



Decriminalising personal drug use.

Position paper

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No Harm, No Discrimination

atdc

Alcohol, Tobacco and other
Drugs Council Tasmania



ATDC position statements on decriminalisation

1. Personal use and possession of illicit drugs should be decriminalised

The ATDC advocates a change toward the way that personal drug use and possession is handled in Tasmania. The ATDC advocates for a removal of criminal penalties toward people who are found with small quantities of illicit drugs for personal use. We maintain that a criminal justice response to the manufacturing, supplying and trafficking of large quantities of illicit drugs should remain.

2. Decriminalisation will reduce costs

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.

3. Stigma stops treatment

Criminalising personal use and possession of small amounts of illicit drugs creates enormous stigma and discrimination and acts as a barrier for people who may wish to seek treatment and support for what is a primarily a health issue.

4. Community and health system readiness – there is work to be done

There is an appetite to progress discussions about decriminalisation of illicit drug use in Tasmania. The community is ready to have this discussion. The ATDC proposes that a review of the *Misuse of Drugs Act 2001* is undertaken, in consultation with key stakeholders, the community and alongside the Tasmanian alcohol and other drug sector to support the community and health system progress this important drug law reform.

Dr Paul Blacklow, an economist at the University of Tasmania, estimated in 2017 that the cost of illicit drug use in Tasmania was \$301.73M and that the cost, if Tasmania adopted a decriminalisation model would be \$273.6M, a financial saving of \$28.13M.¹

¹ Blacklow, P, Illicit Drug Reform in Tasmania A Cost Benefit Analysis, B Bartl, Community Legal Centres Tasmania, Tasmania (2017) [Consultants Report], found here <http://ecite.utas.edu.au/120156>



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

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.

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.



I tried to enrol in a course with disabled and elderly people, due to me having drug charges I was discriminated against and told I could do the course, but due to having drug charges I would not be able to do placement or get a job.

I felt as though I was not worthy as a person.

Everyone deserves the right to progress and better their lives.



Tasmanian with lived experience



How could decriminalisation be progressed in Tasmania?

The legal settings

Currently in Tasmania the possession and use of illicit drugs is subject to the *Misuse of Drugs Act 2001*. As it stands, the purpose of this Act is to prohibit the "...misuse of drugs and activities associated with the misuse of drugs and for related purposes." The ATDC is proposing that within this Act the following section on minor offences be amended to remove criminal penalties:

1. Possession of drug paraphernalia
2. Use/administration of drugs
3. Possession of plants (cannabis).

How would change occur?

Removal of criminal penalties would occur through amendments to the *Misuse of Drugs Act 2001*. In order to make these amendments, a Member of Parliament would draft a bill that recommends the changes. This Bill would then be presented to the Tasmanian Parliament for passage through the two houses.

Community conversations are essential

There is already considerable interest in decriminalisation around Australia with stakeholders in most states advancing conversations around the issue. Data from 2019 indicated that the vast majority of Tasmanians (83%) thought that the use of cannabis should not attract criminal penalties. The extent to which the Tasmanian community supports this being extended to other illicit drugs is unknown. There have been some stakeholders express their interest to the ATDC in progressing such a legislative change and further community consultation is essential.

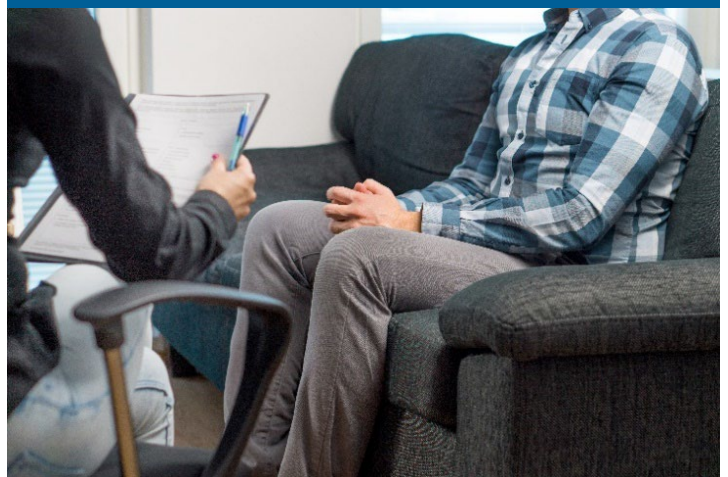
The ATDC's position on decriminalisation is supported by our member organisations delivering alcohol and other drug treatment and support services across Tasmania.

Analysis of the ATOD sector role and readiness

Underpinning any proposal for legislative change to drug law reform would be an analysis of readiness of, and impact to, the wider health and human services sector. Making changes to how drug use and possession is addressed will have flow on effects. For example, if the decision is made to refer people to a treatment or support service as an alternative to a criminal justice response then the capacity of those services to handle extra clients will need to be assessed prior to making such a legislative change.

“ I was a public servant, worked at the RHH then I ended up with a possession charge and it was the end of my career. I spiralled and had many charges after that. If I had had the option to go and have counselling instead it would have been a different story. ”

Tasmanian with lived experience





Decriminalisation is not a radical idea

Decriminalisation is a model adopted in many jurisdictions in Australia (including Tasmania), and across the globe.

Tasmania currently has two de facto programs 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.

Spotlight on the Australian Capital Territory

One jurisdiction in Australia has been leading the way with reforms to drug laws. The Australian Capital Territory (ACT) has made history two times now. The first in September 2019 when it became the first Australian jurisdiction to legalise the possession, use and cultivation of small amounts of cannabis. The second was in October 2022, when the ACT government decriminalised small amounts of commonly used illicit drugs. Under the new law, people found with amounts of certain drugs considered to be 'personal possession' — smaller than trafficable quantities — would be subject to fines rather than criminal charges, and be referred for counselling.

