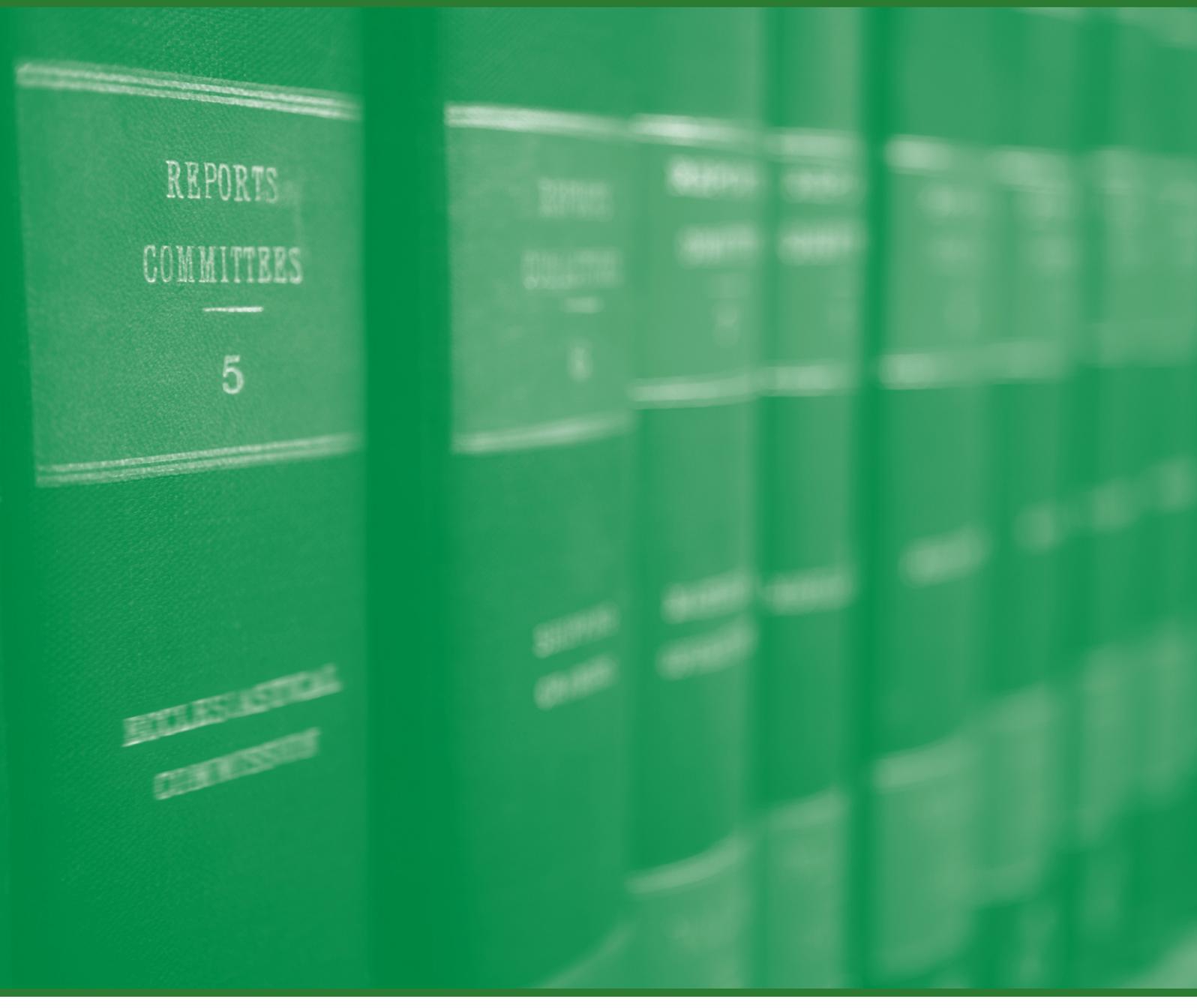




## Legal Affairs Committee

REPORT 1/55 – MAY 2013

### LAW REFORM ISSUES REGARDING SYNTHETIC DRUGS



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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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# Membership

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# Terms of Reference

That the Legal Affairs Committee inquire into and report on law reform issues regarding the prohibition of synthetic drugs, which are designed and manufactured to have the same effect as prohibited drugs. The Committee will consider the adequacy of current NSW legislation and any other related matters.

# Chair's Foreword

The emergence of synthetic drugs poses a real challenge for parents, police and policy makers around the globe and has led the NSW Parliament's Legal Affairs Committee to conduct an inquiry into "law reform issues regarding synthetic drugs".

