

Chapter 6

Decriminalisation

6.1 This chapter considers decriminalisation of illicit drugs and briefly compares that with legalisation. The chapter then considers Portugal's drug framework and the circumstances that led to its implementation. Finally, the chapter considers Australia's current drug policies and the appropriateness of decriminalisation in Australia

What is decriminalisation?

6.2 Decriminalisation is an approach where the legal penalties for the use and/or possession of illicit drugs are reduced. This is achieved by changing the laws for drug use and/or possession offences from criminal offences to civil/administrative offences (such as a fine), or diverting drug users away from the justice system and into education or treatment programs (known as a diversionary programs).¹ Under decriminalised models, the sale or supply of illicit drugs generally remains a criminal offence.²

6.3 Critics of decriminalisation argue that it does not adequately address the core issue of the black market and that serious and organised crime groups will nevertheless sell illicit drugs.³ Others argue that a decriminalised drug policy will lead to an increase in the use of illicit drugs and that lesser penalties 'suggest that society approves of drug use'.⁴

6.4 Professor Alison Ritter from the National Drug & Alcohol Research Centre (NDARC) challenged the assumption that drug use will increase under a decriminalisation model because it assumes criminal penalties operate as a deterrent for some people.⁵ The NDARC noted that research in a number of countries that have implemented decriminalisation policies has:

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- 1 The Parliamentary Joint Committee on Law Enforcement's (PJCLE) first report for the inquiry into crystal methamphetamine discusses the current status of drug diversionary schemes in Australia. The committee recommended that, subsequent to the national review of drug diversionary programs articulated by the National Ice Taskforce and in the National Ice Action Strategy (NIAS), states and territories commit to improving, expanding, or where no drug diversionary program(s) currently exists, implementing such programs across their jurisdictions.
 - 2 Professor Alison Ritter, *Decriminalisation or legalisation: injecting evidence in the drug law reform debate*, National Drug & Alcohol Research Centre (NDARC), 22 April 2016, <https://ndarc.med.unsw.edu.au/blog/decriminalisation-or-legalisation-injecting-evidence-drug-law-reform-debate> (accessed 4 August 2017).
 - 3 Professor Ritter, *Decriminalisation or legalisation: injecting evidence in the drug law reform debate*, NDARC, 22 April 2016.
 - 4 Professor Ritter, *Decriminalisation or legalisation: injecting evidence in the drug law reform debate*, NDARC, 22 April 2016.
 - 5 Professor Ritter, *Decriminalisation or legalisation: injecting evidence in the drug law reform debate*, NDARC, 22 April 2016.

...consistently found that decriminalisation is not associated with significant increases in drug use. And in instances where just cannabis has been decriminalised it has not led to increases in use of other drugs such as ecstasy or heroin.⁶

6.5 Professor Ritter was of the view that decriminalisation 'has the potential to reduce the burden on police and the criminal justice system' and 'removes the negative consequences (including stigma) associated with criminal convictions for drug use'.⁷ According to the NDARC, research shows that decriminalisation policies can lead to less use of police, courts and prisons. For example, in California, the total law enforcement cost before and after the decriminalisation of cannabis were '\$17 million in the first half of 1975 (before decriminalisation) to \$4.4 million in the first half of 1976 (after decriminalisation)'.⁸ Another benefit, according to the Global Commission on Drug Policy, is that police in a jurisdiction with decriminalisation 'have reported improved community relations as a result of the reform'.⁹

6.6 Another consideration in favour of decriminalisation is that it 'improves the employment prospects and relationships with significant others for those detected with drugs' because:

...individuals who avoid a criminal record are less likely to drop out of school early, be sacked or to be denied a job. They are also less likely to have fights with their partners, family or friends or to be evicted from their accommodation as a result of their police encounter.¹⁰

6.7 With regard to the Portuguese model, the NDARC found that drug use rates have not risen, and that there have been 'measurable savings to the criminal justice system'.¹¹

6.8 An important qualifier concerning decriminalisation is that its success is reliant upon additional investment in health and social services. As noted by the Global Commission on Drug Policy, decriminalised drug policies do not stand alone and:

6 NDARC, *Decriminalisation of drug use and possession in Australia – A briefing note*, Drug Policy Modelling Program, 2016, p. 4, <https://dpmp.unsw.edu.au/sites/default/files/dpmp/resources/Decriminalisation%20briefing%20note%20Feb%202016%20FINAL.pdf> (accessed 4 August 2017).

7 Professor Ritter, *Decriminalisation or legalisation: injecting evidence in the drug law reform debate*, NDARC, 22 April 2016.

8 NDARC, *Decriminalisation of drug use and possession in Australia – A briefing note*, Drug Policy Modelling Program, 2016, p. 4.

9 Global Commission on Drug Policy, *Advancing Drug Policy Reform: A New Approach to Decriminalisation*, 2016, p. 21, <http://www.globalcommissionondrugs.org/reports/advancing-drug-policy-reform/> (accessed 20 November 2017).

10 NDARC, *Decriminalisation of drug use and possession in Australia – A briefing note*, Drug Policy Modelling Program, 2016, p. 4.

11 Professor Ritter, *Decriminalisation or legalisation: injecting evidence in the drug law reform debate*, NDARC, 22 April 2016.

...should not be overstated in terms of its impact on public health; it is only with substantial investments in harm reduction and treatment services that the health problems primarily associated with problematic use can be mitigated. However, an environment where drug use is not criminalized can reduce the stigma and fear of prosecution, leading to people feeling more able and comfortable to call on services for support should they require it.¹²

Barriers to the implementation of decriminalisation

6.9 Professor Ritter discussed a number of barriers to the implementation of decriminalisation. One is a lack of understanding about what decriminalisation entails; that is, many people think that decriminalisation equates to legalisation.¹³ Another barrier is differential support for decriminalisation: some national surveys have shown that Australians support decriminalisation of cannabis but this support does not extend to other drug types.¹⁴ Professor Ritter also identified a lack of political will as a barrier.¹⁵

6.10 With respect to public support, the AIHW's *National Drug Strategy Household Survey 2016* asked participants what action should be taken against people found in possession of illicit substances. The survey found most participants believed that drug users should be referred to treatment or an education program for drugs except cannabis.¹⁶ For cannabis, survey participants supported a caution, warning or no action (42 per cent in 2013, 47 per cent in 2016).¹⁷

6.11 For meth/amphetamine possession, less than five per cent of participants supported a caution, warning or no action at all; however, around 45 per cent of survey participants supported meth/amphetamine users being referred to a treatment or education program.¹⁸ Twenty four per cent of participants supported prison sentences for the possession of meth/amphetamine. Figure 6 shows the support for actions taken against people found in possession of selected illicit drugs for personal use in 2016.

12 Global Commission on Drug Policy, *Advancing Drug Policy Reform: A New Approach to Decriminalisation*, 2016, p. 20.

13 Professor Ritter, *Decriminalisation or legalisation: injecting evidence in the drug law reform debate*, NDARC, 22 April 2016.

14 Professor Ritter, *Decriminalisation or legalisation: injecting evidence in the drug law reform debate*, NDARC, 22 April 2016.

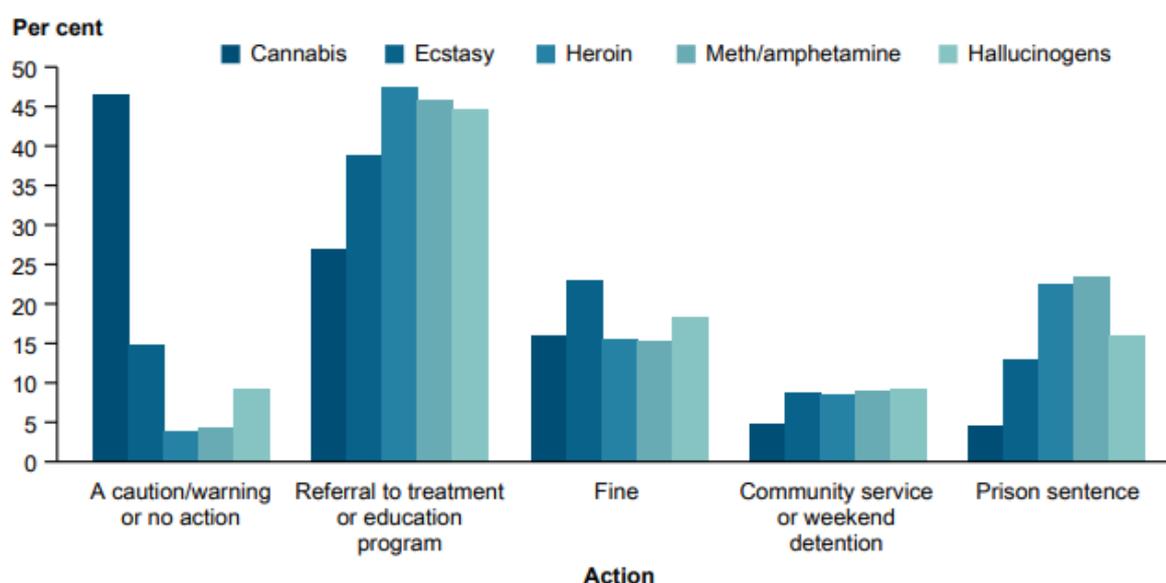
15 Professor Ritter, *Decriminalisation or legalisation: injecting evidence in the drug law reform debate*, NDARC, 22 April 2016.

16 Australian Institute of Health and Welfare (AIHW), *National Drug Strategy Household Survey 2016: Detailed findings*, 2017, p. 130, <https://www.aihw.gov.au/getmedia/15db8c15-7062-4cde-bfa4-3c2079f30af3/21028a.pdf.aspx?inline=true> (accessed 28 February 2018).

17 AIHW, *National Drug Strategy Household Survey 2016: Detailed findings*, 2017, p. 131.

18 AIHW, *National Drug Strategy Household Survey 2016: Detailed findings*, 2017, p. 131.

Figure 6: Support for actions taken against people found in possession of selected illicit drugs for personal use, people aged 14 or older, 2016 (%)¹⁹



Decriminalisation models

6.12 There are two forms of decriminalisation: de jure decriminalisation (the result of changes to legislation) and de facto decriminalisation (where legislation may prohibit an illicit substance, but the relevant laws are not enforced in practice).²⁰

6.13 The NDARC discussed the distinction between these two forms:

- De jure decriminalisation can occur through:
 - removing criminal penalties;
 - replacing criminal penalties with civil penalties (such as a fine) and criminal penalties may be applied if a person fails to comply with the civil penalty; and
 - replacing criminal penalties with administrative penalties (such as a ban on attending a designated site).²¹
- De facto decriminalisation can occur through:
 - non-enforcement of the law (through police discretion or police or prosecutorial guidelines); and

¹⁹ AIHW, *National Drug Strategy Household Survey 2016: Detailed findings*, 2017, p. 131.

