



## Position Statement - August 2012

# The Case Against Legalising, Regulating or Decriminalizing Illicit Drug Usage in Australia

Drug Free Australia supports a balanced and humane illicit drug policy that aims at primary prevention and recovery-based treatment and rehabilitation. This can never be achieved if illicit drugs are condoned through their legalisation. There is a maxim that remains constant - *availability, accessibility* and, of course, the key component *permissibility* all increase consumption'. Legalisation equates to 'regulation' in the illicit drug context.

## Background

There is a growing, coordinated, well-funded movement in many parts of the world, (including Australia) that is committed to liberalising illicit drug policies, under the guise of public health and human rights for people who choose to use these substances.

The history and philosophy of this movement is well documented.<sup>1</sup> Known as the 'Harm Reduction' movement, it morphed into the 'Harm Minimisation' policy in Australia in the 1980's and has been the cornerstone of our drug policy for more than 27 years. This has resulted in Australia becoming one of the highest users (per capita) of illicit drugs in the world.<sup>2</sup>

More recently Harm Reduction has re-surfaced internationally in the form of the 'Global Commission on Drug Policy', which used high profile, often wealthy people, (such as Richard Branson) most of whom had no expertise in the complex issues related to illicit drugs and the harms they cause to our families and communities. From highly publicised media statements made by this so-called 'high level' group, other groups have emerged, including, in this region, 'Australia21' under the banner of 'drug law reform'. All who advise this group in Australia are well-known members of the Harm Reduction movement.

The recurring statements from such groups include:

1. The law enforcement/prohibition approach to illicit drug control is failing
2. Legalisation (regulation) will take the criminal element out of the drug market
3. Legalisation will not increase consumption
4. Illicit Drug law reform (meaning legalisation/decriminalisation/regulation) should be incremental and evidence-based
5. Portugal's drug policy is the best model to be emulated
6. In Australia, Marijuana and Ecstasy should be the starting point for drug law reform

**This position paper will now examine these claims:**

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<sup>1</sup> Moffitt, A; Malouf, J; Thompson, C; *The Drug Precipice* (1997); Sullivan, L; *The Fallacy of Harm Minimisation* (2000); McKeganey, N; *Controversies in Drug Policy and Practice* (2011)

<sup>2</sup> United Nations World Drug Report, 2012; Lancet Report 2011;

## **Harm Reduction (Drug Legalisation) stance # 1 - “The law enforcement/prohibition approach to illicit drug control is failing” - FALSE**

### **DFA Evidence to the contrary is:**

It appears that law enforcement is always taken to mean something that is draconian. However, there are models of very compassionate law enforcement approaches. These are achieving reduced drug use rates, through early intervention and recovery-based rehabilitation. For example, Sweden has a police/social worker model that compassionately intervenes early at the experimentation stage of young people. In the United States, the outcomes of the Drug Courts are proving to be very successful in reducing recidivism and in recovery-based interventions.

Illicit Drug Prevention through a combination of law enforcement, health and education strategies are working globally, with only 5% of the world's population having used illicit drugs, according to the 2012 World Drug Report (a drop from 6.1% in 2011).

Despite this, Australia has increasing rates of illicit drug use, because of a 27 year policy of 'Harm Minimisation' that neglects effective primary prevention. New Zealand is also a victim of a similar drug policy. The policy is hardly prohibitive when we see it being implemented with the following in practice examples:

- An injecting room in Sydney that supervises the use of drugs – currently costing \$2.7 million p.a. where less than 11% of clients receive a drug treatment referral and where overdose rates run at between 35-42 times the rates inside as they do outside.
- Needle and Syringe Programs that lack accountability including no requirement for needles to be returned, and limited referral of people to treatment services. Syringe vending machines have reportedly even been installed in some public places where needles may be extracted on insertion of a coin. There is a strong push for needle programs in prisons, where taxpayer dollars would be used to provide prisoners with needles to inject illegal drugs, rather than helping them to recover from their addiction.
- Drug Traffickers who receive light or even suspended sentences – little or no deterrent in the legal system and a lack of consistency in drug laws across the country.
- Reduced funding for treatment services in the most recent Federal budget and no requirement to give priority to recovery-based rehabilitation.
- Government funding and support for drug user organisations – for example the 'Australian Injecting Drug Users' League continue to receive funding for 'peer education' to help people use drugs 'safely'.
- The Australian Injecting Drug Users' League CEO now sits on the Australian National Council on Drugs - the principal advisory body on drugs to the Australian Government.
- High priority to Methadone maintenance – with over 50,000 people now on this synthetic drug, it has become a lucrative industry. Many remain on methadone for life, and overdose rates are high. No serious support has been given by Australian governments to the alternative drug, Naltrexone implants, which have been documented as successful for over a decade.

