Uniting

Submission

Advocacy
13 January 2023

Parliamentary Joint Committee on Law Enforcement

Inquiry into challenges and opportunities for law enforcement in addressing Australia's illicit drug problem



We would like to thank Uniting NSW.ACT staff and partner organisations who participated in consultations and made other contributions as part of the preparation of this submission, in particular Dr Marianne Jauncey, Medical Director, Uniting Medically Supervised Injecting Centre.

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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 Australia.

Every year, we work with around 120,000 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 of small amounts of prohibited drugs and
- increase investment in drug and alcohol treatment services.

This resolution resulted in Uniting becoming the lead partner in the 70 organisation Fair Treatment campaign, and a strong supporter of a more compassionate, health-based approach to drug use rather than a criminal one.

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

Uniting's support for decriminalisation of personal drug use/possession does not equate to support for legalisation. We consider the illegal importation, manufacture and large-scale supply of decriminalised substances should remain a focus of law enforcement activities.

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 our community, as well as improving the lives of the vulnerable and disadvantaged.

Key Findings

Australia should adopt a nationally coordinated whole of government approach to drug policy, balancing: demand reduction, supply reduction and harm reduction. There is a clear leadership role the Federal Government could and should play in:

- leading a national conversation about the negative impact of our drug laws, the failure to treat drug dependency as a health issue and the need to treat all people with dignity and respect;
- evaluating the impact of the different systems across jurisdictions;
- providing leadership to State/Territory governments consistent with the principles and issues outlined in this submission and summarised below;
- contributing to the cost of prevention, treatment and harm reduction measures that might be carried out by State and Territory governments but result in long term savings to Federal areas of responsibility;
- invest in research into new types of treatment; and
- invest in pilots of innovative diversion programs like the Law Enforcement Action Partnership (LEAP).

Key principles/issues:

- Drug-related issues should be recognised as primarily a health issue and treated like any other chronic health condition.
- Australia should rectify the disproportionate amount it spends on law enforcement of illicit drugs, and instead boost spending on treatment, prevention, and harm reduction.
- There is strong public support among Australians for measures amounting to the removal of criminal sanctions for possession for personal use of all prohibited drugs.
- Decriminalisation should apply to all drug types – people who use various forms of drug are entitled to the same compassionate, health-based approach.
- Decriminalisation and changing the approach to policing people who use drugs would be one of the most effective ways of reducing First Nations incarceration rates.
- Pursuing a course of legalisation of some classes of drug without decriminalisation of all substances would have less health and welfare benefits and may reduce the prospect of achieving further law reform as it relates to other drugs.
- Access to treatment services should be addressed though a doubling of treatment expenditure and the development of State/Territory-based, needs-based planning process.
- Encourage States/Territories to move away from threshold quantities as a mechanism for distinguishing between possession/use and supply.
- Imposing sanctions like fines and community service on people with drug dependency is likely to exacerbate underlying vulnerability and disadvantage.

- Police stop and search laws and sniffer dog use are inconsistent with a health-based approach to drug use, and ineffective at addressing drug supply issues.
- Injectable opioid substitutes offer some people significantly higher treatment retention, greater reductions in illicit opioid use and improvements in health and social outcomes than oral substitutes.
- Dispensing costs for opioid substitutes must be abolished as they represent a barrier to treatment for opioid users.
- The case for supervised injecting facilities and drug checking facilities is heightened by the threat posed by fentanyl, where injecting drug users face a much higher risk of unintentional overdose.
- Sites should be assessed for establishment of overdose prevention health services where they are collocated with existing harm reduction services like needle syringe programs and meet demonstrated local need.

Trends and changes relating to illicit drug markets in Australia, including the supply, trafficking, production, distribution and use of illicit drugs

Uniting NSW.ACT considers that there is an important distinction to be drawn between people who use drugs, and those who produce and distribute them. We support the prosecution of those who seek to profit from the large-scale trafficking of illicit drugs. In fact, decriminalisation would free up policing resources for this task. People who use drugs are frequently a vulnerable and marginalised group for whom criminal sanctions have proven ineffective at supporting them and addressing large scale supply.

Uniting supports moving away from threshold quantities as a mechanism for distinguishing between possession/use and supply. Instead, establishing the offence of supply would require evidence other than the quantity of the substances (such as possessing paraphernalia like scales or packed quantities of the substances, or evidence of transactions such as large amounts of cash).

Emerging trends and risks, such as new psychoactive substances, adulterated drugs, and other new sources of threat

Key Points

- The case for supervised injecting facilities and drug checking facilities is heightened by the threat posed by fentanyl, where injecting drug users face a much higher risk of unintentional overdose because of the potency of the drug and/or being unaware that it has been mixed into their purchased drug.
- New services need not be large stand-alone facilities. Sites should be assessed for establishment of overdose prevention health services where they are co-located with existing harm reduction services like needle syringe programs and meet demonstrated local need.

Threat of Fentanyl

Fentanyl is a powerful synthetic opioid that is up to 100 times more potent than morphine. Illicitly manufactured fentanyl has caused an epidemic of overdose deaths across North America. Synthetic opioids, including illicit fentanyl (as opposed to the pharmaceutically prepared medicine), are now the most common drugs involved in drug overdose deaths in the United States. Of the 107,375 people in the United States who died of drug overdoses and drug poisonings in the 12-month period to January 2022, 67 per cent involved synthetic opioids like fentanyl - compared to 14.3 percent in 2010.[1,2]

