

Introduction – the War on Drugs

Thank you Marty.

Before I begin I too would like to acknowledge the traditional custodians of the beautiful lands on which we meet, the Larrakia people, and I pay my deep respect to their elders past and present and to emerging community leaders.

I would also like to pay my respect to the memory of Tony Fitzgerald and to his family members here tonight.

I moved to the Territory after Tony's time, so I wasn't fortunate enough to know him. I have, however, heard his reputation and it is a great honour to be asked to present this lecture.

Ladies, gentlemen, former colleagues, comrades, friends, everyone, good evening and thank you for having me here tonight to talk about something which, I believe, its time has come.

I am here tonight to talk about:

- the decriminalisation of drugs;
- what I observed during my recent trip to Portugal;
- what is happening here in the Territory; and
- whether we can perhaps do it better.

I find it difficult to talk about decriminalisation without an acknowledgment of the effect the "War on Drugs" has had on our collective understanding of drug use as an issue.

And, possibly even more importantly, its effect on the collective psyches' of politicians around the world.

And, with regard to the "War on Drugs", I might say it has been an unparalleled success...

I don't suppose you would have expected that statement but, hear me out.

Success, of course, depends entirely on your perception of what the "War on Drugs" actually has been.

As a war against the production, distribution, supply, or use of dangerous drugs, it has been a complete failure.

But I, for one, believe it began life as a political strategy and, in that sense, it has succeeded beyond any expectation.

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It was a political strategy that took on a life of its own and today we struggle with the consequences.

There is a very good documentary available on Netflix which provides an interesting perspective regarding the “War on Drugs”.

It is called, 13th and it is named after the amendment to the US Constitution which, following the American Civil War, was responsible for the abolition of slavery, or so it is said.

I can thoroughly recommend having a look for those who haven’t already.

But, for my purposes, the story really kicks into gear in the late 1960s.

By the time the 1960s came around there was a sustained period of civil unrest around the world, but in the US in particular.

The population of young people was growing quickly as a result of the baby-boom that followed WWII.

Again in the US, the civil rights movement was growing and challenging societal norms.

The anti-Vietnam War movement was gaining momentum.

But so too were crime statistics.

Today, Law and Order, is a well-known political chestnut.

But, it wasn’t always the case and it was Richard Nixon’s pronouncement in the late 1960s, in response to these growing crime statistics and the general sense of unease in the community, that:

...if there is an area where the word war is appropriate it is in the fight against crime.

[I wish I could do a good impersonation, but I am afraid I would botch it!!]

This particular utterance is credited by some as the genesis of the modern politicisation of Law and Order as an issue.

More to the point of tonight’s talk, Nixon’s original statement was effectively doubled-down on in 1971, where he said:

...we must wage what I have described as total war against Public Enemy No.1 in the United States, the problem of dangerous drugs...

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It was this second statement that signalled the commencement of hostilities in the “war on drugs” and, thereafter, the mass incarceration of Latinos and African-Americans.

Just a relevant aside, John Ehrlichman, Nixon’s domestic affairs adviser at the time, has been quoted in a Harper’s Magazine interview as saying:

...the Nixon campaign in 1968, and the Nixon Whitehouse after that, had two enemies: the antiwar left and black people.

You understand what I am saying? We knew we couldn’t make it illegal to be either against the war or black but, by getting the public to associate the hippies with marijuana and the blacks with heroin, and then criminalising both heavily we could disrupt those communities, we could arrest their leaders, raid their homes, break-up their meetings and vilify them night after night on the evening news.

Did we know we were lying about drugs? Of course we did.

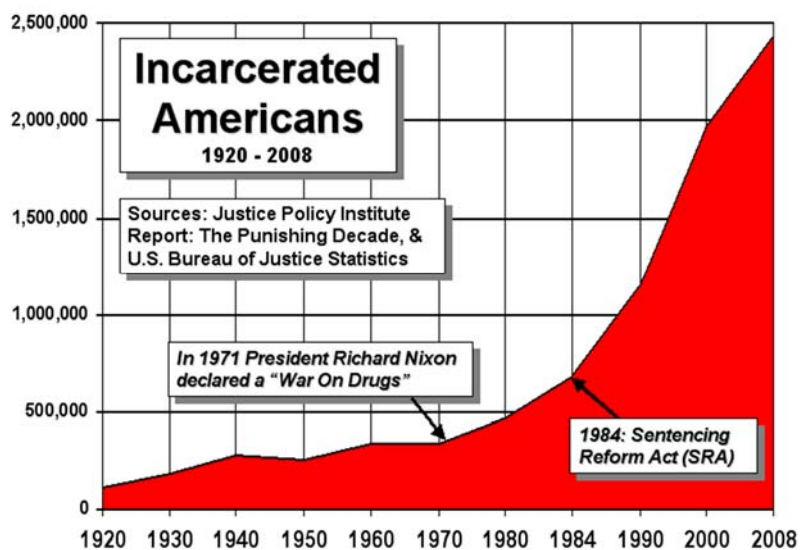
Now there are some who dispute this quote and Ehrlichman, having died in 1999, can no longer confirm or deny, but it has a ring of truth that is hard to deny.

