



What Do We Mean By 'Decriminalisation' or 'Legalisation' of Drugs? A Call For Consistency

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Checking your understanding



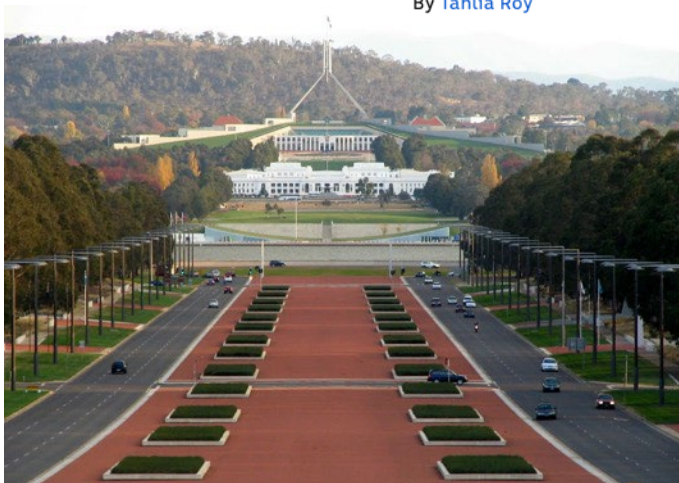
Is this decriminalisation?

- Jurisdiction X changes its laws so that a person found in possession of a small quantity of a drug of dependence will be served a formal notice by police.
- This notice requires the person to either pay a civil fine of \$160 or participate in a drug diversion program.
- Failure to comply with the notice results in a person being charged with a simple criminal offence.

Is this decriminalisation?

**The ACT has today decriminalised
small amounts of some illicit drugs.
But what does that mean?**

By [Tahlia Roy](#)



**Quantities and types of illicit drugs
included in the changes**

Drug	Small quantity
Amphetamine	1.5g
Cocaine	1.5g
Methylamphetamine ('ice' or 'meth')	1.5g
3,4 Methylenedioxymethylamphetamine (MDMA or 'ecstasy')	1.5g (or 5 DDU)**
Cannabis (dried)*	50g
Cannabis (harvested cannabis)*	150g
Heroin	1g
Lysergic acid	0.001g (or 5 DDU)**
Lysergide (LSD, LSD-25)	0.001g (or 5 DDU)**
Psilocybine ('magic mushrooms')	1.5g

*Note only those aged under 18 can be given a Simple Drug Offence

Is this legalisation?

- Jurisdiction Y changes prosecutorial policy so that no adult will be prosecuted for the possession of small quantities of cannabis for a first offence.
- Police and prosecutors also agree to tolerate the sale of cannabis in certain locations, provided the practice doesn't cause a nuisance and sellers do not sell to minors.
- Nevertheless, both possession and sale of cannabis remains a criminal offence.

Is this legalisation?



Is this decriminalisation?

- Jurisdiction Z changes its laws so that the possession of less than a 10-day supply of a drug of dependence is an administrative offence (risking a fine, but no criminal record).
- Police issue citations requiring an alleged offender to speak to an expert panel about their drug use. Failure to attend will result in an automatic fine.
- After the conversation, the expert panel may issue a fine, refer the person to AOD or social services or provide no sanction or response.

Is this decriminalisation?



Drug decriminalisation



The status quo

- Australia is a signatory to the Single Convention on Narcotic Drugs (1961), the Convention of Psychotropic Substances (1971) and the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).
- These conventions schedule substances on the basis of their perceived risk of dependence, and encourage signatories to **control** certain drugs and **introduce sanctions** to control production and supply. There is no strict obligation to **criminalise** possession and use.

The status quo

- Both Federal and State/Territory criminal laws exist punishing the import/export, manufacture, cultivation, supply and possession of certain illicit drugs throughout Australia. 'Deemed supply' provisions apply if in possession of certain quantities.
- Therapeutic scheduling allows some drugs to be provided for medicinal purposes (cannabis, amphetamines) and research purposes (MDMA, psilocybin), whilst others are outright prohibited (heroin).