²⁰ Peter Homel and Rick Brown, *Marijuana legislation in the United States: An Australian perspective*, Trends & issues in crime and criminal justice, No. 535, June 2017, AIC, p. 2, http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi535.pdf (accessed 4 August 2017).

²¹ NDARC, *Decriminalisation of drug use and possession in Australia – A briefing note*, Drug Policy Modelling Program, 2016, p. 2.

- referral of offenders to education/treatment instead of court (eligibility tends to be subject to criteria: such as that this be a first/second offence and criminal penalties may be enforced for non-compliance).²²

6.14 A criticism of de facto decriminalisation is that it relies upon the application of police and judicial discretion. The NDARC was of the view that this model:

...creates higher risk of inequality in terms of who avoids criminal sanctions: such as exclusion of disadvantaged and minority groups or geographic differences in policing.²³

6.15 Another risk arising from de facto decriminalisation is 'net widening', in which:

...more people are sanctioned after than before reform, due to the greater ease with which police can process minor drug offences. The extent of this depends on the specific choice of policy design and how the reform is implemented (eg whether the consequences for non-compliance are more severe than the original offence; the extent of police discretion).²⁴

6.16 In contrast, the NDARC argued that de jure decriminalisation has a much lower risk of inequality²⁵ but acknowledged that any reform that uses criteria to target particular groups of people or drug types risks inequitable outcomes.²⁶

6.17 The NDARC highlighted that 'the way in which decriminalisation is implemented is very important',²⁷ and if implemented properly decriminalisation will:

...not lead to increases in crime (through perceptions of weaker laws). Indeed, people who do not receive a criminal record are much less likely to engage in future crime or have subsequent contact with the criminal justice system, even when you take into account their previous offending history. There is also no evidence that decriminalisation will lead to other types of crime, such as supply or drug-related crime.²⁸

22 NDARC, *Decriminalisation of drug use and possession in Australia – A briefing note*, Drug Policy Modelling Program, 2016, p. 2.

23 NDARC, *Decriminalisation of drug use and possession in Australia – A briefing note*, Drug Policy Modelling Program, 2016, p. 4.

24 NDARC, *Decriminalisation of drug use and possession in Australia – A briefing note*, Drug Policy Modelling Program, 2016, p. 3.

25 NDARC, *Decriminalisation of drug use and possession in Australia – A briefing note*, Drug Policy Modelling Program, 2016, p. 4.

26 NDARC, *Decriminalisation of drug use and possession in Australia – A briefing note*, Drug Policy Modelling Program, 2016, p. 4.

27 NDARC, *Decriminalisation of drug use and possession in Australia – A briefing note*, Drug Policy Modelling Program, 2016, p. 3.

28 NDARC, *Decriminalisation of drug use and possession in Australia – A briefing note*, Drug Policy Modelling Program, 2016, p. 3.

Countries that have adopted a decriminalised model

6.18 Numerous countries have implemented decriminalised drug policies in various ways, including:

- the USA (11 states);
- Netherlands;
- Switzerland;
- France;
- Germany;
- Austria;
- Spain;
- Portugal;
- Belgium;
- Italy;
- Czech Republic;
- Denmark;
- Estonia;
- Ecuador;
- Armenia;
- India;
- Brazil;
- Peru;
- Columbia;
- Argentina;
- Mexico;
- Paraguay;
- Uruguay;
- Costa Rica;
- Norway; and
- Jamaica.²⁹

6.19 In 2015, Ireland announced its intention to decriminalise possession of all drugs.³⁰ On 30 November 2017, the Irish Minister of State announced that legislation

29 NDARC, *Decriminalisation of drug use and possession in Australia – A briefing note*, Drug Policy Modelling Program, 2016, p. 4.

to decriminalise drugs (including heroin, cocaine and cannabis) for personal use could be enacted by early 2019.³¹ The Irish government established a special working group to investigate 'alternative approaches to the possession of drugs for personal use'.³²

6.20 In December 2017, Norway's parliament adopted a decriminalisation model.³³ Norway, the first Scandinavian country to adopt decriminalisation, will implement reforms that 'aim to transfer responsibility for drug policy from the justice system to the health system'.³⁴

6.21 A number of Australia's states and territories have also adopted de jure and de facto decriminalisation models. This is discussed further in paragraphs 6.73–6.77.

Legalisation

6.22 Decriminalisation is not legalisation, and it is important to understand the differences between these two legal frameworks. Drug legalisation is where criminal and civil offences for the use/possession (and production/sale) of a drug are removed (rather than reduced to civil/administrative penalties).

6.23 Drug legalisation laws vary, for example they can be:

- limited to use/possession for small amounts of a drug(s) but not extended to the sale or production of a drug (for example, Uruguay's cannabis legalisation laws);³⁵
- inclusive of possession/use and the production and sale of that drug (such as cannabis legislation in California);³⁶ or

30 Kitty Holland, 'Legislation to decriminalise drugs could come in early 2019', *The Irish Times*, 30 November 2017, <https://www.irishtimes.com/news/social-affairs/legislation-to-decriminalise-drugs-could-come-in-early-2019-1.3311583> (accessed 18 December 2017).

31 Kitty Holland, 'Legislation to decriminalise drugs could come in early 2019', *The Irish Times*, 30 November 2017.

32 Kitty Holland, 'Legislation to decriminalise drugs could come in early 2019', *The Irish Times*, 30 November 2017.

33 Rebecca Flood 'Norway becomes first Scandinavian country to decriminalise drugs in historic vote', *The Independent*, 15 December 2017, <http://www.independent.co.uk/news/health/norway-parliament-drugs-decriminalise-recreational-cocaine-heroin-marijuana-a8111761.html> (accessed 18 December 2017).

34 Rebecca Flood 'Norway becomes first Scandinavian country to decriminalise drugs in historic vote', *The Independent*, 15 December 2017.

35 Melia Robinson, 'This South American country has decriminalised all drugs for 40 years', *Business Insider*, 10 June 2016, <http://www.businessinsider.com/uruguay-has-decriminalized-all-drugs-for-40-years-2016-6/?r=AU&IR=T> (accessed 28 February 2018).

36 Jeremy B White, 'Californians to have marijuana offences wiped from records after drug is legalised', *Independent*, 31 January 2018, <http://www.independent.co.uk/news/world/americas/california-marijuana-law-weed-cannabis-illegal-criminal-record-wiped-san-francisco-a8188356.html> (accessed 28 February 2018).

- restricted³⁷ to specific medical/scientific purposes, such as Australia's medicinal cannabis schemes.³⁸

6.24 The primary argument in favour of legalisation is that it eliminates, or significantly reduces the black market for illicit drugs and severely undermines the business and profits of serious and organised crime groups. Another argument in favour of legalisation is that it shifts the problem, and its response, away from law enforcement and towards a health response.³⁹

6.25 Proponents of drug legalisation also argue that the revenue generated from the sale of illicit drugs through a regulated government body would be accrued much in the same way as gambling, alcohol and tobacco. Professor Ritter identified research by the NDARC that shows that revenue for the state of New South Wales (NSW) could be as high as \$600 million per year for a regulated cannabis market.⁴⁰

6.26 Professor Ritter explained that critics of legalisation argue that it would result in a significant increase in the use of those drugs.⁴¹ Further, Professor Ritter advised that the consumption of alcohol and tobacco as legal drugs are 'associated with an extensive economic burden to society – including hospital admissions, alcoholism, treatment programs and public nuisance', and that legalising illicit drugs would add to the economic burden.⁴²

6.27 The moral argument against legalisation is that illicit drugs are immoral, anti-social and not accepted in today's society. A legalised model would 'send the wrong message'.⁴³

6.28 Professor Ritter noted that there is no direct evidence to support the benefits of legalisation because 'no country'⁴⁴ has legalised drugs yet. But suppositions can be

37 On 24 February 2016, the Commonwealth Parliament passed amendments to the *Narcotics Drugs Act 1967* to establish licensing and permit schemes for the legal cultivation and production of cannabis and cannabis resin for medical and scientific purposes. Amendments were also made to the *Therapeutic Goods Act 1989*. See Parliament of Australia, Narcotic Drugs Amendment Bill 2016 Summary, 2016, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5609 (accessed 28 February 2018).

38 Therapeutic Goods Administration, *Access to medicinal cannabis products*, 14 February 2018, <https://www.tga.gov.au/access-medicinal-cannabis-products> (accessed 28 February 2018).

39 Professor Ritter, *Decriminalisation or legalisation: injecting evidence in the drug law reform debate*, NDARC, 22 April 2016.

40 Professor Ritter, *Decriminalisation or legalisation: injecting evidence in the drug law reform debate*, NDARC, 22 April 2016.

41 Professor Ritter, *Decriminalisation or legalisation: injecting evidence in the drug law reform debate*, NDARC, 22 April 2016.

42 Professor Ritter, *Decriminalisation or legalisation: injecting evidence in the drug law reform debate*, NDARC, 22 April 2016.

43 Professor Ritter, *Decriminalisation or legalisation: injecting evidence in the drug law reform debate*, NDARC, 22 April 2016.

made about the extent of cost-savings to society'.⁴⁵ She referenced NDARC research on a regulated cannabis market that suggested 'there may not be the significant savings under a legalised regime that some commentators have argued. But these are hypothetical exercises'.⁴⁶

6.29 The experience in the US in relation to the legalisation of cannabis provides an example of the complexities that can arise from legalisation in a federated system. Legalisation of recreational cannabis⁴⁷ has occurred in eight states⁴⁸ of the US since 2012.⁴⁹ Although legal in those states, the AIC reported that there have been no legislative changes at a national level, which has 'led to a number of legislative, regulatory and social ambiguities and tensions of the kind that inevitably arise when communities move to address significant social issues in different ways and at different times'.⁵⁰

6.30 The Canadian parliament is currently considering legislation that would establish a restricted⁵¹ legal cannabis framework. Bill C-45, if passed, would provide 'legal access to cannabis and to control and regulate its production, distribution and

44 Although no country has legalised drugs, certain states in the United States have legalised cannabis for recreational use. See paragraph 6.23 for further information. Both Uruguay and the Netherlands have strict (de facto) laws in place surrounding the use and sale of cannabis. See Brookings Institute, *Uruguay's Drug Policy: Major Innovations, Major Challenges*, July 2016, <https://www.brookings.edu/wp-content/uploads/2016/07/Walsh-Uruguay-final.pdf> (accessed 28 February 2018); and, Government of Netherlands, *Toleration policy regarding soft drugs and coffee shops*, <https://www.government.nl/topics/drugs/toleration-policy-regarding-soft-drugs-and-coffee-shops> (accessed 28 February 2018).