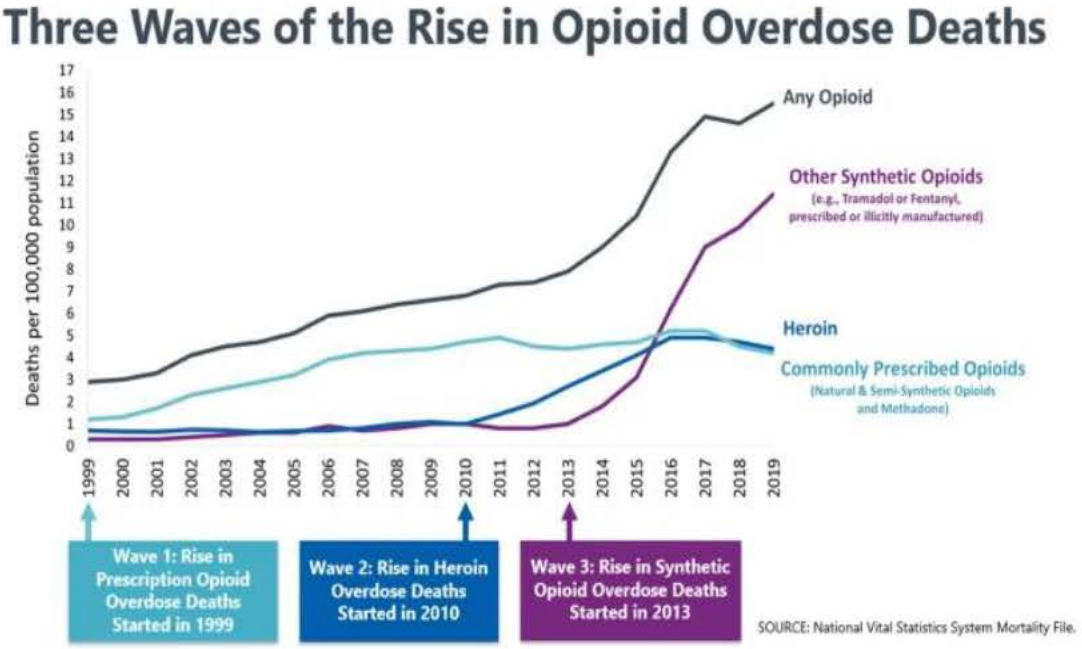
It has become increasingly common for fentanyl to be mixed with other drugs, such as heroin, cocaine, methamphetamine, and MDMA, because of its potency, so people using drugs may not be aware that they are using fentanyl.

The potency of fentanyl, and hence ability to move and conceal large volumes, makes it an attractive drug to attempt to import. While Australia has been spared the United States experience, Australian overdose deaths involving the synthetic opioids of fentanyl, pethidine and tramadol have increased by 1,275% since 2006.[3] However, the discovery of

[1] https://www.dea.gov/fentanylawareness
2 https://nida.nih.gov/publications/drugfacts/fentanyl
[3] https://www.penington.org.au/overdose/overdose-projects-campaigns/australias-annual-overdose-report/

an 11-kilogram shipment of pure fentanyl into Melbourne in August this year highlights the risks and potential for harm.

Furthermore, as shown by the following chart[4], the United States experience indicates that the rate of increase in deaths from fentanyl once introduced into the illicit drug market is significantly faster than for other opioids.



Medically Supervised Injecting Centre

The case for supervised injecting facilities is even stronger where there is a threat from fentanyl. This is because people who inject drugs face a much higher risk of unintentional overdose because of the potency of the drug and/or being unaware that it has been mixed into their purchased drug. Supervised injecting facilities also act as an early warning system and can test for fentanyl in the substances used onsite. The supervised injecting service Uniting runs in Sydney has seen some sporadic cases of illicitly manufactured fentanyl, but these have been sporadic only.

It was twenty-one years ago that Uniting 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 establishing 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 their 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.

[4] Centres for Disease Control and Prevention, https://www.ncbi.nlm.nih.gov/books/NBK578300/figure/ch8.fig11/#

A 2004 evaluation of the initial impacts of MSIC[5] found that 40% of clients had overdosed in the past, with 25% of these having done so at least five times.

The 2007 evaluation[6] found that:

- 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 was sustained over six years.

The Alcohol and Drug Foundation observes that: "While acknowledging that injecting drugs is not considered 'safe', MSICs allow for a safer environment for people to inject drugs, access emergency care (if required) and obtain sterile injecting equipment. These centres also offer broader health services and pathways into rehabilitation, treatment, and other essential services."[7]

Uniting considers that there is scope to introduce additional medically supervised injecting facilities in Australia, however, the imperative for stand-alone services such as Kings Cross is less than it was when faced with the conditions of two decades ago. We recommend that sites be assessed for establishment of supervised injecting services where they are co-located with existing harm reduction services like needle syringe programs and meet demonstrated local need.

This is supported by the New South Wales Special Commission of Inquiry into the Drug Ice, which recommended:

> "…the Uniting MSIC is the only supervised drug consumption service that may lawfully operate in NSW and the legislation permits it to supervise administration by injection only. Evidence to the Inquiry supports a recommendation that these restrictions be removed to allow drug consumption services to be established in areas of local need (Recommendation 51), including by integrating them within existing AOD or primary healthcare services and primary NSPs."[8]

[5] https://kirby.unsw.edu.au/sites/default/files/kirby/report/INT_EVAL_REP_%2B1_SYD_%2BMSIC.pdf
[6] https://kirby.unsw.edu.au/sites/default/files/kirby/report/EvalRep4SMSIC.pdf
[7] https://adf.org.au/insights/medically-supervised-injecting-centres/
[8] https://www.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/publications/The-Drug-ice-1546/02-Report-Volume-1a.pdf, para 113.

The involvement of law enforcement in harm reduction strategies and in efforts to reduce supply and demand, including the effectiveness of its involvement

Key points

- Drug-related issues should be recognised as primarily a health issue and treated like any other chronic health condition.
- Australia spends a disproportionate amount on law enforcement of illicit drugs, compared with treatment, prevention, and harm reduction.
- Decriminalisation or diversion schemes offer an opportunity to support people caught with personal quantities of drugs without recourse to the criminal justice system.
- Discretion inherent in diversion schemes means that not all cohorts of people are dealt with in the same manner, with vulnerable communities particularly unfairly treated.

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. While the Strategy recognises that drug use is a health and social issue, it also refers to the role of law enforcement to detect and deter drug crime.[9]

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 support services; and reduces barriers to seeking treatment.

