

UnitingCare ReGen submission to the Victorian Inquiry into Drug Law Reform (17 March, 2017)

Summary

There is a clear and pressing need to reform drug laws in Victorian and other Australian jurisdictions.

The prohibitionist model upon which our drug laws are based have been consistently demonstrated to be ineffective at preventing the supply and use of illicit drugs and to have caused significant harm at all levels of society, but particularly amongst those experiencing marginalisation and disadvantage.

Of the three broad policy options available (Depenalisation, Decriminalisation and Legalisation), the clearest evidentiary support is for the adoption of a decriminalisation model that removes criminal penalties for the possession and use of small quantities of illicit drugs. There is established public support for such a move and a growing recognition amongst policy makers of the need to adopt a policy approach that recognises illicit drug use as a health issue, not a criminal matter.

Given the weight of current evidence, ReGen recommends that the Victorian Government implement the following measures to establish a more effective policy framework for addressing the harms associated with illicit drug use in the state:

- Remove criminal penalties for the individual possession and use of all illicit drugs and replace them with civil penalties or Diversion into treatment and/or education programs;
- Ensure that Victorian AOD treatment services have the capacity to provide timely access to Diversion programs;
- Expand therapeutic and educational programs for people whose criminal offending is linked to their alcohol and other drug use, as an alternative to incarceration;
- Consider the future adoption of regulated supply and distribution of some drug types: &
- Commit to advocating for the adoption of similar policy reform in other Australian jurisdictions.

The need for drug law reform

'In my experience, good public policy is best shaped by the dispassionate analysis of what in practice has worked, or not. Policy based on common assumptions and popular sentiments can become a recipe for mistaken prescriptions and misguided interventions. Nowhere is this divorce between rhetoric and reality more evident than in the formulation of global drug policies, where too often emotions and ideology rather than evidence have prevailed.'

Former UN Secretary-General Kofi Annan, 2016

As a basis for local, national and global drug policy frameworks, prohibition has had little impact on the production, supply and consumption of illicit drugs. It is estimated that 300 million people now use illicit drugs worldwide and research regularly finds no correlation between the harshness of drug laws and levels of illicit drug use (Annan, 2016).

In spite of the abundant evidence for the ineffectiveness of prohibitionist drug policy frameworks and the role such frameworks play in increasing the scale and intensity of drug related harm (including violence and corruption) at a local, national and international level (GCDP, 2016, Douglas & MacDonald, 2012), Victorian drug laws have remained firmly grounded in prohibitionist model.

While there have been some positive policy developments, such as the establishment of Drug Diversion programs and the recent medicinal cannabis pilot and expansion of the Victorian Drug Court, Victoria's drug laws remain fundamentally prohibitionist in nature. Our current laws do not provide the Victorian Parliament with the legislative tools necessary to respond most effectively to existing or emerging issues, including:

- Rising rates of prescription medication misuse (Monheit et al, 2016);
- The growing presence of fentanyl (and other powerful synthetic opioids) within heroin sold in Australia and the consequent increased risk of overdose fatalities amongst people using illicit opioids (Rodda et al, 2017);
- Increased supply of (and demand for) Novel Psychoactive Substances in Victoria and associated overdose risks (Caldicott, 2017); &
- Ongoing elevated levels of methamphetamine use and associated harm, particularly within regional communities (NADK, 2016).

There is growing recognition in Australia and internationally that the most effective way to respond to illicit drug use is as a health issue, not a criminal justice issue. In framing illicit drug use as a legal issue, our drug laws fundamentally limit the capacity of the Victorian Government to enact evidence based measures to reduce the immediate and long term risks to individuals, families and the wider Victorian community. As former Victorian Police Commissioner Ken Lay famously commented, this is not a problem we can arrest our way out of.

While changes to the state's drug laws will not address the broad global impacts of prohibitionist policy frameworks, a shift towards a local, health-focussed approach will have a significant impact public health, social and economic benefits for all Victorians.