45 Professor Ritter, *Decriminalisation or legalisation: injecting evidence in the drug law reform debate*, NDARC, 22 April 2016.

46 Professor Ritter, *Decriminalisation or legalisation: injecting evidence in the drug law reform debate*, NDARC, 22 April 2016.

47 Medicinal cannabis legislation has been in place in a number of states since 1996. In 2016 there were 30 US states and the Federal District of Columbia that had enacted laws to allow the medical use of cannabis. See Homel and Brown, *Marijuana legislation in the United States: An Australian perspective*, Trends & issues in crime and criminal justice, No. 535, June 2017, AIC, p. 4, http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi535.pdf (accessed 4 August 2017).

48 Alaska, California, Colorado, Maine, Massachusetts, Nevada, Oregon and Washington.

49 Homel and Brown, *Marijuana legislation in the United States: An Australian perspective*, Trends & issues in crime and criminal justice, No. 535, June 2017, AIC, p. 1.

50 Homel and Brown, *Marijuana legislation in the United States: An Australian perspective*, Trends & issues in crime and criminal justice, No. 535, June 2017, AIC, p. 1.

51 Bill C-45 will establish strict cannabis framework that will restrict its sale to young people, protect public health and public safety measures, and deter criminal activity by imposing serious criminal penalties for those operating outside the legal framework. See Parliament of Canada, House of Commons of Canada, Bill C-45, 27 November 2017, <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-45/third-reading> (accessed 28 February 2018).

sale'.⁵² The proposed legalisation scheme only applies to cannabis and cannabis products regulated by the state, and the state will continue to criminalise illicit cannabis trade and consumption.⁵³

The Portuguese model

6.31 On 24 to 30 September 2017, the committee visited Portugal to inquire into the country's decriminalised drug model. During the visit, the committee met with representatives from:

- the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA);
- the Maritime Analysis and Operations Centre (Narcotics);
- the Centre for Integrated Responses, Regional Health Administration of Lisbon;
- the Commission for the Dissuasion of Drug Addiction;
- the Portuguese Judicial Police;
- the Portuguese Association for Victim Support;
- the Bank of Portugal;
- the General-Directorate for Intervention on Addictive Behaviours and Dependencies (SICAD);
- the National Program on Mental Health, General-Directorate for Health;
- Casa de Vila Nova (drop-in centre and shelter), Division for Regional Coordination for Addictive Behaviours and Dependencies Intervention, Northern Region Health Administration;
- the Integrated Program for Community Support, Porto; and
- the Guarda Nacional Republicana.

Development and implementation

6.32 In 2001, Portugal decriminalised the use and possession of all illicit drugs. This legislative change was implemented alongside a substantial investment in drug treatment, harm reduction and social re-integration policies.⁵⁴ These measures were also implemented within a broader expansion of the Portuguese welfare state. Decriminalisation is recognised as playing an important role in transforming drug use

52 Parliament of Canada, House of Commons of Canada, Bill C-45, 27 November 2017, <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-45/third-reading> (accessed 28 February 2018).

53 Parliament of Canada, House of Commons of Canada, Bill C-45, 27 November 2017, <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-45/third-reading> (accessed 28 February 2018).

54 NDARC, *Decriminalisation of drug use and possession in Australia – A briefing note*, Drug Policy Modelling Program, 2016, p. 4.

in Portugal; however, the success of the legislative changes would not have occurred had it not coincided within the framework of 'wider health and social reforms'.⁵⁵

6.33 In the years preceding the implementation of its decriminalisation policy, there was a widespread public perception that drug-related issues were Portugal's main social problem.⁵⁶ At the time, the EMCDDA reported that Portugal had equal to or above average rates of problematic drug use and drug-related harms (particularly for heroin use)⁵⁷ and more patients were seeking treatment services.⁵⁸ Subsequently, the Portuguese government appointed an expert committee comprising doctors, sociologists, psychologists, lawyers and social activists, tasked with analysing Portugal's drug issues and formulating recommendations to develop a national strategy.⁵⁹

6.34 Eight months later, the expert committee recommended that the most effective way to limit drug consumption and reduce the number of dependent persons was to decriminalise drug use and possession for both "hard" and "soft" drugs.⁶⁰ Along with legislative changes, the expert committee recommended that the government focus on:

...preventative and educational, harm reduction, broadening and improving treatment programs for drug dependent persons, and activities that helped at-risk groups and current drug users maintain or restore their connections to family, work and society.⁶¹

6.35 A central tenet of Portugal's new drug strategy was that:

...drug use is not good, drugs are not an absolute evil that require high levels of incarceration of drug users as is seen in various "war on drugs" policies elsewhere...trying to create a "drug-free" society was an illusion

55 Transform Drug Policy Foundation, *Drug decriminalisation in Portugal: setting the record straight*, June 2014, pp 1–2, <https://www.unodc.org/documents/ungass2016/Contributions/Civil/Transform-Drug-Policy-Foundation/Drug-decriminalisation-in-Portugal.pdf> (accessed 20 November 2017).

56 Open Society Foundation, *Drug Policy in Portugal: The benefits of Decriminalizing drug use*, Global Drug Policy Program, June 2011, p. 18, <https://www.opensocietyfoundations.org/sites/default/files/drug-policy-in-portugal-english-20120814.pdf> (accessed 4 August 2017).

57 Open Society Foundation, *Drug Policy in Portugal: The benefits of Decriminalizing drug use*, Global Drug Policy Program, June 2011, p. 19.

58 Open Society Foundation, *Drug Policy in Portugal: The benefits of Decriminalizing drug use*, Global Drug Policy Program, June 2011, p. 20.

59 Open Society Foundation, *Drug Policy in Portugal: The benefits of Decriminalizing drug use*, Global Drug Policy Program, June 2011, p. 21.

60 Open Society Foundation, *Drug Policy in Portugal: The benefits of Decriminalizing drug use*, Global Drug Policy Program, June 2011, pp 23.

61 Open Society Foundation, *Drug Policy in Portugal: The benefits of Decriminalizing drug use*, Global Drug Policy Program, June 2011, pp 21–22.

that would never become reality—like creating a society where drivers will not exceed the speed limit.⁶²

6.36 This philosophy was intended to capture the diverse reasons for people's drug use, such as personal difficulties, social factors, and recreation and pleasure. The expert committee concluded that:

...repressive punishment has no rational explanation and is disproportionate against an action that may be unhealthy for the user but is usually not directly harmful or hostile towards others.⁶³

6.37 The expert committee argued that under criminal law, drug use and possession hindered people with drug abuse issues from seeking treatment, making them afraid to ask for medical assistance out of fear of punishment and that a criminal record would impact their ability to get jobs and participate in society.⁶⁴ According to the Cato Institute, the prime rationale for the decriminalised drug policy was the eradication of barriers that had existed for users to seek treatment:

...enabling effective treatment options to be offered to addicts once they no longer feared prosecution. Moreover, decriminalization freed up resources that could be channelled into treatment and other harm reduction programs. [Further, the] removal of the stigma attached to criminal prosecution for drug usage would eliminate a key barrier for those wishing to seek treatment.⁶⁵

6.38 Portugal's decriminalisation policy maintains prohibition, but removes drug use from the criminal law framework. This change created the 'legal framework for implementing policies to reduce the harm caused by drug consumption and to socially reintegrate drug dependent persons'.⁶⁶

Legal framework

6.39 Portugal's drug strategy was implemented with the passing of Act No. 30/2000 (Law 30/2000) on 29 November 2000. The Act partially repealed section 40 of Law-Decree No. 15/1993 (Portugal's drug law), which had the effect of

62 Open Society Foundation, *Drug Policy in Portugal: The benefits of Decriminalizing drug use*, Global Drug Policy Program, June 2011, p. 22.

63 Open Society Foundation, *Drug Policy in Portugal: The benefits of Decriminalizing drug use*, Global Drug Policy Program, June 2011, p. 22.

64 Open Society Foundation, *Drug Policy in Portugal: The benefits of Decriminalizing drug use*, Global Drug Policy Program, June 2011, p. 22.

65 Glen Greenwald, *Drug Decriminalisation in Portugal: Lessons for creating fair and successful drug policies*, Cato Institute, 2009, p. 7, <https://www.cato.org/publications/white-paper/drug-decriminalization-portugal-lessons-creating-fair-successful-drug-policies> (accessed 21 November 2017).

66 Open Society Foundation, *Drug Policy in Portugal: The benefits of Decriminalizing drug use*, Global Drug Policy Program, June 2011, p. 22.

changing the use of narcotics and psychotropic substances from criminal offences to administrative/civil offences.⁶⁷

6.40 Law 30/2000 stipulates the amount of a drug a person may possess for personal use (higher amounts are deemed to be for supply) and are considered to be the amount for one person's consumption over a ten-day period.⁶⁸ Table 7 shows the amount a user can have in his or her possession under Law 30/2000.

Table 7: Illicit substances and volumes (grams) for possession offences under Law 30/2000⁶⁹

Illicit substance	Grams
Heroin	1
Methadone	1
Morphine	2
Opium	10
Cocaine (hydrochloride)	2
Cocaine (methyl ester benzoylecgonine)	0.3
Cannabis (leaves, flower or fruited dons)	25
Cannabis (resin)	5
Cannabis (oil)	2.5
LSD	0.1
MDMA	1
Amphetamine	1

6.41 Under section 4 of Law 30/2000, if police authorities find drugs in a user's possession, they are required to submit an incident report to the local Commission for

67 Policia Judiciaria, Ministerio da Justica, *Police Action in Drug Use Situations*, additional information received 24 to 30 September 2017, p. 1.

68 Policia Judiciaria, Ministerio da Justica, *Police Action in Drug Use Situations*, additional information received 24 to 30 September 2017, p. 1.