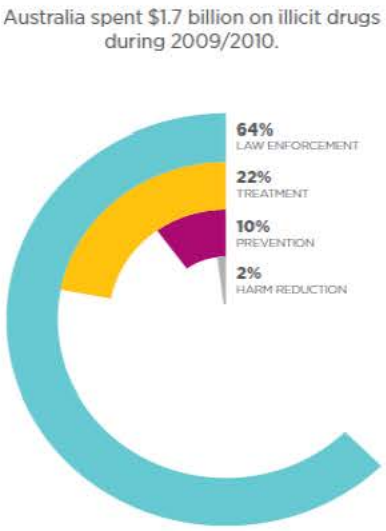
Street-level drug-related law enforcement strategies are premised on the deterrent influence on the demand for illicit substances, however evidence of a deterrent effect is mixed and can vary across policing strategies and studies. Street-level drug-related law enforcement has been criticised for disproportionately 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.[10]

Drug-related issues should be recognised as primarily a health issue and treated like any other chronic health condition.

[9] AIHW National Drug Strategy Household Survey 2019
[10] 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

Drug-related issues are often linked to complex social circumstances including trauma, abuse, poor mental health and social disadvantage. Effective responses to harmful drug use must address these underlying causes.

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.[11] Community attitudes increasingly support a greater proportion of expenditure on drug education programs than law enforcement.[12]

Evidence provided to the Australian Parliament inquiry into crystal methamphetamine[13] 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, research shows that 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'.

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.'

Breaking the law and health connection

As the lead partner in the Fair Treatment campaign[14], Uniting NSW.ACT is a strong supporter of a more compassionate, health-based approach to drug use rather than a criminal one.

The evidence is clear from worldwide experience that expanding drug treatment and reforming personal use laws, implemented together, are likely to yield substantial positive outcomes for the whole community. The potential benefits to the community would include:

[11]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
[12] AIHW National Drug Strategy Household Survey 2019
[13] https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Crystalmethamphetamine45/Final_Report
[14] https://www.fairtreatment.org/

- better health outcomes - more people with drug dependency could receive immediate, appropriate treatment
- freeing significant police and criminal justice resources to be redirected to addressing drug production/supply
- reduced avoidable deaths[15]
- lower rates of recidivism[16]
- reduced rates of drug-related crime[17] 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).[18]

The 2016 United Nations General Assembly Special Session on drugs (UNGASS 2016), recognised:

> "drug addiction as a complex multifactorial health disorder characterized by chronic and relapsing nature" that is preventable and treatable and not the result of moral failure or a criminal behaviour. The World Psychiatric Association observed that "historically, most nations' strategies for addressing substance use disorders have centered on punishment, and thus recognition of the need to shift from a criminal justice to a public health approach represents a major shift in mentality by United Nations Member States."[19]

The Parliament of Victoria Law Reform, Road and Community Safety Committee Inquiry into Drug Law Reform concluded that:

> "The Committee notes that a reorientation or reframing the 'drug problem' as a health issue does not suggest 'going soft' on drugs. Rather it requires a smarter approach. The Committee strongly supports continuing efforts to ensure drug traffickers are subject to the full force of the law. Similarly, those who commit crimes, particularly crimes of violence, while under the influence of drugs should not be immune from prosecution. However, according to a large number of stakeholders, including those who work in law enforcement, arresting and prosecuting people for personal possession and use or for dealing to pay for their own habit, is largely counterproductive. The Committee was advised on numerous occasions that the use of an illicit substance is one of the few actions where the act of use rather than the consequences arising from that use is criminalised."[20]

One of the reasons for pursuing, or threatening to pursue, criminal charges against individuals caught with personal quantities of drugs is to coerce them to disclose

[15] 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.

[16] 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

[17] 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.

[18] 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

[19] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5428163/

[20] https://www.parliament.vic.gov.au/images/stories/committees/lrrcsc/Drugs_/Report/LRRCSC_58-03_Full_Report_Text.pdf, page 66

information about their dealer. This practice is unlikely to be effective in identifying other than intermediate level dealers and places a high degree of stress on the already marginalised individuals caught with personal quantities of drugs.

Law Enforcement Action Partnership (LEAP)

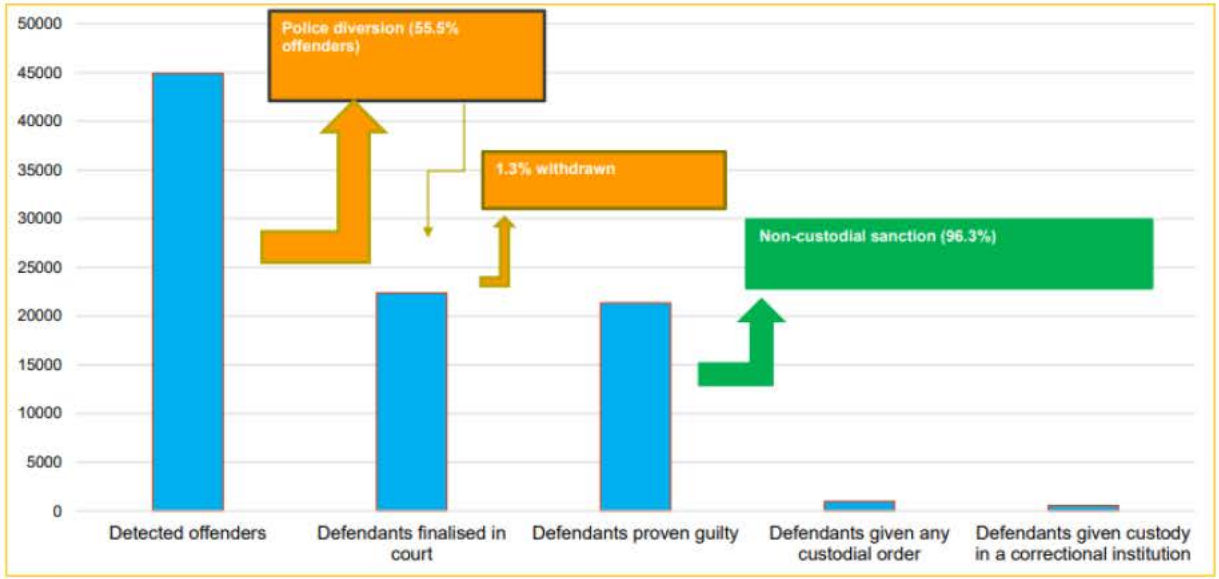
- The Law Enforcement Action Partnership is a global organisation with a membership of law enforcement professionals who advocate for evidence-based drug policies.
- Founded in 2002 by five police officers in the United States, it is a non-profit coalition of police, prosecutors, judges, corrections officials, and other law enforcement officials advocating for criminal justice and drug policy reforms that will make communities safer and more just.
- LEAP believes that adult drug abuse is a public health problem and not a law enforcement matter.
- LEAP believes that individuals suffering from drug addiction who seek help should receive support, including drug treatment.
- We argue that the cost of expanding such services could be financed with a fraction of the criminal justice savings from ending drug prohibition.

