Contemporary Comments

The Criminalisation of Drugs and the Search for Alternative Approaches

Abstract

In the wake of four decades of battling an ineffective, devastating and expensive 'war on drugs', the global movement for drug law reform is gaining considerable momentum. Even the United States (US) and the United Nations, the two most instrumental forces behind the 'war on drugs' policy, have modified their stance on the strict prohibitionist regime. Two US states have just voted to legalise marijuana. Many countries have adopted some form of decriminalisation in the last decade or so, and the number is increasing. Rather than follow behind this global trend, Australia should reclaim its former position as a world leader in harm minimisation. The criminal law cannot solve the majority of social problems that drugs undoubtedly create, in spite of legislative efforts that distort and erode the principles of the criminal law in attempting to do so. The recent High Court case of *Burns v The Queen* is a welcome restraint on attempts to over-criminalise drug-related behaviour. It is time we considered options for reform, including legalising and regulating the drug market. A National Drug Summit, as called for by the Australia21 expert panel on drug policy, is a good place to start.

Introduction

Last year marked 40 years since United States (US) President Richard Nixon, in his re-election campaign, first called for a 'war on drugs'. Since that day in June 1971, the War on Drugs has been radically transformed from a metaphorical war — akin to LBJ's 'War on Poverty' — to a very real and deadly global military and law enforcement offensive.[1] But despite four decades of battling against drugs, users, suppliers, traffickers, manufacturers, cultivators, drug cartels and warlords, illicit drug use has risen, drugs are cheaper and they are purer and more accessible than ever before. The United Nations (UN) conservatively estimates that there are now 250 million illicit drug users worldwide (Beckley Foundation 2011). Our courts and prisons continue to be clogged by those involved in drug-related crime. Violence and killings continue to mount. Health and social problems for drug users often remain unaddressed — death and disease from unregulated use continue. Secondary crime and official corruption flourish. In other words, the War on Drugs has failed comprehensively.

In response to this failure is an ever-increasing level of support for the movement for drug law reform. In 2011, the Global Commission on Drug Policy released its report declaring the longstanding War on Drugs a failure. The Report stated as general propositions: 'End the criminalization, marginalization and stigmatization of people who use drugs but who do no harm to others' and 'Encourage experimentation by governments with

[1] For a detailed description of this transformation see *The Fix* (Massing 1998).

models of legal regulation of drugs to undermine the power of organized crime and safeguard the health and security of their citizens' (Global Commission on Drug Policy 2011:2). Closer to home, the Australia21 think-tank and lobby group published two reports in 2012 which demonstrate convincingly that prohibition of drugs has failed and that there are better policies we can adopt for greater benefits for society generally (Douglas and McDonald 2012; Douglas, Wodak and McDonald 2012).

It appears a tipping point may soon be reached where common sense and the overwhelming evidence of the additional harms caused by the policy of prohibition will trump moral panic and punitive law-and-order rhetoric and the irrational fear of drugs that arises from ignorance and lack of analysis.

At the heart of the appeal to end the War on Drugs is the recognition that drug use is and always has been in truth a public health and social issue, not a criminal one. Those who call for an end to the criminalisation of drugs are not seeking an untenable or radical alternative. No one is in favour of an unregulated market where anyone can purchase his or her drug of choice at a supermarket (along with their tobacco, alcohol and caffeine). Indeed, the criminal law will always have a role in dealing with criminal trafficking in drugs for profit, outside a regulated market. Rather, the proposition is far more conservative: simply take the 'crime' out of the equation. The criminal law cannot solve the majority of problems of illicit (or even licit) drug use. It does not deter young people from using drugs. Australia's reported rates of illicit drug use per capita are among the highest in the world (United Nations Office on Drugs and Crime 2012), which indicates the social ambivalence regarding their criminal status. Nevertheless, for decades the criminal law has been, and remains, our governments' weapon of choice in the futile endeavour to eradicate the demand and supply for drugs.

