

# CAN AUSTRALIA RESPOND **TO DRUGS** MORE EFFECTIVELY AND SAFELY?



Roundtable report of law enforcement and other practitioners,  
researchers and advocates. Sydney, September 2015  
Editors Mick Palmer, Alex Wodak, Bob Douglas and Lyn Stephens

"You are hamstrung by restrictions about what you can and cannot do. In alcohol prohibition in the United States the treatment of people with alcohol problems disappeared. You try and get treatment for your alcohol problem in Saudi Arabia today and it is not available. One of the negatives about drug prohibition when we see everything through a criminal justice lens is that drug treatment suffers. That is because it is treated as an adjunct to law enforcement rather than redefining the issue primarily as a health and social problem such as breast cancer, diabetes, high blood pressure. If we treated the drug problem as a health and social problem we would have new and better ways to manage it."

[Participant comment]

Title for media purposes:

"Can Australia respond to drugs more effectively and safely?"

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While this report has been prepared for Australia21 in consultation with the participants, the views expressed do not reflect the views of all participants on every issue. Areas of agreement were much greater than areas where participants had any disagreement but, where points of difference emerged, they have been noted.

# WE NEED HONEST PUBLIC DEBATE



Mick Palmer was convenor and Chair of the Roundtable and Deputy Chair of Australia21. He is a former Commissioner of both the Australian Federal Police and the Northern Territory Police. Since his retirement he has been actively engaged in consideration of illicit drug policy.

- The question addressed in this roundtable was *"If changes were to be made to our current illicit drugs policy, what options and processes would be most likely to reduce harms to users and increase the effectiveness of our policy?"*
- I have no silver bullet and no ideal recipe as to what the drug landscape should look like post-prohibition. However, I believe I know enough to be sure that what we now have is badly broken, ineffective, and even counterproductive to the harm minimisation aims of Australia's national illicit drugs policy.
- The facts of life are that people, particularly young people, will experiment (whether it be rail train "surfing" or drug use). Forbidden fruit are always more attractive. We cannot hope to nanny ourselves out of risk and we must be courageous enough to consider a new and different approach.
- Laws against drug use and possession are frequently broken by a large proportion of the population. Consumer arrests are in effect highly discriminatory against those unlucky enough to be caught and criminalised. Enforcement of these laws undermines relationships between police and large sections of the community – especially younger people – and creates an environment within which police unavoidably contribute to the further victimisation of the users, rather than assisting in their well-being and rehabilitation.
- While the drug supply market remains unregulated and in the hands of organised criminals who reap huge financial rewards from their endeavours, police will always be chasing their tails or playing catch-up. Law enforcement needs to be relieved of the responsibility of treating recreational and social users as criminals. The user end of the illicit drug marketplace needs to be dealt with primarily as a social and health issue. We must find a way to change the focus to causes, not simply symptoms. This change is already occurring in a number of countries, with demonstrably beneficial outcomes.
- Decriminalising the possession and cultivation of small amounts of cannabis in South Australia, the ACT and the NT has had little or no adverse impact on rates of cannabis use. These initiatives should be constructively reviewed and considered for extension.
- There has to be a better way.

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# FOREWORD BY THE CHAIR OF AUSTRALIA21 PAUL BARRATT AO



Australia21 is an independent public policy focused think tank, which was established in 2001 with the aim of generating fresh debate and consideration of vexed and complex problems of importance to Australia's future. Modelled on the Canadian Institute of Advance Research, Australia21 attempts to develop new frameworks for understanding these problems and brings together in roundtable style forums, multidisciplinary groups of leading academics and thinkers, practitioners, policymakers and researchers to brainstorm issues important to Australians and to the world in which they will increasingly live.

Typically, the issues we deal with are those which social scientists call 'wicked problems' and over our 15 year history they have included issues such as equity and inequality, climate change, agriculture and our landscape, our society and economy, refugees, euthanasia and, of course, illicit drugs and Australia's current national illicit drugs policy.

Our normal modus operandi is to work in collaboration with stakeholders, subject matter experts and others who have knowledge of and insights into the issues we tackle, and to bring them together in one room to debate and consider systematically, under the Chatham House Rule, what we know and do not know about an issue; what is the reality of the current 'state of play' and, most importantly, what can be done to manage the problem more effectively and improve the outcomes being achieved.

This is the report of a full-day roundtable of 17 law enforcement experts – retired judges, prosecutors, senior police, prison and parole administrators, drug law researchers and advocates, conducted at the University of Sydney in September 2015, to consider ways in which Australia could develop safer and more effective policy in relation to illicit drugs.

This initiative followed two previous Australia21 roundtable forums and consequent reports, which were published in 2012, and which documented the failure of the so called 'War on Drugs' to achieve its desired harm minimisation outcomes and considered a range of alternative options to prohibition, including initiatives that have been introduced in other countries.



The evidence in many areas presents as convincing but for understandable social and political reasons it has proven difficult to gain meaningful traction on the subject in Australia. History demonstrates all too graphically that it is difficult to achieve genuine commitment to long term peace when so much is invested in war. Arguably, and sadly, the same can perhaps be said of the 'war' against drugs; a war in which drug users and, even more tragically, people with a drug addiction, are too frequently demonised rather than assisted and supported.

However, this is not to suggest that the issue is easy to resolve or that anyone has all the answers. Our position is, simply, that we cannot in all good conscience be satisfied with the results that have been achieved – and continue to be achieved – under our current illicit drugs policy. There has to be a better way.

The practitioner-focused roundtable forum that led to this report was not intended to provide all the answers to this vexed and multi-faceted issue, but rather to inform and enrich public and, hopefully, political, opinion and to cause the commencement of a wider discussion within the community on our current national illicit drugs policy; the reasons why change is necessary, and the means by which such change could be considered and achieved.

As a participant said at the commencement of the roundtable, "there are no bad guys in this debate, only concerned guys". It is critical that both parties engage in meaningful debate and review of the current state of play.

A key challenge of the day, and the essential purpose of this report, was to further broaden understandings and to stimulate and create an environment for genuine debate.

The position of Australia21, and following the roundtable, I think it safe to say, the opinion of the vast majority of roundtable participants, is that the current policy is sufficiently ineffective to render 'standing still' a non-option. Indeed only one participant requested not to be included in the list of report participants after a draft of this report was circulated for review and comment.

All policies involve benefits and negatives. The fact that some people may be harmed by drug law reform is not, it is suggested, in itself a reason to oppose change. What matters is that the extent of benefits of reform exceed those of the status quo and that the negatives of reform are less than those of the status quo.

Many people are harmed by the criminalisation of cannabis and MDMA, while the benefits of this policy, as I understand the medical evidence, are difficult to identify. Although the majority of experts accept a relationship between cannabis and schizophrenia, there are, I understand, also problems with the evidence for this and the contribution which cannabis makes to schizophrenia. Accepting the connection, it seems on the evidence that the contribution is likely to be quite small.

While accepting that cannabis contributes to some degree to schizophrenia, however, it must also surely be likely that a proportion (obviously unknown) of the (few) deaths from (unregulated) MDMA may be caused by contaminants from the black market manufacturing process.

Whatever the reality, it is difficult to see how anyone could be satisfied with the current state of play and the outcomes being achieved.

Although often asserted, there is no convincing evidence of which I am aware, that less restrictive drug laws increase drug use and more restrictive drug laws reduce drug use. The evidence does, however, seem clear that, regardless of how much police practice improves; how many drug syndicates are apprehended and convicted, or how many drugs are seized, policing has proven, regardless of its successes, to be singularly unsuccessful in reducing harms or changing drug use habits. This is not, in any sense, a criticism of police practice but rather a reflection of the market and the inability of current policy to address the underlying causes, to reduce the harms being caused by drug use or to achieve the outcomes desired. Police are arguably more effective now in investigating organised and international drug trafficking syndicates and groups, seizing ever increasing quantities of illicit drugs and arresting and convicting the traffickers. The reality is, though, it makes little if any material difference to the availability and price of the drugs or the size of the criminal marketplace.

I accept, however, that the jury is out in many people's minds. Certainly no one has all the answers and the journey to find them will necessarily be slow and cautious. But it is a journey that must genuinely be commenced. We must be prepared to accept the risk and incrementally test the waters.

This report, hopefully, will contribute constructively to that journey.

# EXECUTIVE SUMMARY

This is the report of a day-long roundtable of 17 experts and practitioners – retired judges, prosecutors, senior police, prison and parole administrators, drug law researchers and advocates – held at the University of Sydney in September 2015 to consider ways in which Australia could develop safer and more effective policies in relation to illicit drugs.

This roundtable followed two Australia21 reports in 2012 that documented the failure of the International War on Drugs and explored the range of alternative options to prohibition, including initiatives introduced in other countries.

The roundtable forum comprised four sessions:

- Review of current arrangements – strengths and weaknesses,
- Assessment of performance and options for improvement,
- Defining a new way forward, and
- Timetable for possible new policy.

This discussion coalesced into four main areas that have been used to structure this report:

- A starting point for reform
- Assumptions underpinning our approach
- Issues to consider
- A framework for illicit drug policy reform.

Very substantial agreement was reached that Australia's current approach to illicit drugs is not working and is inadvertently exacerbating harm. Participants, though, varied in the extent to which they advocated change, and all cautioned that any change, and rationale for change, would need to be understood and accepted by the community and supported by law enforcement practitioners, the judiciary and other key stakeholders.

However there was broad agreement on a vision of what Australia might look like if drug law reform were to be implemented, on some main points to guide this reform encapsulated in a preamble, and on thirteen recommendations that emerged in discussion. The Board of Australia21 supports the recommendations being considered as proposals for national action by both federal and state political and government agencies. It was suggested that a fifteen-year time frame would allow evaluation of international change projects currently underway and the impact and cost benefit of local initiatives.



## **A VISION OF THE IMPACT OF DRUG LAW REFORM ON AUSTRALIAN SOCIETY**

By 2030 Australia will be a country where laws and strategies that ensure the least harm from illicit substance use contribute to a peaceful existence, where policies on mind-altering drugs contribute to a society characterised by hope, compassion, greater equality and improved safety for all people – for those who use drugs, for all children, and for the community as a whole.

## **PREAMBLE**

1. Successive governments have been determined and well-intentioned in their efforts to reduce illicit drug use and to protect and serve the public interest.
2. Police have continuously improved their ability to identify, track and apprehend criminals in the large-scale trafficking and importation of illicit drugs.
3. Despite these developments and achievements, the current prohibition-based policy has been largely ineffective in reducing harms or the supply of drugs.
4. While it is not suggested that the current policy relying heavily on supply control has been a total failure, it should be subject to rigorous review if more progress is to be made and the harms being caused to drug users reduced.
5. An approach which distinguishes between high-end production and trafficking on the one hand and use and personal possession on the other, and which treats organised drug trafficking as a law enforcement matter and use and possession as a health and social matter, has to be at the heart of any new policy.
6. Consideration should be given to progressing incrementally towards decriminalisation of drug use and regulation and, where possible, taxation of psychoactive drug supply. However, in the opinion of some participants, regulation of supply should be restricted to particular drugs.
7. There needs to be a strong commitment to creating an environment that removes or minimises the availability of untested drugs in an un-regulated marketplace.
8. Finding ways to substantially reduce, if not eliminate, the role of the criminal illicit drug market and allocating sufficient funds to health and treatment options will be fundamental to achieving improved outcomes.

## **THIRTEEN RECOMMENDATIONS FOR ILLICIT DRUG LAW REFORM**

1. The overriding objective of Australia's national policy on drugs should be the minimisation of harm to those who choose to use psychoactive drugs and those around them, and a reduction in the likelihood that those who use such drugs, choose substances that harm their health and the wellbeing of others. The emphasis should shift from trying to stamp out personal use of these drugs, to assisting people to make wiser choices about their use and minimising harms when they make unwise choices.
2. The policy should include substantially reducing, if not eliminating, the size of the criminal marketplace by incrementally moving psychoactive drugs from the black market to the 'white' market. This should be accomplished by regulating and, where possible, taxing the supply of currently illicit drugs, with the regulation of supply being gradually phased in and assessed on an ongoing step-by-step basis, starting with drugs which are known to do least harm and are least contentious. Ongoing assessment and review will determine the desirability and extent of regulation and whether regulation should eventually be extended to all psychoactive drugs. Advertising of any legalised and regulated drugs should not be permitted. Some drugs will require stringent controls, such as prescription by a doctor.
3. Community understanding of Australia's current drug laws and practices should be promoted, including evidence that disproportionate funding is going into ineffective drug law enforcement, while inadequate funding is available for harm minimisation and treatment of those who are addicted to illicit drugs. Understanding that use of drugs of all kinds is primarily a health and social issue, not primarily a law enforcement issue, and that Australia has already progressed a long way down the path of decriminalisation of possession and use of some psychoactive drugs, has been distorted by the way current policy has been implemented.
4. While law enforcement will always be important to managing illicit drug use in Australia, the focus should not be on whether a user has taken or possesses these drugs for personal use but rather on associated criminal or antisocial behaviour including dealing effectively with the black marketeers. The criminal and antisocial behaviour that is a common consequence of habitual psychoactive drug use is largely a result of the high costs of maintaining a drug habit supplied by the criminal marketplace, as well as, in some cases, the specific effects of the drug.
5. Currently, people purchasing illicit drugs from criminal sources have no idea about the purity or safety of the drugs they plan to consume. In order to be better informed and protected, users should be able to submit the drugs for testing in a controlled environment. In a number of overseas countries this is being done in proximity to music festivals where psychoactive drugs are extensively sold and used. Making such facilities available in Australia will help prevent avoidable deaths and overdoses.
6. Current practices to test drivers for the presence of psychoactive substances in their blood should be rigorously reviewed with respect to efficacy and cost effectiveness. The purpose of such testing should be to ascertain whether the driver is unsafe or unfit to drive as a result of psychoactive drug use, not to ascertain whether he or she has consumed a proscribed psychoactive drug. This issue will become a particular concern as the proposed new laws governing use of medicinal cannabis come into effect.