The statistics that followed Nixon’s election in 1968 are now there for all to see.

- In 1968 around 200,000 people were incarcerated in US prisons; that is, federal, state and county jails.
- By 1974, when Nixon resigned in disgrace, that number had doubled to around 400,000.

However, while Nixon is credited with kicking off the War on Drugs, it was Ronald Regan who fed it, watered it and let it off the leash.

As the graph shows the numbers of incarcerated people grew precipitously following the election of Reagan in 1980 and, in particular, with the implementation of the *Sentencing Reform Act* of 1984.



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Unfortunately, the return of the Democrats following Clinton's victory in 1992 changed nothing.

Clinton and the Democrats had experienced 3 election losses in a row, including Michael Dukakis's loss to George Bush Snr in 1988 after he had enjoyed a double-digit lead in the polls through most of the campaign.

The turning point was the infamous "Willie Horton revolving door/soft on crime" advertising campaign run by the Republicans.

Dukakis was a passionate anti-death penalty campaigner and as Governor of Massachusetts implemented a weekend release programs for prisoners.

Horton had been convicted of murder, but importantly, also the beneficiary of the weekend release program.

On one of these weekend releases, Horton did not return and ultimately committed an assault, an armed robbery and a rape before he was recaptured.

During the 88 presidential campaign this unfortunate series of events were turned into an attack-ad used against Dukakis with devastating effect; Bush overcame the poll deficit and went on to win the election.

The effect of Bush's win and the influence of the Horton ad were far more broad-reaching than just the 88 US election.

The lesson the Democrats and, more importantly, Bill Clinton took from the campaign was they could no longer afford to be seen as "soft on crime" and that they had to match, or better, the Republicans on the issue.

So it was that during Clinton's time as US President the *Violent Crime Control and Law Enforcement Act* (more commonly known as the Crime Bill), was introduced ushering in the era of "3 strikes" mandatory life sentences for violent offenders, an expansion of death-penalty offences and truth in sentencing regimes.

Most importantly, as Marc Mauer executive director of the Sentencing Project has said:

...the bill reinforced the popular thinking that the solution to crime was harsher punishments.

And so it was that through the Clinton presidential years the number of incarcerated Americans continued to climb at break-neck speed.

For a possibly more sinister explanation of these increasing numbers I refer you back to the doco, 13th.

So, 50 years and where are we?

So, skip forward to now, and what do we have, after nearly 50 years of war on drugs?

At least 7 countries regularly execute drug offenders and numerous countries, particularly in Asia and Central and South America, impose severe penalties even for mere possession.

It is arguable this might not be so bad, if there was something to show for it.

Unfortunately, there isn't.

It is difficult to point to a single success of this "War".

- It has resulted in the mass incarceration of swathes of poor, underprivileged peoples;
- Criminal cartels make billions of dollars profit without contributing to the communities they are ruining; [except, I suppose through GST and other sales taxes!!]
- A democratically elected leader in the Philippines openly encourages the extra-judicial murder of thousands of citizens;
- There is no sign of any abatement in the production and distribution of drugs;
- There is no sign of any effect on usage rates.

50 years of prohibition has simply resulted in misery for millions, a drain of funds away from more important areas and the enrichment of the worst element of our society.

And, most importantly, it has effectively blocked access to treatment for those afflicted by problematic drug-use.

Drugs today are as much a problem for the community as they have ever been.

They are a problem for the families, for the police services, for governments and the healthcare providers.

How did we get here?

We were driven here by the War on Drugs and the tough on crime attitude that lumps drug use in with other forms of criminal activity.

We didn't get here by adopting a more humanistic approach to the issue of drug use and drug abuse.

Portugal

In 2001 Portugal did exactly that, they took a humanistic approach to the problem.

Like many other western countries through the 1990s, Portugal suffered from a huge influx of heroin; people were literally dying in the streets.

Some of these victims were the children of politicians and other elites of Portuguese society. Perhaps that is the difference, the reason they were prompted to action, but I suspect the children of politicians and the elite were dying from drug overdoses all around the world.

