



# Decriminalising Personal Drug Use.

**Position Paper**

**June 2020**

*No Harm, No Discrimination*

**atdc**  
Alcohol, Tobacco and other  
Drugs Council Tasmania



**The ATDC is of the view that attempting to eradicate drug use through the criminalisation of people who use drugs is neither effective nor humane. We maintain that there will always be a role for a strong criminal justice response to the manufacturing, supplying and trafficking of large quantities of illicit drugs, but that an individual's drug use should be treated as a health issue in Tasmania.**

**It is the ATDC's position that the human and financial costs resulting from current drug laws are borne not only by those who use drugs, but also by their families, friends and carers, and the Tasmanian community as a whole, and that these costs can be significantly reduced if a decriminalisation approach is taken.**

**The ATDC also believes a compelling reason to remove criminal sanctions for personal drug use is the impact of stigma and discrimination. The ATDC is committed to facilitating positive change in community attitudes by tackling stigma and discrimination across the broader community and within the health and human services sector.<sup>1</sup> Although there are diverse moral views about illicit drug use, there is strong community support for people who use drugs to be able to access treatment, and that criminalising these individuals creates an enormous barrier to treatment and support.**

## **What does decriminalisation mean?**

Decriminalisation is not the same as legalisation. Decriminalisation is an approach where criminal penalties for the use and/or personal possession of small quantities of illicit drugs are removed. This can be achieved in two ways:

### **De jure decriminalisation:**

- Removing criminal penalties from the law
- Replacing criminal penalties with civil penalties (such as a fine) or administrative penalties (such as a ban from a designated area)

### **De facto decriminalisation:**

- Non enforcement of the law through police/judicial discretion
- Referral of offenders to treatment/education instead of facing court

Under both decriminalisation models, the sale and supply of illicit drugs still remains a criminal offence. This is very different to **legalisation**, where it is no longer a crime to supply, sell, purchase, possess or use drugs.

**The ATDC does not propose that the Tasmanian Government legalise illicit drugs.** Rather, the ATDC sees personal drug use as a health issue which warrants a harm reduction, health focussed response that works to address the underlying causes of an individual's illicit drug use.

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<sup>1</sup> ATDC 2019-2022 Strategic Plan, Strategic Challenge 3.2



## Decriminalisation is not a radical idea

While decriminalisation may sound like a radical idea, Tasmania currently has two de facto programs successfully operating - the Illicit Drug Diversion Initiative (IDDI) and the Court Mandated Diversion (CMD) Program.

The IDDI is an alcohol and drug counselling and referral service for low level offences and/or first time drug offenders. Through the IDDI police will divert offenders for appropriate counselling and/or education as an alternative to facing court with the aim to educate offenders on the legal and health consequences of illicit drug use. Very similar, is a Youth Drug Caution, for youth under 18 found in possession of illicit drugs.

The CMD Program sits at the other end of the spectrum and aims to address the underlying cycle of illicit drug use and crime for offenders with a lengthy history of illicit drug related offending. Under the Tasmanian Sentencing Act 1997 magistrates and judges can impose a Drug Treatment Order for up to two years on eligible adult offenders whereby they are diverted into intensive treatment for their illicit drug use rather than serving prison sentences.

De jure reform (which as noted above, is changing the use and possession of drugs from a criminal offence to a civil/administrative offence) is currently in place for cannabis use, possession and cultivation offences in South Australia and the Northern Territory. In these two jurisdictions, no criminal proceedings will commence if a

prescribed fine is paid. A very recent development in the Australian Capital Territory (September 2019) has seen it become the first Australian jurisdiction to legalise the possession, use and cultivation of small amounts of cannabis.

There has been a clear shift over recent years in community attitudes towards viewing drug use as a health issue, and not a criminal offence. According to the latest National Drug Strategy Household Survey, when asked about appropriate action for people found in possession of small quantities of drugs, for all drugs except cannabis, most support was for referral to treatment or an education program, while for cannabis the most popular action was a caution, warning or no action at all.<sup>2</sup>



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<sup>2</sup> National Drug Strategy Household Survey 2016, access at <https://www.aihw.gov.au/getmedia/15db8c15-7062-4cde-bfa4-3c2079f30af3/21028a.pdf.aspx?inline=true>



## Decriminalisation across the globe

The momentum for decriminalisation of illicit drugs is growing around the world with over 25 countries having adopted a decriminalisation model. Research evidence from those countries has shown that, contrary to concerns, decriminalisation:

- does not increase drug use, but can substantially reduce harm
- does not increase crime
- reduces the costs to society, especially criminal justice system costs
- removes the negative consequences, including stigma, associated with criminal convictions for drug use
- reduces the social costs to individuals.<sup>3</sup>

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**The UN: Approaches that violate human rights and fail to curb the illicit drug trade are leaving a trail of human suffering.**

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In March 2019 the United Nations launched the International Guidelines on Human Rights and Drug Policy which supports the decriminalisation of small amounts of drugs for personal use. The UN's position is that approaches that violate human rights and fail to curb the illicit drug trade are leaving a trail of human suffering.<sup>4</sup>

In August 2019 New Zealand passed legislative amendments giving police discretion to take a health centred approach rather than prosecuting those in possession of drugs, including what they define as Class A drugs – methamphetamine, heroin and cocaine. Drug use remains a criminal offence in New Zealand but these amendments allow police discretion not to prosecute when they find someone in possession of an illicit drug for personal use. Police are required to consider whether prosecution is in the 'public interest', or whether a health-centred approach would be more beneficial. The New Zealand government determined that there was no evidence that convicting and sentencing drug users reduces drug use or benefits them individually – they found that criminal convictions often have adverse consequences for career and life opportunities and that a health based response is more effective.<sup>5</sup>

<sup>3</sup> Hughes, C., Ritter, A., et al, as above.

<sup>4</sup> United Nations International Guidelines on Human Rights and Drug Policy, March 2019, accessed at [https://www.unaids.org/en/resources/presscentre/pressreleasesandstatementarchive/2019/march/20190315\\_guidelines-human-rights-drug-policy](https://www.unaids.org/en/resources/presscentre/pressreleasesandstatementarchive/2019/march/20190315_guidelines-human-rights-drug-policy)

<sup>5</sup> New Zealand Drug Foundation, Estimating the impact of drug policy options, October 2018, accessed at <https://www.drugfoundation.org.nz/assets/uploads/Cost-benefit-analysis-drug-law-reform.pdf>



## Why decriminalisation is required in Australia

Tasmania's response to illicit drug use mirrors that of other Australian states and territories, with efforts across the three pillars of the National Drug Strategy 2017-2026 of addressing supply (through regulation and law enforcement), demand (through prevention and treatment) and harm (through harm reduction strategies). It is however disappointing that we are not investing equally across the three pillars.

Information provided to the Australian Government's 2015 Parliamentary Joint Committee on Law Enforcement Inquiry into Crystal Methamphetamine outlined that Australian commonwealth, state and territory governments were spending approximately \$1.7 billion annually on illicit drug initiatives, with an estimated 64 per cent being allocated to law enforcement, 22 per cent on treatment, and less than 15 per cent for prevention, and harm reduction strategies.<sup>6</sup>

This funding disparity continues to exist despite there being no evidence of disruption to the consumption of illicit drugs, and law enforcement responses, particularly those related to imprisonment, being far less cost effective and less successful in addressing underlying issues than treatment or harm reduction strategies.

Findings from the 2016 National Drug Strategy Household Survey showed that approximately 8.1 million Australians aged over 14 years (43%)

<sup>6</sup> Parliamentary Joint Committee on Law Enforcement Inquiry into Crystal Methamphetamine Final Report, accessed at [www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Law\\_Enforcement/Crystalmethamphetamine45/Final%20Report/c05](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Crystalmethamphetamine45/Final%20Report/c05)

reported having used illicit drugs, with 3 million (16%) having used illicit drugs in the previous 12 months.<sup>7</sup>

During 2017-2018, there were an almost record high 148,363 drug arrests in Australia, including 2,695 in Tasmania. More than 80 per cent of these arrests (2,196) were made against Tasmanians who were charged with use, possession or administering a drug for their own personal use, **not** for supply or trafficking offences.<sup>8</sup>

These figures support the notion that illicit drug use continues to be prevalent in our community despite significant law enforcement investment, and lead to the frequently used catch phrases of 'the war on drugs is failing' and 'we cannot keep trying to arrest our way out of the illicit drug problem'.