The problem: Criminalisation of drugs

Australia's drug laws are a recent creature of statute. Throughout history, the criminal law was mostly developed by the courts as part of the common law. The common law never developed criminal offences relating to the use, possession or supply of drugs. Some offences, such as murder, sexual assault and theft, are *mala in se* (wrong in themselves). We know why these acts are criminal. Drug offences, on the other hand, are *mala prohibita* (wrong because prohibited). That is, the use of certain drugs is criminal because parliaments have proscribed it, not because we think the conduct is necessarily wrong in itself and deserving of punishment. We do not think the consumption of the drugs alcohol or nicotine or even caffeine is criminal and parliaments have not prohibited it to make it so.

Due to the widespread popularity of illegal drugs and the fact that only a tiny proportion of drug transactions and drug use are caught by the authorities, parliaments around Australia have enacted drug laws that have disfigured, distorted, severely eroded or simply ignored the basic principles of criminal law that are deeply entrenched in the common law and that underlie legislation.

All criminology and law students are taught early in their legal education that the elements of criminal offences — *mens rea* (guilty mind) and *actus reus* (guilty act) — must coincide before a person falls foul of the law. There is also the right to be presumed innocent until proven guilty; the right to silence; and the 'golden thread' of the criminal law: that the prosecution bears the burden of proving guilt beyond a reasonable doubt. To bypass or exclude these common law safeguards, legislatures have continually extended criminal

liability and created legal fictions to assist in the prosecution of drug offences in attempting to realise misconceived policy objectives.

The *Drug Misuse and Trafficking Act 1985* (NSW) ('DMTA') contains a 'deemed drug' provision, where the offer to supply a legal substance (such as parsley or flour) will be regarded as supplying an illicit drug if the offeror misrepresents it as such (DMTA s 40). The extremely broad statutory definition of 'supply' in s 3 means this offence is complete on the making of the offer. Whether any supply eventuates or whether the person actually intends to supply the innocuous substance is irrelevant. One wonders if the use of trade practices law might not be a better approach to such deception.

There is also the 'deemed supply' provision, where if a person is found to be in possession of a prohibited drug above a certain amount it is presumed that he or she is a drug trafficker (DMTA s 29). The burden of proof is reversed and the onus falls on the accused to prove that possession was not for the purpose of trafficking. Furthermore, even if the substance only comprises a small amount of the prohibited drug adulterated with another legal substance, the combined quantity is deemed to be pure (DMTA s 4).

The broad definition of possession in s 5 of the *Drugs, Poisons and Controlled Substances Act 1981* (Vic) provides that if a drug is found in a person's house or on their land they are deemed to be the owner of it, unless and until they convince a jury that they had no knowledge of its presence.[2]

All of these fictional creations fly in the face of the foundations of the common law. They disregard the right to silence, the presumption of innocence, the burden of proof on the prosecution and the concept that the criminal law should only punish where a criminal act coincides with criminal intention. Governments and legislatures 'see criminal law and process as a flexible way of responding to social and administrative problems rather than delimiting the minimum conditions which must be present before the state is entitled to interfere with the individual' (Brown et al 2011:836).

Regrettably, statutory doctrines created to assist the prosecution of drug offences have not been the only source of over-criminalisation of drug-related behaviours. A recent decision of the New South Wales (NSW) Court of Criminal Appeal extended criminal liability for drug offences in a catastrophic way. Fortunately, the High Court stepped in and put the brakes on overreaching prosecution attempts to extend criminal liability in drug offences.

Burns v The Queen [2012] HCA 35

In 2009, Natalie Burns was charged with manslaughter after an acquaintance visited her house and died from a poly-drug overdose soon after departing. One of the drugs in the deceased's system was methadone, which had been supplied to him by Mrs Burns' husband. Mrs Burns was convicted of manslaughter either on the grounds of criminal negligence or because she was party to a joint criminal enterprise with her husband to supply the deceased

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2 In *R v Momcilovic*, the Victorian Court of Appeal was asked to decide if this section violated the *Charter of Human Rights and Responsibilities Act 2006* (Vic). The Court held that requiring Momcilovic to prove she did not know the drugs were in her house was inconsistent with the Act, which provides that people are to be presumed innocent until proven guilty. Momcilovic appealed to the High Court (*Momcilovic v The Queen*). The High Court held that deemed possession could not form the basis for deemed supply, and Momcilovic was granted a retrial.

with the methadone, which formed the base offence of unlawful and dangerous act manslaughter. On appeal, the NSW Court of Criminal Appeal upheld the verdict and affirmed that supplying an illicit substance (in this case methadone in the circumstances in which it was supplied) is an unlawful and objectively dangerous act; that is, 'one that carries with it an appreciable risk of serious injury' (*Wilson v The Queen* at [48]).