- Effectively dismantling the School Drug Education Strategy, by diverting resources from school drug education programs.
- Decriminalisation of Cannabis in SA and the ACT and de facto decriminalisation in others – where at most, people are given a warning, or perhaps charged an expiation fee. This has resulted in continued high use of cannabis in Australia.

Sweden, which abandoned Harm Reduction and drug legalisation in the 1960's, in favour of a bi-partisan, restrictive drug policy, now enjoys the lowest drug use rates per capita in the OECD.<sup>3</sup>

These examples are clear indications that drug control (or prohibition) has succeeded in 'pushing back' against the international drug trade.

### **Harm Reduction (Drug Legalisation) stance # 2 – “Legalisation (regulation) will take the criminal element out of the drug market” – MISLEADING**

#### **DFA Evidence to the contrary is:**

Crime would not be eliminated or reduced. Legalisation would not take the profit out of the drug trade as criminals will always find ways of countering the law. This would include the synthesis of new and more dangerous mind-altering substances than those legalised already; using aggressive marketing techniques designed to promote increased sales and use.

Legal drugs – alcohol and tobacco, are regularly traded on the black market and are an international smuggling problem; an estimated 600 billion cigarettes are smuggled annually<sup>4</sup>.

### **Harm Reduction (Drug Legalisation) stance # 3 – “Legalisation will not increase consumption” – FALSE**

#### **DFA Evidence to the contrary is:**

The most recent National Drug Strategy Household Survey 2010 continues to show that legalised drugs far outweigh the illicit drugs in terms of consumption and acceptability.

The rates of use are as follows:

- Alcohol - 81 %
- Tobacco – 18% (from 55-60%)
- Heroin – 0.2%
- Cocaine – 2%
- Speed/Ice – 2%\Ecstasy – 3%
- Cannabis – 11% (up from 9%) – compared to worldwide average of 2.6-5%

Low use of illegal drugs is the success of Prohibition controls world-wide.<sup>5</sup>

When **Sweden** liberalised its drug policy and effectively 'decriminalised' in the 60's they experienced spikes in drug use. This occurred again in the 90's when drug policy resources were reduced; as soon as Sweden noticed the spikes they took immediate steps to reverse the trend – based on a policy position of a 'Drug Free Sweden'.

<sup>3</sup> United Nations Office of Drug Control Policy; Sweden's Successful Drug Policy (2007)

<sup>4</sup> UN World Drug Report 2009

<sup>5</sup> UN World Drug Report 2010

**Portugal:** did not fully decriminalise; personal users still face fines, compulsory treatment and bans. In 2004 an official evaluation found that while heroin overdose deaths and HIV rates had fallen, there was an increase in drug use among young people and deaths related to drugs other than opiates.

The European Monitoring Centre for Drugs and Drug Addictions in 2011 reported that *'Surveys show a stable situation regarding cannabis use in Portugal but a possible increase in cocaine use among young adults'*.

*"There remains a notorious growing consumption of cocaine in Portugal, although not as severe as that which is verifiable in Spain. The increase in consumption of cocaine is extremely problematic."* (EMCDDA's Executive Director, Wolfgang Gotz, Lisbon - May 2009).

The country still has high levels of problem drug use and HIV infection and does not show specific developments in its drug situation that would clearly distinguish it from other European countries that have a different policy.

*"Portugal registered between 2000-2008 a growing number of older drug users (40 or more) entering treatment - the highest in Europe".* (EMCDDA – "Selected Issues," November 2010)

*"The highest HIV/AIDS mortality rates among drug users are reported for Portugal, followed by Estonia, Spain, Latvia and Italy; in most other countries the rates are low"* (EMCDDA – November 2010).