Current Federal and State drug laws

Laws concerning use and possession of illicit drugs are largely the remit of states and territories, not the Commonwealth. Currently in most states and territories, illicit drug possession and use is a criminal offence that can be sanctioned with up to two years' prison.

Victoria does operate Diversion programs (such as those delivered by ReGen) for low level offences involving cannabis and other illicit, but access to these programs is inconsistent across the state and largely reliant on local police/judicial awareness and processes.

At a national level, Australia's has a longstanding Harm Minimisation policy framework (MCDS, 2011) for incorporating a range of complementary measures under the three pillars: Supply Reduction (e.g. legislation, customs and law enforcement), Demand Reduction (e.g. treatment

services) and Harm Reduction (e.g. Needle and Syringe Programs, Medically Supervised Injecting Centre). However, supply control measures receive a disproportionate amount of Commonwealth funding (Ritter et al, 2013) and law enforcement disproportionately affects individual users of illicit drugs, not those responsible for their production or supply. Of the more than 400,000 Australians charged with drug related offences in 2014/15, 66% were charged with personal possession or use, with only 21% charged with production or supply (ABS 2015).

Hughes et al (2014) have identified inconsistencies (and arbitrariness) across Australian states and territories in the definition of what constitutes a trafficable quantity of individual drug types. By way of example, the Victorian Government recently announced that it was halving the quantity of methamphetamine that would trigger higher level penalties (Gordon, 2017).

Policy options

While there is significant scope for variation within and across the various policy options, the three broad areas for drug law reform are:

- Depenalisation
- Decriminalisation
- Legalisation

Depenalisation

Under a depenalisation model, drug possession and drug use remain criminalised. The individual is still punished for their possession or use of an illegal drug, but the decisions around what that punishment will be are made by the police. There is broad agreement that the maximum penalty will not be applied and a lesser punishment is created.

This approach still criminalises behaviour, stigmatises certain types of drug use, and health and social welfare are not considerations.

Depenalisation already occurs in Victoria (and in other states), but inconsistently.

Decriminalisation

Under decriminalisation, the law is not changed – drugs are still illegal, but a broad agreement is reached that certain aspects of their use or possession will not be punished by the justice system (although may still be subject to administrative sanctions).

The growth in political acceptance of the need for global policy change has been a relatively recent phenomenon. With Portugal providing a well-established and successful model for decriminalisation, major shifts in national drug policies have occurred in the US, Latin America and are ongoing in Europe, particularly in relation to cannabis.

Australian Commonwealth and State Governments have made significant recent changes to cannabis policy, establishing medicinal cannabis pilots and regulated domestic production.

The introduction of decriminalisation in Victorian (and elsewhere in Australia) would enable a range of possible measures including:

- Expansion of harm reduction services, such as Needle and Syringe Programs and Medically Supervised Injecting Centres;
- Expansion of AOD treatment and related health services (e.g. Hepatitis C screening and treatment);
- Re-focusing of police resources on drug production and supply networks, rather than detecting individual use;
- Introduction of drug checking services at music festivals and greater use of police analysis of drug seizures to increase public awareness of potential risk associated with particular drug products; &
- Ending policing activities (such as the use of drug detection dogs at public events) that have been shown to contribute to increased risk amongst people who use illicit drugs.

Legalisation

Legalisation removes any criminal sanctions against drug use or possession, and can either throw open an unregulated market, or set up a regulated system in which the Government licences doctors, pharmacists and businesses to supply the substance.

Examples of regulated supply include:

1. Medical prescriptions and supervised consumption venues – for registered people dependent on the substances associated with the highest level of harms.
2. Specialist Pharmacists – providing ‘rational’ quantities for registered people who wish to use substances that have been assessed as having a medium level of harms associated.
3. Licensed retail sales – similar to the current sales of alcohol and tobacco, for drugs that have been assessed to have a lower level of harms associated.
4. Licensed premises for sale and consumption – similar to licensed alcohol venues or Dutch ‘coffee shops’ selling marijuana
5. Unlicensed sales – for the drugs associated with the lowest risk of harm, such as chocolate or caffeinated drinks.