7. To the extent that police in any jurisdiction operate under Key Performance Indicators (KPIs) that include arrest rates for use and possession of psychoactive substances, such KPIs should be considered only partial measures of 'success' unless they also include harm reduction measures. Policing to achieve certain arrest rates risks being counterproductive to the central aim of harm reduction.
8. Drug treatment and associated social services should be expanded especially in rural areas. Savings made from cutting back unproductive law enforcement activities should be re-allocated within law enforcement to areas that provide more benefit to the community. Increase in resources available for drug treatment and social integration services should be funded from other sources.
9. Opioid Substitution Treatment (OST) including methadone and buprenorphine should be available for all prisoners, sentenced and remanded, who meet agreed criteria for heroin dependence, and continue to be available following release at reduced cost. Current high co-payments for people undergoing OST, a predominantly low income population, are a significant price barrier that delays or prevents entry to treatment and encourages premature attrition from treatment.
10. An expanded OST service, together with further investigation into the drivers of prison costs, could lead to substantial reductions in the Australian prison population and in the costs of prison arrangements. This should be systematically explored by both state and federal jurisdiction task forces and warrants serious attention by the Australian Productivity Commission and the Australian Law Reform Commission.
11. In view of the long and successful operation of the medically supervised injecting centre in Sydney, serious consideration should be given to the establishment of controlled drug consumption rooms in other parts of Australia. Staffed by professionals, these would help minimise fatal and non-fatal overdoses, reduce HIV and other blood-borne viral infections, provide detoxification services, and encourage referral for health and social assistance. They would be community centred and lead to safer neighbourhood environments.
12. Australian authorities should review the 2013 New Zealand Psychoactive Substances Act and consider its suitability for adoption with such modifications as may be necessary to suit contemporary Australian conditions.
13. While many of these recommendations are supported by international experience and evidence, their adoption here will require carefully evaluated local evidence. Two pilot projects to trial and evaluate the health and social programs recommended in this report should be conducted – one in a remote disadvantaged community and another in an urban community with substantial social and drug related problems. Both projects should target critical local health or social problems and identify local champions to encourage community involvement in program design and delivery. Evaluation of the pilots should guide expansion of the programs elsewhere.

# INTRODUCTION

Australia21 sponsored two roundtables on drug law reform in 2012. The first reported on the failure of illicit drug prohibition and the second on alternatives to prohibition. Since then there has been a groundswell of support, nationally and internationally, for reform of the laws surrounding the use of illicit drugs.

Recent drug law reforms in a number of countries raise obvious questions about the potential or need for change here. However, Australia is still short of a political or community-led catalyst for action. This may be partly due to a lack of understanding in the community about the reality of the problem and the breadth of options available to deal with it.

Australian supporters of drug law reform are becoming more unified and collaborative in articulating sensible and feasible options for change. In contrast, supporters of the current drug policy position are becoming less vocal, perhaps in reaction to the increasingly strong evidence that Australia's current policy, on any objective assessment, continues to fall far short of its desired objectives. There are now many commentators who argue that we should be able to do much better.

In 2015 the Board of Australia21 invited a group of experienced judicial, legal, police and prison officials, practitioners, researchers and drug law reform advocates to meet for a full day to discuss ways to move the Australian debate on drug law reform forward. A list of participants is provided at the end of this report.

Prior to the event, the convenor and chair distributed a discussion paper (available at [www.australia21.org.au](http://www.australia21.org.au)) and invited participants to submit dot-points outlining their general views on the nature of the challenge and how it should be addressed. These dot-points were distributed to participants before the group met.

Conducted under the Chatham House Rule at Sydney University on 3 September 2015, the roundtable comprised four sessions:

1. Review of the current arrangements looking at both strengths and weaknesses,
2. Assessment of Australia's performance options for improvement,
3. Defining a new way forward, and
4. Timetable for a possible new policy

This report has been prepared using a transcript of the discussion and the dot-point summaries provided by participants. Where an issue recurred throughout the day, comments have been consolidated rather than reported separately. Where there was a consensus the views of the group are presented as such, and where there were qualifications from some participants this is acknowledged. Quotations are taken directly from the transcript and participant comments on the draft report. No participant is identified.

The four themes that emerged in discussion have been used to structure this report:

1. A starting point for illicit drug law reform,
2. Assumptions underpinning our approach,
3. Issues to consider, and
4. A framework for illicit drug law reform.

# 1. A STARTING POINT FOR ILLICIT DRUG LAW REFORM

Participants acknowledged that developing and implementing an effective illicit drugs policy is complex, both for politicians and for the wider community. All agreed, however, that Australia's current approach is flawed, and failing to achieve its intended results. In the opinion of many participants, and, despite the best of intentions, current policy in some circumstances is actually increasing rather than reducing harms to users and the community.

Australia's official national drug policy since 1985 has been, and still is 'harm minimisation'. In 1997, Prime Minister Howard branded the approach of his government as 'Tough on Drugs'. Harm minimisation was officially defined in the 1990s as comprising supply reduction, demand reduction and harm reduction. A common view was that the policy was to be underpinned by the three principles of compassion, innovation and proportionate response.

The Howard government intended its drug policy to focus law enforcement on the high end of the organised illicit drug marketplace (where most contemporary advocates of change would agree it should be focussed) and to target demand and harm reduction resources at the social and low-level user and addict marketplace. The challenge is to better reflect these desired outcomes in practice.

Whilst substantial additional resources were allocated in the 1990s to law enforcement and the creation of Australian Federal Police Mobile Strike Teams to target organised drug trafficking, significant additional funding was also provided for demand and harm reduction strategies including for drug diversion, safe needle programs and treatment. Many of these demand and harm reduction initiatives are still in operation but tend not to receive the publicity given to large drug seizures and related police actions. Diversion and treatment options are receiving little public recognition, and funding is now insufficient to meet need.



## HAS THE TOUGH ON DRUGS STRATEGY SUCCEEDED?

In practice the core of Australian drug policy is deterrence with a heavy reliance on strong law enforcement. The rationale for this is the widely held view that existence of criminal penalties deters many people from using drugs and thus reduces or controls levels of drug use.

A counter view expressed in this discussion is that, in regard to virtually any crime, it is the fear of getting caught rather than the level of punishment which is the key to successful law enforcement. If people think they are likely to get away with a crime or the chances of getting caught are low, the deterrence effect is weak and many will take the risk. The effectiveness of a law depends more on the perception that swift detection and apprehension of people who offend is likely, rather than on the severity of the punishment. In all criminal activity a common police view is that if the chances of getting caught are only slim, the level of deterrence will also be low. The fact that drug users have a very small chance of ever being caught and, if caught, a reasonable chance of delaying or avoiding punishment, means that any deterrent effect of punitive drug laws is likely to be modest.

Another risk associated with a policy based around prohibition is high-level official corruption. However, despite cases of corrupt conduct by police occurring from time to time, it was acknowledged that the vast majority of police in Australia operate honestly and are not corrupted by the opportunities created by a prohibitionist approach, largely because of the quality of police training and management oversight. Yet, it was agreed that a potential for significant corruption remains a concern contingent on the criminal opportunities created by a lucrative illicit market.

Supply reduction or control, through heavy investment in policing and law enforcement/border control strategies, was acknowledged as another central objective of the current approach. Again, participants were not satisfied that the results achieved over many years are those desired or predicted. Despite the comparatively large amount of money invested in supply reduction, as against demand and harm reduction, there is little evidence that law enforcement efforts and successes – including very large seizures of drugs – measurably and sustainably reduce supply, increase street prices or reduce the size of the drug market.

*"The objective of prohibition is to stamp out drug use or at least to materially reduce what would otherwise be the incidence of use. What we have, here and elsewhere, is a high demand for illicit drugs and the ready availability of such drugs, plus the evidence that attempts to enforce prohibition by preventing supply have made no difference to availability, price etc."* [Participant comment]

At the same time participants agreed that if drug policy continues to define some mind-altering substances as illegal, law enforcement has a key role particularly at the high end of the illicit market. Some participants argued that it is too simplistic to say that prohibition has failed.

*"[To say prohibition has failed] ...is as rhetorical a statement as is 'tough on drugs'. We don't have an evidence base that prohibition has failed. What we have is significant negative consequences of estimates of prohibition – including the wrong people being arrested and locked up; including damaging people's lives; including a flourishing drug market. But none of them actually speaks to whether prohibition has failed."* [Participant comment]

One participant summarised the current situation as follows:

*"190 countries around the world, including ours, have been doing this for 50 years. It must work in some sense otherwise it wouldn't be continued by these countries. So what are those ways in which it works? I suggest that there is only one way in which this policy really does work and that is politically. For many, many years and in many countries, including our own, people running for political office have had a better chance of being voted in if they have strongly backed Draconian drug policies. That is not only the main strength, I think it is the only strength. But it is an important strength and we must acknowledge it.*

*The counterfactual, as the economists would say, is not to get rid of drug law enforcement altogether. That would be crazy. I think the challenge is to say 'we are always going to have drugs and must learn how drug law enforcement works and how much of it we should have, and what kinds we should have'.*

*And I think the challenge among the law enforcement experts in this room ... is to say 'Are these things over here worth keeping, and doing in this way, and [what are] those things that are not worth doing at all.' I don't know what the A list and the B list should comprise but I think if this group can begin the process of identifying the A list and the B list and make a final tweaking of the A list so that we get better results, that will have been a useful outcome. But we are always going to have drug law enforcement. And I think we have to realise the political reality of that."*

[Participant comment]

Other participants said that under the prohibitionist approach, in Australia and globally, the drug market has become much bigger and much more dangerous during the last 50 years:

- production and consumption have increased;
- the number of different kinds of drugs has increased and the purity has often increased;
- the price of drugs has fallen >80%;
- availability has remained 'easy'/'very easy' for 80–90% of people who use drugs;
- drug related deaths and disease have increased;
- drug related property crime and violent crime have increased;
- corruption, although hard to measure, has probably increased; and
- threats to national security related to the drug market have increased.

Statements from world leaders that prohibition has failed have certainly increased. The statement by then Prime Minister Tony Abbott in April 2014 that *"The war on drugs is a war that cannot be won but it is a war that can be lost"* was the first acknowledgement that the drugs war is unwinnable by a serving Prime Minister of this country.

## WHAT IS MEANT BY 'DECRIMINALISATION' AND 'REGULATION'?

Decriminalisation in this report refers to

- Repeal of some or all laws making use and associated activities a criminal offence.
- The moderation of sanctions for use and associated activities: by reduction of prescribed penalties, by limiting the imposition of heavier penalties in specified circumstances, or by enlarging or encouraging the discretionary use of prescribed options by the police or by the courts. This includes the exercise of options that exist now in some states, to not record a conviction despite a finding that an offence has been committed – with or without imposition of a bond and various diversionary options.

Regulation in this report refers to

- Repeal of some or all laws which currently make supply and associated activities a criminal offence, and concurrently introduction of a regulatory scheme for supply of such drugs, with new offences being prescribed for breach of the regulatory scheme.

The following countries have decriminalised drug use/possession: USA (11 states), Netherlands, Switzerland, France, Germany, Austria, Spain, Portugal, Belgium, Italy, the Czech Republic, Denmark, Estonia, Ecuador, Armenia, India, Brazil, Peru, Colombia, Argentina, Mexico, Paraguay, Uruguay, Costa Rica and Jamaica.<sup>1</sup>

In the opinion of participants, most Australians are not aware that most jurisdictions in this country have decriminalised use and possession of most substances. Various arrangements apply in each state and this has lessened some of the worst aspects of the Tough on Drugs approach.

While not presented at the roundtable, participants agreed that the following overview of arrangements which shows the several ways decriminalisation is applied should be included in this report. The biggest distinction is between *de jure* and *de facto* decriminalisation. Where the former is applied, criminal penalties for use/possession are removed in the law (with optional use of non-criminal sanctions). In the latter arrangement, criminal penalties remain in the law, but can be lessened in practice (via police guidelines to not enforce the law).

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<sup>1</sup> 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.

Figure 1. De facto and de jure decriminalisation options provided in Australia by police and key requirements

Reform type and jurisdiction	Drugs	Scheme	Response	Allowable # of referrals	Response to non-compliance
De Jure reforms					
ACT	Cannabis	Simple cannabis offence notice (SCON)	Fine	No limits	May result in criminal penalty
NT	Cannabis	Cannabis expiation scheme	Fine	No limits	Debt to state; may result in criminal prosecution
SA	Cannabis	Cannabis Expiation Notice (CEN)	Fine (Option to pay via community service)	No limits	Reminder notice, additional fee; automatic criminal conviction
De Facto reforms					
ACT	All illicit drugs (inc cannabis)	Police Early Diversion (PED) Program	Caution plus brief intervention	2 previous	May result in criminal penalty
NSW	Cannabis	Cannabis cautioning scheme	Caution plus information	1 previous	Recorded and court advised if subsequently re-offends
NT	Other illicit	Northern Territory Illicit Drug Pre-Court Diversion Program	Assessment + compulsory treatment	No limits	May result in criminal penalty
QLD	Cannabis	Police diversion program for minor offences	Assessment	1 previous	May result in criminal penalty
SA	Other illicit	SA Police Drug Diversion Initiative (PDDI)	Assessment + referral	No limits	May result in criminal penalty

Reform type and jurisdiction	Drugs	Scheme	Response	Allowable # of referrals	Response to non-compliance
TAS	All illicit drugs (inc cannabis)	Police diversion	Caution + brief intervention (for 3rd assessment + compulsory treatment)	3 previous (in last 10 years)	May result in criminal penalty
VIC	Cannabis	Cannabis cautioning program	Caution plus education and optional referral	1 previous	Nil
VIC	Other illicit	Drug diversion program	Assessment + referral	1 previous	May result in criminal penalty
WA	Cannabis	Cannabis Intervention Requirement	Assessment + compulsory education	1 previous	May result in criminal penalty
WA	Other illicit	All drug diversion	Assessment + compulsory treatment	1 only	May result in criminal penalty

Source: Updated from Hughes, C. & Ritter, A. (2008). Monograph No. 16: A summary of diversion programs for drug and drug-related offenders in Australia. DPMP Monograph Series. Sydney, National Drug and Alcohol Research Centre. NB. Programs for youth are not included in the above. For details on other requirements including threshold limits see Hughes and Ritter (2008).