Definitions of decriminalisation

The removal of criminal penalties for drug-related activities: Including drug use, possession of drugs, possession of drug use equipment, and/or the cultivation of drugs for personal consumption

- The International Drug Policy Consortium

Decriminalisation takes away the status of criminal law from those acts to which it is applied. This means that certain acts no longer constitute criminal offences. With regard to drugs, it is usually used to refer to demand; acts of acquisition, possession and consumption. Following decriminalisation, it still is illegal to use, possess, acquire or in certain cases import drugs, but those acts are no longer criminal offences. However, administrative sanctions can still be applied; these can be a fine, suspension of the driving or firearms licence, or just a warning

- European Monitoring Centre for Drugs and Drug Addiction

Types of of decriminalisation

- **De facto (or ‘in practice’) decriminalisation:** where personal use and possession of illicit drugs is still a criminal offence, however police, prosecutors and/or courts use their discretion to not enforce the criminal law in most circumstances.
- **De jure (or ‘by law’) decriminalisation:** where criminal laws are reformed so that the personal use and possession of illicit drugs is no longer a criminal offence if certain conditions are met.

Defacto decriminalisation models

- **Depenalisation:** reduction in the severity of penalties associated with the possession and use of illicit drugs. Eg. Amsterdam's tolerance policy.
- **Police drug diversion:** formal programs where police can provide cautions or warnings if a person participates in some diversion activities. Diversion generally schemes rely on police discretion and strict eligibility criteria. Eg. cannabis cautioning schemes in all States and Territories.



Dejure decriminalisation models

- Around 22* jurisdictions globally have implemented dejure decriminalisation of drugs of dependence.
- Decriminalisation can occur 'by law' either as a result of court decisions which limit the scope of the criminal law (eg. Columbia, Germany etc) or through formal legislative change.
- Jurisdictions differ by criteria for personal use (threshold quantities vs standard usage vs broad discretion), the ultimate decision-maker for eligibility (police vs courts vs prosecutors), possible sanctions (no sanction vs civil/administrative penalties vs mandatory treatment) and pathways to health and social services (voluntary referrals vs mandated treatment vs drug dissuasion bodies).

Types of de jure models

Five models adapted from Hughes et al (2019) '*Models for decriminalisation, depenalisation and diversion of illicit drug possession: An international realist review*':

1. **A no sanction model:** where there are no consequences (other than a warning and confiscation of drugs) for being found in the possession of, or using, illicit drugs
2. **A civil or administrative sanction only model:** where a civil or administrative sanction is imposed for the possession, or use of illicit drugs. Civil or administrative sanctions could include civil fines, banning orders, administrative detention, confiscation of passport or driver's license or other non-criminal sanctions.

Types of dejure models

- 3. A civil or administrative sanction model with pathway to health, education or social services:** civil fine or other sanction can be avoided by engaging with health or social services such as AOD intake and assessment services, education courses, harm reduction services, brief intervention services or treatment programs
- 4. A mandated treatment model:** where assessment and/or treatment is mandated as a consequence of being found in possession of (or using) illicit drugs.
- 5. A dissuasion body model:** where individuals found in possession (or using) illicit drugs are given a notice to appear before a drug dissuasion body. This body assesses the needs of the offender resulting in either no sanction, civil or administration sanctions or referrals to health or social services.

No sanctions model

- A no sanction model simply means that there are no civil or administrative penalties that apply to personal possession or use of illicit drugs.
- A no sanction model exists for all illicit drugs in British Columbia (Canada) as well as Chile, Columbia and Germany – although there are notable differences between these schemes.
- A no sanction model exists for cannabis in jurisdictions where it is legalised.



No sanctions model - example

- British Columbia has been granted an exemption from the *Controlled Drugs and Substances Act* (SC 1996, c. 19) for the period 31 January 2023 to the 21 January 2026.
- During this period the exception applies adults can possess under 2.5 grams of opioids, cocaine, methamphetamine and MDMA without criminal penalty (cannabis is legalised in the province).
- The exemption does not apply to use or possession near schools, child care facilities, airports or Canadian Coast Guard vessels and helicopters.



