

# Decriminalisation



## Position Paper

### What we mean by decriminalisation

Decriminalisation removes criminal penalties for possession either by law or by practice. This means that people would not face criminal punishment (such as a recorded conviction or probation) for small quantities of a drug, which are deemed for personal use, but may still face administrative penalties (such as a fine). This does not change the legal status of currently illicit drugs and people in possession of larger quantities of a drug are still subject to criminal proceedings for supply or trafficking offences.

### The evidence

In Queensland, people who use illicit drugs are almost nine times more likely than dealers or traffickers to find themselves facing action in the criminal justice system (39,099 and 4,385 respectively in 2016-17).<sup>1</sup> The high rate of sentencing for drug possession offences in Queensland is coupled with a declining rate of police proceedings resulting in non-court action.<sup>2</sup>

The National Drug Law Enforcement Research Fund commissioned research to assess cannabis diversion outcomes and cost-effectiveness which found that people who were diverted from the criminal justice system experienced similar outcomes to those subjected to a traditional criminal justice system approach. Significantly, 'the mean cost for the charge group was six to 15 times more than that of the diversion group' yet both groups achieved a similar reduction in their level of offending (p .45).<sup>3</sup> The diversion group also expressed more trust in police and held improved perceptions of police legitimacy.

<sup>1</sup> Australian Criminal Intelligence Commission. Illicit Drug Data Report 2016-17. (2018). [https://www.acic.gov.au/sites/default/files/iddr\\_2016-17\\_050718.pdf?v=1536906944](https://www.acic.gov.au/sites/default/files/iddr_2016-17_050718.pdf?v=1536906944)

<sup>2</sup> Arie Frieberg, Jason Payne, Karen Gelb, Anthony Morgan, Toni Makkai, "Queensland Drug and Specialist Courts Review", Queensland Courts (2016), [https://www.courts.qld.gov.au/\\_\\_data/assets/pdf\\_file/0004/514714/dc-rpt-dscr-final-full-report.pdf](https://www.courts.qld.gov.au/__data/assets/pdf_file/0004/514714/dc-rpt-dscr-final-full-report.pdf).

<sup>3</sup> Marian Shanahan, Caitlin Hughes, Tim McSweeney. (2016). Australian police diversion for cannabis offences: Assessing program outcomes and cost-effectiveness. National Drug Law Enforcement Research Fund. Accessed March 1, 2019 <http://www.ndlerf.gov.au/sites/default/files/publication-documents/monographs/monograph-66.pdf>

The investment required to enforce illicit drug possession offences is significant and growing. Between 2011-12 and 2015-16, the number of people sentenced for drug possession offences (as their most serious offence) has increased by 42.7%, far exceeding growth in the general population which was between 1.3% and 2.0% during the same period.<sup>4 5</sup>

Queensland is the third most populated state in Australia (5.01 million) behind New South Wales (7.98 million) and Victoria (6.45 million), yet the proportion of people charged for illicit drug use or possession dwarfs both those states at 399.6 per 100,000 population (New South Wales = 198.1 per 100,000; Victoria = 100.7 per 100,000).<sup>6</sup> Further, the raw number of people in Queensland being sentenced and finalised in court for illicit drug offences are the highest in Australia (16,923 between 2015-16 and 2016-17).<sup>7</sup>

The role of the criminal justice system in reducing illicit drug supply is as essential to the effectiveness of Australia's National Drug Strategy as treatment and harm reduction. However, the most recent report into Australian drug policy expenditure undertaken by the Drug Policy Modelling Program (2013) highlights investment is heavily weighted towards law enforcement, making up between 61.3-69.8% of the Australian drug budget. By way of comparison, treatment and harm reduction investments range between 19.9-23.3% and 1.8-3.1% respectively.<sup>8</sup> These figures, considered in conjunction with the similarity in individual outcomes referred to above, support a revision of approach with respect to possession of illicit drugs.