Diversion schemes

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.

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



Even though most illicit drug use/possess offences will not attract a custodial order of some kind, the current diversion systems of diversion are not well aligned with harm reduction, establishing respectful and trusted relationships with health professionals and dealing with the root causes of drug use.

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.

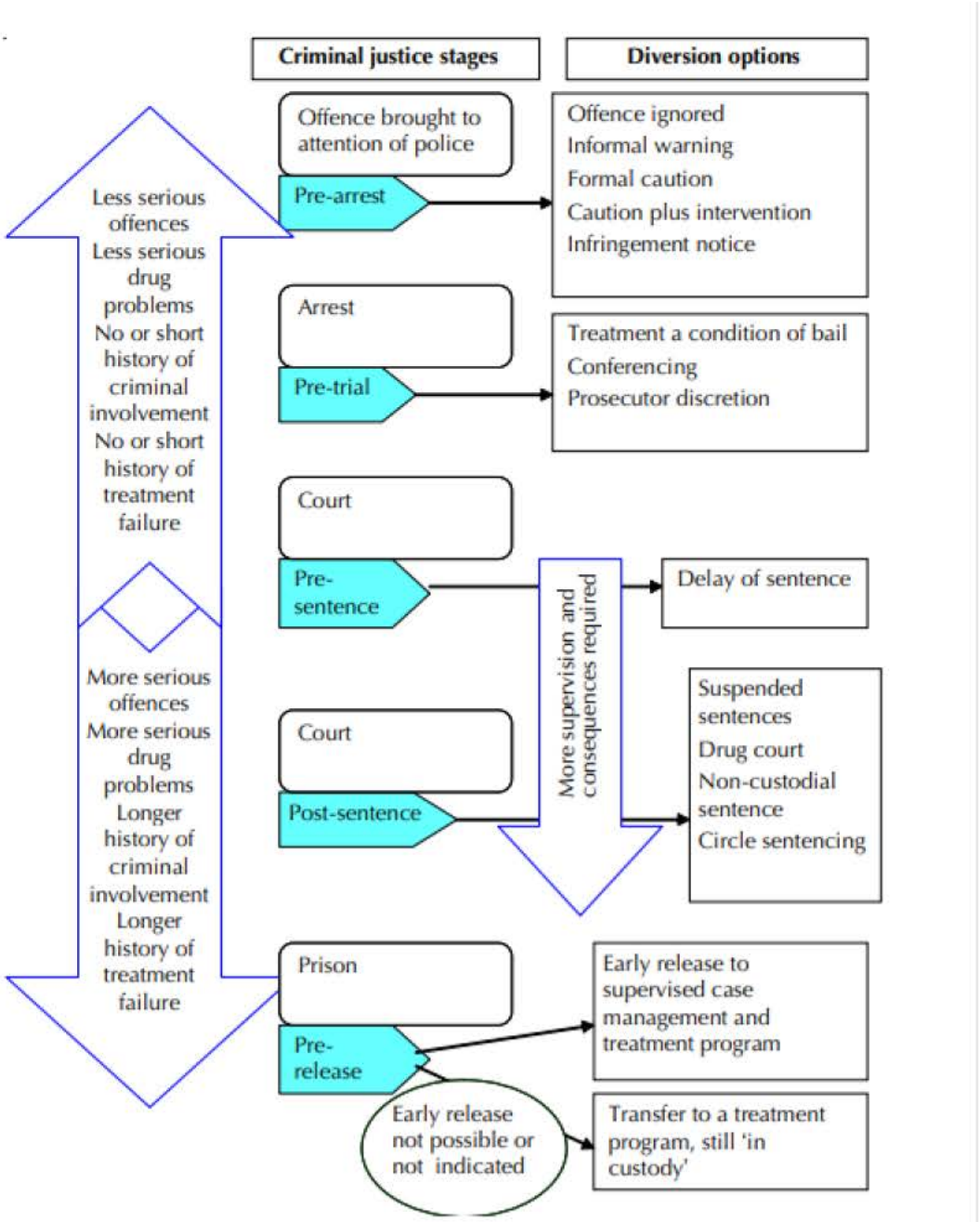
In 2019, the NSW Government introduced provisions allowing police to issue Criminal Infringement Notices (CIN), which are on-the-spot fines for possession of a small quantity of prohibited drugs. Possession of cannabis was already covered by a Cannabis Cautioning Scheme.

A study undertaken of the trial of the scheme across music festivals in NSW from 25 January 2019 to 1 August 2019[21] 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.

The National Drug Law Enforcement Research Fund has suggested a diversion model[22], which is shown below to demonstrate the number of potential points in the criminal justice system where diversion can be used as an alternative to criminal sanctions. Uniting notes that this model suggests a higher level of criminal justice system involvement with longer drug use histories, which we do not support. Those with longer histories of drug use are arguably even more in need of support and health-based interventions as other people who use drugs, and certainly should have equal rights.