Synthetic drugs are products containing chemical substances artificially developed to mimic the effects of illegal drugs like cannabis, cocaine and methamphetamine.

Often, in order to disguise the fact that they are psychoactive drugs, and circumvent 'grey areas' in consumer protection and marketing regulations, synthetic drugs are sold under various product labels, including 'research chemicals', 'bath salts' and 'plant food', and usually with an accompanying disclaimer that they are not intended for human consumption.

The difficulty for law enforcement officers is that when the chemicals contained in synthetic drugs are banned, manufactures tweak the chemical makeup to circumvent the law and have new products back on the shelves within days.

This problem occurred right here in NSW when the Government back in 2011 banned seven synthetic cannabis compounds. Manufacturers quickly responded by developing products containing similar but legal compounds.

The Committee received a range of submissions from a broad cross section of the community, including parents concerned about their children, the mining industry concerned about their employees and law and order agencies concerned about policing and the effectiveness of synthetic drug laws in NSW.

To combat the emergence of synthetic drugs the Committee took the view that governments need to take a multi-faceted approach. There are however two distinct areas which required examination over the course of the inquiry. The first is the effectiveness of the current legislative framework in NSW in capturing synthetic drugs and secondly, the effectiveness of ensuring retailers are not supplying harmful or prohibited substances to the public.

## **Current NSW Legislative Framework**

### *Drug Misuse and Trafficking Act 1985*

The primary legislation concerning illicit substances in NSW is the *Drug Misuse and Trafficking Act 1985* (NSW) (**DMTA**). Schedule 1 contains a list of drugs and plants that are prohibited in NSW. Under section 44 of the Act, names or descriptions of prohibited substances may be added to the Schedule by regulation. This means that, unlike some international jurisdictions substances can be prohibited without the need to pass amending legislation.

Schedule 1 of the DMTA also prohibits substances that are analogues of drugs listed in the Schedule, which captures substances which are structurally similar to existing illicit drugs, with the added requirement that the substance must have 'psychotropic properties'.

The analogue provision has not been successful in capturing many synthetic cannabinoids as some synthetic cannabis compounds are not chemically similar to THC, and therefore do not meet the definition of an analogue.

### *Poisons and Therapeutic Goods Act 1966*

The *Poisons and Therapeutic Goods Act 1966* (NSW) (**Poisons Act**) regulates prescription, or pharmacy medication, as well as poisonous substances. The Poisons Act relies upon a 'Poisons List' which for the most part adopts the Federal Therapeutic Goods Administration's Standard for the Uniform Scheduling of Medicines and Poisons (**SUSMP**).

The SUSMP classifies medicines and chemicals into schedules for inclusion in relevant state and territory legislation. Substances are assessed by the TGA and then classified according to the level of regulatory control over their availability necessary to protect public health and safety.

Substances added to Schedule 9 of the SUSMP are prohibited by law with some exceptions. Rather than simply including specific chemical compounds the SUSMP also includes broad categories that cover many different chemical compounds.

NSW does not incorporate Schedule 9 of the SUSMP into NSW legislation.

### **Proposed Changes to the NSW Legislative Framework**

The Committee has recommended the NSW Government join other states and adopt Schedule 9 of the SUSMP into NSW legislation.

Adopting the Schedule will assist in controlling synthetic drugs pre-emptively by capturing substances through the use of the broad categories that cover many different chemical compounds, thus making bans easier for police to enforce, especially in relation to synthetic cannabis which may not be covered by the analogue provision.

In relation to the analogue provision in the DMTA the Committee recommends that the requirement to demonstrate that an analogue has 'psychotropic properties' be removed. This will simplify the testing required and remove any subjectivity and disputes between expert witnesses.

### **Policing**

Adoption of the proposed legislative changes set out above will provide greater certainty to law enforcement agencies enforcing synthetic drug laws in NSW.

Police officers are only able to seize a product if they reasonably suspect that a banned compound is present in the substance before they seize it and submit it for analysis. According to the head of the NSW police drug squad Detective Superintendent Nick Bingham "*our advice in relation to seizure is they have to be quite sure it is a prohibited drug.*" Given the extremely technical nature of the law in relation to prohibited substances it is completely understandable that the police don't feel confident in seizing these products.

The Committee is also of the view that NSW Police should develop guidelines for policing synthetic drugs as have been established in other jurisdictions.

### **Consumer Law**

The Committee's recommendations also include an interim ban on products, issued through NSW Fair Trading. These bans will provide greater flexibility as retailers will have a list of products to refer to instead of a periodic table of the elements.