Participants agreed that an important step in gaining community support for further reform would be to promote and publicise the decriminalisation programs that already exist as examples of successful public policy. Wider knowledge about the status quo and what police already do, which in certain jurisdictions includes imposing fines with no criminal record for drug use, would be helpful. However one participant commented that despite these state-based reforms, the Australian Crime Commission has reported an annual total of about 80,000 drug consumer arrests, so there is considerable room for improvement. [Illicit Drug Data Report 2014–15. Australian Criminal Intelligence Commission Illicit Drug Data Report 2014–15. p 186 <https://www.acic.gov.au/sites/g/files/net1491/f/2016/08/acic-iddr-2014-15.pdf?v=1470178813>

## **BRINGING THE COMMUNITY ALONG**

Participants noted community concern that greater drug law liberalisation will lead to easier access to drugs and consequently more consumption, as is the case with alcohol, one of the most extensively consumed drugs with high rates of dependency, and tobacco, a drug that causes significant harm to health and sizeable health costs. However, it was suggested that while consumption may increase following policy liberalisation, harms could decrease, as has occurred in Portugal which has not legalised drugs, but has decriminalised the use and possession of personal quantities of drugs and expanded and improved drug treatment.

Participants noted that with some US states passing ballot initiatives to tax and regulate cannabis starting in 2012 and starting to implement this policy from 2014, countries such as Uruguay starting to regulate cannabis, and countries such as Canada committed to introducing cannabis regulation in 2017, the global prohibition of cannabis is beginning to unravel. It will be some time before evaluation of these developments is available but early data from Colorado shows significant benefits to the community via state profits from drug sales being used to fund public schooling, and no major negatives.

Participants agreed that gathering and assessing evidence from these initiatives is critical to providing a sound base upon which options for change can be considered and arguments for change developed. The need to familiarise the community with decriminalisation and other harm minimisation initiatives was endorsed as an important strategy for allaying fears and poorly founded resistance to new ideas. All participants agreed that the community needs to be well informed to gain their support for reform, as occurred when the Kings Cross Medically Supervised Injecting Centre was established.



## WHAT DOES THE COMMUNITY REALLY THINK?

The 2013 National Drug Strategy Household Survey (N= 23,855) included the following question: "What single action best describes what you think should happen to anyone found in possession of small quantities of cannabis/ecstasy/heroin/methamphetamine?"

Responses tabled in Figure 2 indicate significant support for decriminalisation across all four drugs. While not discussed at the roundtable, the data are provided here to counter the perception that the community is totally opposed to reform.

Figure 2: Support for actions taken against people found in possession of selected illicit drugs for personal use<sup>2</sup>

	Cannabis	Ecstasy	Heroin	Meth/amphetamines
<b>Action to be taken:</b>				
A caution/warning or no action	42.1	12.5	3.1	4.3
Referral to treatment or education program	28.2	37.4	44.3	43.1
Fine	17.8	24.5	16.8	18.6
Sub-total decriminalisation support	88.1%	74.4%	64.2%	66.0%
Community service or weekend detention	5.8	10.3	10.0	11.4
Prison sentence	5.0	13.7	23.7	20.3
Some other arrangement	1.1	1.5	2.2	2.3

Source: NDSHS 2013; Respondents: aged 14 or older

<sup>2</sup> 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.

## WHY DO WE KEEP DOING WHAT WE ARE DOING?

While successive governments have remained committed to the current approach to illicit drugs and it has wide public support, participants agreed that the strong anti-drug use message does not impact on the intended audience. As is the case with people who exhibit self-destructive behaviours, the way to help is not via reasoning but through trying to understand what psychological purpose the destructive behaviour is serving. It is the same with drug policy – it is destructive but clearly it serves a psychological purpose for the community.

However, while perceptions of a tough on drugs approach may serve the psychological purpose of calming the fears of parents and the community, there is little evidence that this approach deters recreational use or connects with the reality of what happens on the streets. All participants agreed that there are better ways of sending an appropriate message about drugs than simply through prohibition and law enforcement.

*"We are spending a lot of time and money and effort on things which do not appear to make any damned difference. We must at least be prepared to look at other ways of doing business."*

[Participant comment]

Participants recognised that one of the challenges is to create the right environment for conversations about drugs so that politicians and the community become informed and engaged and begin to ask "Are there better ways?" However, to enable public debate about the impact of current policy on recreational users, it will be necessary to acknowledge people's fears and personalise the issues to make the conversation about real people:

*"If the policy is not good enough for your kids then is not good enough for other kids."*

[Participant comment]

In summary, participants agreed that:

- Implementation failures have been associated with disproportionate investment in favour of law enforcement and, as consequence, there has been insufficient funding for treatment, harm reduction and social interventions.
- High-end drug law enforcement will always be part of the equation.
- The law enforcement focus should be on production and importation of currently illicit drugs, within progression to enforcement of a regulated regime over time.
- A policy that has as its core discouraging and treating drug use and encouraging social reintegration rather than arresting and punishing offers a much greater chance of success.
- A clear strategy for social marketing and engagement of the media will be critical to effective management of reform.
- Reform issues need to be personalised, the message being: "If it is not good enough for your kids then is not good enough for other kids."
- Recognising and responding to community fears about potential harms following greater liberalisation of drug law is critical to gaining support for any reform initiative, indications of considerable community support for change notwithstanding.

## 2. ASSUMPTIONS UNDERPINNING OUR APPROACH

Participants agreed that the following assumptions should underpin illicit drugs reform:

### **THE PRIORITY FOR DRUG POLICY SHOULD BE REDUCTION OF HARM**

The aim is to find the optimal level of control that minimises harm;

- Treatment must have a critical role in any drugs strategy;
- An unregulated market is a dangerous market;
- The law can address matters of use and possession for criminal supply separately;
- Performance measures beyond supply reduction are needed;
- There are benefits for police and the community in standardising police discretion;
- Decriminalisation will allow all drug use to be handled as a health and social issue; and
- Australia is part of a global 'illicit drug use' network and can learn from overseas experience.

Participants agreed that illicit drug policy must differentiate between drug use and drug harm, be based on the premise that there will always be drug use, and have reducing harm, not simply reducing use, as its main focus. There will be situations where it is legitimate to try to reduce harm by reducing drug use, but the correlation between drug use and drug harm is poor and drug harm is often a consequence of policy rather than a consequence of the pharmacology of the drug. The main concern is whether use of a particular drug always has harmful consequences.

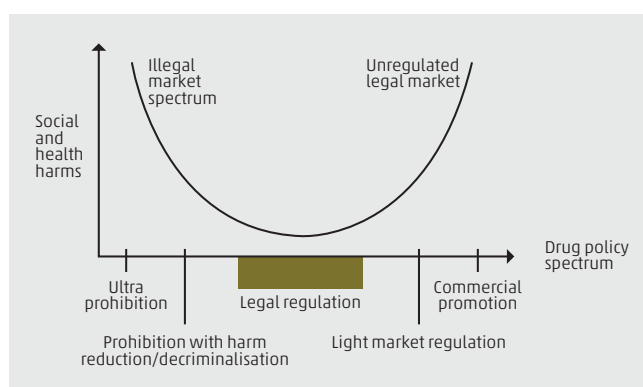
As the aim of reform is a world in which harm from drug use is minimised, reduction of harm to individuals should be at the heart of all drugs policy, anchored by hope, compassion and integration of services. To achieve this requires an environment which reduces the size and profitability of the black market.

There was strong agreement that drug use and 'not for profit' supply should not attract a criminal sanction or be defined as criminal conduct, but some participants expressed concern that while possession and use might ultimately be legalised, progress towards this end will need to vary depending on the substance, starting with less dangerous drugs and slowly working towards the more dangerous. The current policy was created slowly by many small steps, and working towards a more effective response should also involve incremental steps and not be rushed, with each step subject to review and assessment. Participants acknowledged that these issues are complicated, highly sensitive and politically difficult and that trying to shift drug supply and use from the black market to a 'white' market raises a myriad questions.

## THE AIM IS TO FIND THE OPTIMAL LEVEL OF CONTROL THAT MINIMISES HARM

The concept that there is a 'Goldilocks' area – neither too hot nor too cold – where harms from illicit drug use are minimised by just the right amount of control is represented in Figure 3. In this figure, the notional harms due to both drugs and drug policy are plotted on the vertical axis and controls (from prohibition to no control at all) are plotted on the horizontal axis. The bottom of the curve represents the optimal degree of regulation, while higher degrees of regulated control culminating in total prohibition and an unregulated legal commercially promoted market are shown to lead to increased social and health harms. The aim then is to develop strategies midway between the two extremes.

Figure 3: The Curved Relationship between harms and controls



It was suggested that one of the harms of current drug prohibition, almost always overlooked, is the increased hazardousness of drugs available on the street. An attack on unauthorised suppliers through the creation of a legal market that supplied tested drugs from regulated outlets could be critical to reducing harm to users and to the community. While the practicalities and political difficulties of achieving this are not to be underestimated, achieving a regulated supply that is economically and politically viable would be a central plank of drug law reform.

In discussion, the extent to which an optimal Goldilocks area could be achieved by regulated availability together with law enforcement remained uncertain, but there was agreement that relying on supply reduction alone cannot achieve reasonable policy objectives and that there is a strong case for trying to incrementally expand the regulation of the drug market while recognising that the drug market would never be fully regulated.

## **TREATMENT MUST HAVE A CRITICAL ROLE IN ANY DRUGS STRATEGY**

Participants agreed that a lot more can be done to improve Australia's drug policy response, even within the constraints of the current policy. An instructive comparison was made with strategies developed to reduce road traffic fatalities. While car utilisation has increased considerably in recent decades, deaths and severe injuries have markedly decreased. In 1970, road crash deaths in Australia were about 30/100,000; the rate is now <5/100,000. This has been achieved through policy initiatives such as improved roads, safer vehicles, seat belts and air bags, road-side breath testing for alcohol and better speed limitations.

While there may be debate about whether policies that allow for enhanced treatment and harm minimisation activities will always reduce drug use, as in the case of Switzerland, these policies certainly reduce harms. The problem is that current drug treatment is provided inadequately with insufficient levels of funding and quality controls. This was seen to be a direct effect of the criminalisation of drug use.

## **AN UNREGULATED MARKET IS A DANGEROUS MARKET**

There was participant support for an approach that starts with taxing and regulating cannabis in the same way that alcohol is taxed and regulated. Colorado and Washington states in the USA commenced doing this in 2014, and Alaska and Oregon are expected to start soon, after voting to do so in 2014. If review and assessment after 2 to 3 years shows this approach to have been successful, consideration could be given to taxing and regulating ecstasy. However there was general agreement that some drugs – 100% pure heroin, 100% pure cocaine and 100% pure ice – should never and would never be subject to regulated availability.

Reference was made to the recent New Zealand experience of regulating new-to-the-market psychoactive substances that had not previously been prohibited. The new law addressed the problem of untested drugs in an unregulated market by allowing for testing drugs and regulating the market. During the ten months that the Psychoactive Substances Bill was in operation, the number of new psychoactive substances available in New Zealand declined by 75%, from an estimated 200 untested drugs to fewer than 50 tested drugs, while availability fell from an estimated 3000 unlicensed outlets to 170 licensed ones.<sup>3</sup> There was some support for trialling this approach in Australia.

<sup>3</sup> NZ Drug Foundation. Psychoactive Substances Act. Overview. <http://www.drugfoundation.org.nz/psychoactive-substances-bill/history>

All participants agreed that the starting point for any further decriminalisation should be cannabis. It was also suggested that it would be good health care and harm reduction policy to consider making pill testing lawful, to enable users to know what substances are in the drug they plan to take. Parallel education strategies could be put in place to provide accurate advice and warnings about the effects of drug use. Of course, if tested drugs were to be available from regulated outlets, there would be less demand for pill testing – but demand would still exist as tested drugs from regulated outlets will never cover all drugs available in all quantities to all persons at all times.

## **THE LAW CAN ADDRESS USE AND POSSESSION FOR CRIMINAL SUPPLY SEPARATELY**

It was agreed that the criminal law should punish any criminal behaviour, and, particularly violent criminal behaviour, whether drug related or not, but not the simple act of possession or consumption of drugs. It is recognised, though, there may be distinctions according to where the drug taking occurs, or when a legal age limit is breached. Considering how behaviours unconnected to drug use are managed can be a useful guide.

"What do we do with the kid who is found driving a car without a licence? We don't want them doing it so how do we deal with that? We don't want to put them in prison; we don't want to give them a sentence that is going to minimise the chances of a flourishing life. But what kind of boundaries can be set for them? What are some examples of things we currently stop teenagers from doing? If we speed [it is illegal but] we are not criminalised. If we speed and hit someone and kill them, that becomes a criminal offence."

[Participant comment]

There was discussion about where in the supply chain should criminality start and stop. For instance, it's currently a serious offence for a person at a music festival to give another person an ecstasy tablet – should this still be a crime? Is there – or should there be – a level below which it would be considered lawful, or non-criminal, to supply a drug to another person? It was suggested that the threshold for criminality could be evidence that the supply was for a commercial purpose – no matter how small.

Another option would be to impose a penalty rather than a criminal sanction for possession. As an analogy, bringing into Australia an amount of whiskey above the authorised limit, and being caught, will generally incur paying a fine. Similar thresholds could apply for heroin or cocaine, above which a fine would apply. Indeed, the regulated availability of drugs which resemble heroin or cocaine but are not as dangerous, may reduce the demand for unauthorised supply of heroin or cocaine.

Given that conviction for possession for the purpose of supply, however minor, has currently a potentially bigger impact on a person's life and future job prospects than conviction for simple possession, this issue will need to be addressed and resolved in the early stages of the process of separating sanctions for use from sanctions for supply.

One participant put forward a proposition that would leave current laws largely in place but remove 'use and possess' from the statute books, thereby regulating supply of currently illicit drugs but removing from criminal sanction those people requiring help for their problematic drug use.