[21] National Drug and Alcohol Research Centre, Ibid.
[22] National Drug Law Enforcement Research Fund: The role of police in preventing and minimising illicit drug use and its harms https://www.aic.gov.au/sites/default/files/2020-05/monograph-2.pdf



However, a significant shortcoming of diversion schemes that involve discretion is hat not all cohorts of people are dealt with in the same manner, with vulnerable communities particularly unfairly treated. For example, between 2013 and 2017, 82.55% of all Indigenous people found with a non-indictable quantity of cannabis were pursued through the courts, compared with only 52.29% on non-indigenous people[23], suggesting that police disproportionately used the justice system to prosecute Indigenous people, despite the existence of a specific cautioning scheme introduced to keep minor drug offences out of the courts.

[23] https://www.theguardian.com/australia-news/2020/jun/10/nsw-police-pursue-80-of-indigenous-people-caught-with-cannabis-through-courts

The strengths and weaknesses of decriminalisation, including its impact on illicit drug markets and the experiences of other jurisdictions

Key points

- The Synod of the Uniting Church of NSW and the ACT has resolved to support the decriminalisation of personal possession of small amounts of all substances.
- There is strong public support among Australians for measures amounting to the removal of criminal sanctions for possession for personal use of all prohibited drugs.
- Eligibility criteria under decriminalisation schemes (such as age, whether the person admits to the offence, whether the person has previously been found in possession more than a certain number of times) are complex and inequitable.
- Discretion inherent in diversion schemes means that not all cohorts of people are dealt with in the same manner, with vulnerable communities particularly unfairly treated.
- Decriminalisation should apply to all drug types – people who use various forms of drug are entitled to the same compassionate, health-based approach.
- We should move away from threshold quantities as a mechanism for distinguishing between possession/use and supply.
- Imposing sanctions like fines and community service on people with drug dependency is likely to exacerbate underlying vulnerability and disadvantage.
- Pursuing a course of legalisation of some classes of drug without decriminalisation of all substances would have less health and welfare benefits and may reduce the prospect of achieving further law reform for other drugs.

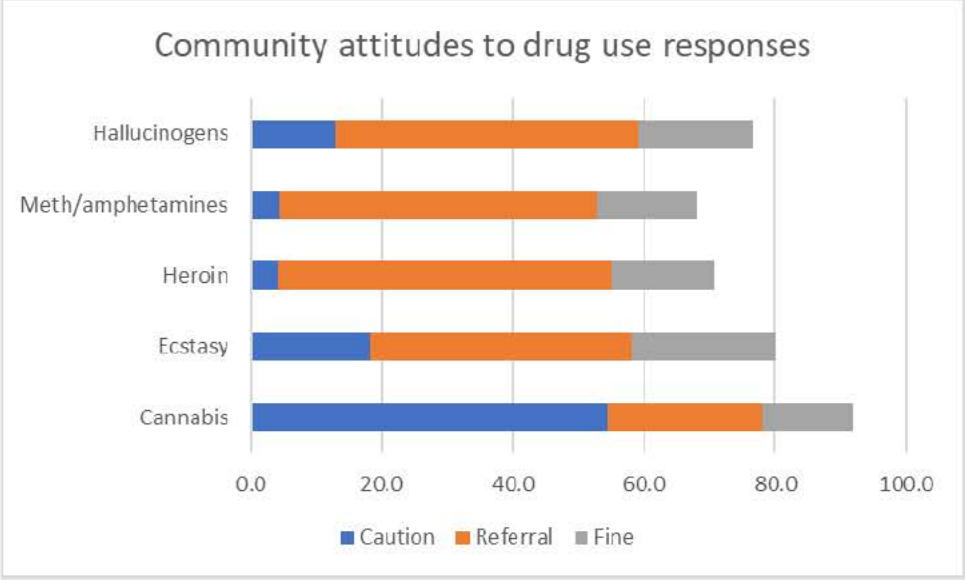
As part of the Fair Treatment campaign, the Synod of the Uniting Church of NSW and the ACT has resolved to support the decriminalisation of personal possession of small amounts of all substances.

The 2019 National Drug Strategy Household Survey[24] 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 to attract 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.[25]

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.

[24] 2019 National Drug Strategy Household Survey, https://www.aihw.gov.au/reports/illicit-use-of-drugs/national-drug-strategy-household-survey-2019

[25] 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.



Polling commissioned by Uniting in a diverse range of NSW and ACT electorates (including Baulkham Hills, Penrith, Parramatta, Coffs Harbour and Monaro in NSW, and Brindabella, Yerrabi, and Kurrajong in the ACT) supports these results – on average 78 per cent of people in NSW and the ACT are against custodial sanctions for people found in possession of small quantities of drugs, while 65 per cent of people think those found in possession of drugs should have a non-punitive response like no action, caution or referral for treatment.

Eligibility for decriminalisation should be consistent and transparent

Various States and Territories have adopted de facto decriminalisation schemes like police diversion programs.[26] 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, such as 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.[27] Criteria and thresholds vary depending on the drug and the jurisdiction.

While eligibility criteria may be superficially appealing because they appear to mitigate the undesirable effects of the criminal law in some cases, they are less transparent, make the law more complex to draft and enforce and can have unintended consequences in practice.

Eligibility criteria are also inequitable. 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

[26] Hughes, *et al.* (2016) *op. cit.*
[27] 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.

evidence that eligibility requirements can exclude those most marginalised, and those most in need of diversion, from access to treatment and rehabilitation.[28]

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.

However, repeated incidents of being found in possession is possibly evidence of a more serious underlying health or social problem and a *greater* need for a health and welfare intervention.

Decriminalisation should apply to all prohibited drugs

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.[29] However, we note that public opinion is consistently more favourable towards decriminalisation of cannabis than other substances.[30]

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.

