

# Removing or reducing criminal penalties for drug use – what is the evidence?

## Introduction

Removing or reducing the criminal penalties for drug use has been a feature of Australian drug policy since 1999, when then Prime Minister, John Howard, introduced the national Illicit Drug Diversion Initiative (IDDI). While there had already been programs in some states, for example South Australia removed criminal penalties for cannabis use and replaced them with a fine (civil penalty) in 1987, following the introduction of IDDI each state and territory undertook some form of police diversion. Since that time, various schemes and programs have been implemented (**O'Reilly & Ritter, 2024**), including multiple police diversion programs for cannabis as well as for other drugs, and in some instances decriminalising drug use and possession for personal use. Currently in October 2024, each state and territory has a non-criminal response (such as a diversion program) available for both cannabis and other illicit drugs.

In this evidence brief we provide a summary of the evidence about these schemes globally, asking:

1. Do they reduce harms in those people receiving a non-criminal response?
2. Do they reduce drug use in those people receiving a non-criminal response?
3. Do they reduce re-offending?
4. Do they reduce burdens on the criminal justice system?
5. Do they have economic benefits for government and society i.e. does it save money?
6. Do they increase population prevalence of drug use?
7. Are they supported by the general public?
8. Are they sending the wrong message?
9. Are they consistent with international conventions and human rights obligations?
10. Are there unintended negative consequences?
11. Is this the thin edge of the wedge? (Will it lead to legalisation of drug use?)

Before proceeding through each of the above questions, we should point out that the findings vary depending on the model – there are many different variants of non-criminal responses (police diversion, depenalisation, civil schemes, referral to education/treatment, removal of all penalties for personal drug use/possession, ie 'full decriminalisation', see 'Drug laws and regulations: six broad approaches', on the DPMP evidence hub; and **Ritter et al., 2018**). Within these there is also diversity in types of police diversion programs including the eligibility criteria, arrangements regarding compliance, what drug types are included, and the extent of police discretion. This means that synthesising the evidence is difficult. In addition, research designs with a comparison/control group are difficult (many individual schemes have not been evaluated), and randomised control trials are not possible nor ethical. Outcomes also vary by the context of the program (i.e. the country or jurisdiction in which it is implemented).

There has been excellent Australian research which has contributed to a strong evidence-base internationally for arrangements where criminal penalties are reduced or removed.

### 1. Do non-criminal responses to drug use reduce harms for those people who receive them?

A review of many studies of police diversion showed positive health effects in all studies that measured this outcome (Blais et al., 2022). Likewise, there are four studies of police diversion that measured changes in quality of life, and all studies reported positive findings (Blais et al., 2022). In Portugal, drug-related deaths were reduced following implementation of decriminalisation and expansion of treatment and harm reduction services (Hughes & Stevens, 2010). There is good evidence from Australia that people who received a non-criminal response had increased employment prospects and increased trust of the police (Lenton, 1999).

### 2. Do non-criminal responses reduce drug use in those people who receiving them?

In Australia, research has shown decreases in cannabis use after police diversion (Shanahan et al., 2017). An international review of police diversion found favourable results regarding drug use reductions (Blais et al., 2022).

### 3. Do non-criminal responses reduce re-offending?

In Australia, research has shown that police diversion resulted in less reoffending among offenders who had either prior offending history or no criminal record (Shanahan et al., 2017) and in the 12-18 months following diversion (Payne et al., 2008). An international review found that police diversion can be considered effective at reducing recidivism (Blais et al., 2022).

### 4. Do non-criminal responses reduce burdens on the criminal justice system?

A number of studies have found reduced imprisonment, arrests, and costs to the criminal justice system following decriminalisation and police diversion initiatives (Hughes et al., 2018). In Portugal, following decriminalisation there was a reduction in prison overcrowding (Hughes & Stevens, 2010). In the Netherlands, USA, Australia, and Italy, there was a reduced burden and cost for the criminal justice system following decriminalisation and police diversion (MacCoun & Reuter, 2001). In the USA (Oregon and Washington), there was a reduction in the numbers of people arrested for drug possession following decriminalisation (Davis et al., 2023). In the UK (Lambeth), one study found a decrease in non-drug crimes following depenalisation of cannabis (Adda et al., 2014). There is no evidence that decriminalising the personal use of drugs increases crime in the community.

The reduced burden on the criminal justice system is only achieved if decriminalisation is actually implemented by the police. In Mexico, there was no reduction in the number of drug possession arrests due to failed implementation (Arredondo et al., 2018).

