



## Précis Paper

### Approaches to Drug Regulation in Australia

A discussion about the laws surrounding the use, possession and supply of illegal drugs and the current legal landscape of drug law both in Australia and around the world.

#### Discussion Includes

- Terminology
- People who use drugs vs people who sell and supply drugs
- Threshold quantities
- The Conventions
- United Nations shift
- Soft vs hard drugs
- Position of Australian states and territories
-

# Précis Paper

## Approaches to Drug Regulation in Australia

1. In this edition of BenchTV, Alison Ritter AO (Professor and Director of the Drug Policy Modelling Program, University of New South Wales, Sydney) and Caitlin Hughes (Associate Professor, Centre for Crime Policy and Research, Flinders University) discuss the laws surrounding the use, possession and supply of illegal drugs and the current legal landscape of drug law both in Australia and around the world.

### Terminology

2. There are different stances in relation to drug laws around the world. Various states in the US have legalised cannabis for both medical and recreational purposes, Canada is now 12 months into the legalisation and regulation of cannabis and numerous other countries such as Portugal have decriminalised the personal use and possession of drugs whilst others have depenalised drug use and possession.
3. Depenalisation refers to a change in the practice of policing and/or prosecution of people using and possessing drugs, but where there is no change in the criminal law or statute itself. It is an example of de facto law reform. Such a reform seeks to reduce but not eliminate the application of criminal penalties.
4. Decriminalization de jure is a change in the law that removes criminal penalties for the personal use and possession of drugs. This means that after that point in time, persons who are convicted for use or possession offences will not receive criminal sanctions, albeit in some models other penalties may be adopted instead e.g. civil or administrative. Portugal is an example of a nation which has decriminalised the use and possession of all illicit drugs: and replaced criminal penalties with administrative sanctions.
5. Legalisation is the full availability of substances including the sale and supply of drugs and the consumption of drugs. This tends to be replaced by a new system to regulate sale and supply e.g. setting age restrictions and conditions on where, when and how drugs can be accessed and the extent of advertising that is permitted.

### People who use drugs vs people who sell and supply drugs

6. Much of drug law reform is premised on treating people who use drugs and people who sell and supply drugs, differently. Whilst drug laws should be about targeting laws at the supply and manufacturing end, the majority of people who are caught up in the criminal justice system are those that are detected for simple use or possession offences. In Australia, the most recent figures showed there were a total

of 133,000 consumer detections in 2018 (that is people detected for simple use or possession) but only 13,000 detections for supplier offences.

### Threshold quantities

7. In Australia, one of the key means to differentiate a drug use and possession offence and a drug supply offence is through specifying threshold quantities, about the amount of drug that a person has. If it is over a certain amount it is deemed to be a supply offence and if it is under that amount, it is deemed to be a use possess offence.
8. However, studies have shown that in many cases, people who use or possess drugs often have a quantity in their possession that exceeds the threshold for deemed supply and therefore they are liable to be sanctioned as a supplier. The starkest example is in NSW where the threshold amount for someone who is possessing MDMA is set at 0.75 grams. However, studies have found that many people use 5 or more times that amount for their personal use alone.
9. These studies have shown that if the thresholds are going to be used, they should be aligned with best knowledge in order to effectively target those who are supplying drugs and thus those that are causing the most harm to the community.
10. The other difficulty is that every state and territory specifies the thresholds in their own laws. There is no consistency across Australia.
11. Many countries have decided to make distinctions about supply vs use based on evidence of supply as opposed to deeming. In fact, the notion of deemed supply is contrary to and reverses the onus of proof in the Australian justice system, that is innocent until proven guilty.

### The Conventions

12. The International Drug Conventions have now operated for over 50 years and collectively they have prohibited possession of drugs for personal use as well as the supply, manufacturing. The central purpose of the conventions was about reducing the use and supply of illicit drugs and to protect the health and safety of citizens.
13. The question is, how do countries such as America and Canada, who are signatories to the conventions prohibiting the use and supply of drugs, justify legalizing and regulating cannabis?
14. The Canadian government has justified the change in their laws by noting that legalising and regulating cannabis for use and supply is about better keeping the spirit of the United Nations Conventions: particularly about ensuring the drug laws can better protect the health and safety of citizens. By providing a legal avenue for people to access cannabis, then the cannabis can be provided having gone through

purity and quality checks, with appropriate health labels and warnings that are otherwise absent, while also reducing reliance upon and exposure to the black market i.e. a less harmful method of supply. Nevertheless, at the most recent Commission on Narcotics Drugs meeting in Vienna Canada was called out by a number of countries for being outside of the United Nations Conventions

15. In the US, whilst there are 12 states which have legalised cannabis, the fact that the Federal Government has not changed their laws, (it remains prohibited as a Federal offence) means that the Federal Government, who is signatory to the Conventions, are not in breach.