69 Servico de Intervencao nos Comportamentos Aditivos e nas Dependencias/General-Directorate for Intervention on Addictive Behaviours and Dependencies (SICAD), *Interventions on Addictive Behaviours and Dependencies*, 12 September 2017, additional information received 24 to 30 September 2017, p. 13.

the Dissuasion of Drug Addiction (CDT).⁷⁰ Police authorities are empowered to detain a user 'in order to ensure that he or she appears before the [dissuasion] commission'.⁷¹ According to the General-Directorate for Intervention on Addictive Behaviours and Dependencies (SICAD), the purpose of each CDT is to:

...ensure the implementation of decriminalisation Law through the proceedings of administrative offences and the application of measures and penalties foreseen in the Law. These services advocate an integrated approach, centred on health promotion and encouraging motivation to behaviour change of individuals referred by security forces or courts in the context of an episode of possession or use of illicit psychoactive substance.⁷²

6.42 The primary goal of the CDT process, according to both Portuguese and European officials, is:

...to avoid the stigma that arises from criminal proceedings. Each step of the process is structured so as to de-emphasize or even eliminate any notion of "guilt" from drug usage and instead to emphasize the health and treatment aspects of the process.⁷³

6.43 CDTs receive drug users instead of criminal courts, with the aim to inform about and dissuade people from drug use. CDTs have the power to impose civil sanctions for non-compliance (for example, if a drug user continually ignores a CDT's ruling) and refer consenting persons to treatment services (treatment is not mandatory).⁷⁴ Each CDT is made up of three individuals: a legal expert and two positions selected from medical doctors, psychologists, social service workers and experts from the AOD field.⁷⁵

6.44 Drug users are questioned by a CDT to determine: whether they are a drug addict; the substance(s) consumed; the circumstances of when the user was in contact with police; and the user's economic situation.⁷⁶ A therapist may be called upon to

70 Policia Judiciaria, Ministerio da Justica, *Police Action in Drug Use Situations*, additional information received 24 to 30 September 2017, pp 1–2.

71 SICAD, *Decriminalisation: Portuguese legal framework applicable to the consumption of narcotics and psychotropic substances*, additional information received 24 to 30 September 2017, p. 4.

72 SICAD, *Promote the reduction of the consumption of psychoactive substances and prevent addictive behaviours and decrease dependencies*, additional information received 24 to 30 September 2017, p. 17.

73 Greenwald, *Drug Decriminalisation in Portugal: Lessons for creating fair and successful drug policies*, Cato Institute, 2009, p. 26.

74 Open Society Foundation, *Drug Policy in Portugal: The benefits of Decriminalizing drug use*, Global Drug Policy Program, June 2011, p. 23.

75 Policia Judiciaria, Ministerio da Justica, *Police Action in Drug Use Situations*, additional information received 24 to 30 September 2017, p. 2.

76 Policia Judiciaria, Ministerio da Justica, *Police Action in Drug Use Situations*, additional information received 24 to 30 September 2017, p. 2.

assist the user during this examination.⁷⁷ Finally, the CDT or user may request medical examinations (urine/blood tests) to determine the drug(s) consumed.⁷⁸

6.45 If a CDT determines that a user is not a drug addict, it may issue an administrative (monetary or non-monetary) penalty. The sanctions for each case are determined on an individual basis according to the need(s) of the individual in question. The primary aim is to facilitate the prevention of drug use. The CDT does not issue monetary penalties if a user is deemed to be a drug addict.⁷⁹

6.46 Article 15 of Law 30/2000 determines the penalties available to the CDTs. It specifies that:

- non-addicted users are eligible for sentences that require a payment/fine, or a non-pecuniary penalty;
- addicted users are only eligible for non-pecuniary penalties;
- a CDT may determine a penalty that accords with the aim of preventing the consumption of narcotics and psychotropic substances;
- the application of a penalty is determined is informed by:
 - the seriousness of the act;
 - the degree of fault;
 - the type of plants, substances or preparations consumed;
 - the public or private nature of the consumption;
 - for non-addicted users, the occasional or habitual nature of drug use; and
 - the personal circumstances (economic and financial) of the user.⁸⁰

6.47 The upper and lower limits of monetary fines are found under Article 16, with the upper limit determined by the national minimum monthly wage. Non-monetary penalties available include:

- warnings;
- banning from the exercise of a licensed profession (for example a doctor, lawyer or driver in circumstances where drug use could jeopardise the wellbeing of a third party/consumer);

77 Policia Judiciaria, Ministerio da Justica, *Police Action in Drug Use Situations*, additional information received 24 to 30 September 2017, p. 2.

78 Policia Judiciaria, Ministerio da Justica, *Police Action in Drug Use Situations*, additional information received 24 to 30 September 2017, p. 2.

79 Policia Judiciaria, Ministerio da Justica, *Police Action in Drug Use Situations*, additional information received 24 to 30 September 2017, p. 2.

80 SICAD, *Decriminalisation: Portuguese legal framework applicable to the consumption of narcotics and psychotropic substances*, additional information received 24 to 30 September 2017, p. 6.

- banning from visiting certain places;
- prohibiting the user from engaging with certain persons;
- prohibiting international travel;
- presenting oneself periodically to the dissuasion commission;
- restricting or removing the right to access firearms;
- seizing a user's belongings that may present a risk or harm to the user or community, or which may encourage user to commit a crime; or:
- '...privation from the right to manage the subsidy or benefit attributed on a personal basis by public bodies or services, which shall be managed by the organisation managing the proceedings or monitoring the treatment process, when agreed to by the consumer'.⁸¹

6.48 A CDT may also request a user to donate a sum of money to a charitable organisation, or undertake community service.⁸²

6.49 A CDT may also suspend penalties.⁸³

6.50 CDTs may enact a provisional suspension of their proceedings in the following circumstances:

- when a user, with no prior record of a drug offence, is deemed to be a non-addicted drug user;
- when a addicted drug user, with no prior record of a drug offence, agrees to undergo treatment; or
- when an addicted drug user, with a prior record of drug offence, agrees to undergo treatment.⁸⁴

6.51 Proceedings may be suspended for up to two years, with an option of a further 12-month extension if authorised by the CDT.⁸⁵ Proceedings of the CDT may be filed

81 SICAD, *Decriminalisation: Portuguese legal framework applicable to the consumption of narcotics and psychotropic substances*, additional information received 24 to 30 September 2017, p. 6.

82 SICAD, *Decriminalisation: Portuguese legal framework applicable to the consumption of narcotics and psychotropic substances*, additional information received 24 to 30 September 2017, p. 6.

83 SICAD, *Decriminalisation: Portuguese legal framework applicable to the consumption of narcotics and psychotropic substances*, additional information received 24 to 30 September 2017, p. 6.

84 SICAD, *Decriminalisation: Portuguese legal framework applicable to the consumption of narcotics and psychotropic substances*, additional information received 24 to 30 September 2017, p. 5.

85 SICAD, *Decriminalisation: Portuguese legal framework applicable to the consumption of narcotics and psychotropic substances*, additional information received 24 to 30 September 2017, p. 6.

and not re-opened, if a non-addicted user does not re-offend, or an addicted user undergoes uninterrupted treatment.⁸⁶

6.52 SICAD provides technical and administrative support to the CDTs. SICAD provides nationally consistent guidelines to ensure uniform application of Law 30/2000 and manages the national database regarding information about 'the administration offence proceedings opened within an episode of consumption or possession for use of illicit psychoactive substances'.⁸⁷

A successful model?

6.53 Portugal's decriminalised model is largely referred to as a model of best-practice.⁸⁸ Supporters of decriminalisation argue that since its implementation, Portugal has seen a drop in the number of drug-related deaths and HIV/AIDS notifications, and drug use has broadly remained stable or declined. The NDARC wrote in its 2016 briefing paper on decriminalisation that the Portuguese model has:

...demonstrated reductions in the burden on the criminal justice system, reductions in problematic drug use, reductions in drug-related HIV and AIDS, reductions in drug-related deaths, and lower social costs of responding to drugs.⁸⁹

6.54 Although there is substantial commentary advocating for Portugal's decriminalised model, it is important to acknowledge it was largely a response to heroin use, and not methamphetamine, and there are differing views about its success.

Impact on drug use

6.55 Since 2001, there have been conflicting accounts of the effect that decriminalisation has had on drug usage rates in Portugal.⁹⁰ Usage rates vary depending on the dataset and age group.

6.56 The United Kingdom's Transform concluded that:

- Portugal's levels of drug use are below the European average;
- the most at risk population, people aged between 15–24, have shown a decline in drug use;

86 SICAD, *Decriminalisation: Portuguese legal framework applicable to the consumption of narcotics and psychotropic substances*, additional information received 24 to 30 September 2017, p. 6.

87 SICAD, *Promote the reduction of the consumption of psychoactive substances and prevent addictive behaviours and decrease dependencies*, additional information received 24 to 30 September 2017, p. 19.

88 For example, the president of the International Narcotics Control Board in 2015 said Portugal's policy as 'a model of best practices'. See Global Commission on Drug Policy, *Advancing Drug Policy Reform: A New Approach to Decriminalisation*, 2016 Report, p. 20.

89 NDARC, *Decriminalisation of drug use and possession in Australia – A briefing note*, Drug Policy Modelling Program, 2016, p. 4.

90 Transform Drug Policy Foundation, *Drug decriminalisation in Portugal: setting the record straight*, June 2014, p. 2.

- lifetime drug use amongst the general population⁹¹ has slightly increased, but remains comparable with nearby countries;
- past-year and past-month⁹² drug use amongst Portugal's general population has decreased;
- usage rates amongst adolescents decreased for a number of years following decriminalisation, however, rates have risen to 2003 levels;
- rates of problematic drug use and injecting drug use have decreased (data from 2000 to 2005); and
- the continuation of drug use (the proportion of the population that have reportedly used drug and continue to do so) has decreased.⁹³

6.57 Transform explained that the removal of criminal sanctions did not cause an increase in drug use and:

There is essentially no relationship between the positiveness of a country's drug laws and its rates of drug use. Instead, drug use tends to rise and fall in line with broader cultural, social or economic trends.⁹⁴

6.58 A paper by Caitlin Elizabeth Hughes and Alex Stevens published in *Drug and Alcohol Review* demonstrated trends for recent and current drug use amongst Portugal's general population (15 to 64 years old). This data indicated a minimal change between 2001 and 2007. Lifetime use, which represents the rate of discontinued drug use for those that have tried a drug but have not used in recent years, had increased. Hughes and Stevens argued that this trend reinforces that the growth in lifetime use is indicative of short-term experimental use.⁹⁵ Further, the authors concluded that while there has been an increase in recent and current drug use for 25 to 34 year olds, there has been 'an overall positive net benefit for the Portuguese

91 Transform added that lifetime use is considered to be the least accurate measure of a country's current drug use situation.

