



Promoting Illicit Drug Prevention Initiatives Nationally

May 2021

Professor Nicole Lee
CEO 360Edge
PO Box 359
Elwood 3184
By email: nicole@360edge.com.au

Re: Your recent article related to decriminalisation of drugs in the ACT - 'The Conversation'¹

Drug Free Australia has grave concerns about the accuracy of the article authored by yourself and Jarrayd Bartle, and the opinions expressed. We therefore wish to take issue on a number of counts.

For example some false assumptions in the article include that:

1. Most Australians support the decriminalization of drugs. FACT: Most Australians do NOT support decriminalisation of heroin, ice, speed, and cocaine and even ecstasy according to the NDSHS 2019. **The 2019 National Drug Strategy Household Survey showed that there continues to be strong public support for the current status of illicit drugs.**
2. Cannabis is legal in the ACT. FACT - The use of cannabis is NOT legal in the ACT because Federal law overrides Territory laws that conflict with it. This fact is not included which makes the statement on this issue misleading.
3. Criminal convictions are a greater harm than the drugs themselves. FACT - the article omits to concede that there ARE clear benefits from criminalising drug use and there is evidence to show that criminalisation reduces use. The first evidence is the comparison between legal alcohol and illicit drug use percentages. Alcohol 80% and illicit drugs <12%. Tobacco was at 65% as a legal drug until we spent billions reducing it.

¹ https://theconversation.com/drugs-could-soon-be-decriminalised-in-the-act-heres-why-that-would-be-a-positive-step-157709?utm_source=360Edge&utm_campaign=2f3cacffa3-EMAIL_CAMPAIGN_2020_02_12_02_10_COPY_02&utm_medium=email&utm_term=0_42fd415bbb-2f3cacffa3-1356273472&mc_cid=2f3cacffa3&mc_eid=a745985b59

4. Portugal had no increases in drug use after decriminalisation. FACT - Drug use has increased in Portugal since decriminalization (see the actual figures later in this document). The country is now reverting back to previous policy. Drug use SKYROCKETED with decriminalisation in Australia in ACT, SA, and NT (see graphs further down) National Drug Strategy Monograph 31). All States are now similar because almost all introduced a softening of cannabis laws

Specific areas of contention:

1. **The Article:** 'In February this year, Labor backbencher Michael Pettersson introduced a private members bill to remove criminal penalties for possession of small amounts of some illicit drugs in the Australian Capital Territory. This might seem like a radical step to some, but researchers and health professionals have been calling for this reform for some time.

DFA response: The people calling for drug reform also believe quite firmly that the regular use of illicit drugs should be accepted. But 96-99% of Australians (who disapprove use of heroin, ice, speed, cocaine, ecstasy) disagree with these minority reformists who are at odds with the rest of Australians.

- 96-99% of Australians do not approve the regular use of heroin, ice, speed, cocaine or ecstasy, suggesting that Australians would want less drug use, not more, which only rehab and recovery can achieve, making them mandatory. Decriminalisation will never drive recovery – it removes all meaningful limits or deterrence value in drug laws (e.g. by scrapping our drug courts), being little different to fully legalising drugs practically-speaking
 - With no legal coercion for a user to cease drug use by entering rehab, drug use markedly increases as it has in Portugal (their preferred model), which decriminalised all illicit drugs in 2001 only to see drug use rise 59%, overdose deaths rise 59% and drug use by high school minors up 60% by 2017. By comparison, Australia's Federal Tough on Drugs policy from 1998 to 2007 reduced drug use 42% and overdose deaths 75% by maintaining convictions and funding more rehab. Portugal increased societal harms, Australia reduced them
2. **The Article:** 'Drug decriminalisation is not the same as legalisation. Decriminalisation means it's still illegal, but you may get a fine, rather than a criminal charge. In this case, the proposal is for decriminalisation of use and possession only. Manufacturing and selling will still be a criminal offence'.

DFA response: The fact is that many users also sell drugs to fund their habit; small amounts are carried by individuals who are part of a drug pushing syndicate. If approached by police, they could well have small amounts, but not for their own

personal possession. How does the concept of decriminalisation and fining perpetrators work in this case?

We note that Uniting's proposed model of decriminalisation, (where we take Uniting to be speaking as proxy for ACT Labor and the NSW Greens) has no discernible difference between their decriminalisation and outright legalisation. With absolutely no legal enforcement at any step in the suggested interventions for drug use, Uniting's model has the legal force of drug legalisation, which is none at all.