### 5. Do non-criminal responses have economic benefits for government and society i.e. do they save money?

Non-criminal responses have shown reductions in the social and criminal justice costs of drugs in a number of countries. In Portugal for example, there was a 12% reduction in the social costs of drugs in the 5-years following decriminalisation, and an 18% reduction in the 11-years post decriminalisation (Gonçalves et al., 2015). In an international review, police diversion was associated with lower criminal processing costs and social costs (e.g. costs to health system and lost productivity) (Blais et al., 2022).

### 6. Do non-criminal responses increase population prevalence of drug use?

There is good Australian evidence that non-criminal responses to cannabis have not increased cannabis use (Fetherston & Lenton, 2007; Donnelly et al., 1995).

The international research evidence shows that the removal of criminal penalties for the personal use of drugs does not increase population prevalence of drug use (Grucza et al., 2018; Červený et al., 2017; Hughes & Stevens, 2010). This has been shown in a number of studies including research from Portugal, which removed criminal penalties for the personal use of drugs in 2001. Studies must take into account the trends in general population drug use, comparing drug use trends in places that have decriminalised with places that haven't. Where there are increases in all places, the increase cannot be attributed to decriminalisation.

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## 7. Is it supported by the general public?

Yes. In Australia, in the 2022/2023 national household survey (a representative sample of everyday Australians), 93% supported non-criminal responses for cannabis; 74% supported non-criminal responses for heroin, and 72% supported non-criminal responses for methamphetamine (AIHW, 2024).

## 8. Is it sending the wrong message, such as that drugs are not harmful?

It is difficult to establish whether a change in the legal response to drugs changes perceptions of drugs, with most studies reporting mixed or no effects (Scheim et al., 2020). In Australia, research from WA suggests that perceptions of harmfulness of cannabis increased after police diversion was introduced (noting this increase was not, however, causal) (Fetherston & Lenton, 2007). In the USA however, 17-18 year olds in California (where cannabis was decriminalised) were 20% less likely to perceive regular cannabis use as a great health risk (compared to other states), and 20% less likely to disapprove of regular cannabis use (Miech et al., 2015).

Underpinning the concern that non-criminal responses will 'send the wrong message' is the concern that drug use will increase. As elaborated in question 6 above, the international research evidence shows that the removal of criminal penalties for the personal use of drugs does not increase population prevalence of drug use (Grucza et al., 2018; Červený et al., 2017; Hughes & Stevens, 2010).

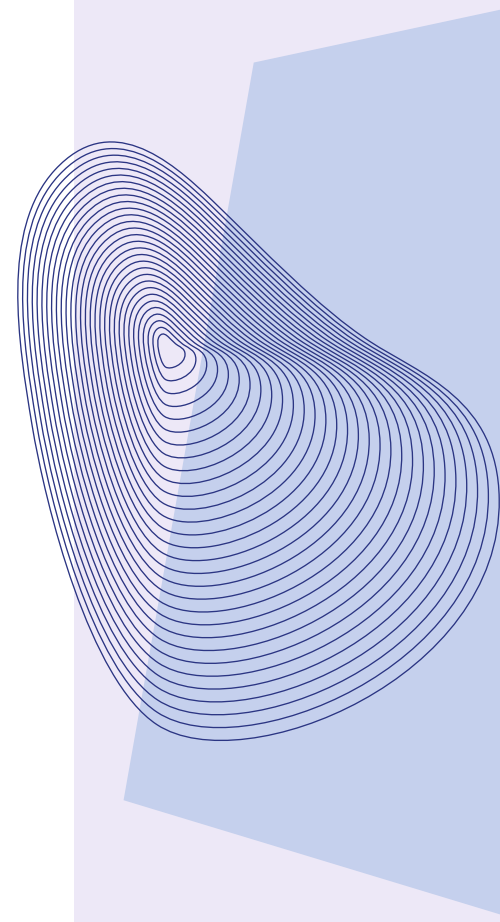
## 9. Is it consistent with international conventions? And human rights obligations?

Yes, the international drug control conventions do permit alternatives to conviction or punishment that include reducing or removing criminal penalties for drug use (See 'Is the removal of criminal penalties for drug use consistent with the International Drug Control Conventions?', on the DPMP evidence hub). A joint resolution by the World Health Organization and United Nations calls for "reviewing and repealing punitive laws that have been proven to have negative health impacts. These include ... drug use or possession of drugs for personal use ..." (United Nations, 2016).

