SANDAS Position Paper

Drug Law Reform

SANDAS believes that seeking to address drug related harms through the criminalisation of people who use drugs is neither effective nor humane. To reduce harm related to drug use in our community we must have a balanced focus on supply (targeting those who import, manufacture and sell), demand (reducing the number of people who use drugs and the amount of drugs they use) and harms (ensuring people who use drugs problematically and their communities are provided with help to reduce the harms they experience).

SANDAS maintains that:

- there should be a strong criminal justice response to the manufacturing, supplying and trafficking of drugs outside of a regulated supply system. Illicit drug markets should be replaced by licit drug markets (with the model to be designed to meet the best outcomes for South Australia informed by international evidence and community consultation).
- where an individual's drug use harms them, their family or the community this should be treated as a health issue, and they should be able to access treatment and support tailored to their needs to minimise harm to themselves and to the community.
- Personal use should not be criminalised or stigmatised. Personal use of all drugs should be re-regulated removing all criminal sanctions from the personal use of drugs.

Current drug laws have both human and economic costs which significantly impact not only those who use drugs, but also their families, friends and carers, and the community. These costs could be significantly reduced by changing the regulatory framework around drug use.

SANDAS is committed to reducing drug-related stigma and discrimination in the community and within the health, human services and justice sectors.[i] Whilst there are diverse views within the community about illicit drug use, there is strong community support for people whose drug use causes harm to be able to access treatment. Criminalising and stigmatising individuals who need help to address dependence creates barriers to their access to treatment and support. Criminalising people who use drugs per se imposes significant social and economic costs on individuals and communities who may not otherwise experience harm from their use.

SANDAS believes the government of South Australia should remove all criminal sanctions for personal drug use. Doing so will reduce the impact of stigma and discrimination, the most significant barrier to treatment seeking for people experiencing problematic alcohol and drug use. It will free up police and court resources, enabling a greater focus on those who produce and distribute drugs for profit and in ways that cause harm. It will free up court and correctional services' time and have a significant impact on the state's recidivism targets.

Regulatory change is consistent with previous SA policies

While decriminalising personal use of illicit drugs may sound like a radical idea, South Australia currently has two programs successfully operating that offer an alternative to criminalising the possession of drugs for personal use – the- Police Drug Diversion Initiative (PDDI) and the Cannabis Infringement Notice (CIN).

The PDDI is an alcohol and drug counselling and referral service for those people detected by police for simple possession drug offences. Through the PDDI police divert offenders to a health intervention instead of the justice system. Since 2018, the number of diversions available to an individual has been capped at two in four years. SANDAS believes this cap is counterproductive, as it severely restricts the number of opportunities a PPDI service has to create meaningful engagement with an individual and facilitate their journey into longer-term treatment options where needed. For young people charged with drug offences there is a Youth Court Treatment Intervention Program. SANDAS believes that young people should be referred to a treatment and support service at point of

apprehension or as soon as possible afterwards. Subsequently they may benefit from Family Conferencing or diversion through the Youth Court. If personal drug use was removed from the criminal law, the PDDI system would not be required. However, these resources could be redeployed to provide greater access to those who seek treatment.

The CIN system changes the use and possession of drugs from a criminal offence to a civil/administrative offence. This is currently in place for cannabis use, possession, and cultivation offences in South Australia. No criminal proceedings will commence if a prescribed fine is paid when a person is apprehended with cannabis in their possession. Recently, the Australian Capital Territory (September 2019) has become the first Australian jurisdiction to legalise the possession, use and cultivation of small amounts of cannabis.

There has been a clear shift over recent years in community attitudes towards viewing drug use as a health issue rather than a criminal offence. According to the latest National Drug Strategy Household Survey, when asked about appropriate action for people found in possession of small quantities of drugs, for all drugs except cannabis, most support was for referral to treatment or an education program, while for cannabis the most popular action was a caution, warning or no action at all.[ii]

International developments

The momentum for changes in the regulation of illicit drugs is growing around the world with over 25 countries having adopted a range of models from decriminalisation to legalisation of personal use. Research evidence from those countries has shown that, contrary to concerns, drug law reform:

- does not significantly increase drug use, but can substantially reduce harms
- does not increase crime
- reduces the costs to society, especially criminal justice system costs
- removes the negative consequences, including stigma, associated with criminal convictions for drug use
- reduces the social costs to individuals.[iii]

In March 2019 the United Nations launched the International Guidelines on Human Rights and Drug Policy which supports the decriminalisation of small amounts of drugs for personal use. The UN's position is that approaches that violate human rights and fail to curb the illicit drug trade are leaving a trail of human suffering.[iv]