The following two steps were suggested:

- promote the success of decriminalisation programs;
- develop service level agreements for police and community corrections staff to stop treating people, whose drug use is social and recreational, as criminals; and,



## **PERFORMANCE MEASURES BEYOND SUPPLY REDUCTION ARE NEEDED**

There was discussion about the issue of police Key Performance Indicators and the pressure that may inadvertently be placed on operational police to achieve arrest results. While Key Performance Indicators for police in Australia do not ordinarily require minimum drug arrest rates, to the extent that this practice may exist, it was considered inappropriate and counter-productive to the central aim of harm reduction.

Public attention to Australian police achievements often focuses on supply reduction 'successes'. This emphasis can lead to a perception that drug policy success is measured by supply reduction only, whilst the record over many years shows that even frequent and large scale seizures have little overall sustained impact on the market.

By contrast, it is more difficult to get media publicity for harm reduction successes, for example, treatment success and the positive use of police discretion, because these are less clearly dramatic, quantifiable and 'newsworthy'. There would be benefit in devising some clear measures of harm reduction success and communicating these regularly to the community.

## **THERE ARE BENEFITS FOR POLICE AND THE COMMUNITY IN STANDARDISING POLICE DISCRETION**

The record suggests that police regularly exercise sensible discretion with respect to drug charges. For example, police could easily have closed down the Medically Supervised Injecting Centre in Kings Cross, or rendered it ineffective, simply by preventing people from going there or arresting those who did. This did not occur. NSW Police strongly supported the establishment of a Supervised Injecting Facility at a NSW Parliamentary Inquiry in 1998, and King's Cross police have been strong supporters of the injecting room for the 15 years it has been operating.

Their performance on the ground provides evidence that police support efforts to reduce harms. There is also evidence that many senior Australian law enforcement officials strongly support harm reduction and an increased health and social response to currently illicit drugs. Indeed they have done so for a long time, as was demonstrated in a survey of 35 senior law enforcement figures interviewed in 1999.<sup>4</sup> There is a high level of police frustration about the enforcement of drug use and possession laws.

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<sup>4</sup> Lorraine Beyer\*, Nick Crofts, Gary Reid. Drug offending and criminal justice responses: practitioners' perspectives. International Journal of Drug Policy 13 (2002) 203–211. [https://www.hri.global/files/2011/08/08/1.02\\_Beyer\\_-\\_Practitioners\\_Perspectives\\_.pdf](https://www.hri.global/files/2011/08/08/1.02_Beyer_-_Practitioners_Perspectives_.pdf).

It was noted that the successful exercise of police discretion depends on the quality of local police management and the attitude of operational police, and is a hallmark of the operational maturity of the organisation or, at least, of the officers involved. However, the fact that it is necessary highlights flaws in current law and policy. In reality, many police exercise discretion in favour of a user, often because of concerns about some aspects of the laws on low-level use and possession, but in the current environment, where knowledge levels and approaches are highly variable, a lot is expected of young police officers in terms of making judgements about discretion. Participants agreed that to protect organisational and individual police integrity, exercise of discretion needs to be transparently accountable. Despite some broad indicative guidance, police under current arrangements can be open to criticism for the exercise of discretion, particularly if it involves not taking action. Allegations of laziness, neglect of duty and even corruption are easily made.

A participant suggested that an unambiguous and transparent instruction or guideline providing clear criteria under which discretion not to act could be exercised would both better protect police and improve consistency in police behaviour. Until the law can be changed, it would be sensible and constructive to set up a service level style agreement stating that unless there is some aggravation of behaviour that leads police to take action (such as commission of other crimes or other antisocial behaviour), police would be encouraged, for matters of simple use and possession, to exercise their discretion in favour of the individual. While the exercise of discretion would necessarily remain a personal decision, it was considered that providing guidelines would remove uncertainty and any risk of complaint against a police officer, improve consistency and clarity, and avoid the possibility of a superior officer or critic second-guessing the decision.

The Netherlands approach was advanced for consideration. Under Dutch drug laws a condition precedent has been introduced, which effectively says 'prosecution will only be carried out if it is in the national interest'.

*"In practice the effect is that if someone is caught with a room full of refrigerators and jewellery that they clearly haven't paid for and if they are also found in possession of small quantities of drugs, which normally wouldn't result in any police activity – if they are clearly committing other crimes then they can be [charged] for the offence of small use and possession. So they have a system which allows the police to know when or not to exercise discretion."*  
[Participant comment]

Such guidance provides assurance that if an officer acts inside the criteria he or she can exercise discretion to not arrest for social use, recreational use and possession and not be subject to any negative response or sanction. It offers both protection and encouragement to exercise discretion, with the strong corporate message that discretion is acceptable and appropriate in certain circumstances.

Changing operational police practice in Australia would not be as 'mission impossible' as some might think. Ideally, for the issue to be comprehensively dealt with, the scope of permissible discretion would need to be clearly explained, possession and use decriminalised, and the drugs concerned tested. The impact of such reforms would be to shrink the criminal marketplace and enable police to shift resources to policing areas with much higher return on investment.

## DECRIMINALISATION WILL ALLOW DRUG USE TO BE HANDLED AS A HEALTH AND SOCIAL ISSUE

"We have been hating drug users for decades ... it is time we started loving them."

[Johann Hari]

Despite positive initiatives and exercise of police discretion, 80,000 drug consumer arrests are occurring annually, according to the Australian Crime Commission, so the issue of decriminalisation still appears to have relevance.

Participants agreed that treating drug use primarily as a social and health problem, where efforts are made to get people back into the workforce rather than turning them into criminals, is a critically important aspect of the move to decriminalisation. They referred to media comment by Johann Hari,<sup>5</sup> visiting Australia at the time of the roundtable, who argued that "we have been hating drug users for decades, but that it is time we started loving them. Instead of pushing users down, which clearly hasn't worked, we should be saying to them: 'You are not a bad person. You have fallen into a problem area of life and we can help you get out of this.'"

Australia is part of a global 'illicit drug use' network and can learn from overseas experience.

Participants acknowledged that the illicit drug trade impacts on global security at both strategic and operational levels. While somewhat outside the scope of this roundtable, participants acknowledged the negative consequences of illicit drug law for global development, peace and security and agreed that publicly recognising that Australia is part of a global 'drug use' network is important.

Other countries are increasingly adopting drug policies that meet their own needs and circumstances rather than adhering to a global 'one size fits all' approach. Following the pleas of three Latin American countries, the United Nations General Assembly Special Session (UNGASS) on Drugs was brought forward by three years and held in New York City in April 2016. This meeting demonstrated that the long-standing international consensus on drug policy is now irrevocably broken.

Australia should be encouraged to take the lead in building a global network or alliance to progress important drug policy reform. This would enable collaboration with countries who have embarked on a drug reform journey and, potentially, to learn from the 'think tanks' in Portugal, The Netherlands, Mexico, California, Colorado and other jurisdictions. At the operational end, the potential value of creating a global alliance of groups working towards achieving policy change was recognised. This would enable fora to be held where the evidence can be examined; where different models for decriminalisation or regulation of cannabis and other drugs can be carefully analysed; and where ideas can be tested and promoted. Such an initiative would not only communicate ideas and options for change but would also assist in building a stronger framework for evaluation.

<sup>5</sup> Johann Hari is an internationally renowned drug law reform advocate and author of *Chasing the Scream* (2015).

In summary a number of steps were identified as being essential not only to achieving progress in this area, but in being seen to do so. They include the need to:

- Set performance indicators (KPI's) which do not focus on the number of convictions for possession and use.
- Promote greater public knowledge and understanding of the success of the decriminalisation of drugs carried out extensively in recent years both in Australia and internationally;
- Recognise and promote current diversionary systems and the benefits and potential benefits of a process that encourages movement of people from the criminal justice system to drug treatment;
- Distinguish, particularly in the current environment where there is so much public concern over a perceived 'ice epidemic', between drug use and any associated violent or criminal conduct, to clearly separate criminal behaviour from drug use.
- Consider, urgently, how to manage more effectively those who engage in violence only when under the influence of a mind-altering substance through or in conjunction with the healthcare sector.
- Develop service level agreements for police and community corrections staff to not to treat people as criminals in relation to social and recreational use (A performance indicator focussed on reducing the number of convictions for possession and use would set a clear objective towards a positive outcome here.); and,
- Promote the benefits of the lawful use of pill testing and provision of accurate information for drug users in the context of mind-altering substance use being primarily a health issue rather than a criminal justice problem.

# 3. ISSUES TO CONSIDER

Participants acknowledged that more detailed work is required to flesh out a framework for reform, including:

- Providing adequate resources to address problematic drug use as a health and social issue;
- Reaping the returns from a greater investment in treatment;
- Considering Heroin Assisted Treatment<sup>6</sup> where heroin dependence is severe and previous treatments provided inadequate benefit;
- Expanding access to Medically Supervised Injecting Centres;
- Trialling a pill testing project;
- Improving the management of drugs in prisons;
- Reviewing drug testing and driving arrangements;
- Investigating the cost effectiveness of non-custodial sentencing options; and
- Researching regulation and how a future regulatory system might work.

## PROVIDING ADEQUATE RESOURCES TO ADDRESS PROBLEMATIC DRUG USE AS A HEALTH AND SOCIAL ISSUE

A participant who argued that drug use which causes problems for the person should be defined as primarily a health and social problem rather than primarily a law enforcement problem, advocated substantial additional resources for health and social arenas.

Many people suffering addiction or reliance problems have missed out on education, had few employment opportunities and have poor employment records. The best intervention for them would be to help them get them a job or get them moving towards a job. Initiatives such as encouraging private industry organisations to keep a small proportion of their jobs for people coming out of or in drug treatment would offer significant benefits not only to the person offered the job but also to the wider community. While some organisations have been doing this for a number of years, the issue is not well promoted or understood and should be expanded.

Keeping a focus on health and social interventions and ensuring they are effectively targeted and provide genuine opportunities was seen as a fundamental step towards improved outcomes. There is currently a serious underfunding of treatment services, specifically for young people and those with high needs, the issue being one of capacity not process. The question of priority for referral, specifically for those on community orders, was also noted.

"All this diversion stuff is killing our capacity to help deal with people with big problems. A lot of our capacity is being soaked up by people who are sent to us [on compulsory orders]. They don't have a dependence, not even a minor one."

[Participant comment]

<sup>6</sup> Heroin Assisted Treatment involves the supervised self-administration by injection of high dose pharmaceutical grade heroin in association with intensive psychosocial assistance for a minority of heroin users who are severely dependent and have previously proved refractory to multiple and diverse forms of treatment.

It is important to gain an accurate assessment of the actual size, cost and extent of unmet demand for treatment, with participants agreeing that drug treatment changes must genuinely embrace capacity, quality, flexibility and funding if they are to achieve desired outcomes.

A related point of concern for NGOs providing drug services is the practice of governments to provide only short term funding (usually 12 months) and to delay announcements of forward funding to the middle of each year. Ongoing employment and retention of high quality staff in these circumstances is extremely difficult. Contracts for 3 years announced in a timely fashion would be preferable.

## REAPING THE RETURNS ON GREATER INVESTMENT IN TREATMENT

Participants agreed that the capacity of treatment should be double what is currently available if user needs are to be addressed. A series of questions to gain traction and credibility for the case for additional funding was proposed including: What amount of additional investment in drug treatment would make a measurable difference? Has there been any estimate of the additional investment required? Who would pay? Is treatment a State/Territory or Commonwealth responsibility? If a shared responsibility, how would the share be apportioned? Under the drug diversion initiative following John Howard's 'Tough on Drugs' policy the Commonwealth committed \$200–300 million per annum to treatment, but this commitment has diminished over time.

The fundamental importance of treatment to the harm reduction progress was emphasised, with participants agreeing it had to be subject to well-informed and apolitical debate.

Reference was made to a classic study by the US RAND Corporation in 1994 which looked at community benefits from different ways of responding to cocaine. The effectiveness of treatment was compared to various levels of law enforcement, including overseas law-enforcement such as crop eradication, border protection and local policing (see Figures S2 and S3 below). The study found heavily in favour of increased investment in treatment. The social return to the US from a one dollar investment was 15 cents for attempting to eradicate the coca plant in South America, 32 cents for attempting to interdict supplies of refined cocaine being transported from South to North America, 52 cents for enhancing US Customs and police and \$7.46 for treating severely dependent cocaine users in the US. Yet 93% of US government resources devoted to responses to cocaine were allocated to the three cost ineffective law enforcement interventions while only 7% was allocated to drug treatment, the only intervention shown to be cost effective.

A similar study in Australia would be useful to guiding decisions on the best options for going forward.

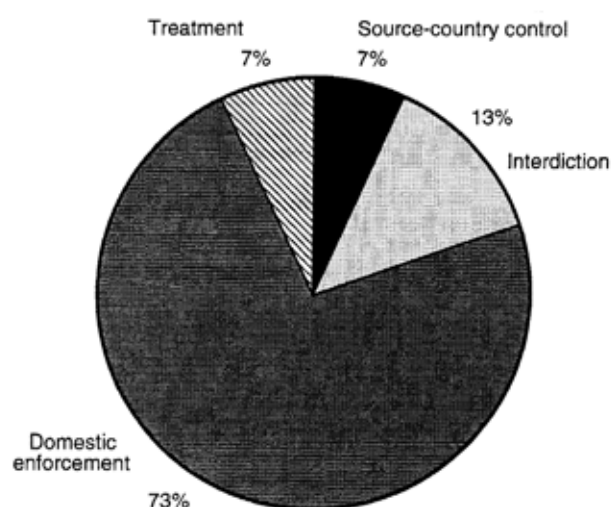


Figure S.2—Distribution of Annual Expenditure on Cocaine Control: 1992



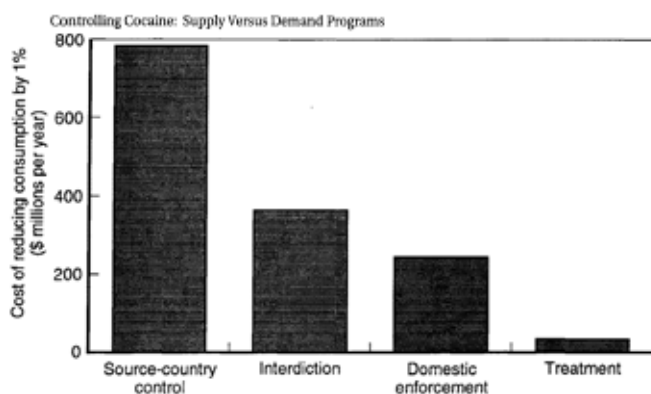


Figure S.3—Cost of Decreasing Cocaine Consumption by 1 Percent with Alternative Cocaine-Control Programs

Source: [http://www.rand.org/content/dam/rand/pubs/monograph\\_reports/2006/RAND\\_MR331.pdf](http://www.rand.org/content/dam/rand/pubs/monograph_reports/2006/RAND_MR331.pdf), pp. xiii and xvi

## CONSIDERING HEROIN ASSISTED TREATMENT IN CERTAIN EXTREME CIRCUMSTANCES

Participants considered the option of Heroin Assisted Treatment (also sometimes referred to as 'heroin prescription') though important, would only apply to a small minority of heroin users.