Civil/administrative sanction only model

- A civil or administrative sanctions only model, means that a person found using or possessing illicit drugs is given a non-criminal sanction, without any formal mechanism for referral to health or social services.
- This model is in place for cannabis in South Australia and the Northern Territory (in the form of cannabis expiation schemes), various jurisdictions in the United States where cannabis is decriminalised, but not legalised, and Luxembourg.
- This model currently exists for all drugs of dependence in the Czech Republic.



CAS model - example

- In South Australia a person found committing a simple cannabis offence is issued with a *cannabis expiation notice* outlining a civil penalty to be paid (\$250 for low quantity possession).
- Civil penalty must be paid within 28 days of the date of issue. Paying the fee means that a person is no longer liable to a criminal offence.
- Failure to pay the fee means that a person is still liable for a cannabis offence (although it's not mandatory for them to be charged).



CAS w/ referral model

- A modified version of the civil and administrative sanctions model, involves retaining a non-criminal sanction as the default response to use or possession of illicit drug, but allowing voluntary participation in health, education or social services in lieu of a sanction.
- This model exists (with varying levels of sophistication) in Estonia, Italy, Oregon in the United States* and, most recently, the Australian Capital Territory.



CAS w/ referral model - example

- Oregon in the United States decriminalised the possession of all controlled substances in 2021.
- Under this scheme, a person found in possession of a small quantity of illicit drugs is issued a notice which provides they can either pay a civil fine or (in lieu of a fine) participate in a telephonic health screening.
- The telephonic health screening is designed to provide voluntary services to a variety of health and social services, with the civil fine being waived upon contacting the service.



Mandatory treatment model

- As the same suggests, this model involves the replacement of criminal or civil sanctions with mandatory or involuntary treatment.
- This model exists in Costa Rica and Mexico.



Mandatory treatment model - example

- In Mexico, a voluntary referral to treatment has been in place since 2009 for the possession of drugs for personal use.
- However, this referral to treatment becomes mandatory if a person is found in possession of illicit drugs for a third time.
- In 2018, the Mexican Supreme Court found that that the prohibition of possession and cultivation of cannabis for personal use was unconstitutional, providing more leniency for cannabis in the country.



Dissuasion body model

- This model involves a person found in possession of illicit drugs are referred to a drug dissuasion body (consisting of a lawyer, a health professional and a social worker) for assessment and referral.
- Civil fines are issued for failing to attend an appointment or if the body deems it appropriate.
- This model exists in Portugal.



Dissuasion body model - example

- In 2001, Portugal's Law 30/2000 made the use or possession of any illicit drug for personal use an administrative rather than a criminal offence and established the Commission for the Dissuasion of Drug Addiction. Also greatly expanded treatment and harm reduction services.
- Personal use is determined as up to a ten-day supply of a drug for personal use.
- In the vast majority of instances, a person who appears before a CDT receives no sanction.



Risk of criminal sanction?

- Depends if an offence exists for non-compliance with referrals or payment of fines.
- Some jurisdictions have no criminal sanction attached at all (Portugal) whilst others do (cannabis fines in the US, the ACT model etc).
- In Australia, the unauthorised and/or non-therapeutic possession of certain drugs may or may not constitute a criminal offence. Varies by categorisation of drugs under the Poison Standard.

Possessing drugs of dependence

(1) A person commits an [offence](#) if—

- (a) the person possesses a drug of dependence; and
- (b) the quantity of the drug is not more than a small quantity for the drug.

Maximum penalty: 1 penalty unit.

(4) If the alleged offender pays the penalty in accordance with subsection (3) (d) (i), or satisfies the [attendance requirements](#) in accordance with subsection (3) (d) (ii)—

- (a) any liability of the person in relation to the alleged [simple drug offence](#) is discharged; and
- (b) no further proceeding may be taken in relation to the alleged [simple drug offence](#); and
- (c) the person must not be regarded as having been convicted of the alleged [simple drug offence](#).

That's not decriminalisation!