In 2019 the New Zealand government determined that there was no evidence that convicting and sentencing drug users reduces drug use or benefits them individually – they found that criminal convictions often have adverse consequences for career and life opportunities and that a health-based response is more effective.[v]

Regulatory change is required

There are four major issues that indicate regulatory change is required:

1. Current resource allocation across the three pillars of the National Drug Strategy is inequitable

South Australia's response to illicit drug use has historically been ground-breaking, with SA being the first to introduce CINs and having at one time had the best PDDI system in the country[vi]. Like all states, SA addresses the three pillars of the National Drug Strategy 2017-2026, addressing supply (through regulation and law enforcement), demand (through prevention and treatment) and harm (through harm reduction strategies). However, it is disappointing that we are not investing equally across the three pillars.

In 2015 Australian commonwealth, state and territory governments spent approximately $1.7 billion annually on illicit drug initiatives, with an estimated 64 per cent being allocated to law enforcement, 22 per cent to treatment, and less than 15 per cent to prevention, and harm reduction.[vii] There is a need to redress this balance. A change in the regulation of personal use could free up much of the currently allocated resources for treatment and support, early intervention, prevention and education.

2. Existing funding does not provide a good return on investment

There is no evidence that the disruption of supply in and of itself will reduce the consumption of illicit drugs[viii]. Law enforcement responses, particularly those related to imprisonment, are far less cost effective and less successful in addressing underlying issues than treatment or harm reduction strategies.[ix]

Findings from the 2016 National Drug Strategy Household Survey showed that approximately 8.1 million Australians aged over 14 years (43%) reported having used illicit drugs, with 3 million (16%) having used illicit drugs in the previous year.[x7] During 2019/20, an almost record high 163,983 drug arrests were made in Australia, including 2,241 in South Australia (not including 6,850 CINs). Nearly 50 per cent of these (1,111) were for the use, possession or administering a drug for their own personal use, not for supply or trafficking offences (1130).[xi]

Illicit drug use continues to be prevalent in our community despite significant investment in law enforcement[xii]. We are hearing more and more that the harm to individuals arising from engagement with the criminal justice system is as significant as harms from use itself[xiii]. There is also a major shift in social perceptions of drug use. In 2019 more Australians supported the legalisation of cannabis than opposed it (41% compared with 37%). There is also a growing movement that argues that 'the war on drugs is failing' and 'we cannot keep trying to arrest our way out of the illicit drug problem'.[xiv] Australian Research by Ritter and others shows that for every dollar invested in treatment there is a $7 return and $1 invested in policing drugs costs the community $1.32[xv]

3. A law enforcement approach fails to address drug use

Most people who use drugs do so for functional gain (they are fun, relieve boredom or stress, are part of social interactions and do not cause the user harms). Most people using drugs for these reasons will not be motivated to not use drugs by criminal sanctions. Nor will criminal sanctions work on those who are dependent. Dependence on illicit drugs and other drug-related harms are often influenced by risk factors commonly associated with disadvantage such as mental health issues, poor physical health, poverty, family violence and crime[xvi]. A law enforcement approach to drug use does not address these fundamental issues and in fact can exacerbate them. Criminalising people, imprisoning, and punishing them, not only fails to address the underlying causes of drug use, but further isolates and stigmatises, creating barriers to treatment and support. The criminal justice system does not provide a reasonable response to personal use of drugs. Nor is it an appropriate gatekeeper for health and support interventions. A therapeutic response to the problematic use of drugs should be provided through the health system.[xvii]

4. The current system stigmatises people who use drugs, thus inhibiting their engagement with treatment services

Stigma related to alcohol and other drug use can be understood as the conditioned negative attitudes, opinions and beliefs held by an individual that people who use drugs are somehow different to all other people.

Discrimination occurs when people who use drugs are treated less favourably than others because of their drug use.[11] Widespread stigma and discrimination towards those in our community who use alcohol and other drugs is still disturbingly prevalent and it is SANDAS' view that this must be addressed.

The impacts of stigma are wide-ranging and can include low self-esteem and worth, feelings of isolation, helplessness, disempowerment, exclusion from social life, chronic stress and depression and difficulties with employment, housing, and education. These experiences are distressing and can result in people feeling shamed, shunned, worthless and hopeless, which in turn can trigger further alcohol and other drug use, and create barriers for treatment and support.[xviii]

Recommendations

With current justice orientated approaches to drug use failing to reduce the prevalence of harm to our communities, an alternative approach needs to be considered.

SANDAS recommends that:

- Policies and regulations be developed to define and respond to 'personal use' that remove legal sanctions from personal use of all currently illicit drugs. Where interventions to reduce or stop use are provided they should be health led.

