Drug law reform in Aotearoa: The case for decriminalisation of all substances

Christopher Mayo

Abstract
Rates of illicit substance use (ISU) in New Zealand are currently amongst the highest in the world, and ISU generates a national disease burden of 9,700 disability-adjusted life years per annum. I propose decriminalisation of personal possession and use of all substances as an appropriate policy change for reducing harm. This is a position supported by the New Zealand Drug Foundation, the Drug Policy Alliance, and the World Health Organisation.

My suggested legislative changes involve repealing and replacing the Misuse of Drugs Act 1975, in particular Section 7 (which criminalises personal possession and use of illicit substances) and Section 13 (which criminalises possession of utensils associated with ISU). I additionally support the cautioning and brief intervention referral scheme recommended by the Law Commission in 2011, as part of an overall move towards treating ISU as a health issue rather than a criminal justice issue.

Evidence shows that criminalisation of personal possession and use of substances is ineffective at reducing substance use, as it does not have a significant effect on substance supply or demand. Furthermore, criminalisation causes health harms to already vulnerable populations, as it leads to social exclusion, and it creates stigma which deters substance users from help-seeking. Decriminalisation also allows for resources to be diverted from criminal justice to healthcare, which may be more effective at reducing harm. Criminalisation also exacerbates existing inequities, particularly with respect to Māori, through uneven law enforcement.

Decriminalisation of personal possession and use of substances is an effective and evidence-based harm reduction intervention.

Background
Illicit substance use (ISU) is a significant public health issue in New Zealand, with cannabis and methamphetamine use in particular having high burdens of disease. Cannabis is used by 14.9% of New Zealanders, and 11% use methamphetamine, with use being higher for Māori, males, and people living in the most socioeconomically deprived neighbourhoods. These usage rates are trending upwards and are presently amongst the highest in the world. Determinants of ISU include leaving formal education without qualifications, having peers or parents who also use substances, conduct problems, and sexual abuse.

ISU has many deleterious health effects including dependence, cardiovascular disease, respiratory disease, metabolic disorders, increased risk of cancer, unsafe driving, unsafe sexual behaviours, and intravenous drug use (leading to an increased risk of blood-borne diseases), and various mental health sequelae (including cognitive impairment, depression, anxiety, psychosis, and suicidality). ISU also leads to social exclusion, which deters help-seeking and perpetuates negative health effects. In total, substance use disorders are estimated to generate a national health burden of 9,700 disability-adjusted life years (DALYs) per annum, with 1,800 DALYs attributable to methamphetamine, and 1,000 DALYs attributable to cannabis.

In this article, I will advocate for the decriminalisation of personal possession and use of all substances. In my view, this is the most appropriate policy change for reducing the burden of disease of ISU. I will firstly explain the legislative changes I am advocating for, and I will then justify this position with three main arguments: continued criminalisation does not reduce substance use, it can exacerbate the harms associated with ISU, and it increases inequities.

Replace the Misuse of Drugs Act 1975
The Misuse of Drugs Act 1975 was developed in a dramatically different social context to the present day, when less was known about the evidence surrounding drug policy. The Law Commission’s 2011 review of the Misuse of Drugs Act found it to be inconsistent with harm reduction principles, and recommended the Act be updated with several evidence-based recommendations. Rather than approaching ISU as a criminal justice issue, the review approached ISU as a health issue first and foremost. A recommendation was made to institute a cautioning scheme, where substance users would be given cautions by police, which would be followed up by referral to a brief intervention session. Additionally, the review recommended that Section 13, which criminalises the possession of pipes and other utensils associated with ISU, be repealed.

In addition to these recommendations, I support the removal of criminal penalties for personal possession and use of all substances (i.e. repealing and replacing Section 7 of the Misuse of Drugs Act), allowing for more focus to be placed on education and treatment. This is in line with policy changes recommended by the New Zealand Drug Foundation, the Drug Policy Alliance, and the World Health Organisation, and it is similar to policy that has seen success in Portugal. Note that this position does not include support for legalisation: commercial dealing and drug trafficking should remain illegal.

In 2019, the Misuse of Drugs Act was amended to give police discretion to avoid prosecuting substance users if prosecution was not in the “public interest.” The aim of this amendment was to divert more substance users into treatment rather than incarceration. However, since the amendment, the number of police actions related to drug possession has risen rather than fallen, and most police still deal with substance use as a criminal offence rather than a health issue. It is evident that more dramatic change to the criminal status of substances is needed.