The unavoidable consequence of such an interpretation is that all drug overdose deaths could be treated as possible homicides. Someone, at some point in time, supplied the deceased with the substance causing or contributing to death. Apart from the unrealistic requirement that police could investigate the drug supplier in all overdose deaths, such an interpretation would significantly increase Australia's homicide rate at a stroke. According to the Australian Bureau of Statistics, there were 260 homicides in Australia in 2010 (Australian Institute of Criminology 2012:14). Preliminary figures from the National Drug and Alcohol Research Centre estimate there were 705 opioid overdose deaths the same year, up from 500 (validated figure) in 2008 (Roxburgh and Burns 2012). Although figures are not available, it would be reasonable to assume that a large proportion of these deaths resulted from the supply of an illicit drug (eg heroin) or the unlawful supply of a licit drug (eg morphine or oxycodone) such as drugs purchased on the black market, obtained by forged or stolen prescriptions, or from a patient legitimately prescribed opiates on-selling the drug.

The High Court in *Burns v The Queen*, however, held that unlawfully supplying a drug to someone does not, by itself, form the basis for unlawful and dangerous act manslaughter. In this it resolved a conundrum that had created difficulties in Australia for some years. The majority held that there is a break in the chain of causation from supplying a drug to someone and that person voluntarily self-administering the drug — the act of supplying drugs is not inherently dangerous, *per se*. Furthermore, the Court held that Mrs Burns did not have a duty of care to the deceased if he injected the drug himself. Of concern, however, French CJ suggested that there might be grounds for parliaments to introduce legislation that extends liability to culpable drug induced homicide (at [11]). For the reasons stated above, we believe this would have disastrous consequences and should not be taken up.

Unintended consequences of drug prohibition

There was some criticism from the High Court in *Burns* that the defendant had not sought medical assistance. This could have made Mrs Burns liable for negligent manslaughter by omission under the principle established in *R v Taktak*.[3] Such criticisms overlook the problems caused by the criminalisation of drug use. Drug users and suppliers are often reluctant to call authorities for help because of the stigmatisation caused by the criminal law and the draconian penalties for drug supply.

The unintended consequences of drug prohibition are well reported. In Australia, as in most developed/affluent/consumer countries, they include: the lack of medical supervision for most illicit drug use; the spread of preventable disease; a large number of preventable overdose deaths; the adulterated substances that people smoke, snort, or inject; the violence around the drug distribution trade; the fact that the most violent and ruthless people win control of the highly profitable drug trade; distraction of police resources; corruption of law

[3] This case established that if a person takes exclusive control of someone suffering from a drug overdose, and negligently prevents access to medical treatment, they can be found guilty of manslaughter on the basis that they owed the deceased a legal duty to obtain medical assistance.

enforcement by prosperous suppliers; secondary crime by users to enable them to purchase drugs; and very limited success in reducing illicit drug use. Funding for health and social services is diverted into law enforcement, prosecution and incarceration where benefits are hard to identify. Prohibition is counterproductive — it causes significant harms additional to those resulting from drug use.

Globally, the consequences of drug prohibition are even more dire. Drug prohibition has indirectly caused over 50,000 homicides in Mexico in the last decade in the turf wars between drug cartels fighting over distribution lines through their country. There have been a similar number of drug-related killings in Colombia in past decades. According to a study by Mexican think-tank the Citizens' Council for Public Security and Criminal Justice, the 20 cities with the world's highest homicide rates are all in Latin America (Wittmeyer 2012). The lucrative illicit drug market is also the major source of funding for the Taliban in Afghanistan. If a drastic change of approach is not adopted these harms will continue to escalate. As the first Australia21 report concluded, the current policy of prohibition 'cannot possibly stop a growing trade that positively thrives on its illegality and black market status' (Douglas and McDonald 2012:5). The illicit drugs industry is now the third most valuable in the world (after food and oil); estimated to be worth US$450 billion a year (Beckley Foundation 2011). Prohibition is also a major cause of the stratospheric prison population in the US (Drucker 2011).