If it is reasonably foreseeable that a product will be used as a drug and could cause injury, the Minister for Fair Trading can issue a ban on it. This will prevent retailers evading the law by labelling a package 'not for human consumption.' Retailers will face fines of up to \$1.1 million if they are found to be supplying a substance subject to a Consumer Law ban and could be charged if found to be supplying a prohibited drug.

Retailers need to be held responsible for the products they sell and liable for any harm that a product may cause the public. We do however need to help retailers understand what they are able to sell, what products are harmful and what are not.

### **National Approach**

Overall we need a simple and coordinated approach. We need state and federal agencies to work together on classification as new drugs emerge. That is why we have recommended the Intergovernmental Committee on Drugs consider implementing an early warning system which will assist in ensuring improved coordination and detecting and classifying emerging synthetic drugs as they emerge.

The Committee has also recommended greater coordination between NSW Government agencies including NSW Fair Trading, NSW Police, the Department of Attorney General and Justice and NSW Health (including Mental Health). Increased communication and information sharing will ensure a more effective response as synthetic drugs emerge.

### **Public Awareness**

The Committee also recommends that public awareness be enhanced in relation to both the harmful effects and the law relating to synthetic drug products.

In closing I would like to thank those who made a submission to the inquiry and particularly those who attended and gave evidence at the public hearings. These submissions provided the basis for many of the recommendations contained in this report.

I would like to acknowledge all the members of the Committee; Deputy Chair Bryan Doyle, Stephen Bromhead, Clayton Barr and Sonia Hornery.

I would also like to particularly pay tribute to the hard work and dedication of the Committee Staff over the course of the inquiry particularly Dora Oravec, Ben Foxe, Rachel Simpson, Emma Wood and Carly Maxwell.

I look forward to the NSW Government's response to the recommendations contained in the report.



**Mr Dominic Perrottet MP**  
Chair

# Executive Summary

## Key issues

Synthetic drugs contain chemical substances which have been artificially developed to mimic the effects of illicit drugs. A wide variety of products containing these drugs are available for retail sale in NSW. There is very limited information about the short and long term health effects related to their use; however there have been media reports of negative side effects and dependency following their use. In recent years an increase in their detection and use has been noted not only within NSW but around Australia and across the world.

Synthetic drugs present difficulties for effective government regulation as many of the chemical substances present in synthetic drug products have not been listed as prohibited drugs in relevant NSW legislation. A particular issue brought to the attention of the Committee by inquiry participants was the challenge presented to government by the need to effectively regulate or respond to synthetic drugs with chemical compositions that can be changed rapidly. The Committee was advised that in the past when governments have banned a specific chemical compound used in synthetic drug products, manufacturers have developed and distributed slightly chemically different products that circumvent prohibitions under the legislation. Not only does this pose problems for the implementation of an effective government response to synthetic drugs but from the time substances are released into the market until they are removed following government regulation, the public is exposed to new and largely untested synthetic drugs and therefore at risk of possible harm.

Other issues raised during the inquiry included difficulties faced by law enforcement in policing bans on synthetic drugs, delays in scientific testing of synthetic drugs and the substantial number of substances that could be developed with the intention of mimicking the effects of prohibited drugs.

## Inquiry outcomes

Inquiry participants suggested reforms to the regulatory approach towards synthetic drugs, particularly in order to provide clarity for members of the public, retailers, police and prosecutors about the status of synthetic drugs in NSW. The Committee found that the current approach of adding new drugs by regulation to the *Drug Misuse and Trafficking Act 1985* was insufficient considering the ability of synthetic drug producers to adapt the chemical composition of synthetic drugs in order to evade specific regulatory bans. The Committee has recommended a suite of complementary measures with the aim of moving towards a comprehensive and detailed government response to the issue of synthetic drug use in NSW.

### *Prohibiting broad categories of synthetic substances*

NSW, unlike the majority of other Australian states and territories, does not incorporate Schedule 9 of the Commonwealth Standard for the Uniform Scheduling of Medicines and Poisons (SUSMP) into its drug control legislation. Schedule 9 consists of a list of substances

which the Therapeutic Goods Administration has analysed and assessed as worthy of prohibition. The Committee has recommended that NSW adopt Schedule 9 of the SUSMP into existing state legislation, which would mean that groups of synthetic drugs currently listed in Schedule 9 and any groups added in the future would be controlled within NSW. The Committee is of the view that prohibiting structurally similar categories of synthetic drugs is an efficient response to the ability of producers to slightly adjust the chemical composition of substances in order to evade legislative prohibition. Adopting Schedule 9 of the SUSMP would also bring NSW in line with many other states and enable a more nationally consistent response to the regulation of synthetic drugs in Australia.