**43% of Australians over 14 years of age have used illicit drugs, 16% within the last 12 months.**



It is widely accepted that dependence on illicit drugs and other drug related harms are often (though not always) influenced by risk factors commonly associated with disadvantage such as poor health, poverty and crime. Thus, developing

<sup>7</sup> Australian Institute of Health and Welfare, National Drug Strategy Household Survey Key Findings, 2016

<sup>8</sup> Australian Criminal Intelligence Commission, Illicit Drug Data Report 2017-2018, (2019), accessed at [https://www.acic.gov.au/sites/default/files/illicit\\_drug\\_data\\_report\\_2017-18.pdf?v=1564727746](https://www.acic.gov.au/sites/default/files/illicit_drug_data_report_2017-18.pdf?v=1564727746)



harmful drug use behaviour then becomes a risk factor for acquiring or compounding the risk factors associated with disadvantage. A law enforcement approach to drug use does not address these fundamental psychosocial issues and in fact can exacerbate them. Criminalising people, imprisoning and punishing them, not only fails to address the underlying causes of drug use, but further isolates and stigmatises, creating barriers to treatment and support. The criminal justice system is not a therapeutic response to the use of drugs and should not be a gatekeeper for health and support interventions.<sup>9</sup>

## **The case for decriminalisation in Tasmania**

With Tasmania's current justice orientated approach to drug use having failed to curtail supply and demand, an alternative approach needs to be considered.

The ATDC is of the view that:

- The existing approach of treating an individual's illicit drug use as a criminal matter is inappropriate and ineffective and that it should be seen first and foremost as a health issue.
- Drug treatment is a more cost effective response proven to reduce recidivism rates, reduce alcohol and other drug harms, while improving the health status and psychological wellbeing and participation in the community of people who use drugs.<sup>10</sup>
- Introducing decriminalisation will enable Tasmania's current de facto reform approach (referral to IDDI and CMD) to be expanded to all Tasmanians, rather than applied selectively by decision makers (police and courts) to favour, or in fact disadvantage, particular groups of people. This would be achieved because de jure reform (removal of criminal penalties to become an administrative offence/fine) becomes embedded in law, rather than convention, thus allowing it to be applied in all cases, without discretion, resulting in everybody being treated equally who is found in possession of illicit drugs.
- There are sufficient examples of decriminalisation models that will enable the development of regulations to define 'personal use' and the development of policy directions with respect to law enforcement response for any other criminal behaviour co-occurring with drug use/possession (such as burglary, violence offences etc.).
- Moving to a system which provides health based responses for people who use illicit drugs, and maintaining a law enforcement approach to drug trafficking and supply will save lives, reduce drug related hospital admissions, reduce crimes involving serious violence, and save considerable money in seemingly ineffective law enforcement initiatives.

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<sup>9</sup> Australia21 Report, 'We all pay the Price', Report from a high level national Roundtable of 36 experts in drug treatment, drug law and community welfare, conducted in Parliament House, Melbourne in March 2018.

<sup>10</sup> Ritter, A., Berends, L., Chalmers, J., Hull, P., Lancaster, K., and Gomez, M (2014) New horizons: the Review of alcohol and other drug treatment services in Australia, NDARC. (2014), Australia.



**Decriminalisation of illicit drug use will significantly reduce stigma and discrimination and deliver significant improvement to the health and wellbeing of people who use drugs, as well as their families, friends and carers.**

Stigma related to alcohol and other drug use can be understood as the conditioned negative attitudes, opinions and beliefs held by an individual that people who use drugs are somehow different to all other people.

In this community's context, discrimination occurs when people who use drugs are treated less favourably than others because of their drug use.<sup>11</sup> Widespread stigma and discrimination towards those in our community who use alcohol and other drugs is still disturbingly prevalent and it is the ATDC's view that this must be addressed.

The impacts of stigma are wide-ranging and can include low self-esteem and worth, feelings of isolation, helplessness, disempowerment, exclusion from social life, chronic stress and depression and difficulties with employment, housing and education. These experiences are distressing and can result in people feeling shamed, shunned, worthless and hopeless, which in turn can trigger further alcohol and other drug use, and create barriers for treatment and support.<sup>12</sup>

"As a former user, hearing people speak about 'dirty junkie' sort of shamed me, which made me feel less likely to be open and seek treatment and also to retreat into 'friendship' circles where using was the common bond"<sup>13</sup>

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<sup>11</sup> As defined by the Australian Injecting & Illicit Drug Users League (AIVL).

<sup>12</sup> K Lancaster, K Seear & A Ritter, Reducing stigma and discrimination for people experiencing problematic alcohol and other drug use, 2017, p8.

<sup>13</sup> A Tasmanian Community Member