Drug laws and regulations: six broad approaches

There are many differing ways to configure drug laws and regulations. In this evidence brief, we provide a summary of the different models and arrangements for drug laws and regulations. Some of these arrangements apply only to the use of drugs and possession for personal use; others apply to both drug use and drug supply. Some of these arrangements occur in law (so called *'de jure'* arrangements), others do not involve changing the law, rather they introduce changes to regulations and police policies and practices (so called *'de facto'* arrangements). In most cases the type of drug matters, so the arrangements for cannabis may be different to the arrangements for heroin or cocaine.

In the boxes below we outline six broad approaches to drug laws and regulations. These broad approaches are often presented as distinct models, but in their diverse implementation there can be overlap between approaches, and many variants within each approach.

Prohibition

Prohibition models are where drug use, possession for personal use, and drug supply (including production, wholesale, and trafficking) are criminal activities. There are no alternative arrangements in place to treat any drug related offending in a non-criminal manner. Supply is regulated through its prohibition, and no other controls beyond enforcement exist to regulate quality, type, or access. The criminal penalties vary by country and by type of offence and can range from non-custodial sentencing to life imprisonment.

Reducing or removing criminal penalties for use or possession for personal use

These models are concerned with drug use itself or when someone possesses drugs for their own personal consumption. There are many approaches across the globe in this category including depenalisation (reduction in the penalty), diversion (the criminal offence remains but the person is diverted into alternative interventions, such as an education session, or referral for assessment), or decriminalisation (removal of the offence from criminal law). Producing, supplying or selling drugs or having drugs above a set amount defined for personal use remains a criminal offence.

There is enormous variety of arrangements under this type of drug law reform. Some models are *de jure*, that is the law is changed and the offence is removed entirely from the criminal code. This is sometimes referred to as 'full decriminalisation' (see INPUD, 2021). Other models, like police diversion, do not involve changes to the law but involve changes to police practices which may be subject to discretion. NSW currently has such a scheme, the Early Drug Diversion Initiative (EDDI), and every other Australian state/territory has had varying models of police diversion for both cannabis and other drugs. Police diversion models retain drug use and possession for personal use as criminal offences in law and people who do not meet the eligibility criteria are charged with a criminal offence. In Australian schemes, it is common for police to retain discretion to charge in all cases, regardless of eligibility (i.e. there is no requirement to divert someone found in possession of drugs for personal use). In other models still, the criminal penalties are replaced with civil or administrative penalties, such as a fine. Every jurisdiction is different. The details for non-criminal approaches to drug use in Australia are provided in O'Reilly and Ritter (2024). Importantly, possession of drugs for personal use above a set quantity, and supplying drugs remains a criminal offence.

Cooperative models and home cultivation

These approaches include co-ops and home cultivation that all exist through personal or private and not-for-profit arrangements. These can operate within the law, for example Cannabis Social Clubs (a type of cooperative model where cannabis is grown and distributed amongst members) in Uruguay, or exist outside the law (that is, drug use and drug supply remain criminal activities). Home cultivation is another approach largely applicable to cannabis, where growing a small number of plants for personal consumption is legal. This is the case in the ACT (and in a number of other jurisdictions, for example most recently in Germany). In cooperative models and home cultivation, the supply of drugs remains a criminal offence (in cooperative models the supply is restricted to the members of the cooperative).

Prescription type models

Here the personal use of drugs is legal with the drugs available through pharmacies with a prescription. All other supply is illegal. This medically oriented model can vary depending on the drug type. For example, the availability of cannabis through prescription is for the treatment of certain conditions or diseases and is often not technically accessible for recreational use.

Prescription type models as described here are different to drug treatment models (such as methadone or slow release oral morphine), though these two models are sometimes conflated. The specific prescription and access conditions may determine whether prescription type models are designed to provide stable, quality-controlled access to psychoactive drugs or to provide avenues for drug treatment.

Government monopoly or not-for-profit models

Under these models drug use is legal and drug supply is legal only through not-for-profit, government run stores. This means that government controls all aspects of the availability of drugs including such things as advertising, the number of outlets, the types of products available, and the price at which drugs are sold. This type of model has historically been applied to alcohol, for example in Scandinavian countries and Canada, and currently is applied to cannabis in a limited number of jurisdictions (for example Quebec). In these models, producers are licenced to sell to government or not-for-profit retailers only.

Commercial models

Commercial models (sometimes described as 'full legalisation') are where personal use is legal and supply is also legal, and drugs are available through largely for-profit retail stores. The extent of regulation by governments on commercial models is highly variable but may include regulations regarding advertising, point of sale, taxation, age restrictions, product labelling and product restrictions. This is the current model in operation for alcohol and tobacco in Australia and for cannabis in a number of American states.

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