DEFACTO MODELS

Depenalisation

Drug Diversion

DE JURE MODELS

No Sanction Model

CAS Only Model

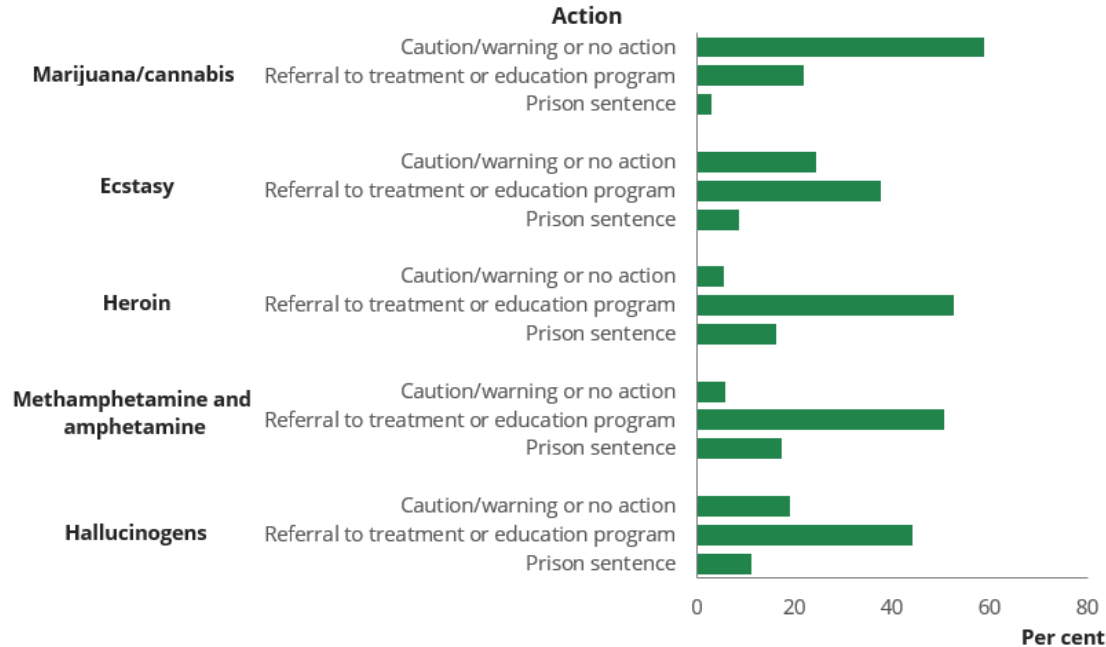
CAS + Referral Model

MT Model

Dissuasion Body
Model



What do the public want?



Source: NDSHS 2022–2023, Table 11.32.

Follow the evidence! *Which evidence?*

Scheim et al (2020) provided a systematic review of impact evaluation for drug decriminalisation and legalisation, finding:

- The vast majority (>91%) of impact evaluations were in relation to the decriminalisation and/or legalisation of cannabis (either a no sanction or CAS sanction model), with a heavy focus on the US.
- In regard to all drugs, the majority of studies looked at the Portugal dissuasion body model (although many were not peer reviewed publications).

Legalisation



Legalisation

- Legalisation refers to the ***regulated supply*** of currently prohibited drugs in some manner. It involves the removal or modification of laws regarding drug cultivation, manufacture and supply as well as possession and use.
- Overwhelmingly current discussions of drug legalisation are focused on the legalisation of recreational cannabis, although there are proposals for the legalisation of other drugs.



Cannabis legalisation

- Cannabis is currently fully or partially legalisation in 10* countries, with some jurisdictions (such as the United States) varying greatly between States on the legal status of cannabis.
- Models for legalisation differ from home-grow models (ACT, Uruguay, Luxembourg, Malta) to pharmacy supply (Uruguay) to retail models (US, Canada) and the ambiguous/unregulated (Mexico).



Homegrow models

- Home grow models retain criminal laws against drug importation/exportation and supply, but allow for the cultivation of cannabis in some circumstances.
- In Uruguay and Malta, cannabis social clubs can be established to allow for the mass cultivation and distribution amongst members.
- In the ACT and Luxembourg, a certain number of plants can be grown as home for personal use by adults.