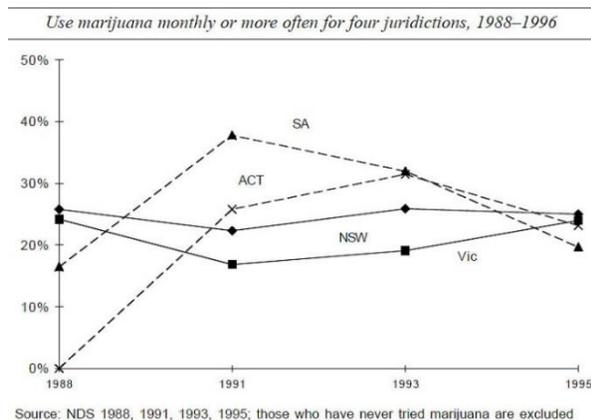
- The Article:** Possession of cannabis has already been decriminalised in the ACT since 1992. Pettersson also introduced a bill that came into effect in 2020, which went one step further. It allowed adult residents in the ACT to legally grow and possess small amounts of cannabis for personal use.

DFA response: This is a clear example that there is an intention to have an incremental approach to making all drugs legal via decriminalisation or using the medicinal approach. i.e. Colorado began with medicinal cannabis and then moved to full legalisation for recreational use.

<https://www.globalcommissionondrugs.org/reports/regulation-the-responsible-control-of-drugs>

- The Article:** Possession of cannabis has also been decriminalised in South Australia and the Northern Territory for nearly 30 years.

DFA response: Australia's statistics from National Drug Strategy Monograph 31 for this point show the following graph shows increases in use in these jurisdictions – SA (1987) and the ACT (1992) from a level of negligible baseline use (p 53), finally settling at the same levels as NSW and Victoria, which already had entrenched criminal networks selling cannabis



The same happened in all US States that decriminalised as well as the Netherlands where virtual decriminalisation was pursued. WA decriminalised cannabis and then recriminalised recognising the damage cannabis was doing. The UK likewise recriminalised cannabis in 2009, after their experiment saw too many young people presenting for treatment.

So what happened with these States is that up to the year 2000 ACT, SA and NT had drug use roughly 25-30% greater than the other States but then the other States introduced virtual decriminalisation as well and so they are all similar these days, excepting NT, which has always been higher.

-
5. **The Article:** 'If the new legislation passes, possession of small amounts of a limited number of illicit drugs will no longer be a criminal offence. They will be decriminalised, like cannabis was between 1992 and 2020 in the ACT'.
DFA response: We should expect an increase in drug use similar to the decriminalising of cannabis in 1992. The ACT didn't have any measurable level of cannabis before they decriminalised.
 6. **The Article:** 'If someone is found in possession of illicit drugs, and the amount is under the "personal possession limit", they risk a civil fine of 1 penalty unit (\$160). The current criminal penalty is a maximum fine of 50 penalty units (\$8,000) or two years of imprisonment or both'.
DFA response: Are there examples of the maximum penalty being imposed? Certainly criminal penalty for shoplifting is 2-10 years in jail depending on the amount stolen. Those penalties are NEVER used.
 7. **The Article:** 'This means people who use drugs can avoid a criminal record if they pay the civil penalty within prescribed time period — a little like a speeding fine'.
DFA response: Drug dependence can cause people to become dysfunctional, especially if addicted; the reality is that under current legal practice, many fines would not be paid, or they would appeal for 'mental health' reasons, not to pay. The system would become very cumbersome system and hard to administer. Portugal found their system to be too expensive and are now backtracking on their policy.
 8. **The Article:** 'The proposed personal limit for possession is 0.5 grams of MDMA, 0.002 grams of LSD, and two grams of cocaine, amphetamines, psilocybin and heroin. These are much lower levels than the current definitions of "personal use" in the ACT'.
DFA response: does this fact make the principle of decriminalisation right for the community?

9. **The Article:** 'Australia's official national drug policy includes reducing harms from legal and illegal drugs. Efforts to reduce harms from illicit drugs are severely hindered because possession and use is a criminal offence'.

DFA response: To the contrary, Australia has a government-sanctioned Australian Injecting and Illicit Drug Users League (**AIVL**) which has reach into most drug user networks. Syringe programs also boast an extensive reach.

10. **The Article:** 'The legal status of some drugs has more to do with history than risk of harm. In fact, some of the major harms from using illicit drugs are because they are illegal. One of the biggest harms from illicit drug use is having a criminal record for possessing small amounts of a drug for personal use. Most people who use illicit drugs do so very occasionally and only in small amounts, and are not dependent nor do they need treatment'.

DFA response: Where is the evidence for this statement? Many young lives have been lost due to taking just one drug; i.e. ecstasy. Many become addicted after trying cannabis and moving to other drugs to experiment; ice is one example and so is the addiction associated with it.

It is simply false that a conviction harms the user. Every drug user has around them a whole constellation of people – their partner, children, their children's grandparents, siblings, friends, other road users, workmates, and the general community - all unacceptably harmed by their use, and for that reason drugs are illegal. Thus a conviction can be levied for use. Australians do not disagree with a conviction for shoplifting, which arguably causes far less harm than illicit drugs, but such convictions are never positioned as harming the person who steals, so on what basis can you suggest that a conviction is a harm?