Yet the majority of politicians around the world remained inert, impotent.

The real difference was that the Portuguese decided to pro-actively address the problem.

In the mid-late 1990s the Portuguese Parliament set up an expert committee, the Committee for a National Drug Strategy, to consider how it could best reduce the harm being caused in its communities by the use and abuse of dangerous drugs.

The committee was chaired by a Dr Joao Goulao a physician who had been practicing in the treatment of drug addicts since the late-1980s.

In 1998, the Committee produced a report calling on the Portuguese Government to adopt a harm-reduction strategy; it also urged the government to separate drug users from the criminal justice system.

The Portuguese Government accepted the Committee's recommendations and used them to formulate the, "National Strategy for the Fight Against Drugs"; more commonly known in Portugal as the "National Drug Strategy".

The National Drug Strategy was based on two particular principles; the "humanistic principle" and the "principle of pragmatism".

The "humanistic principle" forbids ostracising drug users as criminals and, alternatively, requires drug users be treated as full members of society in need of treatment.

While the "principle of pragmatism" adopts the view drug use will always exist in the community and drug policies should not be structured towards an unattainable ideal of

eliminating all drug use, but rather drug policies should seek to reduce and contain the negative consequences of drug use.

Over the 18 years since the publication of the original National Drug Strategy, it has grown.

It was updated in 2005.

Then, in 2013, and in recognition of the detrimental effects of addictive behaviours generally, and following a realisation that their treatment facilities were well adapted to deal with addictive behaviours more generally, the strategy became the “National Plan for the Reduction of Addictive Behaviours and Dependencies”.

To borrow a comment from the 2017 Country Drug Report for Portugal produced by the European Monitoring Centre for Drugs and Drug Addiction:

...The National Plan for the Reduction of Addictive Behaviours and Dependencies builds on the 1999 strategy and takes a broad integrated view of drug and addiction problems, including illicit drug use, new psychoactive substances, alcohol, prescription medications, doping and gambling.

Now that is quoted correctly, however, I’m fairly sure it was meant to read “tobacco”, rather than “doping”.

The Portuguese Drug Strategy in Action

As a result of the work done by Dr Guoluo’s Committee, and the subsequent National Drug Strategy, Law No.30 of 2000 was introduced to the Assembly of the Republic of Portugal and came into effect on 1 July 2001.

It has since become known as the Decriminalisation Law, and I will refer to it simply as “the Law”.

The Portuguese Decriminalisation Law

The Law as enacted, altered the legislative framework relevant to the consumption of drugs.

The operative clauses of the Law are Articles 1(1) and 2(1) respectively.

Article 1(1) – Aim, provides:

This law defines the legal framework applicable to the consumption of narcotics and psychotropic substances, together with the medical and social welfare of the consumers of such substances without medical prescription.

and

Article 2(1) – Consumption, provides:

The consumption, acquisition and possession for one's own consumption of plants, substances or preparations listed in the tables referred to in the preceding article constitute an administrative offence.

The essential element, “for one's own consumption”, is defined in Article 2(2) as a quantity:

not exceeding the quantity required for an average individual's consumption during a period of 10 days.

Decriminalisation does not include drug trafficking, or the production, or sale, or distribution of drugs.

Drug trafficking, or possession of more than the average dose for ten days of use, together with all other drug-related offences, remain criminal offences.

Unlike some other jurisdictions, the Portuguese law does not distinguish between so-called hard drugs, or soft drugs. It makes no value judgment as to the type of drug being consumed.

Likewise, it makes little practical difference whether the consumption takes place in public or private.

The result is that, in Portugal, the personal possession and consumption of all drugs, no matter where they occur or for what purpose, are now decriminalised.

While often misunderstood, drug usage remains prohibited under the Law in Portugal; the change is simply in the way the offence is dealt with.

Under the Law a possession offence is treated strictly administratively and is not dealt with in the criminal justice system. Users, obviously in the absence of any other associated criminal offence, are never subject to the criminal justice system.

At Article 5 establishes a new body responsible for dealing with the new administrative offences; the very Orwellian sounding; “Commissions for Dissuasion of Drug Addiction”; known locally by the acronym CDTs.

CDTs are regional bodies and solely responsible for dealing with and assessing offenders, providing some education, the imposition of sanctions and referrals for treatment.

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The sanction, or penalties available to the CDTs are prescribed in Articles 15, 16 & 17, and while it is worth noting the Article 15(1) provides that:

Non-addicted consumers may be sentenced to payment of a fine or, alternatively, to a non-pecuniary penalty.