The Office of National Drug Control Policy (ONDCP) in the United States has researched the current situation in Portugal and found that *'claims that decriminalization has reduced drug use and had no detrimental impact in Portugal significantly exceed the existing scientific basis... .. The 'Cato Report' conclusions largely contradict prevailing media coverage and several policy analyses in Portugal and the United States.'*<sup>6</sup> For a full report go to: [http://www.whitehouse.gov/sites/default/files/ondcp/Fact\\_Sheets/portugal\\_fact\\_sheet\\_8-25-10.pdf](http://www.whitehouse.gov/sites/default/files/ondcp/Fact_Sheets/portugal_fact_sheet_8-25-10.pdf)

In the **United States**, research by Dr Robert Dupont - who established National Institute of Drug Abuse (NIDA) - shows that from 1973-1977 when Marijuana was decriminalised in some states, use increased. Further, from 1980-92, the growth of strong parent movements that advocated that the gateway impact of marijuana was dangerous and supported by Nancy Reagan's 'Just Say No' campaign, use declined.

Again from 1993 to 1997 there was a rise in the Harm Reduction movement that advocated that the criminal justice system created most of the harm from illegal drug use. And again there was a cultural shift (well-funded) focused on the promotion of medical marijuana.

In **Australia**, following decriminalisation, rates of drug use increased:

- SA and ACT – use initially went from negligible to almost double NSW and Victoria before settling back to the levels of these states with their already entrenched cannabis problems
- NSW Dept of Criminology 2001 study found that criminalisation of cannabis deters 29% of young people from trying<sup>7</sup>

This is supported by the National Drug Survey (NDS) Monograph 31 – demonstrates that decriminalisation causes confusion about legal status:

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<sup>6</sup> ONDCP, Drug Decriminalisation in Portugal – Challenges and Limitations (2009)

<sup>7</sup> NSW Dept of Criminology Report, 2001

*“The 1995 NDS survey shows that a majority, 54 per cent believed that it was legal to possess small amounts of marijuana in the ACT, while 41 per cent believed that a similar situation existed in South Australia. In the remaining states and the Northern Territory, the vast majority correctly answered that possession was illegal, with the proportions varying from 76 per cent in the NT to 87 per cent in Queensland”.*

**Harm Reduction (Drug Legalisation) stance # 4 – “Illicit Drug law reform (meaning legalisation/decriminalisation/regulation) should be incremental and evidence-based – SOCIAL ENGINEERING**

**DFA Evidence to the contrary is:**

There is a current push in Australia to be content with legalising (or regulating) just two of the illicit drugs and to have them distributed through ‘health’ outlets, such as pharmacies. They are cannabis and ecstasy. This is a ‘front’ for a bigger picture outcome – that of complete legalisation across the board, of all currently illicit drugs. An example of ‘incrementalism’ is where decriminalisation of marijuana was legislated in both South Australia and the ACT, followed by de facto decriminalisation in other states.

**Harm Reduction (Drug Legalisation) stance # 5 - “Portugal’s drug policy is the best model to be emulated” – FALSE**

**DFA Evidence to the contrary is:**

The European Monitoring Centre for Drugs and Drug Addictions in 2011 ‘Surveys show a stable situation regarding cannabis use in Portugal but a possible increase in cocaine use among young adults. The country still has high levels of problem drug use and HIV infection and does not show specific developments in its drug situation that would clearly distinguish it from other European countries that have a different policy.

The Office of National Drug Control Policy in the United States has researched the current situation in Portugal and its findings are that the Cato Report is lacking. Go to: [http://www.whitehouse.gov/sites/default/files/ondcp/Fact\\_Sheets/portugal\\_fact\\_sheet\\_8-25-10.pdf](http://www.whitehouse.gov/sites/default/files/ondcp/Fact_Sheets/portugal_fact_sheet_8-25-10.pdf)

- **According to Dr Manuel Pinto Coelho** – ‘because of decriminalisation, there is a growing sense of fearlessness about the selling of small quantity of drugs, since most police officers don’t think it’s worthwhile’ following up ‘small dealers’.
- Coelho quotes João Goulão former IDT President and SICAD Director: “*now we only care with kilos and tones, not with grams*”.

Coelho observes: “*This can be noticed by anyone walking through the crowded streets of Lisbon’s Cova da Moura ou Mouraria or through other areas in the city: they are likely to be approached by individuals with hashish, cocaine and other drugs to sell, even in broad daylight. This situation was nonexistent five years ago in such places*”.