Cracks in the international prohibitionist regime

Despite French CJ's suggestion that parliaments might consider extending liability for drug overdose deaths, public opinion is moving in the opposite direction in relation to that issue and more broadly. There is continuing and growing support to *remove* criminal liability for drug offences in a range of circumstances. Importantly, this shift in opinion is occurring in the two places most instrumental in the War on Drugs: the US and the UN. It is impossible to analyse Australian drug laws without reference to these international influences. For over 100 years, there has been immense international pressure put on Australia to criminalise drug use, starting with the first *International Opium Convention* in Shanghai in 1909, when the first attempts were made internationally to prohibit drugs, primarily at the behest of the US. Since then, the US and the UN (largely under pressure from the US) have encouraged and press-ganged countries to join the international prohibitionist regime. They have also exerted great pressure on countries that try to deviate from or leave the prohibitionist regime.

The extent of this 'peer pressure' was demonstrated in the late 1990s when the Australian Capital Territory (ACT) and NSW were proposing medically supervised injection centres. At the time, over 1,000 young Australians were dying per year from heroin overdoses, yet these attempts to reduce preventable overdose deaths were actively opposed by the US and the UN. During the lead-up to the creation of the NSW Medically Supervised Injecting Centre, a UN spokesman boasted that pressure from the UN's International Narcotics Control Board (INCB) had prevented drug law reform initiatives in five other countries: 'Ultimately the issue was solved because the pressure was such that the country did not want to be named at the [UN's] Economic and Social Council of being in breach of the treaty' (Mann 1999). In the INCB's 2000 annual report the NSW Government was accused of being complicit in criminal behaviour including drug trafficking (Riley 2000). In the lead-up to the ACT heroin prescription trial, US President Bill Clinton sent a top aide to threaten to embargo Tasmania's legal opium industry, which supplies 45%of the world's medicinal morphine (Hamilton 2001). At the time, Brian Harradine, a Tasmanian Senator and morals

crusader, held the balance of power. Prime Minister John Howard subsequently vetoed the ACT heroin trial, despite strong support for the trial by his Health Minister, Dr Michael Wooldridge, who stated that he was 'rolled' (Ward 1998).

There is growing evidence now, however, that the UN and the US are losing their passion to enforce the global prohibitionist regime. Many former high-ranking UN officials have changed their stance on the criminalisation of drug use. In 2010, the Special Rapporteur on the Right to Health released a report to the UN Human Rights Council calling for a move away from drug criminalisation because of the health and human rights consequences:

> A human rights-based approach to drug control must be adopted as a matter of priority to prevent the continuing violations of rights stemming from the current approaches to curtailing supply and demand, and to move towards the creation of a humane system that meets its own health-related objectives. (Grover 2010:16)

In 1998, Kofi Annan, then Secretary General of the UN, gave the opening speech at the *Twentieth Special Session of General Assembly Devoted to Countering the World Drug Problem Together*, declaring a mission to create a drug-free world in the 21st century and proudly observing that the level of consensus on the policy of prohibition was 'almost unprecedented in United Nations history' (Annan 1998).

By 2011, Annan was one of 19 Commissioners of the Global Commission on Drug Policy, which published a report calling for an end to the criminalisation of the drug trade. Other former high-ranking UN officials on the Commission include former UN Special Rapporteur Asma Jahangir, former UN High Commissioner for Human Rights Louise Arbour and former UN High Commissioner for Refugees Thorvald Stoltenberg. The Commission also included former Presidents of Colombia, Mexico, Brazil and Switzerland, and former senior US Government officials, including George Shultz, the Secretary of State in the Reagan Administration. The Report began in no uncertain terms:

> The global war on drugs has failed, with devastating consequences for individuals and societies around the world. Fifty years after the initiation of the UN Single Convention on Narcotic Drugs, and 40 years after President Nixon launched the US government's war on drugs, fundamental reforms in national and global drug control policies are urgently needed.
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> Vast expenditures on criminalization and repressive measures directed at producers, traffickers and consumers of illegal drugs have clearly failed to effectively curtail supply or consumption. (Global Commission on Drug Policy 2011:2)

The other primary source of global pressure to criminalise drug use, the US, is also showing signs of reform. The groundswell for marijuana legalisation and medicinal cannabis (now available on prescription in 18 States and the District of Columbia) continues to strengthen. Former policymakers and senior law enforcement officials increasingly oppose blanket prohibition. In 2010, California voted on an initiative to legalise marijuana. The ballot was marginally defeated, with over 4.6 million Californians voting to legalise marijuana, representing 46.5% of the vote. On 6 November 2012, voters in Colorado and Washington State approved landmark amendments to legalise, regulate and tax marijuana in their respective states. Oregon narrowly rejected similar law reform (46% voting in favour of the amendments). This is significant evidence that the public is increasingly questioning the criminalisation of drug use. As stated by *The Seattle Times* in a pre-election editorial:

> The question for voters is not whether marijuana is good. It is whether prohibition is good. It is whether the people who use marijuana shall be subject to arrest, and whether the people who supply them shall be sent to prison. The question is whether the war on marijuana is worth what it costs. (Editorial 2012)

The quiet revolution: Is decriminalisation already the norm?

Globally, and even in the US, there is increasing recognition of the need to keep non-violent drug users out of the criminal justice system. In addition to the recent ballot outcomes, 14 US states and a number of other local jurisdictions have decriminalised non-medicinal cannabis possession (Stoicescu 2012:162). Two reports published this year document the wave of decriminalisation spreading across the world (see Rosmarin and Eastwood 2012; Stoicescu 2012). They estimate that around 25–30 countries have implemented some form of decriminalisation in the last decade or so. While the form of decriminalisation varies widely between countries, each incident represents recognition by governments that criminalisation is causing significant problems and that alternative approaches are preferable.

In Western Europe, Belgium, Germany, Italy, Spain, Portugal, and the Netherlands have some form of decriminalisation. Switzerland explicitly supports harm reduction and has introduced medically supervised injecting centres. Decriminalisation models have also been adopted in Eastern Europe and Central Asia, including Armenia, Estonia, Kyrgyzstan, Poland, the Czech Republic, and Russia (in theory at least). From 1 January 2013, drug possession for personal use will be decriminalised in Croatia. In Latin America, Chile, Mexico, Paraguay and Peru have some form of decriminalisation. In Argentina and Colombia, courts have held that laws criminalising drug possession are unconstitutional. Brazil has decriminalisation laws pending. In 2011, Bolivia withdrew from the UN *Single Convention on Narcotic Drugs* in protest at the criminalisation of the coca leaf; the chewing of coca leaf for its medicinal and health benefits is a thousand-year-old tradition of the country's indigenous people. The Uruguayan Government is trying to push through legislation that would allow the state to sell marijuana. As reported by *The New York Times*, this is part of a continental movement:

> The agricultural output of [Uruguay] includes rice, soybeans and wheat. Soon, though, the government may get its hands dirty with a far more complicated crop – marijuana – as part of a rising movement in this region to create alternatives to the United States-led war on drugs.
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> Uruguay's famously rebellious president first called for "regulated and controlled legalization of marijuana" in a security plan unveiled last month.
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> Across Latin America, leaders appalled by the spread of drug-related violence are mulling policies that would have once been inconceivable.
>
> Decriminalizing everything from heroin and cocaine to marijuana? The Brazilian and Argentine legislatures think that could be the best way to allow the police to focus on traffickers instead of addicts.
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> President Otto Pérez Molina of Guatemala, a no-nonsense former army general, has called for discussion of such an approach, even as leaders in Colombia, Mexico, Belize and other countries also demand a broader debate on relaxing punitive drug laws. (Cave 2012)

Numerous countries in the Middle East and North Africa — including Egypt, Iran, Israel, Lebanon, Morocco, Oman, Palestine, Tunisia, and the United Arab Emirates — have syringe exchange programs, opioid substitution therapy, or both (Stoicescu 2012). Iran allows syringe exchange in prisons — a hurdle Australian jurisdictions are yet to clear.[4]

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[4] The ACT Government is currently attempting to introduce syringe exchange in prisons, despite strong opposition from the Community and Public Sector Union, who represent prison guards (Knaus 2012).