I was told that, in practice, fines are rarely, if ever, imposed.

Article 17(1) provides that “instead of a fine, the commission may issue a warning” and it appears this is the form of sanction most often applied.

CDTs have a reasonably wide range of sanctions available to deal with addicted offenders; including:

- suspension of the right to practice a licensed profession (doctor, lawyer, taxi driver, etc);
- a ban on visiting high-risk locations (nightclubs);
- a ban on associating with specified individuals;
- requiring periodic reports to the CDT to show there is no ongoing addiction or abuse;
- prohibitions on travel abroad;
- termination of public benefits for subsidies or allowances; or
- a mere oral warning.

Treatment options are not mandatory under the Law; however, CDTs may make the suspension of sanctions conditional on the addicted consumer seeking treatment.

As a result, if the sanction imposed is a condition on a licence to practice, the licence to operate machinery, or the like, then the person has little option other than to comply by attending treatment if they want their licence back, or the condition lifted.

In spite of the apparent lack of power to compel, the Deputy Chair of the Lisbon CDT, Nuno Capaz, advises CDTs record very few cases of failures to comply with orders, or referrals.

It is the opinion of Mr Capaz that this is because of the non-judicial nature of the CDT.

Practically, the CDT provides the non-addicted consumer with a warning on the dangers of the particular drug in question; effectively an education session.

Minors apprehended for offending behaviour, possessing or using drugs, enter the same process as adults; although, pursuant to Article 3, are aided by a legal representative, who is authorised to make decisions for the minor.

Furnishing drugs to minors (or people with mental illness) continues to be an offence explicitly prohibited by the criminal code.

Providing drugs to minors is considered an “aggravating circumstance”, punishable by imprisonment of between 4 to 12 years.

Portuguese Decriminalisation in Practice

There is at least one CDT in each of the 18 administrative districts in Portugal, although larger districts, such as Lisbon and Porto, may have more than one.

CDTs consist of three members:

- one with legal experience appointed by the Ministry of Justice; and
- two other members with medical, psychological, psychiatric, or social work experience appointed jointly by the Minister of Health and the government’s coordinator of drug policy.

Where police officers observe drug use or possession, the drugs are confiscated and destroyed.

The officers are required to issue citations to the offender, but they are not permitted to make an arrest.

The citation requires the offender to present themselves before the relevant CDT within 72 hours.

The administrative process will then commence.

The cited offender appears before the CDT and, if the CDT finds compelling evidence of drug trafficking, it will refer the case to the criminal justice system.

Typically, these initial appearances last around 40-45 minutes and are largely about determining whether the offender is an addicted consumer, or a non-addicted consumer.

Mr Capaz notes criticism has been levelled at the process, with some claiming 45 minutes is insufficient time to make a proper determination regarding addiction in circumstances where the offender is being intentionally evasive.

The most substantial barrier to offering treatment to the addict population was the addicts' fear of arrest...

João Castel-Branco Goulão
Director General of the
Intervention on Addictive
Behaviours and Dependencies

Mr Capaz accepts this criticism, although says even in circumstances where the offender is being intentionally evasive, 45 minutes is sufficient time to get the educative message across to the consumer and to provide information regarding the availability of treatment facilities.

Mr Capaz also notes that while there is no sanction to impose against offenders should they choose not to appear before the CDT after they have been issued with a citation, records indicate there is a particularly high rate of attendance.

Mr Capaz puts this down to the fact offenders recognise the CDT is not a court and they are not facing criminal sanction.

Treatment

The National Drug Strategy establishes treatment interventions based on a comprehensive diagnosis of each individual's full range of needs.

It requires treatment be accessible and adaptable, based on scientific evidence in terms of effectiveness, efficiency and quality, and be underpinned by guidelines.

In 2013-14 Healthcare for drug users was reorganised in Portugal, and is now provided by the Referral Network for Addictive Behaviours and Dependencies.

The public services are provided free of charge through the Portuguese National Health System, (a system not dissimilar to Australia's Medicare) and these are accessible to all drug users who seek treatment.

Referrals can then be made to either public, or private detoxification units, or other therapeutic communities.

All centres provide both psychosocial care and opioid substitution treatment.

There are 59 therapeutic communities, which provide residential treatment programmes for anywhere from 3 to 12-months in length.

In Portugal, opioid substitution treatment is widely available through public services such as specialised treatment centres, health centres, hospitals, pharmacies, NGOs and non-profit organisations.

Treatment provision

Of the 3,389 patients entering treatment in 2015, three out of every five were first-timers.