The reduction or removal of criminal penalties for drug use is also consistent with human rights obligations (United Nations, 1948; 2009; WHO, 2023). The provision of health and harm reduction initiatives are also explicitly called for by UN agencies; for example, as part of the obligations surrounding the right to the highest attainable standard of health, the UN Development Programme notes that States should: "Repeal, amend, or discontinue laws, policies, and practices that inhibit access to controlled substances for medical purposes and to health goods, services, and facilities for the prevention of harmful drug use, harm reduction among those who use drugs, and drug dependence treatment" and that States may "Utilise the available flexibilities in the UN drug control conventions to decriminalise the possession, purchase, or cultivation of controlled substances for personal consumption" (UNDP et al., 2020).

## 10. Are there unintended negative consequences?

The two identified potential unintended negative consequences are 'net widening' and 'net deepening'. Net widening refers to more people being caught up in the criminal justice system as a result of the introduction of non-criminal responses. This can happen for example when police previously ignored drug use but under a new scheme increase the number of people subject to a diversion. Net deepening is when the consequences for any one individual are worse than what they would have received under the original criminal offence. For example, if someone fails to comply with the conditions of the non-criminal response they may have their drivers licence suspended. If this occurs without their knowledge and they are subsequently found to be driving unlicensed, the penalties for unlicensed driving are higher than the penalties would have been for the original drug use offence.

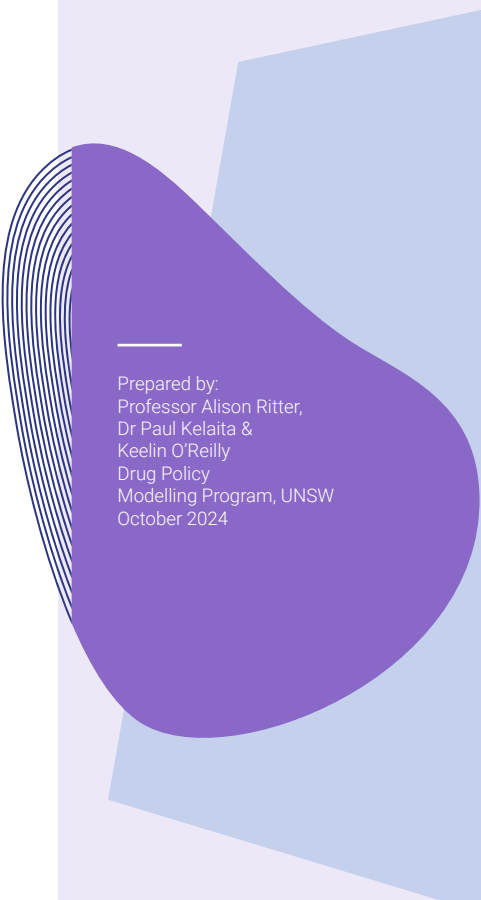


There is evidence of net widening occurring in Australia after a fine scheme was implemented for cannabis in South Australia (Christie & Ali, 2000; Sutton et al., 2005). Similarly, in the UK, following a depenalisation policy for cannabis, there was an increase in cannabis offences processed by police (Adda et al., 2014) but a decrease in other non-drug crimes (see question 4 above). Evidence suggests that the specific design and implementation of the police diversion or decriminalisation scheme is important to minimising net widening. For instance, in the UK, net widening under depenalisation schemes was reversed with the removal of targets for detections as a measure of police performance (Hughes et al., 2018).

### 11. Is this the thin edge of the wedge? (Will it lead to legalisation of drug use?)

Jurisdictions in over 30 countries have reduced or removed criminal penalties for drug use (IDPC et al., 2023). This includes countries like Portugal. Portugal has not become more liberal in relation to drugs; drug supply remains illegal. There is no evidence that removing criminal penalties leads to legalisation or other more progressive policies. Australia is evidence of this.

Sometimes people think that removing criminal penalties for drug use is just legalisation by another name. This is not the case. Legalising drugs means that the supply of drugs is made legal, like coffee or tobacco. Decriminalisation only removes the criminal penalties for the use of drugs, the self-administration of drugs, and the possession of small quantities for personal use only. The supply and manufacture of illicit drugs remains a criminal offence.



Prepared by:  
Professor Alison Ritter,  
Dr Paul Kelaite &  
Keelin O'Reilly  
Drug Policy  
Modelling Program, UNSW  
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