#### United Nations shift

16. There have been more and more UN bodies over recent years that have been calling for the removal of criminal penalties for use and possession. In 2019, there was a new statement released which was signed up to by 31 UN bodies including the United Nations Office on Drug and Crime which called on all member states to reduce the application of criminal penalties for use and possession alone.
17. This broader repositioning reflects a realisation that many of the practices have not been achieving the goals of reducing health, social and criminal justice harms and in many cases, the provision of a criminal record for someone who uses or possesses drugs alone causes much more harms.

#### Soft vs hard drugs

18. There have been some arguments put forward about treating 'soft' drugs e.g. cannabis differently from 'hard' drugs e.g. heroin. However, it can be argued that if penalties are removed for use and possession, it should be done for all drugs, not just on the basis of 'soft' or 'hard' drugs. In many ways, removing penalties for the most harmful drugs is most significant as treatment, harm reduction responses and social reintegration opportunities can be offered more effectively under a decriminalised regime.

#### Position of Australian states and territories

19. At the time of recording there are three jurisdictions in Australia that have de jure decriminalization laws solely in relation to cannabis use and possession, that is South Australia, the Northern Territory and the Australian Capital Territory.

20. In the majority of other jurisdictions in Australia, police can divert someone into assessment and treatment if they are caught with a small quantity (depenalisation), however it depends on the drug. For example, in every jurisdiction other than QLD and NSW, any and all classes of drugs can result in a diversion into treatment. In NSW and QLD, police diversion has traditionally been offered for cannabis only. (In January 2019 NSW introduced a pilot scheme to provide police infringements instead of charge for personal possession of small quantities of drugs e.g. MDMA at festival settings).
21. On average, 55% of people who are detected for a simple use and possession offence in Australia will receive a diversionary response, that is that they will be referred away from the criminal justice system, either to a therapeutic response or paying a fine. However, there are very large state differences in the number of people receiving diversionary responses. For example in South Australia 98% of people detected for a simple drug use and possession offence receive a diversionary response compared to only 32% of people detected in Western Australia and 36% in Queensland.
22. In September 2019 the ACT approved a law legalizing the personal cultivation of cannabis. (Unlike Canada there are no outlets for retail production or sale). The new law entered into force on 31 January 2020 and exempts people over 18 years old from penalties for cultivation of up to two plants per person (maximum four plants per household) kept in part of the home not generally accessible by the public, and for possession of up to 50g of dried cannabis herb or 150g of "fresh" cannabis. This replaces, for adults only, the "simple cannabis offence notice" (monetary fine) currently issued to some people for self-administration, possession or cultivation of cannabis, but maintains existing youth therapeutic and non-therapeutic diversionary schemes for cannabis use, possession and cultivation, including the simple cannabis offence notice (SCON) scheme.

## BIOGRAPHY

### Alison Ritter

Professor, University of New South Wales, Sydney

Professor Alison Ritter is an internationally recognised drug policy scholar and the Director of the Drug Policy Modelling Program (DPMP) at the Social Policy Research Centre (SPRC) at the University of New South Wales. She is an NHMRC Senior Research Fellow leading a multi-disciplinary program of research on drug policy. The goal of the work is to advance drug policy through improving the evidence-base, translating research and studying policy

processes. Professor Ritter worked as a clinical psychologist in the alcohol and drug treatment sector prior to commencing full-time research. She has contributed significant policy and practice developments across alcohol and drug policy over many years.

She is a past President of the International Society for the Study of Drug Policy, Vice-President of the Alcohol and Drug Council of Australia and an Editor for a number of journals, including Drug and Alcohol Review and the International Journal of Drug Policy. Professor Ritter has an extensive research grant track record (\$31m). She has published widely in the field including two edited books, multiple book chapters and more than 180 other publications.

#### Caitlin Hughes

Associate Professor in Criminology and Drug Policy, Centre for Crime Policy and Research, Flinders University

Caitlin Hughes is an Associate Professor in criminology and drug policy and Matthew Flinders Fellow at the Centre for Crime Policy and Research, Flinders University. She is also Visiting Fellow at the National Drug and Alcohol Research Centre, UNSW and Vice-President of the International Society for the Study of Drug Policy. Caitlin has spent 17 years researching drug and alcohol policy, including 12.5 years at the National Drug and Alcohol Research Centre, UNSW, working as part of the Drug Policy Modelling Program. Her research seeks to advance Australian and international drug policy by improving the evidence-base into the effects of different legislative and law enforcement approaches to drug use and supply and working directly with policy makers. Her research focuses on 1) drug laws and drug law reform (including depenalisation, decriminalisation, legalisation), 2) criminal justice policies (including policing and alternatives to arrest) and 3) drug markets, outlining what laws and policies are deployed, how they operate in practice, the impacts of this investment and identifying avenues for more effective responses that can reduce drug-related health, social and criminal justice harms. She works extensively with policy makers and criminal justice practitioners from within and outside of Australia and has a track record of evidence-informed reforms, including the expansion of drug diversion programs and reform of drug trafficking laws.