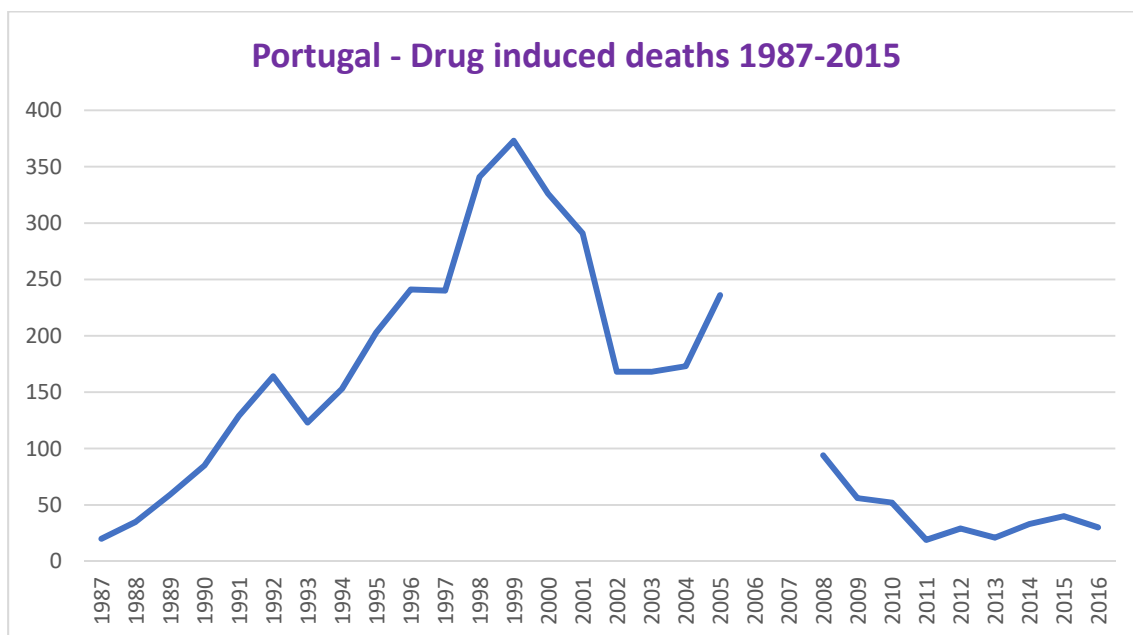
The number of previously treated patients has been decreasing since 2012, while the number of first-time patients has been stable over this period.

Since 2012, there has been an increase in the proportion of patients reporting primary cannabis use and a decrease in the proportion reporting primary opioid use.

Among first-time patients, cannabis has been the most commonly reported primary drug since 2014.

The number of opioid substitution treatment patients decreased between 2010 and 2013, but has been relatively stable since.

Effects of Decriminalisation in Portugal



I have produced this graph myself, it represents a combination of information extracted from 3 separate Tables.

Tables 1 & 2 were obtained from the 2009 Cato Institute publication, *Drug Decriminalisation in Portugal: Lessons for Creating Fair & Successful Drug Policies*, by Glen Greenwald.

Table 3 is extracted from the 2017 Country Drug Report for Portugal by the European Monitoring Centre for Drugs and Drug Addiction.

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So, by way of some background, you can see in 1987 drug-related deaths in Portugal were approximately 20 per year, a figure which increased markedly through the 1990s and, by 1999, stood at around 390.

There is a decline in the number of recorded drug-related deaths heading into 2000 and 2001 and a further strong decline from the introduction of the Decriminalisation Law.

There is a spike around 2004 and 2005, together with a gap in the data for 2006 and 2007; however, when the data is available again the spike has rectified itself and the steady decline continued and, since 2010 has stabilised at figures less than 50.

Drug policy experts credit this decline to the increasing number of heroin users who entered substitution treatment programs after decriminalisation.

***Annually Portugal has
3 overdose deaths per million citizens,
compared with the
European Union average of 17.3...***

The Independent,
Sunday, 7 June 2015

Drug use

One of the most keenly disputed outcomes of the reform in Portugal relates to their impact on levels of drug use.

Conflicting accounts of how rates of use changed after 2001 are usually due to different data sets, or indicators being used; but a more complete picture of the situation, post-decriminalisation reveals:

- Levels of drug use are below the European average;
- Drug use has declined among those aged 15-24, the population most at risk of initiating drug use;
- Lifetime drug use among the general population has increased slightly, in line with trends in comparable nearby countries;
- Rates of past-year and past-month drug use among the general population, seen as the best indicators of evolving drug use trends, have decreased; and
- Rates of continuation of drug use; that is, the proportion of the population that have ever used an illicit drug and continue to do so, have decreased.