As these examples indicate, legalisation does not need to be enacted across the board with all substances simultaneously. Professor David Penington, for example, advocates a system whereby Australians over 16 have access to a limited, regulated quantity of cannabis and ecstasy from a Government approved supplier once they registered on a confidential national register (Penington, 2012).

Some of the key benefits cited by advocates for legalisation include:

- Reduction of the involvement of criminal networks within drug markets;
- Reduction in drug-related crime and freeing up law enforcement capacity to focus on other issues;
- Improvements in quality control and reduced risk to consumers;

- Generation of tax revenue from regulated markets to support government expenditure on treatment and other support services; &
- Increased accessibility (and capacity) of harm reduction and treatment services to address immediate risk and support sustainable behaviour change.

Ritter (2013) notes that there is little current evidence on the impacts of the adoption of legalisation, but that the extent of harm currently attributed to licit drugs (such as alcohol and tobacco) are already very high and that it is difficult to predict what the outcomes of a shift to a legalisation/regulation model would produce. There is a clear need for further research into the impacts of such models that have been adopted in Uruguay and individual American states to increase our understanding of the health, social and economic impacts.

The case for decriminalisation

A global policy shift towards greater support for decriminalisation has been underway in recent years, particularly in relation to cannabis.

The most well known and successful adoption of this approach occurred in Portugal, where in 2001 a decision was made to decriminalise the possession of small amounts of illicit drugs (up to 10 days' worth). Portugal also decided on the approach that people who use drugs should not be labelled or marginalised, and that instead of punishing them, they would go before a 'Commission for Dissuasion of Drug Addiction'. Here, people's drug use is assessed, and if they do not have problematic substance use, they are given harm minimisation advice. If they are assessed as having problematic substance use, immediate free health and social support is made available.

After 15 years of this policy, Portugal now has one of the lowest rates of drug consumption in Europe (Santos & Duarte, 2013). There are only 3 overdose deaths per million citizens, compared to an EU average of 17.3 (the UK has 45) and HIV rates linked to drug use dropped by 13% in 5 years (EMCDDA, 2016). The policy now has near-unanimous political support for keeping decriminalization in place (Hari, 2015).

NDARC's 2016 decriminalisation briefing note identifies that legislative change (as opposed to *de facto* changes in practice) is likely to achieve the greatest benefits, including

- Reduced costs to society, especially the criminal justice system costs;
- Reduced social costs to individuals, including improving employment prospects;

The paper also notes the consistent evidence that decriminalisation does not increase drug use or other crime. There is also some early evidence (Bradford & Bradford, 2016) indicating that US cannabis reforms have led to less risky patterns of drug use, with observed reductions in demand for prescription opioids.

2013 National Drug Strategy Household Survey findings showed that there is strong public support in Australia for decriminalisation approaches (AIHW, 2014) and political support is growing. The recent National Drug Policy Summit universally adopted a declaration calling for the 'implementation and evaluation of the health benefits of removing criminal sanctions for personal drug use' (Parliamentary Drug Summit, 2016)

Likely benefits

Therapeutic benefits

The diversion of people into treatment or education programs (as opposed to imprisonment) will dramatically increase the potential benefits for people engaged in a wide spectrum of illicit drug use, from occasional or recreational use to long-term dependence. It will allow the provision of targeted, evidence based interventions to reduce immediate or potential harm, support engagement with treatment services and sustainable behaviour change.

While not directly linked to decriminalisation, changes to Victorian drug laws would help enable the establishment of key initiatives such as a Medically Supervised Injecting Centre, prescription heroin (or Heroin Assisted Therapy) programs or drug checking services at music festivals and other public events.

Social benefits

The notion that removing criminal penalties will 'send the wrong message' or provide implicit endorsement of drug use is misleading. There is little evidence to suggest that the current penalties provide an effective deterrent to illicit drug use but there is abundant evidence of the impacts of the criminalisation of drug use on stigmatisation and marginalisation of vulnerable Victorians and creating obstacles to help seeking by those directly affected.