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 are consistent with valuing of the dignity of the human person, and a concern for the most disadvantaged.

Threshold quantities

Australia is in the minority of countries that specify threshold quantities to distinguish between drug offences and to identify deemed supply. In all jurisdictions Australian drug trafficking thresholds are attached to deemed supply laws, which reverse the traditional burden of proof from prosecutors onto defendants. Such laws mean that possession of the trafficable threshold amount will constitute a presumption of trafficking placing the

[28] Hughes, *et al.* (2014) *Evaluation of Australian Capital Territory Drug Diversion Programs*ibid.
[29] https://www.dpc.nsw.gov.au/publications/special-commissions-of-inquiry/the-special-commission-of-inquiry-into-the-drug-ice/
[30] Hughes and Ritter (2018) *op. cit.*

onus on the alleged offender to prove that the possessed amount was not for the purposes of trafficking.

Studies have identified that thresholds are too low relative to patterns of drug use: users are at risk of exceeding the trafficable thresholds when they follow typical use and purchase patterns, but that when purchasing high or multiple doses many can exceed the thresholds for their personal use alone.[31]

Uniting supports moving away from threshold quantities as a mechanism for distinguishing between possession/use and supply. Instead, establishing the offence of supply would require evidence other than the quantity of the substances (such as possessing paraphernalia like scales or packed quantities of the substances, or evidence of transactions such as large amounts of cash).

The role of fines in a decriminalisation system

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.

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

The NSW Ice Inquiry recommended 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.[32]

Uniting does not support imposition of fines as part of a decriminalisation system. The frequently given rationale for civil sanctions such as fines and/or community service orders is that they send a signal that society discourages drug use, and such sanctions are likely to operate as a general deterrent. However, fines and community service orders are problematic as primary responses to possession/use. They are not consistent with a belief that policy should reflect concern for the most disadvantaged, nor are they equitable, because they have a greater adverse impact on those who are most vulnerable and with most limited means. Drug dependency is a symptom of underlying vulnerability and disadvantage, and therefore sanctions like fines and community service are likely to exacerbate that disadvantage.

[31] Australian threshold quantities for 'drug trafficking': Are they placing drug users at risk of unjustified sanction? ; https://www.aic.gov.au/publications/tandi/tandi467
[32] https://www.dpc.nsw.gov.au/publications/special-commissions-of-inquiry/the-special-commission-of-inquiry-into-the-drug-ice/

Research undertaken into the entrenched disadvantage of those with drug dependency highlights the clear and distinct correlation between childhood maltreatment and drug dependency in adulthood. A study undertaken by the National Drug & Alcohol Research Centre at the University of New South Wales showed that drug dependent males had a higher prevalence of physical and emotional abuse as children, and female cases had a higher prevalence and great severity of sexual abuse as children.[33]

A further separate study confirmed the link between childhood maltreatment as a significant risk factor for drug dependency. The same study also showed that childhood maltreatment increased the severity of drug dependency and higher rates of engagement in risky injecting, non fatal overdose and suicidal behaviour.[34] The National Drug and Alcohol Research Centre provided advice to the Parliament of Victoria Law Reform, Road and Community Safety Committee Inquiry into Drug Law Reform that, in some programs there have been increases in the number of people who have ended up having contact with the criminal justice system – referred to as net widening - due to the greater ease with which police can process minor drug offences and impose fines.[35]

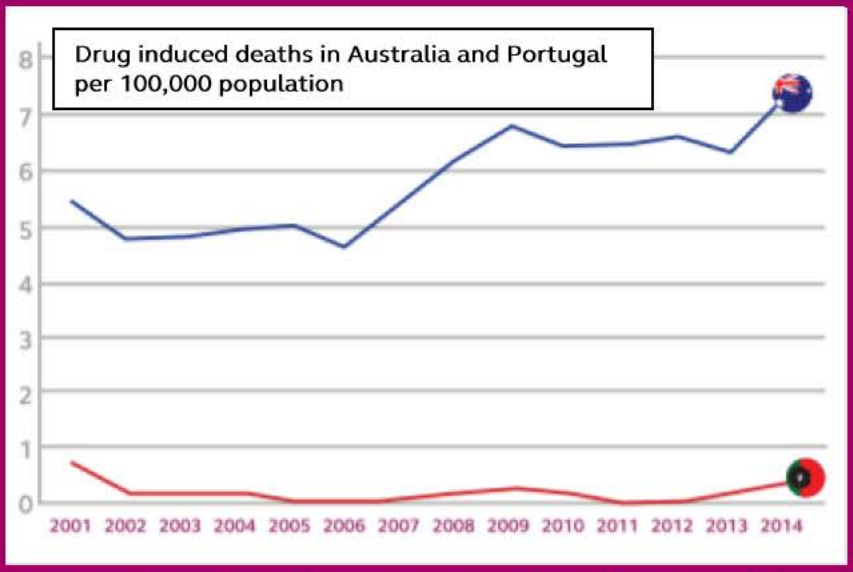
Victoria Law Reform, Road and Community Safety Committee formed the view[36] that it is important to ensure the prioritisation of treatment and health is the goal, rather than the enforcement of fines. In relation to the Portuguese model, fines are rarely imposed and the priority is to encourage people to enter treatment. Further, in Portugal, most cases coming before the Commission for the Dissuasion of Drug Abuse are resolved quickly and without extensive impost on resources.

[33] Conroy, *et. al.* (2009) Child maltreatment as a risk factor for opioid dependence: Comparison of family characteristics and type and severity of child maltreatment with a matched control group
[34] Santo Jr., et. al. (2021) Prevalence of childhood maltreatment among people with opioid use disorder: A systematic review and meta-analysis
[35] https://www.parliament.vic.gov.au/images/stories/committees/lrrcsc/Drugs_/Report/LRRCSC_58-03_Full_Report_Text.pdf, page 170
[36] https://www.parliament.vic.gov.au/images/stories/committees/lrrcsc/Drugs_/Report/LRRCSC_58-03_Full_Report_Text.pdf, page 191

The Portuguese Experience

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[37, 38] 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 declined[i] and the burden on the criminal justice system eased.