92 Transform noted that these two measures are viewed as the best indicators of drug use trends.

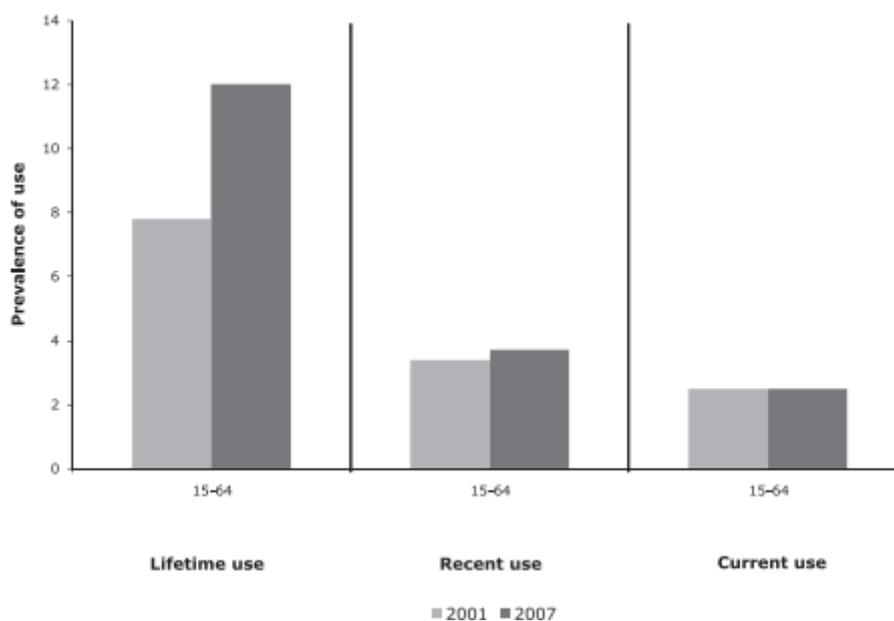
93 Transform Drug Policy Foundation, *Drug decriminalisation in Portugal: setting the record straight*, June 2014, p. 2.

94 Transform Drug Policy Foundation, *Drug decriminalisation in Portugal: setting the record straight*, June 2014, p. 2.

95 Caitlin Elizabeth Hughes and Alex Stevens, 'A resounding success or a disastrous failure: Re-examining the interpretations of evidence on the Portuguese decriminalisation of illicit drugs, *Harm Reduction Digest-44*, Drug and Alcohol Review, January 2012, p. 105, <https://kar.kent.ac.uk/29901/1/Hughes%20%20Stevens%202012.pdf> (accessed 23 November 2017).

community'.⁹⁶ Figure 7 shows a comparison between 2001 and 2007 prevalence of use data in Portugal.

Figure 7: Prevalence of use (lifetime, recent and current), 2001 and 2007⁹⁷



Health outcomes

6.59 The Portuguese government implemented decriminalised drug laws alongside a substantial investment and expansion of treatment services aimed at drug users (such as opiate substitution and needle exchange programs). For this reason, the positive health outcomes cannot be fully explained by decriminalisation. However, evidence suggests decriminalisation allowed drug users to actively seek treatment options without the fear of criminal penalties. According to the Cato Institute, enabling drug users to seek treatment services in a decriminalised framework 'enables the management and diminution of drug-related harms' and resulted in an increase in the number of people seeking treatment in a post-decriminalised setting.⁹⁸ This setting has drastically reduced drug-related harms.⁹⁹

96 Hughes and Stevens, 'A resounding success or a disastrous failure: Re-examining the interpretations of evidence on the Portuguese decriminalisation of illicit drugs, *Harm Reduction Digest-44*, Drug and Alcohol Review, January 2012, p. 105, <https://kar.kent.ac.uk/29901/1/Hughes%20%20Stevens%202012.pdf> (accessed 23 November 2017).

97 Hughes and Stevens, 'A resounding success or a disastrous failure: Re-examining the interpretations of evidence on the Portuguese decriminalisation of illicit drugs, *Harm Reduction Digest-44*, Drug and Alcohol Review, January 2012, p. 105.

98 Greenwald, *Drug Decriminalisation in Portugal: Lessons for creating fair and successful drug policies*, Cato Institute, 2009, p. 15.

99 Greenwald, *Drug Decriminalisation in Portugal: Lessons for creating fair and successful drug policies*, Cato Institute, 2009, p. 15.

6.60 In 1999, Portugal had the highest rate of HIV amongst its injecting drug users in the European Union. Since decriminalisation, Portugal has seen a significant decline in the number of HIV cases amongst people who inject drugs.¹⁰⁰ Transform reported that between 2001 and 2012, the number of newly diagnosed HIV cases fell from 1016 to 56.¹⁰¹ The number of AIDS cases over that same period fell from 568 to 38.¹⁰² Similar trends were seen with cases of Hepatitis C and B. These trends have occurred despite there being an increase in the number of people accessing treatment services.¹⁰³

6.61 Figure 8 shows Portugal's HIV/AIDS notifications between drug users and non-drug users from 2000 to 2006. This data indicates an overall reduction for both drug users and non-drug users; however, the decline has been more drastic for drug users.¹⁰⁴

100 Transform Drug Policy Foundation, *Drug decriminalisation in Portugal: setting the record straight*, June 2014, p. 3.

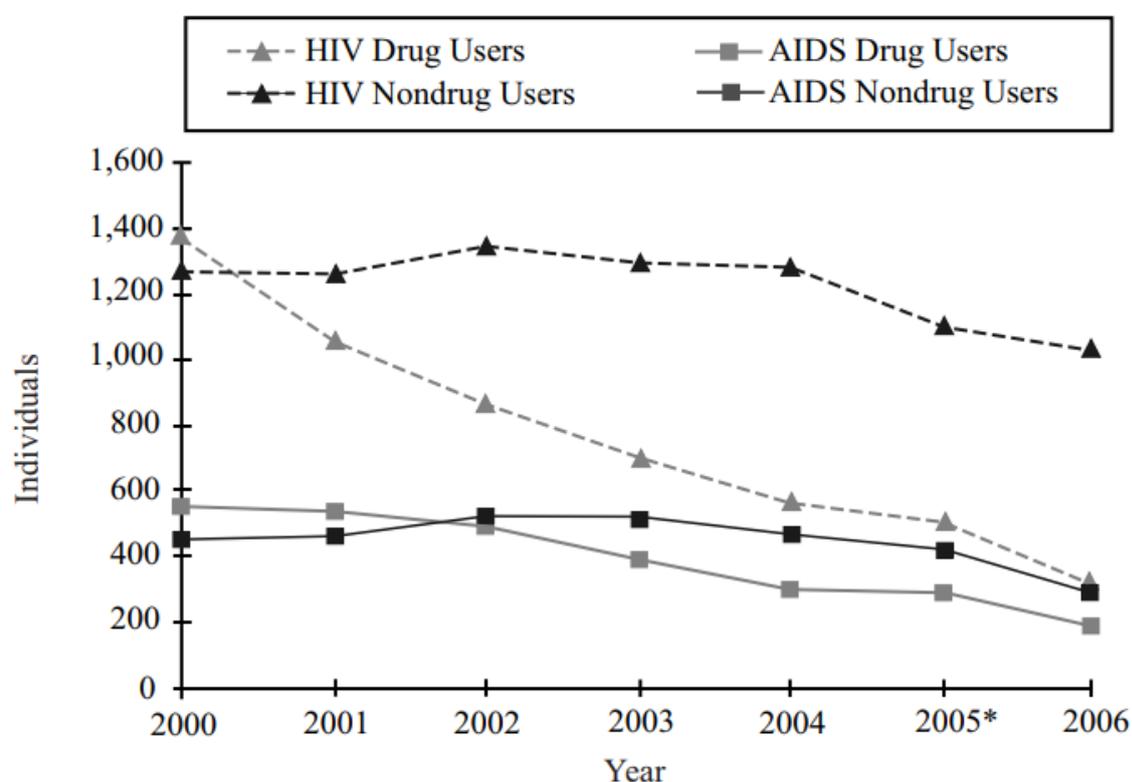
101 Transform Drug Policy Foundation, *Drug decriminalisation in Portugal: setting the record straight*, June 2014, p. 3.

102 Transform Drug Policy Foundation, *Drug decriminalisation in Portugal: setting the record straight*, June 2014, p. 3.

103 Transform Drug Policy Foundation, *Drug decriminalisation in Portugal: setting the record straight*, June 2014, p. 3.

104 Greenwald, *Drug Decriminalisation in Portugal: Lessons for creating fair and successful drug policies*, Cato Institute, 2009, p. 17.

Figure 8: Portugal's HIV/AIDS notification between drug users and non-drug users, 2000–06¹⁰⁵

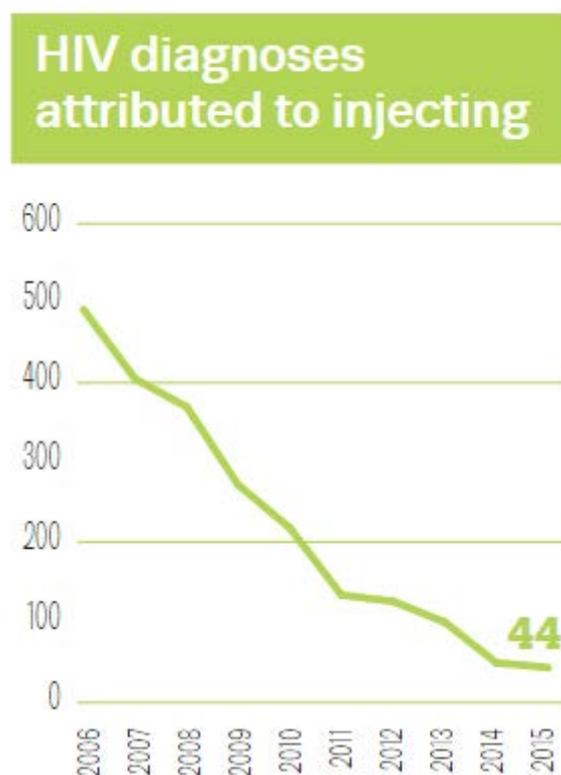


6.62 According to the EMCDDA, since 2006 there has been a continual decline in the number of HIV diagnoses attributed to injecting drugs.¹⁰⁶ In 2015 the number reached a low of 44 cases.¹⁰⁷ Figure 9 shows Portugal's HIV diagnosis rate attributed to injecting drugs from 2006 to 2015.