Leading up to this, the ACT Government worked in partnership with key stakeholders to develop a comprehensive suite of measures designed to reduce drug related harm in the ACT. Running alongside legislative reform was an increase in the investment in alcohol and other drug treatment services.

“ We know from research and evidence around the world that criminalising drug users does not reduce drug use and that treating drug addiction as a health issue improves outcomes for everyone in the community. ”

ACT Minister for Health, Rachel Stephen-Smith MLA



Decriminalisation across the globe

The momentum for decriminalisation of illicit drugs is growing around the world with well 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.²

“ Responding to the harms associated with drug use and the illicit drug trade is one of the greatest social policy challenges of our time. All aspects of this challenge have human rights implications. ”

UN Guidelines on Human Rights

In March 2019 the United Nations launched the International Guidelines on Human Rights and Drug Policy which supports the decriminalisation of small amounts of illicit drugs for personal use.³

² Hughes, C., Ritter, A., Hughes, C., Ritter, A., Chalmers, J., Lancaster, K., Barratt, M. & Moxham-Hall, V. (2016). Decriminalisation of drug use and possession in Australia – A briefing note. Sydney: Drug Policy Modelling Program, NDARC, UNSW Australia, accessed online here: <https://ndarc.med.unsw.edu.au/resource/decriminalisation-on-drug-use-and-possession-australia-briefing-note> on 21/10/2022.



Stigma drives people to hide their drug use, avoid health care and use alone. Through provincewide decriminalization, we can reduce the fear and shame that keep people silent about their drug use, and support people to reach out for help, life-saving supports and treatment⁴

Sheila Malcolmson, Minister of Mental Health and Addictions, British Columbia

In response to a recognised problem with overdose and also to address stigma, the British Columbia government in Canada are planning to decriminalise illicit drug use in 2023.

Closer to home, in 2019, New Zealand passed legislative amendments giving police discretion to take a health-centred approach rather than prosecuting those in possession of drugs such as 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.⁵

³ 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

⁴ <https://news.gov.bc.ca/releases/2021MMHA0017-000706>

⁵ New Zealand Drug Foundation, *Estimating the impact of drug policy options*, October 2018, accessed at



Why decriminalisation is required in Australia

Tasmania's response to illicit drug use is aligned with that of other Australian states and territories and with Australia's National Drug Strategy 2017-2026. This strategy sees activity across three pillars, addressing supply (through regulation and law enforcement), demand (through prevention and treatment) and harm (through harm reduction strategies). Supply reduction efforts receive two thirds of the budget Australia spends to address issues with alcohol and other drugs.

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.⁶

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

70,000 Tasmanians over 14 years of age have used illicit drugs within the last 12 months.

Findings from the 2019 National Drug Strategy Household Survey showed that approximately 70,000 Tasmanians aged over 14 years (16.5%) reported having used illicit drugs recently.⁷

During 2019-2020, there were an almost record high 166,321 drug arrests in Australia, including 2,790 in Tasmania. More than 85 per cent of these arrests (2,576) 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.⁸

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'.



I mean look at the recidivism rate in Risdon prison. The fact that they're what, 60% likely to come back, and everyone's either on something or coming down off something, shows you the current way does not work and it WILL NOT WORK.

Tasmanian with lived experience



<https://www.drugfoundation.org.nz/assets/uploads/Cost-benefit-analysis-drug-law-reform.pdf>

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

<http://unsworks.unsw.edu.au/fapi/datastream/unsworks:52287/bin564e5d83-0fc6-4562-b828-94c687f59a03?view=true>

⁷ Recently means in the last 12 months. Australian Institute of Health and Welfare, *National Drug Strategy Household Survey Key Findings*, 2019. Accessed online 21/10/2022

<https://www.aihw.gov.au/reports/illicit-use-of-drugs/national-drug-strategy-household-survey-2019/contents/summary>

⁸ Australian Criminal Intelligence Commission, *Illicit Drug Data Report 2019-2020*, (2021), accessed at <https://www.acic.gov.au/publications/illicit-drug-data-report/illicit-drug-data-report-2019-20>



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 (e.g. poor health, poverty and crime). A law enforcement approach to drug use does not address these fundamental 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. These barriers extend to all people who experience issues with alcohol and other drugs, regardless of socio economic status. Shame and stigma impacts an individual's willingness to be open about discussing their concerns or make the step to access treatment and support. As such, 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.⁹

The case for decriminalisation in Tasmania

Tasmania's current justice orientated approach to drug use has failed to curtail supply and demand, and 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 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.¹⁰

- A report prepared by the University of Tasmania estimated the cost of illicit drugs to Tasmania in 2015-16 at \$301.73 million. In this analysis the report identified savings of \$273.6 million under a decriminalisation model.¹¹
- 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.

⁹ 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.

¹⁰ 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.

¹¹ Blacklow, P, Illicit Drug Reform in Tasmania A Cost Benefit Analysis, B Bartl, Community Legal Centres Tasmania, Tasmania (2017) [Consultants Report], found here <http://ecite.utas.edu.au/120156>



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.¹² Widespread stigma and discrimination towards those in our community who use alcohol and other drugs is pervasive 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.¹³

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.

“
To have the chance to go and do something about it, would have been a good trigger for me to go to counselling, rather than hit rock bottom and have it become part of my identity. **”**
Tasmanian with lived experience

¹² As defined by the Australian Injecting & Illicit Drug Users League (AIVL).

¹³ K Lancaster, K Seear & A Ritter, *Reducing stigma and discrimination for people experiencing problematic alcohol and other drug use*, 2017, p8.