*"It is not a first-line treatment. It is a last resort treatment. It is for a small minority of people who are severely dependent and refractory to other treatments – meaning everything has been tried and nothing else has worked."*

*The reason why this group is important is that although they are a small minority, they account for a disproportionate amount of the harm that is created in the community. They may be a \$400 a day person or a \$600 a day person. They are doing a lot of crime and a lot of recruiting if they're using at that level. Taking them out of the market is both a way of shrinking the market and reducing harm and changing the black market into a 'white' market. That is why I think it is so important."*

[Participant comment]

## EXPANDING ACCESS TO MEDICALLY SUPERVISED INJECTING CENTRES

Participants strongly supported the need for more Medically Supervised Injecting Centres which provide less risky place to take drugs under supervision and with possible assistance, rather than doing so in a back alley which is likely to be unsanitary, unfriendly, and not infrequently dangerous. Such centres now need to be able to also accommodate people who inhale drugs (such as ice).

The aim of these centres is to reduce fatal and non-fatal drug overdoses and blood borne viral infections and act as a portal to detoxification, drug treatment and other health and social interventions, particularly for users who are extremely socially disadvantaged, estranged from family and friends, and marginalised. The centres should be established where large drug markets have negative effects on residents and businesses, but must be located only where the local community is supportive.

The Medically Supervised Injecting Centre in Sydney has supervised drug injecting of all types since it opened in 2001. Amphetamine accounts for an increasing proportion of injections over the years and now account for approximately 18% of current visits. Methamphetamine has now become the predominant drug of that class injected. The rates of violence among people injecting amphetamine or methamphetamine are extremely small. In the last couple of years there has not been a single incident of violence associated with the use of methamphetamine. The low level of violence among people injecting methamphetamine at the MSIC may suggest that if people who inject this drug are comfortable with the environment and staff are well trained this can have a direct impact on their behaviour.

## **TRIALLING PILL TESTING**

Discussion about achieving a system of regulated supply of the least harmful drugs so as to minimise harm to individuals and communities included reference to an approach adopted by an increasing number of countries which involves provision of roving drug testing, on-site or off-site, so drugs purchased by young people can be tested prior to use. This has direct benefits for buyers who then know what they have bought and what adulterants are in the drugs, but it also has an indirect quality control impact on the drug market through feedback to drug dealers. Evaluation of the effectiveness, safety and cost effectiveness of pill testing would then be compared with existing controls such as sniffer dogs.

All participants agreed that pill testing merits further consideration.

## **TESTING SOME WHOLE OF COMMUNITY APPROACHES**

Several examples of 'practical' incremental step initiatives were canvassed. They included a proposal to conduct two sponsored pilot studies, one in a remote, disadvantaged community and another in an urban community where there are substantial social and drug-related problems. These pilot studies would adopt a community strengthening approach, by engaging the local community in discussion about the problems happening in the community and why they are happening, with the aim of discovering and implementing the community's ideas for change.

The pilots could be used to develop a centre of excellence as a basis for wider learning and education. It was noted that there are precedents of similar initiatives, particularly in regard to high risk drinking and domestic violence, and that a similar model of program is currently operating in four Indigenous communities.

"I think a remote community and particularly a community with the lower socio-economic indicators will enable us to learn lessons across this field. So in summary, in the context of drugs and perhaps also other antisocial behaviour, then we get some local champions in both those communities to pick up on some of these ideas so that the community can begin to own the product.

We can do all sorts of things for people. At the end of the day people out there need to do some things for themselves. What happens is that they lack the capacity. So the role of the people coming in has got to be about trying to build capacity in tandem with those people to do something about their problems. Under the framework of the big policy change that we are discussing it would be good to have a couple of centres of excellence where they are actually doing something on the ground that shows some results. It is about restorative justice models being applied to the community and with the community driving it. There is a groundswell of support out there particularly, in the Indigenous communities from women for something like this to happen."

**[Participant comment]**

It was agreed that for ideas aimed at making a beneficial difference and lessening harms must be practical and likely to work to earn gravitas, traction and bi-partisan support.

## **IMPROVING THE MANAGEMENT OF DRUGS IN PRISONS**

The prisons environment was identified as particularly problematic in that in many prisons a zero tolerance policy to any drugs operates which makes no differentiation between cannabis and heroin. According to one participant, this can have detrimental effects.

"What we are doing is forcing a lot of cannabis users in gaol to move up the scale and they get to be treated as if they are heroin addicts because ... in jail we have no discretion at all. If we find cannabis in the test they get punished. And then they move up to heroin because they are far less likely to get caught [tests detect cannabis more easily because it has a longer half-life than some drugs like heroin]. There is a lot of anecdotal evidence that people come into prison using lower risk drugs and go out addicted to higher risk drugs.

If this whole issue of decriminalising low-level drugs is widely accepted in the community we have to get our correctional colleagues together to talk about it all with government. Would we have any tolerance and acceptance within the gaols? Would we at least not punish people who are using cannabis so we don't force them up that chain? That's what we have in the community. We don't currently punish people in Australia for using cannabis. We have diversion schemes, but not in prisons. The contradiction exists right now that the person who smokes cannabis today in the community is not treated the same as the person who uses cannabis in the prison."

**[Participant comment]**

However, according to another participant, not all jurisdictions or prisons adopt such a non-discretionary approach. As an example, although NSW correctional officers are bound to report self-admissions of smoking marijuana; with such behaviour being a breach of parole, the parole authority can exercise discretion about formally arresting and charging the person and deciding whether they should be returned to prison. There is also discretion inside prisons regarding types of penalties for various contraband/drug matters, which vary according to the type of substance. For example, the prison-based Compulsory Drug Treatment Program is a type of diversionary program.

Participants agreed on the need for a clear distinction between the circumstances of prisoners and parolees and that if under current arrangements a person with a drug problem was released from prison with a more serious drug problem than at reception, this was a matter of concern. It was agreed that the drug use of a person inside prison should be treated similarly to a person outside prison, and that this might require significant change in attitude and practice in many correctional facilities. It was also suggested that some treatment could be moved out of correctional facilities into a community environment.

In addition it was agreed that

- In-prison methadone and buprenorphine treatment should be significantly expanded and made available to every prisoner who met defined guidelines, regardless of length of sentence or remand status (instead of as now being limited to sentenced prisoners in prescribed circumstances);
- Follow-through into community care is critical for prisoners who are dependent on methadone and for all prisoners with a drug problem, including alcohol; and
- Programmed continuity of care at point of release needs to be available, rather than letting ex-prisoners fall between the gaps as now because of ambiguity about who is responsible for this group.

In summary, to reduce risk of reoffending and address drug user needs requires a more effective relationship between sentencing, options for sanctions arising from sentencing, through care services for offenders, and joined up services to support the offender's family and community. Coupled with a justice reinvestment approach, this would lead to a reduction in crime and imprisonment rates, particularly for Indigenous people, less reliance on large secure correctional precincts that are ineffective for rehabilitation, and significant savings over the next 5 to 10 years.

It was pointed out that a more strategic way of reducing the risk of drug-related harm through incarceration would be to minimise the number of people in the prison population through decriminalisation, diversion and treatment.

## **REVIEWING DRUG TESTING AND DRIVING ARRANGEMENTS**

Mobile drug testing of vehicle drivers was identified as a significant concern, largely due to questions about the quality and accuracy of current drug testing. It was suggested that drivers should be tested for drugs which measurably contribute to danger on the roads, where there is evidence that drug levels are causally related to impairment, and where the accuracy and quality of tests can be assured. Drugs such as antihistamines and short acting benzodiazepines carry a much higher risk of road crashes than drugs currently tested for at the roadside, viz cannabis, MDMA or methamphetamine. The concern is that the wrong drugs are being tested for, and that the current approach is adopted as being easier to justify, as the drugs being tested for are illegal.

A review of the efficacy, safety and cost effectiveness of drug driving laws was recommended, to test the outcomes being achieved and the level of impairment drivers actually demonstrate at the time they give a positive test result.

## **INVESTIGATING THE COST EFFECTIVENESS OF NON-CUSTODIAL SENTENCING OPTIONS**

There was wide-ranging discussion about greater use of non-custodial sentencing options including 'How can better use be made of non-custodial sentencing options?' Is there scope for these options to be expanded? How do we prevent people ending up embedded in the system?

These questions encroached on the exercise of judicial discretion, which is limited by precedent and legislative controls. Participants were cautious about venturing too far into this area. Changes here can only be achieved by changing the law and by legislating to give different parameters in which the judges and magistrates can operate. The focus of change would be on parliamentarians rather than judicial officers.

The need to better understand the level of inefficiency and cost wastage within Australia's prison systems was recognised by some participants who proposed that a task force be established to identify inefficiencies and produce savings. It was suggested that a well-researched report would find evidence of serious inefficiencies and wastage with recommendations for structural and holistic changes over a period of 5–10 years which could achieve significant savings.

The Law Reform Commission is currently looking at alternatives to custodial sentences, including diversionary options, and this is likely to lead to recommendations for change. However, it needs to be recognised that not all diversionary schemes are successful. The need for ongoing review and a willingness to do some things differently was seen as a necessary ingredient for programs to achieve improved outcomes. For example, a focus on reducing reoffending across the justice system may be required as a means of shifting resources to different areas. It was suggested that the current balance was focusing on high churn, not on high risk and not necessarily on harm minimisation. Such issues will be key challenges in the prisoner reduction or diversion schemes suggested for consideration.

## RESEARCHING REGULATION AND HOW A FUTURE REGULATORY SYSTEM MIGHT WORK

The value of tying drug reform approaches to what has been learnt from errors in alcohol and tobacco regulation was discussed. Many would say that regulation of the alcohol industry has failed dismally, whereas many public health experts argue that, despite some mistakes, Australia has overall done well with tobacco policy. The need for more research into regulation and how future regulation might work was emphasised, leading to the following questions:

- If the supply of cannabis was regulated, should it be sold by a for-profit industry?
- Should cannabis be taxed and regulated?
- Should licences for commercial supply of cannabis be hard to get and easy to lose and, if so, how might this be controlled?

The following gives an account of how the system might work:

"There are three stages before the market. They are cultivation, wholesale and retail. Licences should be hard to get and once you have got them, if you misbehave it should be easy to lose them. Then, once the whole system is running, the cannabis will be packaged and the package would have health warnings on it. It would have labels like 'smoking this could give you schizophrenia'. It would have help seeking information at such and such a number if you feel you can't stop. It will also have consumer product information. There would be proof of age for purchase that would be made analogous with alcohol. And there would be two prohibitions: one would be a prohibition on advertising and secondly there would be a prohibition on donations from the industry to any political parties."

[Participant comment]

Various approaches being tested overseas were mentioned, each with different strengths and weaknesses. The first is the Colorado 'for-profit' model, a regulated industry. The second is the Spanish cannabis social club, a not-for-profit community model. The third is the government monopoly model, which operates for alcohol in parts of Scandinavia and in several provinces of Canada.

In Colorado, the revenue generated is tied to a specific social purpose, namely rebuilding the public schools in that state, and the program is understood to enjoy a lot of community support for that reason.

The Spanish model involves the development of 'cannabis social clubs', which have the advantage that they are not-for-profit and require no complex regulation. An Australian analogy illustrates the advantages of this model:

"If you live in Queanbeyan and you join the Queanbeyan cannabis social club, you sign up and only people who are in that club can be supplied by the provider. The argument is that it adds to social cohesion in that the Queanbeyan cannabis smokers develop a kind of social network and avoids whatever risks might be incurred with the development of a large and powerful legal cannabis industry along the lines of the alcohol beverage or tobacco industries."

[Participant comment]

The argument for government monopolies of cannabis production and retail sale, as in Uruguay, is that marketing and promotion are likely to be less aggressive than a for-profit company. Here there is an Australian precedent: when the ban on off-course betting on horse races was lifted some decades ago, a government monopoly was established initially to accommodate all such gambling, in short, to provide services and cater for a demand that is embraced by only a minority of the community.

In discussion, it was agreed that there are too many unanswered questions to recommend a model for Australia. However, a great deal of literature on the different models is available, and evidence will continue to emerge. A review of current models of regulation and supply, and an assessment of the alternatives, was recommended. It was also noted that in 2016, the Australian Drug Law Reform Initiative at the UNSW Law School commenced a project to draft legislation to regulate the market for recreational cannabis.

In summary, a number of potential next steps for testing incremental drug law reform in Australia were identified. Australia is well served by research capacity in this area. It was agreed that innovation and research should aim to reduce the health, social and economic costs of drug use and drug policy rather than aim to reduce drug consumption regardless of adverse consequences. The federal US government attitude to recent cannabis policy reform has been that some states will serve as laboratories to test change rather than change occurring at the national level.

The fact that decriminalisation of cannabis and other drugs in Australian states and territories is now known to be more extensive than generally perceived, and that this decriminalisation has occurred without being accompanied by negative consequences, is reassuring and in line with international research and experience.