**Harm Reduction (Drug Legalisation) stance # 6 - “Given that they are the most used illicit drugs, Marijuana and Ecstasy should be the starting**

## *point for drug law reform (legalisation, decriminalisation or regulation) -* **SOCIAL ENGINEERING**

### **DFA Evidence to the contrary is:**

The deterrent of marijuana remaining criminalised is an important factor in 'permissibility of use'. Decades of study into the harms of marijuana have established a wide variety of unacceptable harms, including the harms it causes to mental health and the developing brain. We need more education about the harms of both these drugs. Drug Law Reform needs to be a balanced policy with primary prevention, law enforcement, recovery-based treatment and research. (Note that recently, the UK has re-classified Marijuana and it is now in the bracket of a far more dangerous drug that they previously had classified)

In Australia (or elsewhere) if Ecstasy (MDMA) is regulated and distributed via pharmacies (the rationale being that because in its current form it is dangerous for users), that would be a '**green light**' about safety to users and potential users, as happened with cannabis in the UK and in South Australia, following decriminalisation.

We are already experiencing a concerning growth in the abuse of pharmaceutical drugs, which are 'controlled, regulated and legal'.<sup>8</sup>

### **Drug Law Reform - the way forward**

National Drug Policy needs the following critical success factors:

- Drug literacy in our communities focuses on the real harms of drug consumption and how this can be prevented.
- We prevent deaths, disease, crime and corruption - not just 'minimise' them
- Our treatment and rehabilitation is 'recovery-based' so that people actually heal from their addiction.
- Interventions are available to ALL who use drugs (not just those who are 'concerned about their drug use').

We cannot be a 'lone voice' in what is essentially, a global problem. The UN Drug Conventions were adopted because of the recognition by the international community that drugs are an enormous social and health problem and that the trade adversely affects the global economy.

In 2012, UN Controls are working as deterrent. They have helped keep use rates low, with only 5% of people globally (between the ages of 15 and 64) using illicit drugs. International cooperation is imperative if we are to continue to succeed.

#### **We need to:**

- Move away from the misleading position put by the so-called 'Global Commission on Drug Policy' report, which was promoted in late 2011, towards more workable improvements in Australia's drug policy. We must not repeat the mistakes of the past – from lenient/permissive drug policy in other countries.
- Move in the direction of Sweden and give priority to Harm Prevention and children's rights.
- Re-focus Australia's drug policy on the UN Convention on the Rights of the Child, where Article 33 states that:

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<sup>8</sup> <http://www.abc.net.au/news/2011-08-15/prescription-drug-overdoses-on-the-rise/2839544> and <http://www.drugabuse.gov/drugs-abuse/prescription-medications>

Member States “shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances”.<sup>9</sup>

- Reverse the emerging trend of increases in child abuse and neglect, both to the unborn child, and those who are growing up in families where illicit drugs are used regularly. Specifically, there are too many examples of increased rates of births of drug-addicted babies across the board, in Australia. Here is one such example: <http://au.news.yahoo.com/thewest/a/-/breaking/8808278/drug-addict-baby-numbers-rise/>

Links to child abuse and neglect are increasingly associated with intergenerational drug use. For instance, in 2008, research compiled by the Australian Institute of Family Studies (AIFS) found that a substantial number of Australian children are living in households where adults routinely misuse alcohol and other drugs. The AIFS research further shows that in cases of substantiated child abuse or neglect, 64% of parents experienced significant problems with substance and alcohol abuse.

And disturbingly, it is estimated that **30% of abused or neglected children go on to maltreat children in some way when they are adults.**

It also warns that existing data underestimates the impact of drug and alcohol abuse on children, because current national surveys do not collect information on parental status or child care responsibilities.<sup>10</sup>

- Join together with more countries against a more permissive drug policy, and in so doing, hold our commitment to the United Nations Drug Conventions.
- Communicate with political counterparts in other leading countries and, rather than further liberalising our drug laws, take a stronger stance against this global oppression.

See the May 2012 signing of the **Joint Statement for a Humane and Balanced Drug Policy** - by Drug Policy Directors/Ministers from Sweden, UK, Italy, United States and Russia at [www.wfad.se](http://www.wfad.se)<sup>11</sup>

## Conclusion

A balanced, humane drug policy where law enforcement, combined with well-resourced education and public health practice, together with international cooperation, will help us reap the benefits of effective prevention and demand reduction initiatives.

Appeasement to the seductive chorus of calls for decriminalisation will only lead to greater uptake of illicit drug use. Those who offer this panacea of legalisation coupled with regulation have yet to demonstrate any practical means of regulation and should be held to account.

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<sup>9</sup> UN Convention on the Rights of the Child, <http://www.unicef.org/crc/>

<sup>10</sup> Australian Institute of Family Studies Research Report, 2008

<sup>11</sup> Joint Statement for a Humane and Balanced Drug Policy; UK, Sweden, USA, Russia and Italy.