Portugal's drug situation has improved significantly in several key areas. Most notably, HIV infections and drug-related deaths have decreased, while the dramatic rise in use feared by some has failed to materialise.[39]

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

[37] 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/
[38] Hughes & Stevens (2010), "What can we learn from the Portuguese decriminalization of illicit drugs?", *Brit.J Criminol* at https://kar.kent.ac.uk/29910/
[39] Transform Drug Policy Foundation (2020), op.cit.

> an increase in the number of people seeking treatment in a post-decriminalised setting. This setting has drastically reduced drug-related harms.[40]

It also found that:

> Evidence suggests drug-related deaths in Portugal have declined since decriminalisation; however, there are limitations to the available data. Documents provided by SICAD show the number of overdoses has drastically fallen between 2008 and 2014.
>
> In 2008, there were reportedly 94 overdose deaths, and in 2014, this total had declined to 33. This total accounted for only 15 per cent of all drug-related deaths. Transform reported that deaths due to drug use had decreased from approximately 80 in 2001, to 16 in 2012.[39]

Decriminalisation versus legalisation

Uniting is pursuing a policy goal of decriminalisation of personal use and possession of all types of drugs, however, this does not extend to support for legalisation. Under the model that we envisage, the illegal importation, manufacture and large-scale supply of decriminalised substances should remain a focus of law enforcement activities.

Various schemes have been proposed to legalise cannabis, most notably recently by the Greens at the State and federal level.[41] While we can see that public sentiment for drug law reform is stronger for cannabis, we have concerns that seeking law reform of cannabis only will not assist the most vulnerable illicit drug users, namely those with other drug dependency problems. Pursuing a course of legalisation of some classes of drug without decriminalisation of all substances would have less health and welfare benefits.

We are also concerned that pursuing a course of legalisation of only cannabis may reduce the prospect of achieving further law reform as it relates to other drugs. The arguments made in support of cannabis legalisation often refer to its lower rates of harm. Uniting believes that people using substances that may have higher health impacts are the people who should be most considered in law reform. People who use these substances are more in need of health and welfare responses. The perceived harm of a drug should not be the basis of law reform. Uniting believes in compassion, dignity and a health-based response for all people who use drugs, but especially for those that are vulnerable - which includes users of all drugs, not just cannabis.

[40] Joint Committee on Law Enforcement (2017), ":First report: Inquiry into crystal methamphetamine (ice)", https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Crystalmethamphetamine45/~/media/Committees/le_ctte/Crystalmethamphetamine45/First_report/c01.pdf

[41] https://www.parliament.nsw.gov.au/bill/files/3826/XN%20Cannabis%20Legalisation%20Bill%202021.pdf; https://greens.org.au/campaigns/legalise-it.

Other related matters

Key points

- Australia should adopt a nationally coordinated whole of government approach to drug policy, balancing: demand reduction, supply reduction and harm reduction. There is a clear leadership role the Federal Government could and should play. Access to treatment services should be addressed though a doubling of treatment expenditure and the development of a state-wide needs-based planning process.
- Police stop and search laws and sniffer dog use are inconsistent with a health-based approach to drug use, and ineffective at addressing drug supply issues.
- Injectable opioid substitutes offer some people significantly higher treatment retention, greater reductions in illicit opioid use and improvements in health and social outcomes than oral substitutes.
- Dispensing costs for opioid substitutes must be abolished as they represent a barrier to treatment for opioid users.

Whole of Government approach to drug policy

While Uniting advocates for a health-based approach to people who use drugs, this does not mean that government's overall drug strategy should be approached just from a narrow health portfolio perspective.

The Ice Inquiry found that NSW has no whole-of-government policy to support a coordinated response to amphetamines and other drugs. This has resulted in a piecemeal response, devolved to individual agencies without adequate oversight and accountability. It noted that this lack of a centrally guided government response contrasts with earlier approaches to the issue of drug use in the community, particularly those taken following the NSW Drug Summit in 1999. In its view, a whole of government approach is implicitly supported by the National Drug Strategy, which recommends governments adopt a balanced approach across the three pillars of harm minimisation: demand reduction, supply reduction and harm reduction. It also recommended a broader government drug action plan and Ministerial responsibility for drug and alcohol policy.[42]

Access to Treatment

Every year more than 200,000 Australians are unable to access alcohol and other drug (AOD) treatment because there are not enough services available.[43] 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.[44] There are similar gaps in availability of non-residential options such as community-based day treatment.

[42] https://www.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/publications/The-Drug-ice-1546/02-Report-Volume-1a.pdf
[43] 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.
[44] 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

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.[45]

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.

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. Delays mean the window of opportunity when people are motivated to seek help may be lost. 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.

Investment in drug treatment is also highly cost effective – for every $1 spent on treatment, the government saves $7.[46] By refocusing the system on helping people with drug use disorders we can save lives, save money and save law enforcement resources.

Uniting supports a staged approach to address historical underinvestment in AOD treatment:

- doubling of budgets for alcohol and drug treatment services
- immediate funding of new AOD treatment services in high need rural and regional areas identified in previous inquiries
- development of a state-wide needs-based planning process, in line with the recommendation of the *Parliamentary Inquiry into the Provision of Drug Rehabilitation Services in Rural, Regional and Remote NSW*. The planning process should include both residential and non-residential services and address the needs of specific population groups such as women with children.