# 4. A FRAMEWORK FOR ILLICIT DRUG LAW REFORM

"If changes were to be made to our current illicit drugs policy, what options and processes would be most likely to reduce harms to users and increase the effectiveness of our policy?"

In the final session, the group focussed on a way forward. Whilst there was some concern about the potential dangers of declaring an ambitious vision for drug law reform it was noted that most public health strategies involve creation of a vision followed by a broad mission statement outlining the approach to be taken. Following this, strategies are developed to identify how the mission would be undertaken and the vision achieved. It was argued that a similar approach should underpin drug law reform.

While it was not the role of the roundtable to develop a fully detailed plan it was agreed that articulating a final destination was fundamental to any change agenda and potentially extremely useful to the debate if complemented with clear explanation of the steps of the journey. It was emphasised that the journey will need to be slow and incremental, dealt with step-by-step, and fully evaluated. Any reviews or assessments conducted or relied upon will need to stand scrutiny, be thorough, comprehensive, and have process integrity. Actions taken to progress reform will need to be demonstrably transparent and seen to be apolitical.

## CONTEXT OF THE VISION

There was common agreement that while illicit drug use exists across the social and economic spectrum, problems associated with it are concentrated on people who are of low socio-economic status, excluded from mainstream Australia, unemployed, in ethnic minorities, and marginalised. This needs to be fully recognised in the development of a new national strategy.

The framework of this strategy will need to address issues of concern in law enforcement and the judicial system. Judges are not happy sending people to prison for behaviours they believe should not be considered crimes. Police are not happy being part of that process. Prison Officers are unhappy receiving people where they think it inappropriate.

In the circumstances of likely growing youth unemployment, the size of the illicit drug problem and issues with legal drugs will continue to increase. A comprehensive and efficient response to the problem should address all these factors – through reducing inequalities, reducing marginalisation, improving education and employment opportunities, and expanding health and social services for low income struggling families. The Street University established by the Noffs Foundation ([www.streetuni.net/](http://www.streetuni.net/)) was mentioned as an innovative and effective initiative in this area.

It was suggested that all these problems are interrelated:

"To what extent are we prepared to think of this as a single problem about the regulation of drugs? And my inclination is that the more we can think of this as one problem the better and the more truthful. As we know, the real drug problems in Australia are alcohol and tobacco.

It is at the base of a lot of the social discrimination and other things that are going on. As an initial position – and I'm trying not to be dogmatic about this, – a vision in which we treated all drug issues as being about the same kind of problem – the more that we can do that, the more persuasive and the more administratively possible will be the proposition."

[Participant comment]

## **A VISION FOR DRUG LAW REFORM IN AUSTRALIA**

The following vision of drug law reform for Australia, based around the view that all the problems outlined above are interrelated, had strong support from all participants:

By 2030 Australia will be a country where laws and strategies that ensure the least harm from illicit substance use contribute to a peaceful existence, where policies on mind-altering drugs contribute to a society characterised by hope, compassion, greater equality and improved safety for all people – for those who use drugs, for all children, and for the community as a whole.

If achieved, this vision would benefit the wellbeing and quality of life for all Australians. If achieved, it would involve less drug use and less harm, through the recognition that harm occurs not only from drug use but also from inappropriate drug policy.

It was agreed that a key first step on the road to reform is promoting community awareness of the current arrangements, so that Australians and their political leaders have a firm foundation for considering the vision and associated reform initiatives.

## **PREAMBLE**

Participants agreed on the following as a preamble to their recommendations:

1. Successive governments have been determined and well-intentioned in their efforts to reduce illicit drug use and to protect and serve the public interest.
2. Police have continuously improved their ability to identify, track and apprehend criminals in the large-scale trafficking and importation of illicit drugs.
3. Despite these developments and achievements, the current prohibition-based policy has been largely ineffective in reducing harms or supply of drugs.
4. Whilst it is not suggested that the current policy relying heavily on supply control has been a total failure, it must be subject to rigorous review if progress is to be made and the harms being caused to drug users reduced.
5. An approach which distinguishes between high-end production and trafficking on the one hand and use and personal possession on the other, and which treats organised drug trafficking as a law enforcement matter, and use and possession as a health and social matter, has to be at the heart of any new policy.
6. Consideration should be given to progressing incrementally towards decriminalisation of drug use and where possible regulation and taxing of psychoactive drug supply. However, in the opinion of some participants, regulation of supply should be restricted to particular drugs.
7. There needs to be a strong commitment to creating an environment that removes or minimises the availability of untested drugs in an un-regulated marketplace.
8. Finding ways to substantially reduce if not eliminate the role of the criminal illicit drug market and allocating sufficient funds to health and treatment options will be fundamental to achieving improved outcomes.

## THIRTEEN RECOMMENDATIONS FOR ILLICIT DRUG LAW REFORM

The following recommendations are drawn from the transcript of discussion.

1. The overriding objective of Australia's national policy on drugs should be the minimisation of harm to those who choose to use psychoactive drugs and those around them, and a reduction in the likelihood that those who use such drugs choose substances that harm their health and the wellbeing of others. The emphasis should shift from trying to stamp out personal use of these drugs, to assisting people to make wiser choices about their use and minimising harms when they make unwise choices.
2. The policy should include substantially reducing, if not eliminating, the size of the criminal marketplace by incrementally moving psychoactive drugs from the black market to the 'white' market. This will be accomplished by regulating and taxing the supply of currently illicit drugs, with regulation of supply being gradually phased in and assessed on an ongoing step-by-step basis, starting with drugs which are known to do least harm and are least contentious. Ongoing assessment and review will determine the desirability and extent of legalisation and whether regulation should eventually be extended to all psychoactive drugs. Advertising of any regulation and regulated drugs should not be permitted. Some drugs will require stringent controls, such as prescription by a doctor.
3. Community understanding of Australia's current drug laws and practices should be promoted, including evidence that disproportionate funding is going into ineffective drug law enforcement, while inadequate funding is available for harm minimisation and treatment of those who are addicted to illicit drugs. Understanding that use of drugs of all kinds is primarily a health and social issue, rather than primarily a law enforcement issue, and that Australia has already progressed a long way down the path of decriminalisation of possession and use of some psychoactive drugs, has been distorted by the way current policy has been implemented.
4. Whilst law enforcement will always be important to managing illicit drug use in Australia, the focus should not be on whether a user has taken or possesses these drugs for personal use but rather on associated criminal or antisocial behaviour including dealing effectively with the black marketeers. The criminal and antisocial behaviour that is a common consequence of habitual psychoactive drug use is largely a result of the high costs of maintaining a drug habit supplied by the criminal marketplace, as well as, in some cases, the specific effects of the drug.
5. Currently, people purchasing illicit drugs from criminal sources have no idea about the purity or safety of the drugs they plan to consume. In order to be better informed and protected, users should be able to submit the drugs for testing in a controlled environment. In a number of overseas countries this is being done in proximity to music festivals where psychoactive drugs are extensively sold and used. Making such facilities available in Australia will help prevent avoidable deaths and overdoses.
6. Current practices to test drivers for the presence of psychoactive substances in their blood should be rigorously reviewed with respect to efficacy and cost effectiveness. The purpose of such testing should be to ascertain whether the driver is unsafe or unfit to drive as a result of psychoactive drug use, not to ascertain whether he or she has consumed a psychoactive drug. This issue will become a particular concern as the proposed new laws governing use of medicinal cannabis come into effect.

7. To the extent that police in any jurisdiction operate under Key Performance Indicators (KPIs) that include arrest rates for use and possession of psychoactive substances, such KPIs should be considered only partial measures of 'success' unless they also include harm reduction measures. Arrest rates alone are counterproductive to the central aim of harm reduction.
8. Drug treatment and associated social services should be expanded especially in rural areas. Savings made from cutting back unproductive law enforcement activities should be re-allocated within law enforcement to areas that provide more benefit to the community. Increase in resources available for drug treatment and social integration services should be funded from other sources.
9. Opioid substitution treatment (OST) should be available for all prisoners, sentenced and remanded, who meet agreed criteria for heroin dependence, and continue to be available following release at reduced cost. Current co-payments for people undergoing OST, a predominantly low income population, are a significant price barrier that delays or prevents entry to treatment and encourages premature attrition from treatment.
10. An expanded OST service, together with further investigation into the drivers of prison costs, could lead to substantial reductions in the Australian prison population and in the costs of prison arrangements. This should be systematically explored by both state and federal jurisdiction task forces and warrants serious attention by the Australian Productivity Commission and the Australian Law Reform Commission.
11. In view of the long and successful operation of the medically supervised injecting centre in Sydney, serious consideration should be given to the establishment of controlled drug consumption rooms in other parts of Australia. Staffed by professionals, these would help minimise fatal and non-fatal overdoses, reduce HIV and other viral infections, provide detoxification services, and encourage referral for health and social assistance. They would be community centred and lead to safer neighbourhood environments.
12. Australian authorities should review the 2013 New Zealand Psychoactive Substances Act and consider its suitability for adoption with such modifications as may be necessary to suit contemporary Australian conditions.
13. While many of these recommendations are supported by international experience and evidence, their adoption here will require carefully evaluated local evidence. Two pilot projects to trial and evaluate the health and social programs recommended in this report should be conducted – one in a remote disadvantaged community and another in an urban community with substantial social and drug related problems. Both projects should target critical local health or social problems and identify local champions to encourage community involvement in program design and delivery. Evaluation of the pilots should guide expansion of the programs elsewhere.

# LIST OF PARTICIPANTS

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Former Judge of the NSW Supreme Court and member of NSW Law Reform Commission

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UNSW and former President International Society for the Study of Drug Policy

**Dr Alex Wodak AM**

Director Australia21 and President of the Australian Drug Law Reform Foundation

Australia21 also appreciates the contribution of Dr Mel Miller, Director of Siggins Miller, who greatly assisted with facilitation of the roundtable.

## PROFESSOR DESMOND MANDERSON



"The real question is why there is such resistance to change."

Desmond Manderson is a leader in interdisciplinary scholarship in law and the humanities, bringing together thinking about law and regulation with insights from literature, history, philosophy and the arts at the Australian National University.

- The real question is not whether the drug prohibition regime has failed miserably. The jury is no longer out on that. More information and more rational argument are not needed.
- The real question is rather why there is still such resistance to change. In other words, we have to understand that these laws are doing something for and in the community that is not related to their insignificant effects on the drug market.
- They are serving an important symbolic function. We need to think about the symbolic or psychological meaning of drug laws. And then we need to think about how we can change the discourse and the meaning of these laws in order to achieve lasting change. The challenge is not about information but about discourse and feeling.
- The most significant consequences of our legal regime are at the supply end. Countries like Mexico are basically turning into failed states as a result of the corruption, greed, and violence of the drug cartels. It is the consequences for global development, peace, and security that ought most to concern us. Our responsibility for global instability through these laws needs to be acknowledged and ought to be part of how we change the discourse.
- The issue is about health and about community relations, but it is also about the legitimacy of the legal structure, and it is also about global security.

## KEN MORONEY AO PHM



"I think we need greater community engagement in addressing the drug issue."

Ken Moroney is a former member of the NSW Police Force 1965–2007 and Commissioner, NSW Police Force 2002–2007. His policing career was equally divided in metropolitan and rural areas of NSW and covered generalist and specialist fields. Currently he is a member of State Parole Authority of NSW; Conduct Division of the Judicial Commission of NSW ; Oncology Children's Foundation and The Kid's Cancer Project and Chair, Australian Graduate School of Policing and Security.

- I am concerned at the future that my grandchildren will face as they grow from infancy to teenage years and adulthood and wonder how best I can protect and educate them regarding substance use – legal and illegal.
- As an observer and practitioner of law enforcement in this State I wonder how law enforcement (in all of its forms) is best prepared to face the future.
- I wonder at the fragmented approach to legal and illicit drug abuse and would encourage a more integrated approach by the public and private sectors and commonwealth and state agencies to this issue. Is it just a law enforcement problem or are there real alternatives?
- I think we need greater community engagement in addressing the drug issue.
- I am sceptical that we can arrest our way out of this problem.
- I also think we need to consider alternatives to incarceration and for those who are incarcerated, explore how we ensure that they do not re-join and remain on the gaol merry-go-round?



## DR ALEX WODAK AM



**"The threshold step is to redefine drugs as primarily a health and social, rather than primarily a criminal justice issue."**

Dr Alex Wodak is a physician who was Director of the Alcohol and Drug Service at St Vincent's Hospital, Sydney from 1982 until he retired in 2012. In the 1980s he experienced fierce and relentless resistance while trying to start needle syringe programs to control HIV among and from people who inject drugs. This provoked an interest in the origins, effectiveness, equity and alternatives to drug prohibition which grew over three decades. Dr Wodak is a Board member of Australia21 and is President of the Australian Drug Law Reform Foundation.

- The assessment that drug prohibition has failed comprehensively, though trenchantly resisted for many decades, is now increasingly acknowledged. Drug prohibition is also unfair and unjust, was not based on good evidence, is now flagrantly contradicted by good evidence and was developed with poor processes.
- But prohibition has been a very effective political strategy. Revision of drug law enforcement will, at best, only marginally improve outcomes. Inefficient resource allocation is also at the crux of the current situation with excessive resources allocated to drug law enforcement and grossly inadequate resources allocated to health and social interventions.
- The threshold step is to redefine drugs as primarily a health and social, rather than primarily a criminal justice issue: considerably enhanced drug treatment is critical. Substantially increasing funding for health and social interventions is required with these additional resources coming from new funding (rather than redirected from law enforcement).
- Regulated supplies will undermine economically the market for currently illicit drugs. Drugs controlled by prescription should be used increasingly as part of drug treatment just as methadone/buprenorphine have been used successfully to manage severe heroin dependence.
- Small quantities of low purity, carefully selected sedative, stimulant and hallucinogenic drugs should be available for regulated commercial sale but large quantities of high purity drugs should not, and never will be available for regulated commercial sale.
- The far greater problems of alcohol cannot continue to be ignored. Implementing known-to-be-effective measures to reduce alcohol problems should be linked to efforts to control illicit drugs.

## PROFESSOR ALISON RITTER



"Our regulation system needs to minimise harms."

