

## **The case for decriminalising drugs**

*James Eyers*

Those who argue for decriminalising illicit drugs make an economic argument as well as a social one. The most senior prosecutor in NSW, Nick Cowdery, QC, says if he had his way, illicit drugs would be decriminalised. Working at the apex of the state's burgeoning criminal jurisdiction, Cowdery has witnessed daily parades of drug offenders before the courts.

He says "our present approach to illicit drugs, after decades of trying, is ineffective, wasteful and inconsiderate of the human rights of those concerned".

Other senior legal figures are also calling for a more enlightened approach to illicit drugs.

In May, former ACT Supreme Court judge Ken Crispin asked governments to "seriously consider wresting the entire [illicit drug] market from the criminal and terrorist elements by licensing and regulating the sale of drugs, as our societies do with cigarettes and alcohol".

The status quo is a "spectacular failure", Crispin argues in *The Quest for Justice*, which examines how drug prohibition has corrupted global law enforcement bodies, propelled international organised crime and terrorism while delivering jaw-dropping profit margins to local dealers, eroded civil liberties and led to health catastrophes, a corollary of unregulated markets.

The Chief Justice of Queensland, Paul de Jersey, joined the chorus last month. He told prosecutors and criminal defenders that on a visit to Zurich, Switzerland, a decade ago, he witnessed addicts injecting themselves with heroin in a government-sponsored injecting room, using heroin supplied by the Swiss government.

"As a judge committed to traditional notions of criminal justice, it was, as you may appreciate, quite a disturbing experience," de Jersey said. But he found the policy "an enlightened and unprejudiced response to a remarkably difficult social problem for that country".

These views demand attention because it is the criminal justice system that carries the major burden of drug policy. Not surprisingly, most taxpayer dollars deployed for drug policies goes to law enforcement, not health or treatment. Australian governments spent \$3.2 billion on illicit drug policies in 2002-03, according to a 2005 report by economist Tim Moore. Of this, \$1.3 billion went to "preventive" policies, including law enforcement, interdiction and treatment, and \$1.9 billion was spent on the consequences of drugs, including health and crime.

Of the preventive amount, 56 per cent was spent on enforcement-related activity and just 17 per cent was spent on treatment and 3 per cent on harm reduction.

This focus on criminal law has led to swelling numbers in prisons, which are ineffective at treating addiction. The law enforcement model also disproportionately targets users, who comprise 82 per cent of all drug-related arrests, the Australian Institute of Criminology says.

Despite the spending, illicit drug use remains popular: two in five Australians older than 14 had used an illicit drug at some time in their lives, and 13.4 per cent had used them in the previous 12 months, according to the National Drug Strategy in 2007.

Globally, waging wars against producers and boosting customs and detection spending has proved ineffective. Production of cocaine and opium has not been curtailed, and street prices have fallen dramatically

since the late 1980s.

"We are investing in strategies that give a very poor return," says Alex Wodak, director of the Alcohol and Drug Service at St Vincent's Hospital in Sydney. Wodak will address the National Press Club in Canberra on Tuesday with Ethan Nadelmann, the executive director of the Drug Policy Alliance in the US and critic of the US war on drugs.

"This is one of the last areas of public policy that has been quarantined from economics," Wodak says. "But it is an area where governments are going to have to have the courage to talk the truth to the people. In many respects, the people are way ahead of governments in thinking about this."

When drug policy has been viewed through the prism of harm minimisation, which was adopted as the national approach to drug policy in April 1985 by prime minister Bob Hawke and the state premiers, governments have received substantial returns on their investment. A national syringe program was established in 1988 to reduce HIV infections and other health problems from the use of dirty needles; a study last year found for every dollar spent, there had been a \$4 saving in healthcare costs, and a total saving of \$27.

Methadone programs for heroin addicts have also proved cost effective: the leading study found a \$4 to \$7 saving for every \$1 spent. The medically supervised injecting centre at Kings Cross is supported by 78 per cent of local residents.

Yet politicians find it hard to sell the economic benefits of drug reform due to the "fear factor", Wodak says. "If you talk about changing the way you respond to drugs, it is so easy for your political opponents to capitalise on and exploit that."

This has resulted in other harm minimisation policies not being pursued in Australia, even though much of the rest of the world is embracing reform.

Heroin trials, which would provide heroin to the most dependent users under a similar model to the Swiss, are under way in Spain, the Netherlands, Germany, Canada and the United Kingdom, where a government report found 5 per cent of heroin users account for 30 per cent of heroin-related crime – a product of the need to feed their habit.

Wodak says each program is producing economic benefits exceeding the amount spent. Such trials were debated in Australia in the 1990s, but were killed in August 1997 by prime minister John Howard, who feared they would "send the wrong message".

Both de Jersey and Crispin have pointed to Portugal as a model worthy of debate. In July 2001, Portugal abolished criminal penalties for the possession of all drugs for personal use – including amphetamines, cocaine, ecstasy and heroin. Rather than going to court, users appear before a panel comprising a psychologist, social worker and lawyer, who consider appropriate treatments.

A report published last year by the Cato Institute says that from 2001 to 2006, by "virtually every metric, the Portuguese decriminalisation framework has been a resounding success". It had not increased drug usage rates, the report says – indeed, it points to drug use falling in many categories. Drug usage is among the lowest in Europe and the prevalence of drugs there is below the EU average. HIV infection rates have also fallen, and the number of people seeking treatment for addiction has more than doubled.

The "Portuguese model ought to be carefully considered by policy makers around the world", the Cato report concludes.

Crispin says the Portuguese experience "provides grounds for confidence that decriminalisation will lead to many more people undertaking rehabilitation, and to fewer infections and drug-related deaths". Australia's present policy "has been such an abject failure that we really have little to lose by trying alternative approaches that have proven successful elsewhere", he says.

Other lawyers are joining the debate. The Australian Lawyers Alliance last month resolved to raise public awareness of the failures of the criminal law in dealing with drugs, describing the government position on the issue as "flawed and untenable".

"Australia, like the US, has been blithely ignoring developments in countries such as Portugal," alliance director Greg Barns says.

Elements of the media have approached the issue in "such an immature fashion that it amounts to a shameful abdication of their responsibility to inform and shape debate", he says, and "politicians in Australia are timid

or blind".

"In the meantime we are content to watch our citizens suffer mental and physical illness, have their lives destroyed and those of their friends and families around them catastrophised, because in this area of public policy we tolerate a second best approach. As lawyers we have a responsibility to inform and educate and to lead on the issue of drugs policy because we, along with the medical and allied health professionals, see the results of policy failure every day," he adds.