", CESNOVA - Centro de Estudos de Sociologia da Universidade Nova de Lisboa, p. 59; Hughes & Stevens (2012), op.cit., pp. 101-113

Opportunities and challenges for community-based and community-controlled organisations, programs and initiatives to reduce harm from drugs

Uniting NSW.ACT does not provide alcohol and other drug rehabilitation services, however is a strong advocate for increased access to treatment services, particularly in regional areas.

Medically Supervised Injecting Centre

Twenty years ago, Uniting NSW.ACT commenced operation of Australia's first medically supervised injecting centre, in Kings Cross in Sydney.

The Sydney Medically Supervised Injecting Centre (MSIC) was established in 2001 following the recommendations of the NSW Parliamentary Drug Summit and was aimed at addressing public health and order issues associated with street based injecting in the area. It operated initially on a trial basis for 10 years, prior to Parliament established it on a permanent basis in 2010.

Over that time, MSIC has assisted over 17,000 people to manage their drug dependencies in a way that is safer for them and the community. It has also supported these people with their broader health and social welfare, including housing and treatment, through over 19,000 referrals. In 1.2 million supervised injections, the centre has successfully managed 10,611 overdoses without any deaths.

A 2004 evaluation of the initial impacts of MSIC³⁰ found that 40% of clients had overdosed in the past, with 25% of these having done so at least five times.

The 2007 evaluation found that:³¹

- it is likely that substantial proportions of overdoses managed at the site would have resulted in significant morbidity had they occurred elsewhere, and that approximately half would have otherwise occurred in public places
- monthly counts of discarded needles and syringes collected locally indicated a decrease of around 50% following the establishment of the service that has been sustained over six years.

A study into community perceptions³² of the Centre indicated that 'the proportion of residents who had witnessed public injecting locally within the last month' went from 33% in 2000, down to 19% in 2005. Moreover, the study found that 90% of residents surveyed could identify 'at least one advantage to having the MSIC located in the area', reflecting the importance of the Centre not just for illicit drug users, but also for the wider community.

³⁰ https://kirby.unsw.edu.au/sites/default/files/kirby/report/INT_EVAL_REP_%2B1_SYD_%2BMSIC.pdf

³¹ <https://kirby.unsw.edu.au/sites/default/files/kirby/report/EvalRep4SMSIC.pdf>

³² *Ibid*

Issues specific to the drug rehabilitation and service sector

Access to Treatment

Every year more than 200,000 Australians are unable to access AOD treatment because there are not enough services available.³³ Modelling conducted for the Network of Alcohol and Other Drug Agencies estimates that we need approximately double the existing number of residential rehabilitation and detoxification beds to meet the level of need in NSW.³⁴ There are similar gaps in availability of non-residential options such as community-based day treatment.

As the 2018 *Parliamentary Inquiry into the Provision of Drug Rehabilitation Services in Rural, Regional and Remote NSW* found, there is a chronic shortage of detoxification and rehabilitation services in regional and rural areas.³⁵

In the South Coast and Canberra region, the Inquiry heard that there are no rehabilitation services in or around Batemans Bay for people with amphetamine and methamphetamine addictions, with the closest being in Nowra or Canberra, which have long wait lists. The Southern NSW Local Health District operates six community mental health, drug and alcohol teams across the region, based in Queanbeyan, Yass, Goulburn, Batemans Bay, Moruya, Bega and Cooma.

Benefits of AOD treatment services

Positive outcomes from AOD treatment include:

- improved physical health, including reductions in blood borne virus transmission
- improved psychological health
- improved social functioning, including employment outcomes
- reductions in criminal behaviour
- reduction in drug use.

Investment in drug treatment is highly cost effective – for every \$1 spent on treatment, the government saves \$7.³⁶ By refocusing the system on helping people with drug use disorders we can save lives, save money and save law enforcement resources.

Too many people are facing long waiting times in accessing AOD treatment. The need for more services is clear when the waiting list for residential rehabilitation can extend to six months. These delays lead to greater harm and increased costs for the health and criminal justice systems. Long travel distances to access treatment may also be a barrier to treatment - the window of opportunity when people are motivated to seek help may be lost.

³³ Ritter, A. et al., 2014, *New Horizons: the review of alcohol and other drug treatment services in Australia, Drug Policy Modelling Program*, National Drug and Alcohol Research Centre, NSW.

³⁴ NADA, 2019, *Submission to the NSW Health Minister and NSW Ministry of Health for the provision of additional residential rehabilitation and withdrawal management beds in NSW*, https://www.nada.org.au/wp-content/uploads/2019/03/NADA-Submission-NSW-AOD-Beds_120319.pdf

³⁵ NSW Parliament, Legislative Council, 2018, *Provision of drug rehabilitation services in regional, rural and remote New South Wales*.

³⁶ Ibid.