The movement in Australia

In the 1980s and 1990s, Australia was at the forefront of the global drug law reform movement. We were world leaders in needle and syringe exchange and harm reduction programs that had extremely beneficial outcomes during the HIV/AIDS epidemic (Wodak and Lurie 1996). The push for the medically supervised injecting centre in Sydney in the 1990s provided inspiration to the Canadian and European movements for similar facilities (Carrigg 2004). The Canadian Supreme Court has recently upheld the constitutionality of the British Columbian legislation allowing the Vancouver facility (*Canada (Attorney General) v PHS Community Services*). After the opening of the Medically Supervised Injecting Centre in Kings Cross (the only one in Australia), however, drug law reform fell off the front pages.

This changed in May this year when Australia21 released its first report *The Prohibition of Illicit Drugs is Killing and Criminalising Our Children and We Are All Letting it Happen* (Douglas and McDonald 2012). Luminaries who participated in the roundtable discussion included former Western Australian Premier Geoff Gallop; former Chief Minister of the ACT Kate Carnell; Foreign Affairs Minister Bob Carr; former Health Minister in the Howard Government Dr Michael Wooldridge; Minister for Health in the Fraser Government Professor Peter Baume AC; former NSW Director of Public Prosecutions Professor Nicholas Cowdery AM QC; and former Australian Federal Police Commissioner Mick Palmer AO APM. The Report said it was time to reopen the national debate about drug use, its regulation and control. Palmer, writing in *The Sydney Morning Herald*, explained his conversion from believing in drug prohibition to advocating for change:

> In recent decades, Australian governments have relied heavily on drug law enforcement (while providing more limited funding for health and social responses), yet the drug market has continued to expand. Around the world, drug production has increased, drug consumption has increased, the number of new kinds of drugs has increased, drugs are readily available, drug prices have decreased and the purity of street drugs has increased … It's time the community and its leaders had the courage to look at this issue with fresh eyes. (Palmer 2012)

A second report was released by Australia21 in September, *Alternatives to Prohibition – Illicit Drugs: how we can stop killing and criminalising young Australians*. The Report calls for a National Drug Summit to be held in 2013 to discuss a range of alternatives to the criminalisation of drug use, including decriminalisation and legislated regulation. The Report considers, among other sensible reform options, the model for a regulated market in cannabis and ecstasy proposed by Emeritus Professor David Penington AC, a former Professor and Dean of Medicine at the University of Melbourne, and former Chair of the Victorian Premier's Drug Advisory Council. Under the Penington proposal, cannabis and ecstasy would be distributed through a government-approved supplier, such as a pharmacy, in regulated quality and quantities and subject to conditions. A regulation approach would operate in conjunction with other public health initiatives. Products would contain health warnings and pharmacists would discuss the health consequences of drug use with the consumer. Such a system would be infinitely safer than the current arrangement that ensures only unregulated criminals manufacture and distribute chemical cocktails of unknown content and quantity to young people. Reforms just to these provisions would divert thousands of otherwise law-abiding people from the harmful clutch of the criminal justice system each year. Under the current law in NSW, people can be sent to prison for up to two years for smoking or even *attempting* to smoke a joint, for being in possession of a small amount of cannabis, or simply for owning a bong.

So far, the Federal Government has shown little interest in engaging in a public debate about options for drug law reform. In response to the first Australia21 report, Prime Minister Julia Gillard quickly shut down any discussion of decriminalising drug use (Metherell 2012). However, there are federal, state and territory politicians in favour of reform, operating as the Australian Parliamentary Group for Drug Law Reform, chaired by Dr Mal Washer MP.