- Problematic drug use be seen first and foremost as a health issue. The existing approach of treating an individual's illicit drug use as primarily a criminal matter is inappropriate and ineffective and all criminal sanctions for personal use should be removed.

- Treatment services are allocated resources that are sufficient to provide timely and effective health responses to problematic drug use. Treatment is a more cost-effective response, proven to reduce recidivism rates. It reduces alcohol and other drug harms, while improving the health status and psychological wellbeing and participation in the community of people who use drugs.[xix]

- A law enforcement approach to illicit drug manufacturing, trafficking and supply be maintained. Consideration be given to establishing licit markets and addressing peer to peer sales or distribution differently to larger scale trading.

- Appropriate consequences for criminal behaviour co-occurring with drug use be determined in relation to those crimes. Re-regulation of currently illicit drug use will require consideration of the impact of use on criminal behaviours (such as burglary, driving offences, violence, including domestic and family violence etc.).

To progress appropriate law reform SANDAS calls on the government of the day to convene an inquiry into drug law reform, such a Parliamentary Inquiry or Royal Commission. The inquiry should consult with the South Australian community and draw on local, national and international evidence to identify the best model of drug regulation for South Australia.

REFERENCES

[i] SANDAS Strategic Directions 2021-2024 (https://sandas.org.au/wp-content/uploads/2016/01/pdf-icon-80x103.png)

[ii] National Drug Strategy Household Survey 2016, access at https://www.aihw.gov.au/getmedia/15db8c15-7062-4cde- bfa4-3c2079f30af3/21028a.pdf.aspx?inline=true

[iii] Hughes, C., Ritter, A., Chalmers, J., Lancaster, K., Barratt, M. & Moxham-Hall, V. Decriminalisation briefing note Feb 2016 FINAL.pdf

[iv] United Nations International Guidelines on Human Rights and Drug Policy, March 2019, accessed at https://www.unaids.org/en/resources/presscentre/pressreleas eandstatementarchive/2019/march/20190315_guidelines- human-rights-drug-policy

[v] New Zealand Drug Foundation, Estimating the impact of drug policy options, October 2018, accessed at https://www.drugfoundation.org.nz/assets/uploads/Cost- benefit-analysis-drug-law-reform.pdf

[vi] Criminal justice responses relating to personal use and possession of Illicit drugs: the reach of Australian drug diversion programs and barriers and facilitators to expansion (2016) Hughes C , Seear K, Ritter A, Mazerolle L, http://unsworks.unsw.edu.au/fapi/datastream/unsworks:55882/binf110b3d5-712f-4ac6-9909-f07567a0e22e?view=true&xy=01

[vii] Parliamentary Joint Committee on Law Enforcement Inquiry into Crystal Methamphetamine Final Report, accessed at www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Crystalmethamphetamine45/Final%20Report/ c05

[viii] https://www.policyforum.net/australias-wastewater-says-countrys-drug-problem/

[ix] https://www2.deloitte.com/au/en/pages/economics/articles/cost-prison-vs-residential-treatment-offenders.html

[x] Australian Institute of Health and Welfare, National Drug Strategy Household Survey Key Findings, 2016

[xi] Australian Criminal Intelligence Commission, Illicit Drug Data Report 2019-2020 accessed at https://www.acic.gov.au/publications/illicit-drug-data-report/illicit-drug-data-report-2019-20

[xii] https://ndarc.med.unsw.edu.au/blog/australias-recreational-drug-policies-arent-working-so-what-are-options-reform

[xiii] https://ndarc.med.unsw.edu.au/blog/australias-recreational-drug-policies-arent-working-so-what-are-options-reform

[xiv] https://ndarc.med.unsw.edu.au/blog/australias-recreational-drug-policies-arent-working-so-what-are-options-reform

[xv] https://ndarc.med.unsw.edu.au/resource/new-horizons-review-alcohol-and-other-drug-treatment-services-australia

[xvi] https://adf.org.au/reducing-risk/aod-mental-health/identifying-risk-factors/

[xvii] Australia21 Report, 'We all pay the Price', Report from a high-level national Roundtable of 36 experts in drug treatment, drug law and community welfare, conducted in Parliament House, Melbourne in March 2018.

[xviii] K Lancaster, K Seear & A Ritter, Reducing stigma and discrimination for people experiencing problematic alcohol and other drug use, 2017, p8.

[xix] Ritter, A., Berends, L., Chalmers, J., Hull, P., Lancaster, K., and Gomez, M (2014) New horizons: the Review of alcohol and other drug treatment services in Australia, NDARC, (2014), Australia.