Implications for the draft legislation

Our understanding of the Bill is that it proposes:

- simple amendments to the existing *Drugs of Dependence Act 1989* in relation to personal possession of common illicit drugs
- to retain the existing personal possession limits for illicit drugs, specified by weight
- to rename the Simple Cannabis Offence Notice (SCON) Scheme to the Simple Drug Offence Notice (SDON) Scheme and add other common illicit drugs to this diversionary pathway, providing:
 - police with discretion to issue a SDON instead of a Court Attendance Notice for simple offences
 - for drugs to be confiscated
 - for the individual not to have to attend court, not to be criminally charged, and not to have a criminal record
 - for an individual to pay a prescribed penalty in full satisfaction of the matter, unless they do not pay the penalty within 60 days when criminal proceedings may be commenced.

Uniting NSW.ACT supports decriminalisation of possession and use of small amounts of prohibited drugs and is advocating to change the law through the Fair Treatment campaign.

As a provider of services to many families and individuals impacted by drug dependency, we consider that any change that moves the ACT closer to a decriminalisation model would improve the lives of the vulnerable and disadvantaged and benefit the community, particularly if combined with increased access to treatment and reducing stigma.

We recognise there are a variety of ways in which decriminalisation could be achieved - Uniting NSW.ACT is attracted to a decriminalisation model that applies principles that we believe make good laws, as well as our beliefs about what makes good social policy. Based on this, we make a number of observations in regard to the draft legislation.

Referral to treatment

By amending the existing *Drugs of Dependence Act 1989*, the Bill does not explicitly address referral to treatment. Even though not all people who use drugs need or want referral to treatment, established decriminalisation models such as Portugal have an emphasis on health assessment.

We acknowledge that the ACT offers diversion programs to support and educates users such as:

- the Police Early Diversion Program, offering eligible people referral to the Assessment and Coordination Team with the ACT Health Alcohol and Drug Program
- the Court Alcohol and Drug Assessment Service, allowing for an order to be made to submit for assessment, undergo treatment, or for monitoring or referral.

However, it is not clear how these schemes would interact with the SDON.

We note that a health- and welfare-oriented approach to drug dependency depends on people actually engaging with any treatment and support services to which they may be referred. Under the Court Alcohol and Drug Assessment Service, if an individual does not comply with an order to submit for assessment, undergo treatment, or subject themselves to monitoring or referral, the court may consider sanctions but must not impose a more severe sentence than it would have had the offender not been referred. A similar approach was favoured by the NSW Ice Inquiry, which supported voluntary

treatment or education, and civil sanctions for non-compliance – however such an approach could be argued is, in effect, mandatory treatment.

We also note that ACT policing indicates that its current approach to the illicit drugs diversion program provided for almost 200 people to be referred to the program in 2019-20.³⁷ However, such diversion programs can still be relatively disjointed, subject to discretion, and potentially inconsistently implemented. For example, the Police Early Diversion Program requires police to consider factors such as the public interest as well as the interests of the person involved and their immediate family when considered referral.

A 2011 evaluation of the ACT regime found that, of all types of drug and drug-related offenders in the ACT system, individuals found in possession of ecstasy, cocaine, methamphetamine and heroin were the least likely to be diverted.³⁸

Threshold quantities

The ACT regime provides for the weight of drugs to be used to determine the difference between the offence of use/possession and the offence of supply, and this would be retained under the proposed changes.

Deemed supply provisions such as these were introduced across Australia to overcome perceived difficulties in the prosecution and sanction of drug traffickers.³⁹ However, many countries do not use threshold quantities to make this distinction, including Uruguay, Denmark, Spain. This means that in those countries, police and prosecutors must prove a charge of supply by using other evidence.

It would be worth considering whether, in the long term, threshold quantities should be removed as a mechanism for distinguishing between possession or use, and supply. Instead, establishing the offence of supply would require evidence other than the quantity of the substances, such as possessing paraphernalia such as scales or packed quantities of the substances, or evidence of transactions such as large amounts of cash.

Penalties for non-compliance

The proposed regime provides for criminal proceedings to be commenced where a prescribed penalty is not paid in full satisfaction of the matter. This is a concern as drug dependency generally is a symptom of underlying vulnerability and disadvantage, and a failure to pay a fine may reflect an inability to do so. Sanctions like fines have a greater adverse impact on those who are most vulnerable, such as those with limited means are likely to exacerbate that disadvantage. Perhaps a person could avoid paying a fine by submitting to a telehealth assessment or utilising the ACT's Work or Development Order program to discharge fine obligations.

³⁷ <https://www.abc.net.au/news/2021-02-15/plan-to-decriminalise-illicit-drugs-splits-act-community/13152122>

³⁸ National Drug & Alcohol Research Centre, Evaluation of Australian Capital Territory drug diversion programs; <https://ndarc.med.unsw.edu.au/resource/25-evaluation-australian-capital-territory-drug-diversion-programs>

³⁹ Hughes, et al. (2015) 'Deemed supply in Australian drug trafficking laws: A justifiable legal provision?', *Current Issues in Criminal Justice*, 27(1), pp. 1-20.