Despite a lack of support from the Prime Minister for such a debate, the community is ready for it. The community deserves an explanation from politicians for why they believe continued prohibition to be the best approach to drug use. On 21 May 2012, the University of Sydney held a public forum titled '*Should the government decriminalise drugs?*', and encouraged this debate to continue, supported at that time by *The Sydney Morning Herald* newspaper. Countless current and former judges, barristers, solicitors, senior law enforcement officials, medical practitioners, business leaders, senior politicians, country presidents, professors, scientists, philosophers, and other prominent leaders and citizens around the globe are seeking a more sensible approach to drug policy. The Australian Government should too.

If the mood continues to change at the global level and drug law reform sweeps like falling dominos across the American states from the west coast, to Colorado, into the corridors of Federal Congress in Washington DC and onto the UN headquarters in New York, the Australian Government will no doubt follow. Alternatively, rather than following America and the world, Australia should reclaim its place as a leader in harm minimisation. A National Drug Summit next year that rigorously analyses alternatives to criminalisation would be a good start.

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* ADLaRI is a University of New South Wales (UNSW) project formed at the end of 2011 in partnership with Professor Ernest Drucker, one of the founders of the harm minimisation movement in the United States.
A working group was formed with the intent of pursuing a variety of pathways towards drug law reform, education and the achievement of social justice. Our members include academics, criminal lawyers, criminologists and researchers from the UNSW Faculty of Law, Faculty of Arts and Social Sciences and the National Drug and Alcohol Research Centre. For more information about ADLaRI please visit: <http://www.cjrn.unsw.edu.au/australian-drug-law-reform-initiative> or follow us on Twitter @AuDrugLawReform. We are seeking to form coalitions with other universities and with the legal profession to promote debate about drug law reform. Anyone interested in joining ADLaRI, please contact Helen Gibbon: h.gibbon@unsw.edu.au.

Cases

Burns v The Queen [2010] NSWCCA 279 (30 November 2010)

Burns v The Queen [2012] HCA 35 (14 September 2012)

Canada (Attorney General) v PHS Community Services Society [2011] SCC 44 (30 September 2011)

Momcilovic v The Queen (2011) 245 CLR 1

R v Momcilovic (2010) 265 ALR 751

R v Taktak (1988) 14 NSWLR 226

Wilson v The Queen [1992] HCA 31 (25 June 1992)

Legislation

Charter of Human Rights and Responsibilities Act 2006 (Vic)

Drug Misuse and Trafficking Act 1985 (NSW)

Drugs, Poisons and Controlled Substances Act 1981 (Vic)

Treaties

International Opium Convention, opened for signature 23 January 1912, 8 LNTS187

Single Convention on Narcotic Drugs, 1961, opened for signature 30 March 1961, 976 UNTS 105, entered into force 13 December 1964

References

Annan K (1998) 'Secretary General calls on every nation to say "no" to drugs. To say "yes" to challenge of working towards drug-free world', Press Release SG/SM/6586 GA/9412, 8 June 1998 <www.un.org/ga/20special/presrel/sgsm6586.htm>

Australian Institute of Criminology (2012) 'Australian crime: Facts & figures 2011', Australian Institute of Criminology, Canberra <http://www.aic.gov.au/documents/0/B/6/%7B0B619F44-B18B-47B4-9B59-F87BA643CBAA%7Dfacts11.pdf>

Beckley Foundation (2011) 'Public Letter in The Times and Guardian calling for a new approach to Drug Policy', 19 November 2011 <http://www.beckleyfoundation.org/2011/11/19/public-letter-in-the-times-and-guardian-calling-for-a-new-approach/>

Brown D, Farrier D, Egger S, McNamara L, Steel A, Grewcock M and Spears D (2011) *Criminal Laws: Materials and Commentary on Criminal Law and Process of New South Wales* (5th ed), Federation Press, Sydney

Carrigg D (2004) 'Mayor Heads to Oz for Drug Talk', *The Vancouver Courier* (online), 22 March 2004 <http://www.mapinc.org/drugnews/v04/n477/a12.html>

Cave D (2012) 'South America Sees Drug Path to Legalization', *The New York Times* (online), 29 July 2012 <http://www.nytimes.com/2012/07/30/world/americas/uruguay-considers-legalizing-marijuana-to-stop-traffickers.html?pagewanted=all>