The risk of harm to both the drug user and community productivity is increased by involvement in the justice system. In Australia, data indicates that only 1.4 of every five people diverted or charged with cannabis offences meets the criteria for dependence.<sup>9</sup> This is consistent with the United Nations Office of Drugs and Crime estimates that globally, 88-89% who use illicit drugs do not experience dependence or require a treatment intervention.<sup>10</sup>

Where people would benefit from accessing a treatment intervention, the ability to access the right treatment at the right time is paramount. Evidence informed treatment and harm reduction services demonstrably reduce alcohol and other drug harm, improve health status, and improve psychological wellbeing and participation in the community.<sup>11</sup> Moreover, for every dollar invested in alcohol and other drug treatment and harm reduction services, there is a seven dollar return.<sup>12</sup>

By recalibrating the Queensland system towards health-based responses for people who use illicit drugs, and maintaining a law enforcement approach for drug trafficking and supply, there is an opportunity to both save money and improve health and wellbeing for Queensland communities.

4 Queensland Sentencing Advisory Council (2017). Sentencing Spotlight on... possession of dangerous drugs.

5 Queensland Government Statistician's Office. Population growth highlights and trends, Queensland, accessed March 1, 2019. <http://www.qgso.qld.gov.au/products/reports/pop-growth-highlights-trends-qld/index.php>

6 "Australian Bureau of Statistics", Recorded Crime – Offenders, 2016-17, accessed October 29, 2018, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4519.02016-17?OpenDocument>

7 Ibid.

8 Alison Ritter, Ross McLeod, and Marian Shanahan, "Monograph No. 24: Government Drug Policy Expenditure in Australia - 2009/10," in DPMP Monograph Series (Sydney: National Drug and Alcohol Research Centre, 2013).

9 Marian Shanahan, Caitlin Hughes, Tim McSweeney. (2016). Australian police diversion for cannabis offences: Assessing program outcomes and cost-effectiveness. National Drug Law Enforcement Research Fund. Accessed March 1, 2019 <http://www.ndlerf.gov.au/sites/default/files/publication-documents/monographs/monograph-66.pdf>

10 United Nations Office on Drugs and Crime. World Drug Report 2017. accessed March 1, 2019

11 Alison Ritter, Linda Berends, Jenny Chalmers, Phil Hull, Kari Lancaster, Maria Gomez, "New Horizons: The review of alcohol and other drug treatment services in Australia", National Drug and Alcohol Research Centre (2014), <https://ndarc.med.unsw.edu.au/resource/new-horizons-review-alcohol-and-other-drug-treatment-services-australia>.

12 Alison Ritter et al., "New Horizons: The Review of Alcohol and Other Drug Treatment Services in Australia," in Final Report (Sydney: University of New South Wales, 2014).

Health-based responses to illicit drug use and possession reduce the adverse social consequences of contact with the justice system and provide a more efficient and cost-effective opportunity to identify people most in need of treatment. Savings are achieved through the reduced costs of processing people in possession of drugs through the justice system.

The removal of criminal penalties for possession of illicit drugs is a reasonable and prudent system recalibration strategy from both an economic and individual perspective. A review of the first 10 years of the impact of decriminalisation in Portugal found:

*‘ . . . recent and current drug use declined among those aged 15–24, the population who were most at risk of initiation and long-term engagement [in drug use]. The available evidence thus gives grounds for arguing that while there was some growth in the scale of drug use in post-reform Portugal, there was an overall positive net benefit for the Portuguese community’ (p. 105).*

A principle benefit of a health-based approach to illicit drug use and possession is that it reduces significant resource impost on the criminal justice system, enabling law enforcement to focus on dealing and trafficking of illicit drugs.<sup>13</sup>

<sup>13</sup> Caitlin Elizabeth Hughes and Alex Stevens. “What can we learn from the Portuguese Decriminalization of Illicit Drugs?”, *British Journal of Criminology* 50, (2010), 999-1022.

## QNADA's position

It is our view that the evidence supports:

- our understanding that most people who use drugs are productive members of society and most do not experience problems that require intensive treatment.
- the removal of criminal penalties for possession (decriminalisation) as a prudent strategy to reduce the investment required over time to process people through the criminal justice system and increase opportunities for people to access treatment when they need it.
- a review of current approaches across law enforcement, treatment and harm reduction to ensure an appropriate balance across the three pillars of the National Drug Strategy in future investment.