Criminalisation of substances is ineffective
The rationale behind criminalisation of substances is to reduce supply and demand, thereby reducing the number of people using substances and thus harm. However, evidence does not suggest that criminalisation has been effective at reducing supply or demand.
Criminalisation of substances is harmful

Prosecution of substance users has many established harms that could be avoided if personal possession and use were decriminalised. Prison time is associated with poorer health outcomes. Criminal prosecution has negative effects on family relationships, employment, finances, and travel, and the resulting social exclusion has negative effects on health. It is acknowledged by many that it is unjust to further victimise substance users, especially when use is driven by poor mental health, abuse, or family dysfunction.

Furthermore, many policing hours are consumed by prosecuting low-level drug offences. Of the 62,000 people convicted of drug-related offences in New Zealand between 2009 and 2018, 36,500 people were convicted for possession or usage. It is believed that diverting resources from criminal justice to healthcare would be more effective at reducing harm.

As mentioned earlier, the stigma created by criminalisation of substances has negative effects on substance users. This is because the stigma (and associated fear of criminal prosecution) serves as a barrier towards help-seeking, resulting in harms being exacerbated. After decriminalisation of substances in Portugal, the number of people seeking treatment for substance use disorders increased, due to reduced stigma and reduced fear of prosecution. Decriminalisation is also associated with improved help-seeking behaviour for the sequelae of ISU. For instance, in a 2017 systematic review, decriminalisation was associated with reduced prevalence of human immunodeficiency virus (HIV) infection and increased treatment uptake. Decriminalisation of substance use (and the associated increase in funding of harm reduction services) resulted in marked reductions in HIV, acquired immunodeficiency syndrome (AIDS), and tuberculosis diagnoses in Portugal.

Following Portugal’s 2001 decriminalisation policy, drug-related harms decreased significantly. Drug death rates in Portugal were at 21 per million in 2013, well below the European average of 16 per million. Portugal has seen a reduction in incarcerations and an increase in drug trafficking seizures (due to freed-up police resources). Over the first ten years of decriminalisation, a total reduction in social costs of 18% was observed, due to reductions in both legal and health costs. It is thus evident that criminalisation is associated with significant harms and costs, both for substance users and society at large.

Section 13 of the Misuse of Drugs Act, which prosecutes people found in possession of utensils associated with ISU, also runs contrary to harm reduction principles. Criminalising utensils may encourage riskier ways of consuming drugs (for instance, injecting rather than smoking through a pipe), and may deter people from participation in needle exchange programmes.

Criminalisation of substances is inequitable

As established earlier, ISU disproportionately affects Māori, males, and people living in socioeconomically deprived neighbourhoods. Young people and Pacific peoples are also at high risk of harm from ISU. Harms associated with criminalisation will therefore disproportionately affect these groups, perpetuating existing inequities.

Additionally, there are significant concerns that criminalisation is associated with police discrimination. It is believed that insufficient police resources exist to enforce substance possession laws consistently, therefore, there will necessarily be uneven enforcement. This has been shown to occur in a discriminatory manner: substance users who are Māori, male, or who have had previous police contact are more likely to be arrested and convicted of a drug-related offence (even when controlling for baseline substance use rates). This exacerbates the existing harms of criminalisation for these populations, further increasing inequity.

Uneven enforcement of substance possession laws was reinforced by the 2019 amendment to the Misuse of Drugs Act, which reaffirmed police discretion when deciding to prosecute. Since this amendment, more Māori and young people have come into contact with police, and Māori are still disproportionately prosecuted. It is important that future drug misuse legislation acts to reduce inequities, and decriminalisation of all substances is an important step towards this.

Conclusions

In the ten years since the Law Commission’s 2011 review of the Misuse of Drugs Act, there has been little action in the way of drug law reform in New Zealand. The continued criminalisation of substances is ineffective, harmful, and inequitable, and ISU remains a significant problem in New Zealand. As health professionals, it is our responsibility to advocate for decriminalisation to ensure optimal health outcomes for our communities.

References


---

About the author

Christopher is a fifth-year medical student at The University of Auckland. He has a strong interest in the applications of data science and artificial intelligence in medicine. This academic viewpoint was the winner of The University of Auckland 2021 Population Health Intensive (PHi) Academic Essay Prize.

Conflicts of Interest

Christopher Mayo is a student reviewer for the New Zealand Medical Student Journal (NZMSJ). This article has, however, gone through a double-blinded peer review process which is applied to all articles submitted to the NZMSJ, and has been accepted after achieving the standard required for publication. The author has no other conflict of interest to declare.

Correspondence

Christopher Mayo: cmayo091@aucklanduni.ac.nz