It is true that a criminal record can have a long-lasting negative impact on a person's future, including on their career and their ability to travel. However, a criminal record can be expunged after a nominated period of testing 'clean'.

The deterrent to not use drugs because they are harmful and therefore illegal must help many young people at the early intervention stage. **Diversion programs if not already making provision for no criminal record for first time users, could be instituted in preference to completely decriminalising and not having a deterrent.**

Why there must be legal consequences

- Illicit drug use has historically attracted a conviction because of the unacceptable harms it causes to so many. For instance, the value of lost retirement and savings for grandparents raising their grandchildren due to drug-dependent parental neglect represents a 'stolen' cost infinitely greater than petty sums attracting criminal sanctions for shoplifters or embezzlers
- 96-99% of Australians do not approve the regular use of heroin, ice, speed, cocaine or ecstasy, suggesting that Australians would want less drug use, not more, which only

rehab and recovery can achieve, making them mandatory. Decriminalisation will never drive recovery – it removes all meaningful limits or deterrence value in drug laws (e.g. by scrapping our drug courts), being little different to fully legalising drugs practically-speaking

- With no legal coercion for a user to cease drug use by entering rehab, drug use markedly increases as it has in Portugal (their preferred model), which decriminalised all illicit drugs in 2001 only to see drug use rise 59%, overdose deaths rise 59% and drug use by high school minors up 60% by 2017. By comparison, Australia's Federal Tough on Drugs policy from 1998 to 2007 reduced drug use 42% and overdose deaths 75% by maintaining convictions and funding more rehab. Portugal increased societal harms, Australia reduced them
- Drug Free Australia promotes 'spent' convictions, where a criminal record is totally erased if a drug user can return drug free tests over a three-year period

Keeping drugs illegal works

- 73% of Australians say they have no interest in illicit drugs. Relevant to the remainder that likely would have an interest, 32% of Australians say they don't use drugs because of their illegality. If cannabis was legalised here, 10% who've never tried it would use it, and 3% who use it would use more, multiplying the established harms caused by cannabis
- Changing the legal status of drugs removes these deterrents. When cannabis was decriminalised in the ACT in 1992, 43% of Territorians thought it was now legal to use, explaining its skyrocketing use by 1993 where monthly use amongst lifetime users went from 0% to 31%

11. **The Article:** 'Making them a criminal offence also means there is a lot of stigma attached to using these drugs. We know stigma makes it harder for people to seek help when they need it'.

DFA response: - is there no stigma with tobacco smoking? The fact is that the stigma attached to tobacco has done a great deal to change cultural norms and reduce its use. Even Johann Hari, an apologist for legalisation, celebrates the stigmatising of tobacco! Why not for the illicit? Through motivational interviewing and similar interventions people can still be encouraged to go into treatment; surely this is better than the spiral of addiction and likely associated terrible ramifications.

12. **The Article:** 'There are no clear benefits from criminalisation of illicit drugs. In the justice system, a large amount of time and money is spent on addressing drug-related offences. Former Australian Federal Police Commissioner Mick Palmer has noted: "drug law enforcement has had little impact on the Australian drug market". There's no evidence criminalisation has reduced use of illicit drugs'.

DFA response: With respect, perhaps Mike is now out of touch with the reality of what is really happening on the ground in many states - i.e. drug courts, drug diversion etc? The illicit drug market is lucrative in Australian because for over 30 years, drug use has been 'normalised' and penalties are often soft. No one is in jail for cannabis use in Australia - it is the associated criminal acts and behaviour that is generally the cause of imprisonment.

13. **The Article:** 'Decriminalisation significantly reduces the involvement of the justice system and allows existing resources to be better used to support treatment for people who need it, or to focus justice system efforts elsewhere'.

DFA response: Systems that have adopted decriminalisation often do a back flip, largely because of (a) increasing use and therefore (b) burgeoning health care costs, along with lost productivity, road carnage and the like. Ie Portugal is the latest example:

Portugal surveys their drug use every 5 years

- use increased between 2001 and 2017 by 59%, an alarming increase
- overdose deaths increased 59%
- use by high school minors rose 60%
- overdose deaths increasing by 59% indicates opiate use has increased by roughly the same percentage – so problematic use demonstrably increased
- when drug use is no longer a crime there is no need for courts or appearances - but that doesn't stop the increased harm from increased drug use
- social costs of drug use obviously rose with increased use and deaths
- see Drug Free Australia's document on Portugal with all the [official data](#)

We would be appreciative of your further explanation on this matter.

Regards

Major Brian Watters AO

President

Drug Free Australia

Past INCB First Vice President and Inaugural Chair of the Australian National Council on Drugs