Douglas B and McDonald D (2012) *The Prohibition of Illicit Drugs is Killing and Criminalising Our Children and We Are All Letting It Happen*, Report of a high level Australia21 Roundtable, Australia21, Canberra <http://www.australia21.org.au/our_research/illicit_drugs_download.html#a />

Douglas B, Wodak A and McDonald D (2012) *Alternatives to Prohibition – Illicit drugs: How we can stop killing and criminalising young Australians*, Report of the second Australia21 Roundtable on Illicit Drugs, Australia21, Canberra <http://www.australia21.org.au/our_research/illicit_drugs_download.html#a>

Drucker E (2011) *A Plague of Prisons: The Epidemiology of Mass Incarceration in America*, The New Press, New York

Editorial (2012) 'Editorial: Approve Initiative 502 – It's time to legalize, regulate and tax marijuana', *The Seattle Times* (online), 22 September 2012 <http://seattletimes.com/html/editorials/2019226555_editmarijuanainitiative502xml.html>

Global Commission on Drug Policy (2011) 'War on Drugs: Report of the Global Commission on Drug Policy', Global Commission on Drug Policy, Rio de Janeiro <http://www.globalcommissionondrugs.org/Report>

Grover A (2010) *Right of everyone to the enjoyment of the highest attainable standard of physical and mental health* , United Nations General Assembly, 65th sess, Agenda Item 69(b), UN Doc A/65/255, 6 August 2010

Hamilton M (2001) 'Drug Policy in Australia – Our Own?' in Gerber J and Jensen EL (eds) *Drug War American Style: The Internationalization of Failed Policy and Its Alternatives*, Garland Publishing, New York

Knaus C (2012) 'Needle exchange trial to go ahead at Canberra Jail', *Canberra Times* (online), 15 August 2012 <http://www.canberratimes.com.au/act-news/needle-exchange-trial-to-go-ahead-at-canberra-jail-20120815-247l0.html#ixzz29dHa89No>

Mann S (1999) '$150M opiates trade at risk', *The Age* (online), 18 December 1999 <www.mapinc.org/drugnews/v99/n1378/a05.html>

Massing M (1998) *The Fix*, University of California Press, Berkeley, California

Metherell M (2012) 'Gillard and Carr divided over decriminalisation of drugs', *The Sydney Morning Herald* (online), 3 April 2012 <http://www.smh.com.au/opinion/political-news/gillard-and-carr-divided-over-decriminalisation-of-drugs-20120403-1w9iz.html>

Palmer M (2012) 'After 33 years, I can no longer ignore the evidence', *The Sydney Morning Herald* (online), 7 June 2012 <http://www.smh.com.au/opinion/society-and-culture/after-33-years-i-can-no-longer-ignore-the-evidence-on-drugs-20120606-1zwpr.html>

Riley M (2000) 'Injecting Rooms a Crime: UN', *The Sydney Morning Herald* (online), 24 February 2000 <http://www.mapinc.org/drugnews/v00/n258/a06.html>

Rosmarin A and Eastwood N (2012) *A Quiet Revolution: Drug Decriminalisation Policies in Practice Across the Globe*, Release Publication

Roxburgh A and Burns L (2012) 'Accidental drug-induced deaths due to opioids in Australia, 2008', National Drug and Alcohol Research Centre, Sydney

Stoicescu C (ed) (2012) *The Global State of Harm Reduction: Towards an Integrated Response*, Harm Reduction International, London

United Nations Office on Drugs and Crime 2012, *World Drug Report 2012*, New York <http://www.unodc.org/unodc/en/data-and-analysis/WDR-2012.html>

Ward I (1998) 'Political Chronicles: Commonwealth of Australia July to December 1997', *Australian Journal of Politics and History* 44(2), 233–319

Wittmeyer A (2012) 'The world's 10 deadliest cities', *The Age* (online), 10 October 2012 <http://www.theage.com.au/travel/the-worlds-10-deadliest-cities-20121010-27cnz.html>

Wodak A and Lurie P (1996) 'A Tale of Two Countries: Attempts to Control HIV Among Injecting Drug Users in Australia and the United States', *Journal of Drug Issues* 27(1), 117–34