

Injustice reinvestment

It is difficult to imagine a more confused and confusing set of measures than those being pursued by the ACT government. On the one hand the government is supporting a bill that will legalise the possession and cultivation of small quantities of cannabis and has just announced that the second trial of pill testing will take place at the *Groovin the Moo* dance festival in April. Families and Friends for Drug Law Reform has given enthusiastic support to both these initiatives because each removes the obstruction of the criminal law that hinders the deployment of health and social interventions and the dissemination of credible information about the harmful impact of drugs.

On the other hand the same government is pushing ahead with two other initiatives that each buttress the intervention of the criminal law in drug treatment. These are the introduction of a drug court in the Australian Capital Territory and its announced intention to build a “reintegration centre” which is effectively an 80 bed extension of the existing high security ACT prison that, after barely 10 years, is already bursting at the seams with 591 inmates. The sad part is that both these initiatives are motivated by the best of intentions. In the words of the Attorney General at our remembrance ceremony in October, the government is committed to “a health based approach and support [of] 0people rather than a criminal justice approach.” The Corrections Minister applies the moniker of “Justice reinvestment” to justify the “reintegration centre”: [“Justice reinvestment means being honest about the reality of incarceration in Australia: that we cannot continue to simply spend millions, if not billions, building prisons. We can choose to reinvest some of this effort into building communities.”](#)

Families and Friends wholeheartedly endorses the concept of justice reinvestment but considers the government is fooling itself, if not being misleading, in seeking to badge what is plainly funding the extension and operation of the ACT prison as a redeployment of “taxpayer dollars from prisons and [investment] back into communities.”

If reoffending is to be addressed, the two most prominent characteristics of those sentenced to prison must be addressed. These are dependence on illicit substances and a range of other serious mental health conditions that afflict about two thirds of prisoners. The predicament of women is even worse.

So crowded are prisons with people suffering from mental health conditions that they have become modern day mental health institutions. In a large measure the [drug laws are drivers of this situation](#) not in terms of imprisonment for minor use and possession charges but in terms of young people becoming mixed up with a criminal peer group, being enticed by the easy money of drug dealing and property crime to fund their dependency – possibilities enhanced by common pre-existing mental health conditions like depression and youthful risk taking.

The criminal law both mediates access to drug courts and the reintegration centre and will serve as the ultimate guarantor of compliance with the usual drug free regime imposed in prisons. Effectively therefore, the drug courts and the reintegration centre are exercises in compulsory drug treatment.

It does not make sense to invest heavily in compulsory treatment when there is a crying shortage of treatment slots for those who seek it voluntarily.

- “The ACT is the only jurisdiction in Australia that does not have an outpatient withdrawal program as part of its alcohol and other drug treatment services system

. . . The availability of bed based-only AOD withdrawal care represents a major gap in service delivery in the ACT ([ATODA](#) budget sub);

- the absence in Belconnen of an induction clinic for opioid maintenance treatment. At present the need to attend building 7 at the Canberra Hospital in Woden is a big inconvenience for clients and the services;
- there is a wait time of between two weeks and six months to access detox services
- securing rehab beds is particularly difficult because the detox must line up with it. The ACT users group informs us that "it often requires people to keep ringing back every morning to see if there is a spot available" typically for several weeks to a month.

In all likelihood, plugging gaps in voluntary services is cheaper and more effective in reducing offending than compulsory services embedded in the criminal justice system. ATODA reports that "Reduced involvement in crime was the number one self-reported outcome of specialist AOD treatment in the ACT, with 91% of service users reporting a reduced involvement in crime since accessing the service" ([ATODA](#) budget sub).

How exactly the drug court and the reintegration centre this to function is yet to be revealed if not also determined. What is clear though is that both systems will draw heavily upon the human and financial resources of the existing drug treatment services. Unless there is a greatly increased deployment of those resources there is the real danger that those presently servicing voluntary clients will find themselves even less able to meet current voluntary demand. This situation could produce negative unintended consequences. The Australian National Council on Drugs has warned:

Another unintended negative outcome that can arise from compulsory treatment programs is the displacement of limited treatment resources available in the community. Through diversion programs, treatment places are allocated preferentially to people coercively referred via the criminal justice system, leaving fewer places for those voluntarily seeking treatment ([ANCD](#)).

Indeed in an environment of shortage of services there is the potential for 'perverse incentives' for people to access treatment via the criminal justice system.

I wish to be clear that Families and Friends for Drug Law Reform wholeheartedly endorses prison programs that address critical needs of drug dependency, mental ill health and other well-recognised risk factors for offending. Programs therefore need to be put in place to attend to the needs of the current prison population but the inflow needs to be and would be staunchly by measures such as the cannabis legislation and pill testing that facilitate health intervention and social support undisrupted by the processes of the criminal law.

A conviction and doing time in the government's proposed "reintegration centre" would destroy a young Australian's life chances. The life courses of Michael Pettersson in the ACT, Kate Faehrmann in New South Wales and numerous other politicians who have had the courage to fess up to having tried illicit drugs in their youth would have been ruinously derailed had they been caught by the police and prosecuted.

This very weekend, I learnt of someone whose family could afford a top notch barrister who moved a magistrate to record no conviction of their child arrested for a drug offence. That child would not now be a successful, highly respected architect.

We know of others in less fortunate circumstances who bear a brand for life because of a youthful drug charge – a brand that has deprived the nation and our community of enormous talent and benefit.

Similar considerations operate in the case of older Australians. There is absolutely no community interest or benefit in disrupting the well established life of a latter day tax paying family man reliving his hippie days and for whom a drug charge would mean a loss of livelihood, family and disgrace.

We made a [submission](#) in support of the Michael's Pettersson's [Drugs of Dependence \(Personal Cannabis Use\) Amendment Bill 2018](#). The most significant reservation that we raised was the unfairness of subjecting those under 18 to the simple cannabis offence notice (SCON) system. They will thereby be subject to a fine (and possible prosecution if they do not pay it) when adults would be subject to no penalty – in other words perpetuating the approach of prohibition of subjecting to the coercive processes of law the very people they law was intended to protect.

The conflicted position of the ACT government as revealed by its recent drug policy initiatives shows how difficult it is to appreciate the implications of a health and social support based approach that it ostensibly embraces. In formulating measures to implement its vision the government can so easily slide away from the courage of its convictions.

Bill Bush