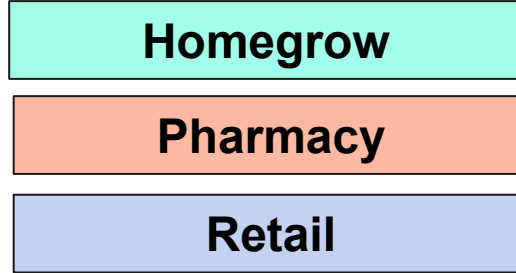
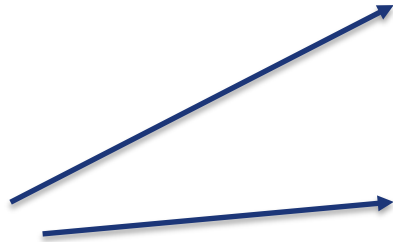
Pharmacy supply models

- A pharmacy or 'dispensary' model allows legal sale of cannabis products, grown via government cultivators, via a pharmacy environment.
- This model exists in Uruguay where pharmacies become licensed cannabis distributors.

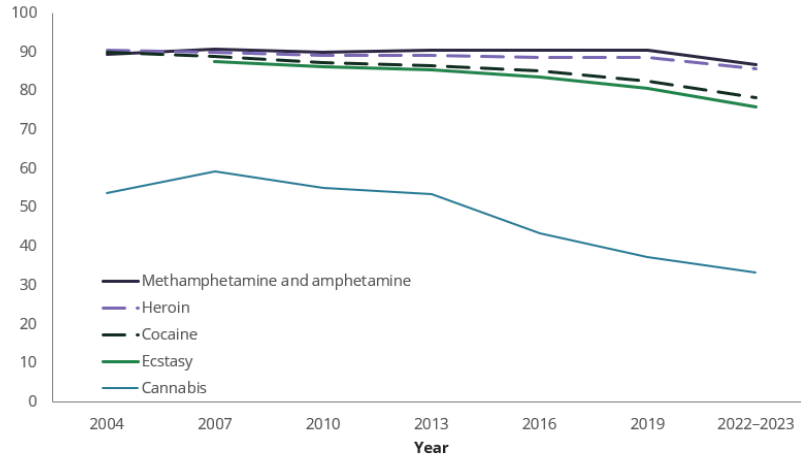
Retail models

- Retail models treat cannabis in a similar manner to tobacco or alcohol, allowing certain licensed business to sell cannabis related products with regulations on age of purchase, quality, packaging and advertising.
- Retail models in the US and Canada have led to innovations in cannabis supply including the sale of THC-infused edible lollies and sodas as well as THC concentrates or 'dabs'.

That's not legalisation!



What do the public want?



(a) 'Oppose' or 'Strongly oppose'.

Note: Ecstasy was only included in the survey from 2007.

Source: NDSHS 2022-2023, Table 11.26.

Cannabis was the clear exception, with more people supporting legalisation of cannabis for personal use (45%) than opposing it (33%). This was also the first time that more people supported legalising cannabis for personal use than supported increased penalties for the sale or supply of cannabis (39% in 2022-2023), reflecting a continuing trend in [public views towards cannabis becoming more positive](#).

Follow the evidence! *Which evidence?*

Farrelly et al (2023) provided a systematic review of impact evaluations for cannabis legalisation, finding:

- A clear majority of research is focused in the US on retail models (66.%) documenting 'mixed findings' in terms of increased young adult use, cannabis-related healthcare visits, and impaired driving.
- Understanding of cannabis legalisation in other jurisdictions is much more limited (only 1.5% of published papers focused on Uruguay).

Further models for other drugs

- Prescription supply (currently the case for heroin assisted therapy in Switzerland, Germany, the Netherlands, Canada and Denmark).
- Unregulated market (currently the case for psilocybin containing mushrooms in many jurisdictions).



A call for consistency and clarity



A 'model' approach

- Rather than causing further confusion, it is best to speak of specific models of decriminalisation and/or legalisation when discussing drug liberalisation efforts.
- This shift in language assists in clarifying the current state of the evidence, delineates similarities and important differences between reformers and provides clarity for the public.

Questions