#### *Analogue provision simplification*

The Committee heard that the current provision within the *Drug Misuse and Trafficking Act 1985* concerning substances that are analogues of prohibited drugs needs to be simplified due to difficulties faced by law enforcement officers in enforcing the provision and prosecuting related offences. Currently, substances need to be proven to have psychotropic properties in order to be considered an analogue of a prohibited drug and thus subject to the same controls and offences. The Committee heard from various inquiry participants that due to the potentially subjective and highly technical nature of the effects of synthetic drugs on the human brain, the analogue provision would be more practical and clearer for practitioners and the public if the legislative requirement for a substance to have 'psychotropic properties' were removed.

The Committee is of the view that removing the requirement to prove that a substance has 'psychotropic properties' will capture more substances whilst simplifying the test required in determining whether a substance is an analogue of a prohibited substance.

#### *Consumer protection and enforcement*

The Committee has recommended that the government's approach to synthetic drugs be enhanced through other measures in addition to amendments to existing state legislation. The Committee is of the view that an effective response to synthetic drugs should involve the NSW Minister for Fair Trading issuing interim bans on synthetic drug products if they are identified under the provisions of the Australian Consumer Law as consumer goods of a kind that will or may cause injury to any person. It is clear from evidence received during the inquiry that many synthetic drug products meet this test, and therefore should not be available for retail sale. The use of interim product safety bans would facilitate a timely and efficient approach to new and emerging synthetic drugs by government, particularly in relation to the retail sale of products containing potentially harmful synthetic drugs.

A system incorporating the use of interim bans would provide a rapid means for synthetic drug products to be banned and would complement current NSW drug legislation in the form of the *Drug Misuse and Trafficking Act 1985*. The use of interim bans on emerging synthetic drug products would provide a significant disincentive for synthetic drug manufacturers to introduce slightly chemically altered synthetic drugs into the community and for retailers to sell synthetic drug products. The swift nature of interim drug bans under the Australian

Consumer Law would also provide a higher and more responsive level of protection for the public and reduce the public's exposure to possibly harmful substances.

The Committee has recommended that the NSW Government request the Commonwealth Government to extend the length of interim bans able to be issued by state ministers under the *Competition and Consumer Act 2010 (Cth)* from the current maximum of 90 days to a period of six months. It is intended that the six month interim ban period be used by government to assess the banned product and then make a recommendation to the Commonwealth for its permanent prohibition, if it is found that the product contains a prohibited synthetic compound or analogue or that it may cause injury or harm to members of the public.

The Committee considers that a core focus for law enforcement and Fair Trading officers working in the area of synthetic drugs should be on assisting retailers to ensure that they are aware of and comply with legislation regarding synthetic drugs. The use of interim bans and the extension of such bans to a period of six months, as recommended by the Committee, should also provide greater clarity for consumers, retailers and police on the legal status of synthetic drugs.

The Committee heard that multiple issues constrain effective policing of synthetic drugs in NSW, including the lack of clarity for officers, retailers and consumers in regards to the chemical contents of newly developed substances and their legal status. As a result, the Committee is of the view that specific training regarding synthetic drugs and any changes to relevant legislation should be provided to officers of the NSW Police Force to ensure that they are adequately prepared and educated about their legislative powers and responsibilities in relation to synthetic drugs. Specific guidelines for policing synthetic drugs should also be developed for use by the NSW Police Force to ensure a uniform approach towards law enforcement in this area. The Committee notes that such guidelines have effectively been issued in international jurisdictions and have provided greater clarity for law enforcement officers in the policing of synthetic drugs.

#### *State and national co-operation and co-ordination*

The Committee considers that there should be close interaction and co-operation between government agencies in NSW in order to achieve a uniform government-wide approach to the issue and to co-ordinate government efforts in response to synthetic drugs. It is also clear that the importation of synthetic drugs across national borders is a significant issue, with increases in synthetic drug use being detected around Australia. The Committee's recommendation that the NSW Government incorporate Schedule 9 of the SUSMP into the *Drug Misuse and Trafficking Act 1985* should facilitate a more nationally consistent approach towards the issue of emerging synthetic drugs. The Committee's recommendation that the Intergovernmental Committee on Drugs consider implementing a national synthetic drug early warning system will also assist in ensuring improved co-ordination, which in turn will assist in detecting and classifying emerging synthetic drugs as they emerge. An early warning system based on the

European Model would compile information drawn from a range of sources and disseminate more complete information on emerging substances to relevant agencies in a timely manner.