105 Greenwald, *Drug Decriminalisation in Portugal: Lessons for creating fair and successful drug policies*, Cato Institute, 2009, p. 17.

106 European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), *Portugal Country Drug Report 2017*, http://www.emcdda.europa.eu/countries/drug-reports/2017/portugal_en (accessed 22 November 2017).

107 EMCDDA, *Portugal Country Drug Report 2017*.

Figure 9: Portugal's HIV diagnosis attributed to injecting drugs, 2006–15¹⁰⁸

Drug-related deaths

6.63 Evidence suggests drug-related deaths in Portugal have declined since decriminalisation; however, there are limitations to the available data.¹⁰⁹ Documents provided by SICAD show the number of overdoses has drastically fallen between 2008 and 2014.¹¹⁰ In 2008, there were reportedly 94 overdose deaths, and in 2014, this total had declined to 33.¹¹¹ This total accounted for only 15 per cent of all drug-related deaths.¹¹² Transform reported that deaths due to drug use had decreased from approximately 80 in 2001, to 16 in 2012.¹¹³

108 EMCDDA, *Portugal Country Drug Report 2017*.

109 Hughes and Stevens, 'A resounding success or a disastrous failure: Re-examining the interpretations of evidence on the Portuguese decriminalisation of illicit drugs, *Harm Reduction Digest-44*, Drug and Alcohol Review, January 2012, p. 105.

110 SICAD, *Interventions on Addictive Behaviour and Dependencies*, additional information received 24 to 30 September 2017, p. 32.

111 SICAD, *Interventions on Addictive Behaviour and Dependencies*, additional information received 24 to 30 September 2017, p. 32.

112 SICAD, *Interventions on Addictive Behaviour and Dependencies*, additional information received 24 to 30 September 2017, p. 32.

113 Transform Drug Policy Foundation, *Drug decriminalisation in Portugal: setting the record straight*, June 2014, p. 3.

6.64 The Portuguese National Statistics Institute refers to 'the number of people that have been determined by doctors according to International Classification of Disease protocols to have died from drugs'.¹¹⁴ This data shows the number of people that died due to drug use had decreased from 2001 to 2005, and then increased from 2005 to 2008. Hughes and Stevens observed that this decline cannot be solely attributed to decriminalisation and that expanded health services also provide a plausible explanation.¹¹⁵ However, they noted that:

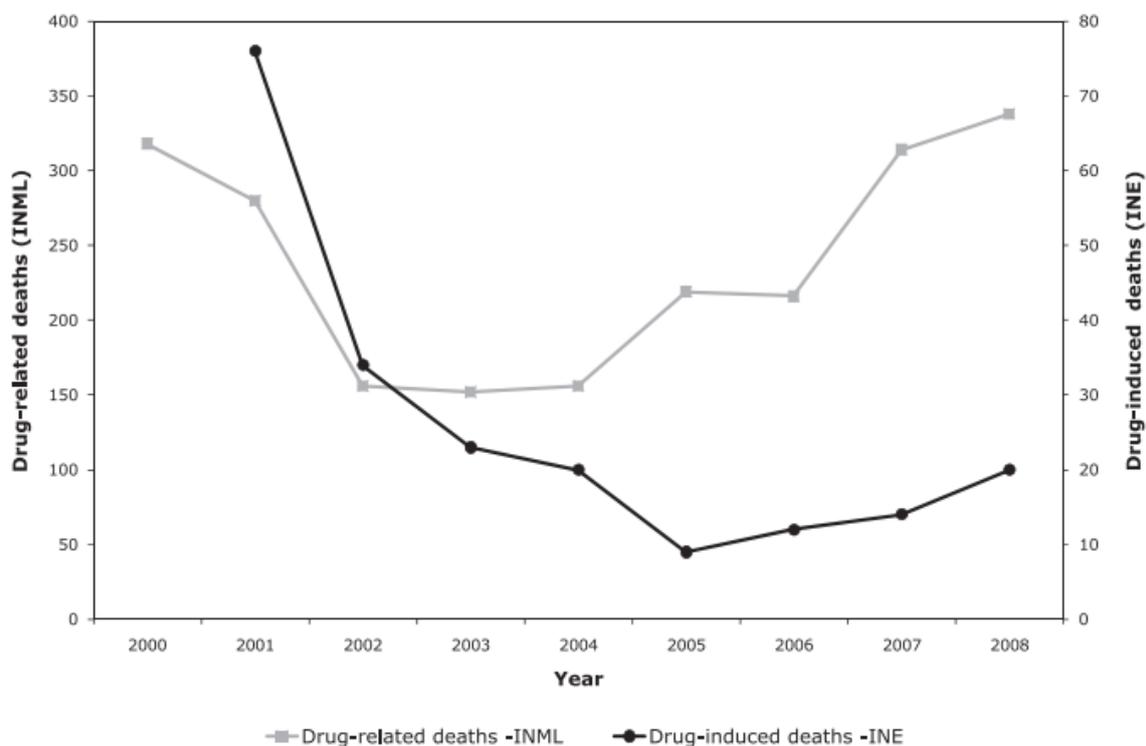
...a key goal of the reform had been to reduce social stigma and thereby facilitate access to Portuguese drug treatment and harm reduction services...drug treatment access in Portugal expanded considerably post-reform. This provides partial evidence that the reform may have contributed to the observed declines.¹¹⁶

6.65 Figure 10 shows drug-related deaths and drug-induced deaths in Portugal between 2000 and 2008.

114 Hughes and Stevens, 'A resounding success or a disastrous failure: Re-examining the interpretations of evidence on the Portuguese decriminalisation of illicit drugs, *Harm Reduction Digest-44*, Drug and Alcohol Review, January 2012, p. 108.

115 Hughes and Stevens, 'A resounding success or a disastrous failure: Re-examining the interpretations of evidence on the Portuguese decriminalisation of illicit drugs, *Harm Reduction Digest-44*, Drug and Alcohol Review, January 2012, p. 108.

116 Hughes and Stevens, 'A resounding success or a disastrous failure: Re-examining the interpretations of evidence on the Portuguese decriminalisation of illicit drugs, *Harm Reduction Digest-44*, Drug and Alcohol Review, January 2012, p. 108.

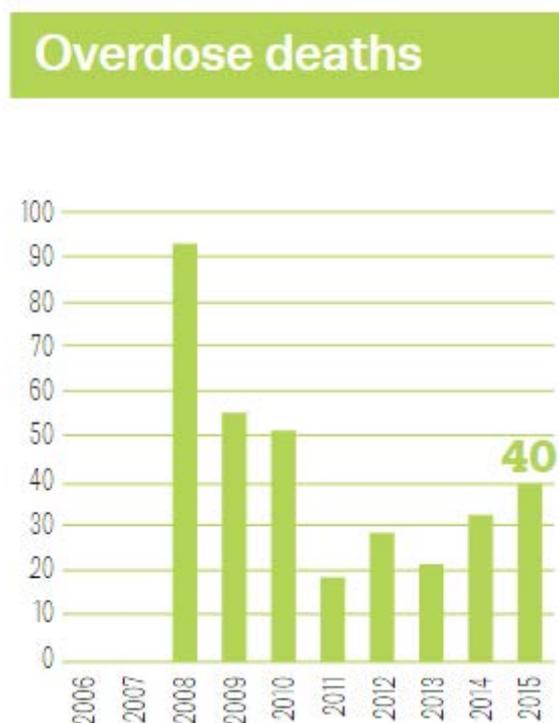
Figure 10: Drug related deaths and drug induced death in Portugal, 2000–08¹¹⁷

6.66 The EMCDDA 2017 drug report for Portugal shows that overdose deaths have reduced significantly since 2008, but have steadily increased since a low in 2011.¹¹⁸ Figure 11 shows EMCDDA drug overdose deaths in Portugal between 2006 and 2015.

117 Hughes and Stevens, 'A resounding success or a disastrous failure: Re-examining the interpretations of evidence on the Portuguese decriminalisation of illicit drugs, Harm Reduction Digest-44, Drug and Alcohol Review, January 2012, p. 108.

118 EMCDDA, *Portugal Country Drug Report 2017*, http://www.emcdda.europa.eu/countries/drug-reports/2017/portugal_en (accessed 22 November 2017).

Figure 11: Overdose deaths in Portugal, 2006–15¹¹⁹



Law enforcement

6.67 The two primary concerns about the Portuguese model, prior to its introduction, were that it would lead to an increase in drug use, and that Portugal would become a drug paradise, facilitating "drug tourism" where foreigners would travel to Portugal use drugs without risk of serious conflict with the law.¹²⁰ The Portuguese Judicial Police,¹²¹ which shared these concerns, advised the committee that many of the concerns about decriminalisation had not eventuated.¹²² The Judicial Police reported that the vast majority of Portuguese law enforcement officers 'now consider that the solutions adopted by [Law 30/2000] were the right ones'.¹²³

6.68 With regard to drug tourism, data from the Institute on Drugs and Drug Addiction of Portugal for 2001–05 showed that approximately 95 per cent of

119 EMCDDA, *Portugal Country Drug Report 2017*.

120 Open Society Foundation, *Drug Policy in Portugal: The benefits of Decriminalizing drug use*, Global Drug Policy Program, June 2011, p. 24.

121 Policia Judiciaria, Ministerio da Justica, *Police Action in Drug Use Situations*, additional information received 24 to 30 September 2017, p. 4.

122 Policia Judiciaria, Ministerio da Justica, *Police Action in Drug Use Situations*, additional information received 24 to 30 September 2017, p. 4.

