

DRUG DECRIMINALISATION

The Victorian AIDS Council (VAC) supports the decriminalisation of the personal possession and use of all drugs. Criminalisation of personal drug possession and use should be rejected in favour of public health interventions that reduce drug-related harms.

WHAT IS DRUG DECRIMINALISATION?

Drug decriminalisation is not the same as legalisation. Decriminalisation involves removing criminal penalties. It stops short of full legalisation and regulation in the way that alcohol and tobacco are legal, regulated substances.

Decriminalisation allows for the creation of infringements, or administrative sanctions, that are dealt with outside the criminal justice system. By removing drug offences from the criminal justice system, authorities are better able to treat problematic drug use as the public health issue it is and design interventions that reduce the harms related to drug use.

DRUG USE IN THE LGBTI COMMUNITY

Issues related to alcohol and other drug use are of significant concern within the lesbian, gay, bisexual, transgender, and intersex (LGBTI) communities, although there remains a need for more research, particularly with regard to the transgender and intersex communities. Available research indicates LGBT people report significantly higher rates of drug use than the general population.¹ This leaves LGBT people far more vulnerable to the various harms associated with drug use, particularly the transmission of blood-borne viruses like HIV and hepatitis C. LGBT people are also more likely to experience indirect harms as a result of drug use, such as mental health conditions and physical health problems.²

CURRENT PRACTICE

In Victoria the possession and use of drugs of dependence are criminal offences under sections 73 and 75 of the *Drugs, Poisons and Controlled Substances Act 1981*. If convicted of an offence under section 73, a person faces up to five years imprisonment, and if convicted of an offence under section 75, the penalty is up to one year imprisonment. In certain limited cases, a person may be diverted to the Drug Court, a specialist division of the Magistrates' Court. This allows for the possibility of people charged with drug offences to undergo diversion, with a focus on abstinence and rehabilitation.

It is notable that the law as it stands does not prohibit substances based on the degree of harm caused. For example, alcohol is a legal and regulated substance despite the fact it causes more harm than heroin or crack cocaine; and tobacco is a legal and regulated substance despite the fact it is almost as harmful as cocaine, and causes more harm than ecstasy and ketamine combined.³

THE PORTUGUESE EXPERIENCE

Various decriminalisation schemes have been established throughout the world, most notably in Portugal.⁴ In 2001, the Portuguese government removed all criminal penalties for the personal possession and use of drugs. While the trafficking of drugs remains a criminal offence, individuals caught with small quantities of drugs are subject to administrative penalties, rather than criminal ones. The exact penalties applied are decided by the Commissions for the Dissuasion of Drug Addiction, however, the vast majority of cases referred to it are suspended, meaning no penalties are applied.⁵

People who are dependent on particular drugs can also access safe forms of the drugs from government-approved providers, allowing them to safely manage and ultimately stop their use. While people who are dependent on drugs are encouraged to seek treatment, they are rarely sanctioned if they choose not to.⁶ The aim is for people to begin treatment voluntarily, as ultimately this will improve the chances of treatment being successful.

Portugal's policy of drug decriminalisation has been successful in many ways. Harms associated with drug use have decreased, while more people have sought and accessed treatment. Overall rates of drug use have not increased, but rates of acquisitive crime – crimes committed to help the individual ultimately acquire drugs – have dropped.⁷

RECOMMENDATION

The Victorian Government should repeal sections 73 and 75 of the *Drugs, Poisons and Controlled Substances Act 1981*, thereby removing the personal possession and use of drugs of dependence as offences. Possession and use of drugs of dependence should be managed through the public health system using education, rehabilitation, and in rare cases as necessary, administrative sanctions.

REFERENCES

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- ³ Nutt, D.J., King, L.A., and Phillips, L.D. (2010). Drug harms in the UK: a multicriteria decision analysis. *The Lancet*, 376(9752): 1561.
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- ⁵ Santos, A.S., Duarte, O. and Maia, E. (2012). *2012 National report (2011 data) to the EMCDDA: "Portugal" new developments, trends and in-depth information on selected issues*. Reitox National Focal Point, 102.
- ⁶ Domoslawski, A. (2011). *Drug policy in Portugal: the benefits of decriminalizing drug use*. English translation by Hanna Siemaszko. Global Drug Policy Program, Open Society Foundations, 30.
- ⁷ Hughes, C., and Stevens, A. (2010). What can we learn from the Portuguese decriminalisation of Illicit Drugs? *British Journal of Criminology*, 50(6), 1010.