The Committee has noted that jurisdictions around the world are currently considering how to appropriately deal with the rising issue of synthetic drug use, with significant reforms set to be implemented in New Zealand in 2013. Although there are some concerns regarding the effectiveness of a scheme which involves government approvals of possibly harmful substances designed to mimic prohibited drugs, the Committee encourages the Intergovernmental Committee on Drugs to continue to monitor the implementation of the new regulatory scheme in New Zealand and to evaluate its outcomes as they are identified.

#### *Public awareness*

The absence of sufficient information available to the public regarding synthetic drugs in NSW was highlighted by many inquiry participants. It was noted that users of synthetic drugs are often unaware of the legal status of these drugs and the dangers that their use could pose to their health. In order to address this gap in public awareness, the Committee has recommended that the NSW Government develop a public awareness campaign to educate the community about synthetic drugs. In addition, the Committee has recommended the development of a tailored government website, which would publicise warnings about synthetic drugs as they are identified and allow the public to provide information to government agencies about synthetic drug products being sold in the community. Greater public awareness about emerging synthetic drugs will help to alert the public to new drugs as they are identified and to the health risks that these drugs can pose to users.

#### **Report structure**

**Chapter One** explains the background to the establishment of the inquiry, its terms of reference and how it was conducted.

**Chapter Two** discusses the nature of synthetic drugs and provides information about their prevalence and use.

**Chapter Three** details the current government approach towards controlling synthetic drugs and the views of inquiry participants on that approach.

**Chapter Four** explores possible reforms to the current government approach to synthetic drugs and regulatory approaches taken in foreign jurisdictions towards this issue.

**Chapter Five** contains the Committee's recommendations for reform.

# List of Recommendations

RECOMMENDATION 1 _____	62
That the Attorney General introduce legislation to amend Schedule 1 of the <i>Drug Misuse and Trafficking Act 1985</i> to remove the requirement for analogues of prescribed drugs to have “psychotropic properties”.	
RECOMMENDATION 2 _____	64
That the NSW Government incorporate Schedule 9 of the Standard for the Uniform Scheduling of Medicines and Poisons into NSW legislation, to facilitate a nationally consistent approach towards emerging synthetic drugs.	
As new substances are incorporated from Schedule 9, specific quantities for relevant offences will need to be prescribed in NSW legislation.	
In incorporating Schedule 9, the Government should ensure that there is provision for authorised bodies to undertake research into banned synthetic drug compounds for medical and scientific purposes.	
RECOMMENDATION 3 _____	65
That the Minister for Fair Trading issue interim bans under the provisions of the Australian Consumer Law on synthetic drug products, as consumer goods of a kind that will or may cause injury to any person.	
RECOMMENDATION 4 _____	66
That the Minister for Fair Trading write to the responsible Commonwealth Minister to request an amendment to the <i>Competition and Consumer Act 2010</i> (Cth) enabling interim product bans to be imposed by state ministers for up to 6 months.	
RECOMMENDATION 5 _____	67
That NSW Fair Trading and the NSW Police Force work with retailers of synthetic drugs to ensure that products available for sale in NSW meet consumer protection requirements under the Australian Consumer Law and the <i>Fair Trading Act 1987</i> (NSW), and that retailers are aware of their legal responsibilities and the offences associated with the sale of consumer goods that may cause injury.	
RECOMMENDATION 6 _____	67
That the NSW Police Force provide specialised training to police officers on synthetic drugs and their powers to seize them and arrest individuals suspected of committing offences.	
RECOMMENDATION 7 _____	68
That the NSW Police Force develop guidelines for policing synthetic drugs. The guidelines should cover the appearance of synthetic drugs, their effects, relevant offences under drugs legislation and consumer laws and police powers to seize the drugs. Advice on policing retailers that sell synthetic drug products should also be covered, including a template letter notifying retailers of the possible consequences of selling products containing illegal synthetic drugs.	

**RECOMMENDATION 8** \_\_\_\_\_ **69**

That the NSW Government establish a specific interdepartmental senior officers group, with representatives from the NSW Police Force, the Department of Attorney General and Justice, NSW Health and NSW Fair Trading, to facilitate a co-ordinated government response to synthetic drugs.