Overall, these figures suggest removing criminal penalties for personal drug possession did not cause an increase in levels of drug use.

This tallies with a significant body of evidence from around the world that shows the enforcement of criminal drug laws has, at best, a marginal impact in deterring people from using drugs.

There is essentially no relationship between the punitiveness of a country's drug laws and its rates of drug use.

Instead, drug use tends to rise and fall in line with broader cultural, social, or economic trends.

Health

It has been claimed by some that the prevalence of drug-related infectious diseases rose after decriminalisation, yet this is strongly contradicted by the evidence.

While the number of newly diagnosed HIV cases among people who inject drugs in Portugal remains above the European average, it has declined dramatically, falling from 1,016 in 2001 to 56 in 2012.

Over the same period, the number of new cases of AIDS among people who inject drugs also decreased, from 568 to 38.

A similar, downward trend has been observed for cases of Hepatitis C and B among clients of drug treatment centres.

Crime

Again, in spite of claims to the contrary, decriminalisation appears to have had a positive effect on crime.

With its re-categorisation of low-level drug possession as an administrative rather than criminal offence, decriminalisation inevitably produced a reduction in the number of people arrested and sent to criminal court for drug offences, from over 14,000 in 2000, to around 5,500-6,000 per year once the policy had come into effect.

The proportion of drug-related offenders, defined as those who committed offences under the influence of drugs and/or to fund drug consumption, in the Portuguese prison population also declined, from 44% in 1999, to just under 21% in 2012.

Additionally, decriminalisation does not appear to have caused an increase in crimes typically associated with drugs.

While opportunistic thefts and robberies had gone up when measured in 2004, it has been suggested that this may have been because police were able to use the time saved by no longer arresting drug users to tackle (and record) other low-level crimes.

Although difficult to test, this theory is perhaps supported by the fact that, during the same period, there was a reduction in recorded cases of other, more complex crimes typically

Before the enactment of the decriminalisation law, opponents insisted that the proposed change in law would make Portugal a centre of so-called drug tourism.

Paulo Portas, leader of the conservative Popular Party, said:

“There will be planeloads of students heading for [Portugal] to smoke marijuana and take a lot worse, knowing we won’t put them in jail. We promise sun, beaches and any drug you like.”¹

Such fears have turned out to be completely unfounded.¹

committed by people who are dependent on drugs, such as thefts from homes and businesses.

Anecdotally, when visiting Portugal, and Lisbon, today it is equally difficult not give some credit to the changes in the law.

In the late 1990s Lisbon was ranked among the most crime-ridden cities in Europe, whereas today it is a vibrant city, ranked now as one of the safest cities both to live in and to visit.

Difference between Legalisation and Decriminalisation

While I have a feeling there is little need to spell out the distinction between legalisation and decriminalisation tonight, it is something I regularly need to clarify, so I will touch on it.

Almost invariably, when I discuss decriminalisation people immediately assume I am talking about legalisation.

Since I began studying and then practicing law, I have found there are regular misconceptions about many legal terms;

- the burden of proof, as opposed to the onus;
- legal professional privilege and the slightly broader client legal; and, in my current line of work...
- conflict of interest!!

And these are just an example and I have no doubt you would be able to think of many more.

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In the current climate where the legalisation of cannabis is becoming a more common occurrence around the world, and there are a number of high profile examples; such as, the states of California and Colorado in the US, I find people generally gravitate to that concept.

Perhaps because of the misconception, they are then often shocked to hear the model I propose, the Portuguese model, includes the decriminalisation of all drugs.

Of course, decriminalisation does not mean legalisation.

Legalisation is a distinctly more difficult argument, although, in my opinion, not one that should be shied away from.

My personal position, and I stress it is my personal position, is I favour legalisation.

I favour legalisation for the very simple proposition that I cannot see any more effective way to deal with the criminal element that has become extraordinarily wealthy from the legal prohibition of drugs.

Think of the money spent across all countries maintaining the rage of the War on Drugs.

Add to this the combined wealth of the illicit drug industry.

The taxes not collected.

Take that money and think what could be done if we were instead spending it on the health and well-being of our citizens.

Think of the education and treatment facilities we would be able to afford.

Think of the additional healthcare facilities we could afford.

Think of all those wells we wouldn't have to frack!!

Prohibition of alcohol in the US in the 1930s did nothing to curb the use of alcohol, it only served to create a very wealthy class of criminal.