123 Policia Judiciaria, Ministerio da Justica, *Police Action in Drug Use Situations*, additional information received 24 to 30 September 2017, p. 4.

individuals cited for drug offences were Portuguese and few came from other European Union states.¹²⁴

6.69 Since the implementation of Law 30/2000, Portuguese law enforcement agencies and courts have seen a 'significant savings in human and material resources, apart from a decrease in the level of conflicts [in regard to] police action in the streets'.¹²⁵ Most critically, '[d]rug users stopped being looked at as criminals'¹²⁶ and police resources have been re-directed to target drug trafficking.¹²⁷

6.70 The Global Commission on Drug Policy has stated that decriminalisation for drug use and possession effectively:

...free up police time, allowing them to focus on more serious crimes such as property and violent crimes. Portugal witnessed a decline in the number of criminal drug offenses from approximately 14,000 per year in 2000 to an average of 5,000-5,500 per year after decriminalization, and the number of people incarcerated for low-level drug offending fell from 44 percent of all prisoners in 1999 to 24 percent by 2013, resulting in a substantial reduction in prison overcrowding.¹²⁸

Social costs

6.71 In the first 10 years of decriminalisation, Portugal saved 18 per cent in social costs.¹²⁹ According to the Global Commission on Drug Policy, these saving were largely due to the opportunity for drug users to maintain an income and productivity:

...as a result of individuals avoiding imprisonment for drug possession, and indirect health costs such as the reduction of drug-related deaths and HIV rates. There were, furthermore, direct savings to the criminal justice system resulting from decriminalization, something a number of other jurisdictions have experienced.¹³⁰

124 Greenwald, *Drug Decriminalisation in Portugal: Lessons for creating fair and successful drug policies*, Cato Institute, 2009, p. 6 and p. 8.

125 Policia Judiciaria, Ministerio da Justica, *Police Action in Drug Use Situations*, additional information received 24 to 30 September 2017, p. 3.

126 Policia Judiciaria, Ministerio da Justica, *Police Action in Drug Use Situations*, additional information received 24 to 30 September 2017, p. 3.

127 Policia Judiciaria, Ministerio da Justica, *Police Action in Drug Use Situations*, additional information received 24 to 30 September 2017, p. 3.

128 Global Commission on Drug Policy, *Advancing Drug Policy Reform: A New Approach to Decriminalisation*, 2016, p. 21.

129 Global Commission on Drug Policy, *Advancing Drug Policy Reform: A New Approach to Decriminalisation*, 2016, p. 21.

130 Global Commission on Drug Policy, *Advancing Drug Policy Reform: A New Approach to Decriminalisation*, 2016, p. 21.

Overview of Australia's current illicit drug laws

6.72 Use and possession laws are primarily the responsibility of the states and territories, not the Commonwealth. According to the NDARC's 2016 briefing paper, most states and territories have laws in place that make drug use and possession a criminal offence that can be sanctioned with up to two years prison.¹³¹

6.73 The states and territories have adopted elements of both de jure and de facto decriminalisation:

- All Australian states and territories provide diversion programs for cannabis use.
- South Australia (SA), the Australian Capital Territory (ACT) and the Northern Territory (NT) have adopted de jure decriminalisation for cannabis use and possession.¹³² In these jurisdictions, people are issued a fine (\$100 to \$300) rather than a criminal sanction.¹³³
- De facto policies exist in all states and territories to various degrees. Victoria, Western Australia (WA), Tasmania, SA, the NT and the ACT have enacted de facto policies for the use and possession of other illicit drugs.
- Queensland and NSW have only implemented de facto reform for cannabis use and possession, compulsory criminal sanctions remain for all other illicit drugs.¹³⁴

6.74 Table 8 details current decriminalisation approaches in each state and territory, separated into de jure and de facto, and cannabis and other drugs (for people aged 18 years and over).¹³⁵

131 NDARC, *Decriminalisation of drug use and possession in Australia – A briefing note*, Drug Policy Modelling Program, 2016, p. 5.

132 Professor Ritter, *Decriminalisation or legalisation: injecting evidence in the drug law reform debate*, NDARC, 22 April 2016.

133 NDARC's submission to the Parliament of Victoria's Law Reform, Road and Community Safety Committee, *Inquiry into drug law reform*, Submission no. 164, March 2017, p. 3.

134 NDARC, *Decriminalisation of drug use and possession in Australia – A briefing note*, Drug Policy Modelling Program, 2016, p. 5.

135 NDARC, *Decriminalisation of drug use and possession in Australia – A briefing note*, Drug Policy Modelling Program, 2016, p. 5.

Table 8: State and territory decriminalisation approach by type and drug¹³⁶

	De jure reform		De facto reform	
	Cannabis	Other illicit	Cannabis	Other illicit
NSW			✓	
Qld			✓	
Vic			✓	✓
SA	✓			✓
WA			✓	✓
Tas			✓	✓
ACT	✓		✓	✓
NT	✓			✓

De facto policies

6.75 State and territory de facto policies (where drug use remains a criminal offence) are police referral programs where drug users undergo education, assessment and/or treatment. Users' eligibility for these programs is often limited, for example a user may need to admit to an offence and be a first or second time offender.¹³⁷ These initiatives are commonly known as drug diversionary schemes and can exist alongside other initiatives such as cautioning schemes and drug courts.

6.76 Drug courts are designed to direct offenders to treatment as part of the judicial process.¹³⁸ Drug courts divert drug offenders into treatment and, according to St Vincent's Health Australia, are an 'effective and less expensive option that offers the best chance of recovery when compared to the expensive option of incarceration'.¹³⁹ NSW, Victoria, WA and SA have had specialised drug courts since the late 1990s and early 2000s.¹⁴⁰ Queensland reinstated its Drug and Alcohol Court on

136 NDARC, *Decriminalisation of drug use and possession in Australia – A briefing note*, Drug Policy Modelling Program, 2016, p. 5.

137 NDARC, submission to the Parliament of Victoria's Law Reform, Road and Community Safety Committee, *Inquiry into drug law reform*, Submission no. 164, March 2017, p. 3.

138 Queensland Network of Alcohol and Other Drug Agencies (QNADA), *Submission 20*, p. 4.

139 St Vincent's Health Australia, *Submission 18*, p. 22.

140 Australia's first drug court opened in NSW in 1999. South Australia and Western Australia have had drug courts since 2000, Victoria since 2002. See Ryan Kornhauser, 'The effectiveness of Australia's drug courts', *Australian & New Zealand Journal of Criminology*, Vol. 51(1), p. 77, 2018.

29 January 2018.¹⁴¹ The NT,¹⁴² ACT¹⁴³ and Tasmania¹⁴⁴ have diversionary programs available through the regular court structure.

6.77 In relation to drug courts, St. Vincent's Health Australia remarked:

In our opinion, there should be greater utilisation of treatment and rehabilitation programs for offenders with drug-related crimes; however, what is required is a long-term approach to ensure effectiveness. Currently, many individuals who are referred for treatment on short term orders are not provided the opportunity for the necessary extended support which is required when using drugs. As health professionals, it is our view that effective treatment of addictions can only be achieved when adequate resources enable relationships to be maintained long enough to make a difference psychologically, physiologically and socially.¹⁴⁵

6.78 St Vincent's Health Australia also observed that:

...courts require research data to inform the most effective sentencing options for encouraging recovery or responses which do not require incarceration to rehabilitate drug users who interact with the justice system. This is why having a systemic and national approach to data measures would enable the right policies to be put in place.¹⁴⁶

6.79 The committee considered diversionary programs in its first report.¹⁴⁷

De jure policies

6.80 As noted in paragraph 6.73, de jure policies for cannabis use and possession (in small quantities) have been adopted in SA, the ACT and the NT. However, there have been a growing number of calls for the adoption of de jure decriminalisation in all jurisdictions across Australia for all illicit drug types.

141 Queensland Courts, *Queensland Drug and Alcohol Court*, <http://www.courts.qld.gov.au/courts/drug-court> (accessed 21 March 2018).

142 The NT has an Infringement Notice System, and for young offenders a cautioning system available through police and the court. See NT Government, *Young people: diversion programs*, <https://nt.gov.au/law/young-people/young-people-diversion-programs> (accessed 21 March 2018).

143 The ACT has a Court Alcohol and Drug Assessment Service (CADAS) scheme in use by its Magistrates, Children's and Supreme courts. See ACT Health, *Diversionary services*, <http://www.health.act.gov.au/our-services/alcohol-and-other-drugs/diversion-services> (accessed 21 March 2018).

144 Magistrates Court of Tasmania, *Doing a drug treatment order*, http://www.magistratescourt.tas.gov.au/about_us/criminal_division/drug_treatment_orders (accessed 21 March 2018).

145 St Vincent's Health Australia, *Submission 18*, p. 22.

146 St Vincent's Health Australia, *Submission 18*, p. 22.

147 PJCLE, *Inquiry into crystal methamphetamine (ice): First Report*, September 2017, pp 105–110.

6.81 For example, in 1992, the Australian Parliamentary Group for Drug Law Reform was launched, which in 1993 endorsed the Charter for Drug Law Reform (the Charter). The Charter had the short term goal of seeking the 'abolition of criminal sanctions for the personal use of drugs of dependence and psychotropic substances throughout Australia'.¹⁴⁸

6.82 In 2012, Australia21 released a report on its second roundtable discussion on drug law reform. The roundtable considered new approaches to policy about illicit drugs in Australia, and comprised 22 experts and youth representatives who considered international approaches to drug use (including Portugal) and Australia's current policies. The report made a broad range of recommendations and outlined specific reform options. One reform option was the removal of 'sanctions for personal use and possession of drugs and drug-using paraphernalia'.¹⁴⁹

6.83 In 2016, the Parliament of Australia hosted a cross-party Parliamentary Drug Summit. The summit brought together international and Australian representatives from the health sector, non-government organisations, law enforcement and academia to consider harm minimisation and drug law reform. It called for the removal of criminal sanctions for personal drug use along with other harm reduction and treatment initiatives.¹⁵⁰ In the same year, the NSW Parliament also hosted a Parliamentary Cross-Party Harm Minimisation Roundtable to consider and advocate for drug law reform in NSW.¹⁵¹

6.84 On 29 March 2018, the Victorian Parliamentary Law Reform, Road and Community Safety Committee (the Victorian committee) will report on its inquiry into drug law reform.¹⁵² A significant number of submissions to that inquiry overwhelmingly support de jure decriminalisation of drug use and possession.