**RECOMMENDATION 9** \_\_\_\_\_ **69**

That the NSW Government recommend to the Intergovernmental Committee on Drugs that a national early warning system modelled on the European Early Warning System be implemented in Australia. The system would provide knowledge and awareness of emerging synthetic drugs and the public health risks associated with them.

**RECOMMENDATION 10** \_\_\_\_\_ **70**

That the NSW Government develop and deliver a public awareness campaign to educate the community about synthetic drugs. The campaign should target vulnerable groups, including young people.

**RECOMMENDATION 11** \_\_\_\_\_ **71**

That the NSW Government develop an online website to publicise warnings about synthetic drugs to:

1. ensure that the public is informed of potentially dangerous products being available for sale in NSW;
2. ensure that retailers are aware of and comply with relevant legislation regarding synthetic drugs; and
3. provide an avenue for the public to provide information to the NSW Government on synthetic drug products and on retailers who are selling products which may be prohibited or subject to an interim ban.

**RECOMMENDATION 12** \_\_\_\_\_ **72**

That the interdepartmental senior officers group (recommendation 8) monitor the effectiveness of current scientific research and testing procedures to detect newly emerging synthetic drugs.

**RECOMMENDATION 13** \_\_\_\_\_ **80**

That the NSW Government continue its work on the Intergovernmental Committee on Drugs' response to synthetic drugs, including evaluating and monitoring the implementation of the New Zealand regulatory scheme.



# Chapter One – Introduction

## TERMS OF REFERENCE

- 1.1 On 16 February 2012, the Committee resolved to inquire into and report on law reform issues concerning synthetic drugs. The inquiry was self-referred.
- 1.2 The terms of reference require the Committee to consider law reform issues regarding the prohibition of synthetic drugs, which are designed and manufactured to have the same effect as prohibited drugs. In conducting the inquiry, the Committee was to consider the adequacy of current NSW legislation and other related matters.
- 1.3 The issue of emerging synthetic drugs was brought to the attention of the Committee by representatives from the NSW Attorney General's Department at an informal briefing to the Committee.
- 1.4 Synthetic drugs are referred to using various terms, including 'legal highs' and emerging psychoactive substances. In this report, the Committee has used the term synthetic drugs in referring to these drugs.

## Scope of inquiry

- 1.1 It is difficult to separate the issues raised by synthetic drugs from broader policy issues raised by drug regulation. The use and regulation of synthetic drugs is connected with illicit drugs, and raises law reform issues that cannot be considered in isolation. In considering the adequacy of current NSW legislation with respect to synthetic drugs, the Committee has examined approaches to regulating synthetic drugs in Australian and international jurisdictions, within the context of the framework for regulating drugs more broadly.
- 1.2 During the inquiry, the Committee heard from a number of individuals and organisations who advocated a complete change in the way that the NSW Government approaches the regulation of drugs in general. Various participants argued that the traditional approach of prohibition had failed and had caused a variety of negative social, economic and health consequences for large portions of the public.<sup>1</sup>
- 1.3 The Committee acknowledges the views of inquiry participants on the broader policy issues associated with prohibiting drugs. However, the Committee notes that submissions in relation to the broader philosophical issues surrounding drug laws were confined only to those advocating for legalisation. The terms of reference for the inquiry were narrow in scope, and limited the Committee to considering law reform issues relating to synthetic drugs. The Committee did not call for submissions in relation to wider drug law reform and therefore will not make recommendations in relation to broader drug law reform issues.

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<sup>1</sup> Submission 13, Name Suppressed, p 2; Submission 14, Maureen Steele, p 2; Submission 15, NSW Users and AIDS Association Inc, p 2; Submission 19, The Eros Foundation, pp 1-2; Dr Alex Wodak, President, Australian Drug Law Reform Foundation, Transcript of evidence, 15 October 2012, p 37

## CONDUCT OF THE INQUIRY

### Submissions

- 1.4 The Committee advertised for submissions in the *Sydney Morning Herald* on 29 February 2012, with a closing date of 5 April 2012. The Committee also wrote to relevant stakeholders inviting them to make a submission.
- 1.5 The Committee received 23 submissions from a range of stakeholders including the NSW Government, drug and alcohol research groups, industry representatives, and members of the community. A list of submission makers may be found at Appendix 1. Submissions can be accessed at the Committee's website: [www.parliament.nsw.gov.au/legalaffairs](http://www.parliament.nsw.gov.au/legalaffairs).

### Visit of inspection

- 1.6 On 2 and 3 July 2012 the Committee travelled to the Hunter region to meet with stakeholders in the area to discuss the inquiry and obtain more information about relevant issues. Over the course of the visit the Committee met with representatives from the NSW Police Force, NSW Health, the mining industry, residents at a rehabilitation centre and the Toronto Drug Court. A report of the visit may be found at Appendix 3.