By creating a legal environment within which individuals need not fear criminal charges from disclosing their illicit drug use, drug law reform would help promote a more open discussion of drug related harms and prevention strategies.

Reframing drug use as a health issue will promote opportunities to provide more evidence-based education and discussion of related issues. It will help reduce the stigmatisation of vulnerable Victorians, something that has already occurred in relation to mental health, with significant improvements in public awareness of related issues and support options.

Reducing the extent to which people who use illicit drugs are caught up in the Victorian justice system will enable earlier interventions with people at risk of becoming entrenched in a cycle of AOD related offending and imprisonment. In addition to removing one category of criminal offences, decriminalisation will help reduce future offending through improved access to therapeutic interventions.

Economic benefits

Currently, a history of drug related convictions (and subsequent periods of incarceration) provides a significant barrier to education, professional development and employment opportunities for many Victorians. In addition to the therapeutic and social benefits mentioned above, the removal of criminal penalties for individual drug possession and use will help unlock the economic potential of people currently excluded from the job market.

Redirection of law enforcement and justice resources to other issues, creating new capacity to address other matters affecting public safety

Requirements for successful drug law reform

ReGen realises that decriminalisation does not offer a panacea for the harm associated with illicit drug use in Victoria and needs to be implemented as part of a holistic response. If decriminalisation is to be successfully implemented, the Victorian Government will need to address the following issues:

- Consistency of implementation – current access to Diversion programs is highly variable across the state, with much relying on individual practice by magistrates or police. The operationalisation of drug law reform within the Victorian justice system will need to be monitored to ensure consistency of application.
- 'Net widening' – making minor drug offences easier for police to process has been found, in some jurisdictions, to result in more people being sanctioned (Shiner, 2015: Single et al, 2000). This has been linked to variability in police practice and would need to be monitored.
- AOD sector capacity – capacity constraints within the Victorian AOD sector are longstanding concern. Any expansion of demand for Diversion programs as a result of decriminalisation will need to be accompanied by corresponding new service funding.
- Systemic approach – reducing future demand for illicit drugs and the incidence of drug related crime requires a holistic approach to addressing the individual, social and structural drivers of disadvantage.

Options for further consideration

One of the limitations of decriminalisation is that it does not address the existence of black markets and the involvement of criminal networks in the production and distribution of illicit drugs. There is a clear logical argument for regulated markets to reduce the profitability for criminal organisations and reduce risks to public health through quality control measures and regulated supply to consumers. Regulated markets also have the clear benefit of generating tax revenue (as they currently do from sales of licit drugs) for governments to redirect into funding for treatment, harm reduction and other services to support sustainable reductions in demand.

In its 2016 report ('Advancing Drug Policy Reform: A new approach to decriminalization') calling for the implementation of alternatives to punishment for all low-level, non-violent actors in the drug trade, the Global Commission on Drug Policy highlights market regulation as the next logical step for drug policy makers.

A 2014 NSW Bar Association Drug Law Reform Discussion Paper recommends regulated production and supply as the 'only way' to effectively reduce the social harms associated with illicit drug use.

While some international jurisdictions have recently introduced a variety of regulated markets for cannabis, to date there is insufficient evidence to comprehensively support the adoption of similar policy models for all drug types. Further research is required, but the Victorian (together with the Federal and other state governments) should be prepared to consider the evidence as it emerges.

Recommendations

ReGen believes that the goal of drug policy should be to reduce drug-related harm, and that the current policies clearly do not achieve this goal. ReGen believes that the criminalisation of people who use drugs is counterproductive, unjust and promotes stigma.

Given the weight of current evidence, ReGen recommends the following measures by the Victorian Government to establish a more effective policy framework for addressing the harms associated with illicit drug use in the state:

- Remove criminal penalties for the individual possession and use of all illicit drugs and replace them with civil penalties or Diversion into treatment and/or education programs;
- Ensure that Victorian AOD treatment services have the capacity to provide timely access to Diversion programs;
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