Addressing Stigma

The Alcohol and Drug Foundation has identified that dependence on illegal drugs has been ranked as the most stigmatised health condition globally, with alcohol dependence ranked as the fourth most stigmatised. The effects of stigma can also prevent or delay someone from seeking alcohol or other drug help and result in people leaving treatment or support services early. Internalised stigma, from supressing stigmatising thoughts and feelings, can also impact a person's mental health and self-esteem, leading to greater potential for increased severity of an alcohol or other drug dependence.[47]

Injection drug use stigma has been identified as a major contributor to healthcare disparities for people who inject drugs. A study by the Harm Reduction Journal found that 78.1% of people reported at least one instance of stigma related to healthcare system engagement, while people attributed healthcare stigma to their drug injection use status and overwhelmingly felt distrustful of, and frustrated with, medical providers and other

[45] NSW Parliament, Legislative Council, 2018, *Provision of drug rehabilitation services in regional, rural and remote New South Wales.*
[46] Ettner, S., Denmead, G., Dilonardo, J., Cao, H., & Belanger, A., 2003, 'The impact of managed care on the substance abuse treatment patterns and outcomes of Medicaid beneficiaries: Maryland's HealthChoice program', *Journal of Behavioral Health Services and Research*, 30(1), 41-62.
[47] https://adf.org.au/insights/stigma-people-who-use-drugs/

healthcare staff at hospitals and local clinics.[48] The creation of respectful and trusting relationships with medical and allied health and welfare services via the Medically Supervised Injecting Centre tells a very different story, and one we are immensely proud of.

The Special Commission of Inquiry into the Drug Ice recommended that NSW Health develop and implement a project to reduce stigma, including:

- a public education campaign about ATS [amphetamine-type stimulants] and people who use ATS, with a focus on raising awareness and dispelling myths;
- the dissemination of existing best practice communication guidelines to government and non-government agencies that come into frequent contact with people who use ATS;
- the development and implementation of anti-stigma training resources for government and non-government health workers; and
- the use of consumer representatives in policy, planning and services, peer workers or advisors, and other community-based strategies.

Police search and sniffer dogs are ineffective in addressing drug use and supply

Uniting Believes that police stop and search laws and sniffer dog use are inconsistent with a health-based approach to drug use, and ineffective at addressing drug supply issues.

The New South Wales Ice Inquiry recommended that the NSW Police Force cease the use of drug detection dogs at music festivals and implement other detection practices to target illicit drug supply, having identified a number of shortcomings to drug detection dogs,[49] including:

- drug detection dogs cannot be trained to distinguish quantities of illicit drugs and cannot be used to target particular quantities of illicit substances to identify suppliers as opposed to people in possession of small amounts for personal use
- data shows that only a quarter of dog indications identify that a person is carrying drugs, while only between 1.4% and 4.8% are of the weight sufficient to deemed to be for supply
- drug detection dogs increase the risk of drug-related harm through encouraging people to quickly consume all the drugs to avoid detection; carry drugs in vaginal and anal cavities; consume drugs before the festival or 'preloading'; and buying drugs from someone they do not know inside the festival.

NSW Police practices in conducting strip searches were found by the Ice Inquiry to be similarly ineffectual in dealing with drug supply. Over the five years to 2019, between 64% and 68% of strip searches found nothing that related to a criminal offence. Of criminal charges arising from a search, supply of a prohibited drug accounted for 17%.[50]

Of significant concern, children have also been subject to strip searches. Data released through a freedom of information request by the Redfern Legal Centre showed that 108 children aged between 10 and 17 were subjected to the search between July 2020 and May 2022. Of those strip searches, 60% found nothing illegal. The information also showed that 18% of the searches were of Indigenous Australians, despite making up 3.4% of NSW population.

[48] https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-020-00399-8
[49] https://www.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/publications/The-Drug-ice-1546/05-Report-Volume-3.pdf, page 820
[50] https://www.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/publications/The-Drug-ice-1546/05-Report-Volume-3.pdf, page 832.

Uniting believes the practice of stop and search, including strip searching would be unnecessary where possession and use of a substance was decriminalised and the removal of that power could be considered.

Opioid Substitute Treatments

The National Drug & Alcohol Research Centre has identified that opioid agonist therapy (OAT) is an effective treatment for opioid addiction, for drugs such as heroin, oxycodone and fentanyl. Administered orally, substitutes such as methadone or buprenorphine are highly effective in reducing illicit drug use and the risk of death. However, this form of treatment does not work for all injecting drug users, and it is acceptable internationally that injectable opioid agonist treatment (iOAT) reduces drug use and related harms for those where the standard treatments are ineffective.

Studies have found that injectable substitute patients have significantly higher treatment retention, greater reductions in illicit opioid use and improvements in health and social outcomes than those patients who were randomised into oral methadone.[51] The feasibility of implementing iOAT within existing treatment settings is worthy of further study.

Dispensing costs form a barrier to treatment

Uniting considers that out-of-pocket costs such as dispensing costs must be abolished as they represent a barrier to treatment for opioid users.

Opioid treatments such as methadone, buprenorphine-naloxone and buprenorphine are supplied under a mixed arrangement of private GPs and privately owned and operated pharmacies, with the costs covered by:

- the Commonwealth Government for the medications themselves under section 100 of the *National Health Act 1953*;
- State and Territory Governments through funding for public clinics, regulatory services and other costs, including training for GPs and pharmacists; and
- consumers who are charged program or dispensing fees by pharmacies which dispense pharmacotherapy medications.[52]

Dispensing fees have been identified as a barrier to treatment. A 2008 study in NSW found that around one quarter of pharmacotherapy clients were in debt to their community pharmacy, 12% of clients described skipping doses and 5% refused doses due to their inability to pay.

A 2022 study[53] found that people using Opioid agonist therapy incurred average monthly dispensing costs of:

- $59.40 at public clinics
- between $70.84 and $94.16 at community clinics
- $156.20 at private clinics.

[51] https://az659834.vo.msecnd.net/eventsairaueprod/production-ashm-public/981fe279b24246aab5fd543d7f0bfebb

[52] https://creidu.edu.au/policy_briefs_and_submissions/10-opioid-pharmacotherapy-fees-a-long-standing-barrier-to-treatment-entry-and-retention

[53] Economic analysis of out-of-pocket costs among people in opioid agonist treatment: A cross-sectional survey in three Australian jurisdictions; https://pubmed.ncbi.nlm.nih.gov/34649203/