Prohibition of drugs, in my view, is having the same effect.

The drug industry preys on the weak, the young, the disillusioned, the disconnected.

It scares me that this is an industry, without regulation, that takes self-interest to stratospheric levels.

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It is an industry that thrives on encouraging young people, at the point in their lives when they are particularly vulnerable, to experiment; at the point when they are most likely to be developing their rebellious nature, to rebel.

This industry and the pushers and the parasites that infest it, cares nothing for the health and well-being of its customers. That job is left to the distraught families, or the health care providers, or the community as a whole.

But, still, legalisation is a different argument and one for another day.

Decriminalisation, on the other hand, is an argument for today.

It's an argument which, in fact, is long overdue.

Decriminalisation is simply the removal of criminal penalties for certain offences; specifically, those personal offences of use and/or possession of drugs.

In essence, decriminalisation is a humanitarian, health-based approach to a societal problem.

So, still the question remains, why decriminalise.

For me, the answer is so we, as a society, can more appropriately deal with what is fundamentally, a health issue.

Let's face it, an individual's choice to take drugs is not a good choice, but is that choice a criminal action?

Is it criminal in the same sense as another individual's choice to steal your car, or break in to your business, or punch you in the face as you walk down Mitchell Street?

I suggest it is not.

What would be better outcome for everyone, the user and the community, would be to follow the lead provided by Portugal and to provide treatment and education; the ways and means to making better health choices.

Australia

Of course, decriminalisation is not unique to Portugal.

There are numerous countries around the world that have introduced decriminalisation to varying degrees.

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Even in Australia, and here in the Northern Territory, we have decriminalised aspects of our drug laws.

The removal of criminal penalties can be achieved in one of two ways:

1. De jure; that is, laws can be amended to remove criminal sanctions, or to provide for civil penalties (such as fines) or administrative sanction; or
2. De facto; where the laws remain intact, but in practice either the police, the prosecutors, or the courts exercise some form of discretion not to charge, prosecute or convict.

Portugal adopted the de jure model and incorporated this with an integrated approach to treatment of addicts and addictive behaviour.

While many other countries have implemented decriminalisation in one form or another, none have gone so far as adopting the Portuguese model; that is, until this year when Norway introduced its own decriminalisation modelled on Portugal.

I have not had the opportunity as yet to look at the Norwegian model, but it is something I intend doing very soon.

In Australian jurisdictions decriminalisation is achieved through a mix of de jure and de facto models and is far from universal.

And, as of 2016, in most states and territories drug use and possession remains a criminal offence that can be sanctioned with up to two years prison.

State/Terr	De jure reform		De Facto reform	
	Cannabis	Other illicits	Cannabis	Other illicits
ACT	●		●	●
NSW			●	
NT	●			●
Qld			●	
SA	●			●
Tas			●	●
Vic			●	●
WA			●	●

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The system is complex and far from uniform.

- De jure decriminalisation is provided in SA, the ACT and here in the NT; in the form of civil penalty schemes and is only available for cannabis;
- De facto decriminalisation is provided in most states; in the form of ‘police referral to education/assessment/treatment’; often referred to as ‘drug diversion’ programs. Programs target cannabis and other illicit drugs; for example, cocaine and heroin.

Both schemes may result in criminal penalties in cases of non-compliance.

Reform type & Jurisdiction	Drugs	Scheme	Response	Allowable no. of referrals	Response to non-compliance
De jure reforms					
ACT	Cannabis	Simple cannabis offence notice (SCON)	Fine	No limits	May result in criminal penalty
NT	Cannabis	Cannabis expiation scheme	Fine	No limits	Debt to state; may result in criminal prosecution
SA	Cannabis	Cannabis Expiation Notice (CEN)	Fine (option to pay via community service)	No limits	Reminder notice, additional fee; automatic criminal conviction
De facto reforms					
ACT	All illicit drugs (incl cannabis)	Police Early Diversion (PED) Program	Caution plus brief intervention	2 previous	May result in criminal penalty
NSW	Cannabis	Cannabis cautioning scheme	Caution plus intervention	1 previous	Recorded & court advised if further offence
NT	Other illicit	NT Illicit Drug Pre-Court Diversion Program	Assessment plus compulsory treatment	No limits	May result in criminal penalty
Qld	Cannabis	Police diversion program for minor offences	Assessment	1 previous	May result in criminal penalty
SA	Other illicit	SA Police Drug Diversion Initiative (PDDI)	Assessment plus referral	No limits	May result in criminal penalty
Tas	All illicit drugs (incl cannabis)	Police diversion	Caution plus brief intervention (3rd offence, assessment plus compulsory treatment)	3 previous (in last 10 years)	May result in criminal penalty
Vic	Cannabis	Cannabis cautioning program	Caution plus education and optional referral	1 previous	Nil
Vic	Other illicit	Drug diversion program	Assessment plus referral	1 previous	May result in criminal penalty
WA	Cannabis	Cannabis Intervention Requirement	Assessment plus compulsory education	1 previous	May result in criminal penalty
WA	Other illicit	All drug diversion	Assessment plus compulsory treatment	1 only	May result in criminal penalty