6.85 The National Drug Research Institute's (NDRI) submission to the Victorian committee expressed concern that a criminalised drug policy contributes to harmful and counterproductive stigmatisation of drug users.¹⁵³ NDRI research conducted between 2014 and 2017, showed that drug users have 'a range of negative and

148 Australian Drug Law Reform Foundation, *Charter*, <https://adlrf.org.au/charter/> (accessed 23 November 2017).

149 Australia21, *Report on the second Australia21 Roundtable on illicit drugs held at The University of Melbourne on 6 July 2012*, September 2012, p. 38.

150 Drug Policy Forum, *Parliamentary Drug Summit 2016*, <http://www.drugpolicyreform.com.au/> (accessed 23 November 2017).

151 Parliament of New South Wales, *Illegal drug use and possession: Current policy and debates*, <https://www.parliament.nsw.gov.au/news/Pages/IllegaldruguseandpossessionCurrentpolicyanddebates.aspx> (accessed 24 November 2017).

152 Law Reform, Road and Community Safety Committee, Parliament of Victoria, *Inquiry into drug law reform*, <https://www.parliament.vic.gov.au/lrrcsc/inquiries/article/2809> (accessed 24 November 2017).

153 The National Drug Research Institute's (NDRI) submission to the Parliament of Victoria's Law Reform, Road and Community Safety Committee, *Inquiry into drug law reform*, Submission no. 136, p. 5.

discriminatory experiences with police and the criminal justice system'; that criminalisation is a 'key driver of the stigma surrounding drug consumption'; and that 'stigmatisation was considered unlikely to diminish to any significant degree until the laws surrounding drug use were revised'.¹⁵⁴ The NDRI concluded that overall, there is a:

...need to address the relationship between stigma and institutional and legal conditions. Measures that treat stigma only as an individual issue that can be tackled through education and interaction with stigmatised individuals ignore its institutional dimension and are thus less likely to eradicate the pernicious forms of stigma inherent in institutional processes. This points to a need to take seriously increasing calls for decriminalisation/drug law reform.¹⁵⁵

6.86 The NDARC's submission to the Victorian committee highlighted decriminalisation of illicit drug use and possession as law reform that should be considered. It outlined the weaknesses of current de facto approaches, in particular the strict eligibility requirements that limit access to drug diversionary schemes 'particularly for people who are more marginalised and/or in need of diversion into treatment and rehabilitation'.¹⁵⁶ It then outlined the benefits of de jure drug policy and noted that the Portuguese experience:

...illustrates the benefits of applying decriminalisation to all illicit drugs. It further shows how drug law reform can be a tool not only reduce adverse impacts on those detected by police, but also to foster a more public-health approach towards drugs, including by reducing the stigma and discrimination of people who use drugs and facilitate access to harm reduction and treatment services...It would be prudent for Victoria to follow the international and domestic examples, and calls of bodies including the World Health Organisation, and decriminalise use and possession for personal use of all illicit drugs.¹⁵⁷

6.87 Uniting Care ReGen recommended the removal of criminal penalties for individual use and possession of all illicit drugs, to be replaced with civil penalties or diversionary programs into treatment and/or drug educational programs.¹⁵⁸ In Uniting Care ReGen's view, decriminalisation has the 'clearest evidentiary support' and:

154 NDRI's submission to the Parliament of Victoria's Law Reform, Road and Community Safety Committee, *Inquiry into drug law reform*, Submission no. 136, p. 5.

155 NDRI's submission to the Parliament of Victoria's Law Reform, Road and Community Safety Committee, *Inquiry into drug law reform*, Submission no. 136, p. 6.

156 NDRARC's submission to the Parliament of Victoria's Law Reform, Road and Community Safety Committee, *Inquiry into drug law reform*, Submission no. 164, p. 6.

157 NDRARC's submission to the Parliament of Victoria's Law Reform, Road and Community Safety Committee, *Inquiry into drug law reform*, Submission no. 164, p. 6.

158 UnitingCare ReGen, Submission to the Parliament of Victoria's Law Reform, Road and Community Safety Committee, Submission no. 168, p. 1.

There is established public support for such a move and a growing recognition amongst policy makers of the need to adopt a policy approach that recognises illicit drug use a health issue, not a criminal matter.¹⁵⁹

6.88 The Alcohol and Drug Foundation's (ADF) submission to the Victorian committee encouraged governments to 'act with caution' before proceeding with the liberalisation of drug laws.¹⁶⁰ The ADF's submission noted researchers' concerns that the outcomes of drug liberalisation are difficult to predict, and such measures may not be readily reversible and may entrench 'undesirable social norms'.¹⁶¹ The ADF, however, discusses the Portuguese approach and stated that this option 'would require a large expansion of drug treatment and education services although the cost would likely be defrayed by cost savings in the judicial and custodial systems'.¹⁶²

6.89 Addiction medicine doctor Associate Professor Nadine Ezard reflected upon her experience witnessing 'first-hand the increased harm to individuals, and their communities, of criminalising drug use'.¹⁶³ Professor Ezard noted that communities are adversely impacted by criminalisation because of the increased stigma and marginalisation of people who use drugs, 'and resources consumed by law enforcement activities would be more effectively allocated to treatment services, reinforce limited access to and uptake of treatment'.¹⁶⁴ She concluded that those jurisdictions with de jure policies for cannabis use and possession 'have far lower proportion of use/possess offenders referred by police to courts, than states without'.¹⁶⁵

6.90 In its final report, the National Ice Taskforce (NIT) noted that decriminalisation was 'raised at some community meetings and in some submissions.

159 UnitingCare ReGen, Submission to the Parliament of Victoria's Law Reform, Road and Community Safety Committee, Submission no. 168, p. 1.

160 The Alcohol and Drug Foundation's (ADF) submission refers to the Portugal's drug policy as a depenalisation, citing that it is commonly confused with the term decriminalised. See ADF, Submission to the Parliament of Victoria's Law Reform, Road and Community Safety Committee, Submission no. 218, p. 9.

161 ADF submission refers to Portugal's drug policy as a depenalisation, citing that it is commonly confused with the term 'decriminalised'. See ADF, Submission to the Parliament of Victoria's Law Reform, Road and Community Safety Committee, Submission no. 218, p. 9.

162 ADF, Submission to the Parliament of Victoria's Law Reform, Road and Community Safety Committee, *Inquiry into drug law reform*, Submission no. 218, p. 9.

163 Associate Professor Nadine Ezard, Submission to the Parliament of Victoria's Law Reform, Road and Community Safety Committee, *Inquiry into drug law reform*, Submission no. 221, p. 1.

164 Associate Professor Ezard, Submission to the Parliament of Victoria's Law Reform, Road and Community Safety Committee, *Inquiry into drug law reform*, Submission no. 221, p. 1.

165 Associate Professor Ezard, Submission to the Parliament of Victoria's Law Reform, Road and Community Safety Committee, *Inquiry into drug law reform*, Submission no. 221, p. 1.

However, it was not discussed at length in meetings and it was not a prevalent theme in the consultations'.¹⁶⁶

Committee comment

6.91 The committee's visit to Portugal provided it with valuable insight into that country's decriminalised drug framework. The Portuguese model offers an alternative to criminalisation and the "war on drugs". Whilst maintaining criminal sanctions against individuals and organised crime groups responsible for the trafficking of drugs, Portugal's drug users are treated with compassion. They are supported by police and the CDTs to receive education about the harms of drug use and attend voluntary treatment. Portugal has created an environment the purpose of which is to improve drug users' health, irrespective of whether or not they continue to use drugs, and that enables drug users to pursue treatment for their drug use without fear of criminal sanctions. The Portuguese drug framework has reduced the spread of HIV/AIDS and improved mortality rates, and appears to have the support of law enforcement agencies.

6.92 While decriminalised drug policies are demonstrated to have a positive impact on health outcomes for drug users, decriminalisation is not a "silver bullet". Reform to decriminalise drug use must occur in conjunction with investment in treatment services to ensure drug users are able to transition into treatment services without delay. The committee agrees with analyses that attribute the success of Portugal's approach to this combination of drug law reform and investment in treatment services.

6.93 As discussed earlier in this report, the committee believes that additional funding and increased capacity is needed in Australia's drug treatment sector. This should occur irrespective of whether illicit drugs, or particular illicit drugs, are decriminalised now or in the future in Australian jurisdictions. However, a substantial increase in the capacity and availability of treatment services would be necessary if Australia transitioned to a decriminalised model such as Portugal's.

6.94 The committee has not reached a concluded view about the appropriateness of decriminalisation of methamphetamine or a broader range of illicit drugs in Australia. The committee is cognisant of the jurisdictional challenges that arise in a federated system and the legal complexity and ambiguity that might be created if the Commonwealth and states and territories take different approaches. The committee is also cautious about endorsing the Portuguese model for implementation in Australia: the Portuguese experts and agencies with which the committee met repeatedly emphasised that the Portuguese approach was one intended to address heroin use, and not methamphetamine, and that the availability of pharmacotherapy to treat heroin use makes treating that drug addiction a different proposition to methamphetamine.

6.95 If Australian governments are of a mind to give serious consideration to decriminalisation in Australia, the committee suggests that the approach taken in Portugal of appointing an expert panel comprising doctors, sociologists, psychologists, lawyers, AOD treatment specialists and law enforcement

166 NIT, *Final Report*, p. 170.

representatives is an excellent example. The primary objective of such an expert panel would be to develop a strategy that aims to improve health outcomes for Australian drug users.

6.96 Successful implementation of decriminalisation in Australia would require the engagement and commitment of the Commonwealth and state and territory governments. Political will and leadership would be essential to building public understanding of and support for such an approach. The success of research examining pharmacotherapies for methamphetamine users, such as that of Professor Rebecca McKetin (see chapter 2), would also have a bearing on the timing and appropriateness of decriminalisation of methamphetamine in Australia.

6.97 What is clear to the committee is that the current approach in Australia is not working. Methamphetamine abuse can have devastating effects on individuals, their families and communities, and has broader social and economic impacts. When former law enforcement officers and law enforcement agencies themselves are saying that Australia cannot arrest its way out of the methamphetamine problem, that view must be taken seriously.

6.98 The committee urges Australian governments to implement the recommendations in this and the committee's first report. Improvements can and must be made in addressing methamphetamine use in Australia; in the committee's opinion, this should be done by shifting the focus on methamphetamine from a law enforcement problem to a health issue within an environment where treatment and support are readily available and without stigmatisation. Concerted attention must also be paid to improving the services and support available to Indigenous drug users, drug users in regional and remote areas, prisoners and drug users with young children. Achieving this necessitates changes as articulated in the committee's recommendations.

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Chair