Professor Ritter from the University of NSW worked as a clinical psychologist in the alcohol and drug treatment sector prior to commencing full-time research. She is the immediate past President of the International Society for the Study of Drug Policy, Vice-President of the Alcohol and Drug Council of Australia and an editor for a number of journals, including *Drug and Alcohol Review*, and the *International Journal of Drug Policy*.

- In the main, research findings are positive for some law enforcement interventions, mixed for others and negative for a few, with most also having negative unintended consequences. My summary of the evidence measured against the objectives of the intervention (reduced supply, market disruption, reduced crime, rather than reductions in drug use) follows.<sup>7</sup>

<sup>7</sup> For a fuller exposition of this evidence see <https://www.dropbox.com/s/xuackhetfb9o9uo/Alison%20Ritter.pdf?dl=0>

Intervention type	Summary of evidence	Intervention type	Summary of evidence
Interdiction (seizures at the border)	Can reduce supply (supply shock); may disrupt market & supply chain. Limited evidence for any long-term market impact.	Community policing (community education, drug hotlines, neighbourhood revitalisation, watch groups)	May reduce dealing & drug offences; increased community satisfaction.
Crop eradication	No reductions in cultivation; may create temporary market disruption; high health harms. No evidence for any long-term market impact.	Crime prevention through environmental design (CPTED)	Positive effects on drug and property crime and disorder.
Crop substitution/ alternative development	Can reduce cultivation; no assessment of market impact. Costly.	Drug free zones	No effect on drug crime, markets & displacement effects.
Crackdowns & raids (high visibility, drug-related behaviours targeted)	No evidence of long-term market impact; no reductions in drug related crime; evidence for displacement.	Problem-Oriented Policing (focussed deterrence strategies; focussed tactic on problem, people or places often in partnership with non-police entities)	Reduction in drug-related crime & spillover effects to other crimes. Some evidence of displacement.
Undercover operations (investigations, buy-busts, informants)	No effects on drug related crime.	Diversion (individual intervention)	Reductions in drug use, drug-related crimes; improvements in health; improved employment opportunities (social benefits); cost savings.
Search & seizures (street level market)	May lead to reductions in supply in short-term. No effect on rates of crime and arrest.	Drug courts (individual intervention)	Reduced rate of offending; improvements in health; social benefit.
Third party policing (crime control partnerships, range of civil, criminal and regulatory rules or laws)	Reductions in dealing & drug offences; & spillover to other crimes. No evidence of displacement.		

## NICHOLAS COWDERY AM



"The solution is to remove the illicit profits by regulating, controlling and taxing drug supply."

Nicholas Cowdery was a Director of Public Prosecutions for NSW from 1994 to 2011, and is now an Adjunct Professor of Law at the University of Sydney and a Visiting Professorial Fellow at the University of NSW

- Drug prohibition is a failed policy – not only a failure, but counter-productive in that it actually causes additional harms by way of disease, death, crime and corruption and adverse health and personal and social consequences for drug users.
- There have always been, are and forever will be a demand for mood altering drugs. There have always been, are and forever will be a supply of drugs.
- Things must and can be done better. That is why I'm here.
- The solution is to remove the illicit profits by regulating, controlling and taxing drug supply. Different regimes would be required for different drugs. Small scale possession and use for all drugs should be decriminalised (as in Portugal).
- An approach might be to move first on medicinal cannabis, then on recreational cannabis, then on other drugs. Heroin could be made available only on prescription. The criminal law would still have a role to play against those who chose to act outside the regulated regime.

## VIVIENNE MOXHAM-HALL



"The effective use of police resources should be directed at the high end of the market and users should be directed to health services."

Vivienne Moxham-Hall was an inaugural Australia21 Honorary Youth Adviser from 2012–15 and assumed the role of Young Australia21 Ambassador in 2015. She is enrolled in a PhD and has completed a Bachelor of Science, Bachelor of Arts and a Master of Health Policy at the University of Sydney. Vivienne is currently the Secretary of the Australian Drug Law Reform Foundation. She is passionate about giving a youth voice to the policy directives of the future.

- The current enforcement of Australian drug laws tends to criminalise recreational drug users, people with addictions and the occasional small-time dealer to a greater extent than the big dealers and producers. The effective use of police resources should be directed at the high end of the market and users should be directed to health services.
- Young offenders benefit from the introduction of police drug diversion measures as they've been implemented in Victoria and the UK. In the UK, the use of diversion has shown a steady reduction in the number of under 18 year old being put into custody (<https://www.gov.uk/government/statistics/youth-custody-data>).
- Other states in Australia have Cannabis diversion, but Victoria has a program where offenders must attend a two-hour drug assessment followed by counselling or access to treatment services.
- A review of diversion strategies across Australia by the Australian Institute of Criminology was conducted in 2008 ([http://www.aic.gov.au/media\\_library/publications/rpp/97/rpp097.pdf](http://www.aic.gov.au/media_library/publications/rpp/97/rpp097.pdf)).
- I believe that it would be a worthwhile and realistic policy goal to implement drug diversion across all jurisdictions in Australia.
- Knowing young people who've had to go to court on drug charges because they've been found with a pill in their pocket by a sniffer dog on a train or on their way to a festival in NSW, I believe that we should look to finding a compromise that allows some measure of unmerited grace to recreational drug users, people with addictions and the occasional small-time dealer.

## KEITH HAMBURGER AM



"Our current system is founded on the erroneous believe that it is possible to punish crime away."

Keith Hamburger held senior executive positions in the QLD public service including Director General, QLD Corrective Services Commission for almost 10 years. He led a successful reform of the QLD Prison System achieving the most cost-effective system of Corrections in Australia including, at that time, the lowest return to prison rate. As Managing Director of Knowledge Consulting he has undertaken significant correctional consultancies in most States of Australia. He is currently developing initiatives aimed at reducing Indigenous imprisonment rates and their contact with the criminal justice system generally.

- We need to redefine the higher order role of the criminal justice system as: "To contribute to keeping peace in our society".
- Our current system is founded in the erroneous belief that it is possible to punish crime away – this is reactive, not cost effective and creates harm for cohorts of people including drug users, Indigenous people, youth, intellectually impaired people, and those who are mentally ill.
- Such a redefined role opens up thinking for proactive, positive, cost effective options to reduce crime and strengthen social cohesion. It could move political and public debate to achieving best practice responses to social breakdown and crime under the umbrella of "keeping peace in society" and applying Restorative Justice and Justice Reinvestment concepts.
- I also support the NSW Bar Association Discussion Paper November 2014, in its aim "to replace the black market for drugs with a form of legal availability under a highly regulated system".

## DR ANNE MARIE MARTIN



### "Reform is everybody's business."

Dr Martin has formal qualifications in clinical psychology and is Assistant Commissioner, Offender Management and Policy, Corrective Services NSW. She joined the South Australian Department of Correctional Services in 2004. After providing programs to high risk violent offenders and sex offenders, followed by writing and implementing a new cognitive-behavioural program for high risk offenders, she became Executive Director,

Offender Development. She joined Corrective Services New South Wales in February 2013 and has oversight of prisoner classification and placement, inmate employment and education, chaplaincy, psychological and welfare services, as well as the restorative justice unit.

- The level of substance use amongst people entering custody is high; including over 80 per cent amongst the Aboriginal and Torres Strait cohort.
- Correctional Centres replicate the community, in that there are two main issues:
  - > The acquisition and distribution of illicit substances;
  - > The use of (and withdrawal from) illicit substances that poses risks to self and others (staff and other inmates).
- Visitors who introduce contraband are being faced with increased surveillance/monitoring systems, and the consequences of introducing contraband include banning from entering a Centre and formal charges. Those that introduce illicit substances are often not traffickers/dealers themselves, but are from the same environment of consumers as the inmate. Outcomes include further disadvantage and disconnection.
- Availability of pharmacological treatment in all Correctional Centres (many in regional areas only have a clinic or 5 day a week service) is actually resulting in people remaining in higher security levels than is needed, and reducing access to activities that assist with release into the community.
- Reform is everybody's business across all ages and includes information and ownership of a strategy across numerous sectors (health, education, industry and judicial).



## MATT NOFFS



"The evidence shows that prohibition is not necessary and not even sufficient to reduce usage of illicit drugs."

Matt Noffs is CEO of the Noffs Foundation, Australia's largest drug and alcohol treatment service provider for young people under 25. He is co-founder of the Street University, an early intervention service established in Sydney's west and southwest, which aims to reconnect young people with their communities and help them discover their innate capacity. He has drawn on this experience in his recently released book 'Breaking the Ice: how we will get through Australia's methamphetamine crisis' (2016).

- One of the most common opinions I hear from proponents of prohibition is that the alternatives will all lead to an increase in drug use especially amongst young people.
- So we need to ask three questions:
  - > Do alternatives to prohibition increase use and is this increase concentrated in young people?
  - > Does prohibition reduce use and is this reduction concentrated in young people?
  - > Is it possible to reduce the use of non-prohibited substances, particularly amongst young people, without prohibiting them?
- I have concluded from a careful examination of available international evidence that prohibition is not necessary and not even sufficient to reduce usage of illicit drugs.
- Even if it were the case that adopting measures other than prohibition were to result in an increased rate of usage we know how to adjust our regulatory framework to reduce usage in young people.
- We need to ask whether our goal should be to minimise usage of drugs at all costs. Surely our goal in terms of government expenditure should be to minimise the impact of drugs on the lives of our young people and families and on our society.

## RET'D. JUSTICE HAL SPERLING



"I am yet to be satisfied that there is any benefit whatever in the current regime of law and law enforcement concerning drugs."

Retired Justice Sperling was a Judge of the NSW Supreme Court 1995–2005, Founder and then convenor of the Crime and Justice Reform Committee 2007–2010, Member of the NSW Law Reform Commission at various times, for over 25 years in total, and Deputy President of the NSW Mental Health Review Tribunal since 2013.

- Using mood altering substances is normal human behaviour across time and across cultures.
- The appetite for such substances is strong. Supply is practicable and, if illegal, hugely profitable. Any attempt to enforce prohibition will fail in these circumstances. Witness the prohibition of alcohol in the USA and our own experience with illicit drugs.
- Attempting enforced prohibition of mood altering substances in these circumstances is futile and counterproductive.
  - > It is a waste of public money.
  - > It encourages use of more dangerous substances.
  - > It brings the courts and the police into contempt.
  - > It supports organised crime.
  - > It stifles the development of good policy for regulating the supply of such substances and for harm minimisation.
- I am yet to be satisfied that there is any benefit whatever in the current regime of law and law enforcement concerning drugs. I want to put that on the record.

## BILL BUSH



"Problematic drug use is vastly concentrated in disadvantaged communities and drug use often sucks them into the corrective system."

Bill Bush worked as an international lawyer in the Department of Foreign Affairs and Trade where for 9 years he was head of the Treaties Section. Since retiring he has written on the international drug treaty regime. He joined Families and Friends for Drug Law Reform in 1997 and has been involved in the preparation of numerous submissions of the group to, and appeared before, Commonwealth and State parliamentary committees. These submissions have canvassed the impact of drug policy on different social problems.

- We are at a turning point in the evolution of the international drugs regime. Within the multilateral drug treaties there always was much more flexibility for national discretion than the champions of a strict prohibitionist approach like to admit.
- Altogether, parties to the International drug conventions have a wide margin of appreciation in how to give effect to their obligations. This is reflected in the liberal approaches adopted by countries such as The Netherlands and Portugal and increasingly by the United States itself.
- This development in the United States is of vital significance given the long history of uncompromising campaigning that the United States has waged over the past century to establish a stringent prohibitionist regime.
- We cannot really do this subject justice without recognising that while problematic drug use exists across the whole social and economic spectrum, it is vastly concentrated on people who are of low socio-economic status, who are excluded from mainstream Australia, who are unemployed; who are in ethnic minorities and marginalised.
- There is a pipeline that exists from these disadvantaged communities that sucks these people up and puts them in the corrective system. And often the conduit is through drugs.

## DR STEPHEN JIGGINS AM



"For those not actively involved in drug policy, there appears to be a bewildering array of fiercely held and highly contested positions on this topic."

Dr Jiggins has over 40 years' experience as a professional communicator working across a variety of fields including policing, indigenous and multicultural affairs, road safety, defence and academe. He has been responsible for a number of major communication projects including the communication campaign for the previous Australian Census of Population, the launch of the international Year of Indigenous People and federal government initiatives in relation to Multicultural policy and Aboriginal Reconciliation.

- I accept the premise that we could do a lot better in terms of minimising the harm to the community associated with drug misuse. Given my communication background my thoughts relate to promoting awareness of the need for change.
- For those not actively involved in drug policy, there appears to be a bewildering array of positions on this topic. Most of these positions are fiercely held and highly contested.
- The community is presented with alarmist media reporting largely lacking in context. There is also an apparent plethora of initiatives and taskforces examining the issue of drug use.
- What is "the real problem" when it comes to drugs – as opposed to that being promoted in the media? What needs to change?
- We need one sentence that would articulate what the policy/paradigm should be.

**SUPERINTENDENT (RET'D)  
FRANK HANSEN APM**



**"Police are generally supportive of harm reduction principles if given the opportunity to exercise them."**

Following 15 years in drug law enforcement Superintendent Hansen was promoted to Superintendent in 1994. He then occupied various positions including Local Area Commander, Cabramatta for 2 years (2001/2); and Commander, Drug and Alcohol Coordination, State Crime Command (8 years) before his last position on retirement. For the majority of his career Superintendent Hansen has had

responsibility for providing policy advice to the NSW Police Force and Government on various aspects of alcohol and other drug use, particularly legislative and training issues, policing practices and their relationship to the provision of public health services.