(Table extracted from Decriminalisation of drug use and possession in Australia – A briefing note, 2016 Sydney: Drug Policy Modelling Program, National Drug & Alcohol Research Centre, UNSW Australia)

There are a number of things to note here:

1. All states and territories provide some type of decriminalisation for cannabis (mainly de facto);
2. 4 states, the ACT and the NT provide decriminalisation for other illicit drugs (all de facto), although this is not an option in either NSW, or Qld;
3. No state or territory has removed criminal penalties by law for possession of all illicit drugs.

As a result, many people continue to be sent to court for possession of only small quantities of drugs.

There are a number of things to note about the current Australian approaches.

First, access to all de facto decriminalisation schemes in Australia is controlled by “eligibility requirements.”

For example, to be eligible people often have to admit the offence, not have been detected by police more than once, or twice, and carry only a very small quantity of the drug.

Anyone who does not meet the strict requirements is processed through the usual court mechanism.

Such eligibility requirements can exclude those most marginalised and/or those most in need of diversion into treatment and rehabilitation.

De jure schemes have fewer eligibility restrictions and this increases equity and access to the program.

Northern Territory

So, where are we in the Northern Territory?

Since returning from Portugal late last year I have been busy talking to as many people as I can.

And, I can say, I received heartening support from pretty much everyone I have spoken to expect, perhaps, some of my colleagues.

I suppose this ties in with where I started tonight and the ongoing political fallout over the issues of Law and Order and tough on crime.

These remain fundamentally difficult issues for politicians to deal with.

The fear of being seen, in the media and in the community, as soft on crime is palpable.

It colours almost everything a politician does.

Perhaps I should be more cautious.

Or perhaps I am simply lacking some of the necessary neural connectors controlling my fight or flight mode but, I entered the politics to affect positive change.

Dangerously idealistic, I know.

But, in the end, I’m not interested in hanging around for the shits and giggles, or winning simply for winning sake.

CLANT Fitzgerald Memorial Lecture – Decriminalisation

I firmly believe this is positive change worth fighting for and I intend fighting for it.

If it costs me in the end, so be it.

However, I have a sneaking suspicion there is a much greater appetite for this type of reform than some of those who occupy the darkened corners of Level 5 care to believe.

The good news is there are others who feel the same.

During the March sittings of Parliament, the Labor Caucus agreed to set up a Select Committee to undertake a review of and inquire into harm reduction strategies for illicit drug-use and other addictive behaviours.

The opposition is presently considering the terms of reference we have proposed and there may be some minor changes, but at this point caucus has agreed to the following:

To establish a Select Committee on a Territory Strategy for Addictive Behaviours to inquire into best practice, humanitarian approaches to reducing the damage caused by illicit drug-use through effective harm minimisation policies and legislation;

and to develop a coordinated treatment approach to deal with the broad-range of other addictive behaviours; including, but not limited to, alcohol, tobacco and gambling.

While I stress, at this stage this our position only, the proposed scope of inquiry is that it:

...will review the available evidence regarding harm minimisation strategies used to address health problems associated with illicit drug-use and other addictive behaviours and, also, consider best-practice strategies for reducing the impact of these behaviours on families and the broader community.

I am very excited about where we go from here.

I have seen the Portuguese system at work and it is something we should be exploring.

We are clearly very different; the Territory and Portugal.

Portugal is about 1/15 the size of the Territory, with around 42 times our population.

Portugal does not have the problems associated with service delivery in remote communities, but this does not mean the system they have adopted cannot work for us as well.

CLANT Fitzgerald Memorial Lecture – Decriminalisation

In the end, this concept is about treating everyone in a humanitarian manner and reducing the adverse effect of imposing the criminal justice system on people for whom it has no beneficial effect.

I have gone on far too long and I hope I haven't bored you all senseless.

I know there are things I have not said, which I really wanted to, but were chopped out in my mad rush to shorten the talk time.

Please feel free to ask anything you like.