- Law enforcement, including street level policing, will not by itself counter the prevalence of illicit drug use. However, police support for a well-resourced prevention and treatment strategy will clearly have the most positive effect.
- Local police responsible for street level offending are often frustrated by the lack of options available to them when dealing with those using or in possession of a typical small quantity of drugs for personal use.
- In NSW cannabis cautioning has provided such an option but is limited to that drug. As a first step an expansion to other drugs would seem a sensible course given the fact that there have been no noticeable negative impacts as a consequence of its introduction.
- There is also an opportunity to further expand the cautioning system by providing police with a level of "accountable discretion" for those found using and/or possessing small quantities. Any discretion should be broad enough to ensure minor offending does not result in a criminal prosecution but also be governed by a well-articulated corporate direction so that the individual police officer knows exactly what is expected of them.
- Police are generally supportive of harm reduction principles if given the opportunity to exercise them. While not without the occasional problems arising from operational practices, this is evidenced by their working relationships with such public health initiatives as Needle and Syringe Programs and Sydney's Medically Supervised Injecting Centre.

## GINO VUMBACA



"Although most agree a balance of supply, demand and harm reduction strategies are needed to address drug use, the primary response by governments currently remains law enforcement."

Gino Vumbaca is President of Harm Reduction Australia and has extensive experience in the HIV/AIDS and drug and alcohol fields both in Australia and internationally. He is a Churchill Fellow, has completed a Social Work degree and a Master of Business Administration at the University of Sydney and is a qualified Company Director. He is the former

Executive Director of the Australian National Council on Drugs – a position he held for over 15 years – and which provided advice directly to the offices of the previous 4 Australian Prime Ministers as well as numerous Ministers and senior officials. He is also a Director of Justice Reinvestment NSW at the Aboriginal Legal Service and President of the largest non-government drug and alcohol organisation in Macau SAR.

- The long standing and current balance of investment in reducing drug use and associated harms remains skewed heavily to law enforcement responses, despite the weight of evidence demonstrating that health based responses are effective and efficient.
- Although most agree a balance of supply, demand and harm reduction strategies is needed to address drug use, the primary response by governments remains law enforcement. This is clearly demonstrated by government responses to date for new psychoactive substances (synthetic cannabinoids etc.) and more recently crystal methamphetamine (ice) which have overwhelmingly resulted in increased budgets and authority for law enforcement responses and provided less funds for health based responses.
- There is a need to focus on the behaviour of people of people using drugs not simply the acts of either possession or consumption. That is, it is illegal to drive a vehicle under the influence of alcohol at certain levels, it is illegal to assault anyone even if intoxicated by alcohol. It is not illegal to possess or consume alcohol. It is any subsequent actions that transgress laws protecting other citizens that are punishable, not the act of consumption alcohol itself. Those who use alcohol are not seen as criminals.
- However with current illicit drugs it is the act of possession or consumption that is punishable regardless whether actions that have breached other laws protecting citizens have been breached.
- Our current stance on drugs is not only creating new markets, wasting resources and punishing many people for the rest of their lives, it is simply not working.

**DENNIS MCDERMOTT AM, APM, SIM**



"A concerted effort needs to be made in schools, colleges and universities to ensure the illicit use of drugs is fully understood."

Dennis McDermott is a retired AFP Assistant Commissioner and has 48 years policing & executive management experience. He was a Senior Executive Manager in numerous positions within the Australian Federal Police (AFP) with exposure to Territory, National & International policing. (Mr McDermott intended to participate but was unable to attend due to unforeseen circumstances.)

- The complexities of the subject highlight the need for Governments, Federally and State, to address the failures of the previously introduced "tough on drugs policy". Some will continue to argue that the policy did not fail, but one only needs to look at the current trends, as outlined, to show that it has.
- I liken the current problem with drugs to the youth alcohol fuelled epidemic that has developed over the past 10–20 years, culminating in a restriction with regards to closing times on licensed premises in some jurisdictions.
- The education system needs to be relevant and I am suggesting that a concerted effort needs to be made in schools, colleges and universities to ensure the illicit use of drugs is fully understood. I personally do not think sufficient is currently being done with education, due to the costs involved. Reformed addicts should be encouraged as a part of their rehabilitation to undertake Community work to try and educate our communities in the age group 14–25 years that the use of illicit drugs is unacceptable. The one thing any education system cannot stop is the risks associated with the actions of our younger people in society.



## JACK JOHNSTON



"A review of current attitudes and approaches should be a free ranging attempt to legitimise the existing approach, tinker with it or replace it."

Jack Johnston was a serving police officer for 43 years with both Tasmania Police and the National Crime Authority. He retired as the Commissioner of the Tasmania Police Service and the Secretary of the Department of Police and Emergency Management. Jack has been a member and chair of the (National) Intergovernmental Committee on Drugs (IGCD) and a member of the Australian National Council on Drugs (ANCD). (Mr Johnston intended to participate but was unable to attend due to unforeseen circumstances.)

- Motherhood statement:  
"...to build safe and healthy communities by minimising alcohol, tobacco and other drug-related health, social and economic harms among individuals, families and communities." Since the first iteration in 1985, the strategy has had an overarching approach of harm minimisation encompassing the three pillars of demand reduction, supply reduction and harm reduction.
- It should be remembered though that the reaction of governments and their agencies, together with the non-government sector, to the "Heroin Crisis" has been seen to have been effective even if it was somewhat tardy, with a noted reduction in both demand and supply but most noticeably in harms. It is remembered that it was not until the media and the community crescendo over the impact of heroin overdose deaths, increasing crime related to heroin use and the increase in prevalence of blood borne diseases, that governments heeded a call to action. The resulting responses were constructed under the NDS under the auspices of the Ministerial Council on Drugs Strategy.

- It was also under the auspices of the NDS that the Cannabis Diversion schemes were designed and implemented and, it could be argued, the fostering of therapeutic jurisprudence has been facilitated, encouraged and enhanced.
- Pressure is again building in the community in relation to the impacts of the drug ICE and is likely to again reach a point at which governments will want to be seen to act. It is likely that a strategy similar to that adopted during the 'heroin crisis' will be sought. Evidence of this is the creation by the Commonwealth of the Ice Taskforce, chaired by Ken Lay and similar State/Territory responses. The community is again struggling to decide which of the effects of this drug they are seeking to address as a priority: the harms to the individual user and his/her family such as an increase in family violence, the harms to the community through an increase in the levels of public violence, increased crime rates such as burglary/stealing offences, or the harms to the individual as a consequence of addiction. As always there will be demands to address all of them concurrently but without any increase in resources or re-prioritising of existing resources.
- The clamour for greater emphasis to be put on education to prevent uptake and on treatment to manage those who are addicted (or who will become addicted) has already started but without any increase in the available resources there will be a likelihood that politicians will try to 'paper over the cracks in the different systems by trying to squeeze more juice from the already dry lemon', get existing teachers to add to their workload by introducing new subjects to the curriculum, get the police to set up more task forces by using officers from other duties, re-allocate already utilised treatment beds from one type of drugs to another etc.
- Police are responding to the current drug environment by dealing with the impacts of the behaviours of those on the drugs, such as assaults on both the public and police officers, by ignoring drug diversion options and reverting to the prosecutorial approach. This is leading to an increase in workload for courts and consequently increasing the overcrowding of prisons. These increases are also exacerbated by the types of crimes now being committed which require a 'stronger' public policy response. A common criticism over the years has been that the NDS is not sufficiently responsive to changing circumstances, particularly changing illicit drug markets, to guide a rapid and targeted response.
- The NDS, by its very nature, seeks to include all relevant stakeholders and bring them together to work collaboratively in addressing the various problems. This has been a successful approach but has not been taken as far as it could be and is hampered by some sectors limiting themselves to their own silo of activity.
- The current NDS expires in 2015 so now is an ideal time to seek to influence the future direction of drug strategy in Australia for the longer term. Whether the clarion call is for the abolition of the NDS and replacement with separate policies for the different drug types, decriminalisation of some drug types or even regulation of them, and so on, one thing is certain, a realignment of existing resources is necessary. Amongst the limitations of a bureaucratic NDS that engages so many stakeholders with so many disparate priorities and personal agendas is that it is so slow to move and respond to emerging trends or needs for policy direction. The data capture systems, such as the Illicit Drug Reporting System (IDRS) whilst a useful tool usually validate after time the information that has been available to those workers on the ground for a longer period. This tardiness allows the community perception, accurate or otherwise, to lead the debate.

- The strongest argument against the NDS approach is that too many people and organisations push their own perspectives or agendas to the detriment of the overall aims of the Strategy. The unwieldy bureaucracy of the strategy does not allow for more timely intervention and, of course, the fact that so many jurisdictions have to be involved in our Federation before any meaningful response can be mounted or timely decisions taken or resources allocated. Maybe the return of the concept of a Drugs Czar, informed by a cadre of competent individuals with appropriate skills, and experience, could see a changed approach.
- Over time the concept that individuals are responsible for their own actions has been diluted significantly, often to appease other alternative approaches to behaviour modification. We have seen schemes to divert users of cannabis from the judicial system so that they are not stigmatised and to reduce emerging demands on the courts. It was hoped that in this way they will modify their using behaviour if firstly caught but then if that doesn't work being given some information about the impacts of their use if they are caught again before eventually entering the criminal justice system if they are persistent users who were regularly unable to avoid detection. Similarly, court mandated drug diversion schemes have been designed and implemented in a similar way for those who have used 'harder' drugs and who have committed crimes whilst influenced by those drugs.
- It is interesting to note recent evidence that suggests that re-offending rates amongst those provided with these diversion opportunities indicates that they are not the success that was anticipated in the original scheme development (depending upon the objective being measured).
- Pointing to the argument that "Despite the increase in arrests in Australia, only a tiny proportion of the three million Australians who are estimated to use illicit drugs each year are arrested." is, in my view, equally a testament to the changed priorities of law enforcement policymakers and those operational police who no longer see any 'value' in apprehension or other intervention with users of drugs. They are presently led to believe that the search for the elusive Mr Biggs is where their energies should be exclusively put. Operational police now "don't bother" with minor cannabis use as to do so, in their view, does not produce a dividend for the expended effort. This is not an argument to abandon diversion schemes but for a change to the construct of them and the education of those delivering them.
- No scheme is perfect. Every scheme that is developed requires regular review to determine whether it is meeting its aims and whether there may have emerged a better way to address the problem. With this in mind a review of current attitudes and approaches should not be confined to one drug type, illicit drugs only, or the current conglomerate of all drugs, but should be a free ranging attempt to legitimise the existing approach, tinker with it or replace it.

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From *The Times* June 16, 2016



Public health officials have seen the logic of decriminalising illegal drugs. This is an important step towards putting violent gangs out of business.

Would it ever make sense to jail a chain-smoker for smoking or an alcoholic for touching drink? On the basis that the answer is no, the Royal Society for Public Health (RSPH) is urging the government to decriminalise the personal possession and use of all illegal drugs. This is radical advice, but also sound. Ministers should give it serious consideration.

Prosecutions in Britain for small-scale personal cannabis use are already rare. To this extent the new proposals would not do much more than bring the statute book up to date with the status quo in most parts of the country. But the change the RSPH has in mind would go much further. It would push Britain into a small group of countries that have switched from regarding the use of drugs including heroin, cocaine and ecstasy as a health issue rather than one of criminal justice.

This is not a switch to be taken lightly, nor one the Home Office under present management is likely to take without sustained pressure from elsewhere in government. Yet the logic behind it and evidence from elsewhere are persuasive. Indeed, the government should be encouraged to think of decriminalisation not as an end in itself but as a first step towards legalising and regulating drugs as it already regulates alcohol and tobacco.

The RSPH's model is a drug decriminalisation initiative in Portugal that is now 15 years old. Since 2001 possession of even hard drugs in Portugal has meant at most a small fine and, more likely, referral to a treatment programme. It does not earn the user a criminal record. More importantly, as of last year the country's drug-related death rate was three per million citizens compared with ten per million in the Netherlands and 44.6 in Britain. Recreational drug use has not soared, as critics of decriminalisation had feared. HIV infection rates have fallen and the use of so-called legal highs is, according to a study last year, lower than in any other European country.

From a public health point of view the Portuguese approach is working so well that the question arises why it has taken British officials so long to seek to copy it. As they note, lower incarceration rates contribute to lower addiction rates since prison exposes inmates to more drugs. Prison also ruptures families, interferes with education and lowers the chances of employment. Less time inside prison means more hope for drug users trying to rebuild their lives and less crowded prisons.

For these reasons the RSPH is right to highlight Portugal's successes. Ministers, however, need to see the bigger picture. This model decriminalises drug use but not supply, and the RSPH report specifies that "dealers, suppliers and importers of illegal substances would still be actively pursued and prosecuted". It may be politic not to rush discussion of full legalisation but that should still be the ultimate goal. In the long term it is not tenable to decriminalise possession of a substance while preserving the profit motive of the criminal gangs that supply it.

The example of the Netherlands bears this out. Like Portugal, Dutch authorities have decriminalised most drug use while continuing to pursue dealers and kingpins. As a result even though more users are in treatment and drug abuse among teenagers has fallen, Amsterdam has become a hub of organised crime in which traffickers trade people and guns as well as drugs.

Leaving distribution and supply to criminal cartels ultimately leaves drug-producing states at their mercy, as Mexico and Afghanistan attest. The solution is not to return to the international drug wars of past decades, which proved unwinnable. It is to move gradually towards legalised supply chains such as those allowed for cannabis in Uruguay and a minority of US states.

The lesson of the drug wars is that a legal drug trade can hardly be worse than an illegal one.

## **"WHY IT IS TIME TO LEGALISE DRUGS"**

Kofi Anan, A member of the Global Commission on Drug policy and former Secretary General of the United Nations:

Prohibition has had little impact on the supply of or demand for drugs. Nor has prohibition significantly reduced drug use. Studies have consistently failed to establish the existence of a link between the harshness of a country's drug laws and its levels of drug use. The widespread criminalisation and punishment of people who use drugs, the overcrowded prisons, mean that the war on drugs is, to a significant degree a war on drug users – a war on people.

# ABOUT AUSTRALIA21

Australia21 is an independent public policy think tank. Inspired by the Canadian Institute for Advanced Research (CIAR), it was founded in 2001 to develop new frameworks for understanding complex problems that are important to Australia's future. For fifteen years we have been bringing together multidisciplinary groups of leading thinkers, researchers and policymakers to consider issues about our future, ranging from climate and landscape, our society and our economy, to Australia's place in the world.





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