### Hearings

- 1.7 Two public hearings were held at Parliament House on 15 October and 22 October 2012. Evidence was taken from 18 witnesses. A list of witnesses who appeared before the Committee may be found at Appendix 2.
- 1.8 The transcripts of evidence from the hearings can be accessed at the Committee's website: [www.parliament.nsw.gov.au/legalaffairs](http://www.parliament.nsw.gov.au/legalaffairs).
- 1.9 The Committee thanks the organisations and individuals who participated in the inquiry.

## Chapter Two – Emerging synthetic drugs

- 2.1 Over recent years attention has been drawn to the emergence of new synthetic drugs that are designed to mimic the effects of mainstream prohibited drugs. These new substances are known by a number of terms but are most commonly referred to as 'synthetic drugs' or 'legal highs'. This chapter provides an introduction to these new synthetic drugs, their health impacts and the challenges associated with regulating their use.

### WHAT ARE SYNTHETIC DRUGS?

- 2.2 Synthetic drugs aim to mimic the effects of existing illicit drugs, including cannabis and stimulants such as cocaine and amphetamines. The substances can be chemically similar to prohibited drugs, but are different enough to be technically legal. They are sold in retail shops and on the internet as 'legal highs'. The European Monitoring Centre for Drugs and Addiction has described how they are sold and marketed:

... the so-called 'legal highs'—are legally sourced and sold as replacements for controlled drugs on the open market by exploiting existing laws. ... [the substances] are often sold as branded products. They are also sometimes sold in combination with other new substances. This may be an attempt to better mimic the effects of controlled drugs, or to achieve novel psychoactive effects, or as a result of accidental contamination or deliberate substitution. These so-called 'legal highs' are usually sold through the Internet and in 'bricks and mortar' head shops (in countries where there are few head shops, the Internet may play a key role in direct sales to consumers). They may also be sold by street-level drug dealers. Mostly they are advertised with aggressive and innovative marketing strategies. Often, in order to disguise the fact that they are psychoactive drugs, and circumvent 'grey areas' in consumer protection and marketing regulations, they are sold under various product labels, including 'research chemicals', 'bath salts' and 'plant food', and usually with an accompanying disclaimer that they are not intended for human consumption.<sup>2</sup>

- 2.3 Some synthetic drugs were initially developed for potential therapeutic use; however, there is a lack of data about their effects:

Many new drugs have previously been described in the scientific and patent literature as part of legitimate research and development. Some have been used in experiments designed to better understand the complex signalling pathways in our bodies, while others have been studied as potential medicines. However, a common feature is that there is usually limited information about the effects of these drugs in humans and the harms that they may cause.<sup>3</sup>

- 2.4 There has been an increase in the number of synthetic drugs being developed and detected. In 2012, 73 new psychoactive substances were officially notified in

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<sup>2</sup> European Monitoring Centre for Drugs and Drug Addiction and Europol, *EU drug markets report: a strategic analysis*, January 2013, p 109, <http://www.emcdda.europa.eu/publications/joint-publications/drug-markets>

<sup>3</sup> European Monitoring Centre for Drugs and Drug Addiction and Europol, *EU drug markets report: a strategic analysis*, January 2013, p 106, <http://www.emcdda.europa.eu/publications/joint-publications/drug-markets>

the EU through the early warning system, compared with 49 in 2011, 41 in 2010 and 24 in 2009.<sup>4</sup>

2.5 There are various types of synthetic drugs. Synthetic cannabinoids are a group of chemicals that act like the active ingredient in cannabis, tetrahydrocannabinol (THC). They function similarly to THC and activate the same receptors in the brain. Substances with a chemical structure similar<sup>5</sup> to THC were first developed in the 1960s. In 1994 scientists synthesised a number of synthetic cannabinoids now known as the JWH compounds.<sup>6</sup>

2.6 Many other groups of compounds that mimic cannabis and other illicit drugs have since been developed. The United Nations Office on Drugs and Crime outlined the wide range of new synthetic drugs available internationally in its 2012 World Drug Report:

- Methcathinone analogue 4-methyl-methcathinone (also known as mephedrone) and methylenedioxypropylamphetamine (MDPV), which are often sold as bath salts or plant food and used as substitutes for controlled stimulants such as amphetamines or ecstasy.
- Piperazine derivatives continue to be sold as substitutes for ecstasy.
- Synthetic cannabinoids that emulate the effect of cannabis but contain products not under international control have also been detected since 2008 in herbal smoking blends sold under brand names such as Spice.
- Other substances including indanes, benzodifuranyls, narcotic analgesics (such as codeine for conversion into krokodil (desomorphine) in the Russian Federation), synthetic cocaine derivatives, *Salvia divinorum* (reported in Canada), ketamine (commonly reported in South-East Asia) and phencyclidine derivatives.<sup>7</sup>

## PREVALENCE AND USE

2.7 From 2004, products packaged as herbal mixtures and marketed as incense or air freshener appeared around the world, retailing on the internet, in 'head shops' selling drug paraphernalia, tobacconists and sex shops. Although warnings on the products stated they were not for human consumption, they were promoted as alternatives to cannabis, and not detectable by drug testing. The products generally contained 1-3 grams of dried plant matter, labelled as legal 'herbal blends'.<sup>8</sup>

2.8 Tests on samples of one brand of synthetic cannabis showed that the herbal ingredients listed on the package were not present in many of the tested

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<sup>4</sup> European Monitoring Centre for Drugs and Drug Addiction and Europol, *EU drug markets report: a strategic analysis*, January 2013, p 106, <http://www.emcdda.europa.eu/publications/joint-publications/drug-markets>

<sup>5</sup> Substances with a similar chemical structure to another substance are known as analogues.

<sup>6</sup> Submission 17, NSW Government, pp 1-2, footnotes omitted

<sup>7</sup> United Nations Office on Drugs and Crime, *World Drug Report 2012*, June 2012, p 14, [http://www.unodc.org/documents/data-and-analysis/WDR2012/WDR\\_2012\\_web\\_small.pdf](http://www.unodc.org/documents/data-and-analysis/WDR2012/WDR_2012_web_small.pdf)

<sup>8</sup> Submission 17, NSW Government, pp 1-2, footnotes omitted

samples. According to the NSW Government submission, studies have found that a variety of synthetic cannabinoids with differing concentrations were present in the Spice products, meaning that batches of the same brand of product can have a significantly different effect.<sup>9</sup>

2.9 Spice is a well-known synthetic cannabis product in Europe and the United States. According to the National Cannabis Prevention and Information Centre, other products such as Kalma, Voodoo, Kaos and Mango Kush were also thought to contain synthetic cannabis.<sup>10</sup>

2.10 In 2011 the synthetic cannabis product branded as Kronic came to prominence.<sup>11</sup> The National Cannabis Prevention and Information Centre indicates that Kronic products have been available in Australia for several years:

Kronic products are produced and distributed by a New Zealand company. Available evidence suggests that the company imports the synthetic cannabinoids, possibly from China. These are then dissolved in acetone and sprayed onto a range of herbal products, potentially leading to widely varying potency due to uneven spraying, and then distributed throughout New Zealand, Australia and worldwide via the Internet.<sup>12</sup>

2.11 Media reports in early 2011 claimed that mine workers in Western Australia were using synthetic cannabis to avoid workplace drug testing. The product in question was reported to be stronger than THC, and had not been detected in random drug testing. Mining companies sought to address the issue by developing a test capable of detecting the substance:

A test to detect these compounds was requested by mining companies and the Western Australian testing facility ChemCentre had very soon implemented processes, arranged a methodology for testing and purchased standards from a US pharmaceutical company (Hastie, 2011). Even so, the Centre stated that “there is a challenging task ahead of them” with regards to identification of these compounds, as there were “many more synthetic cannabinoids widely available in bulk over the internet, and very little literature or standards for the pharmacological metabolites available.”<sup>13</sup>

2.12 In its submission ChemCentre, the Western Australian Government’s chemical and forensic science facility, outlined the large number of synthetic cannabinoids it had tested for since the products first appeared in 2011:

The first synthetic cannabinoids were identified in plant material submitted for analysis in January 2011. To date, a total of 210 exhibits have been found to contain one or more synthetic cannabinoids. 48 different products have been analysed as well as a host of unmarked, unidentified plant materials.

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<sup>9</sup> Submission 17, NSW Government, pp 1-2, footnotes omitted

<sup>10</sup> Submission 8, National Cannabis Prevention and Information Centre, pp 4-6

<sup>11</sup> R Noone, 'Fake pot known as Kronic is a very chronic concern', news.com.au, 20 May 2011; 'Kronic a bad trip for the law', Sydney Morning Herald, 15 June 2011, H Aston; 'Why is this MP buying a bag of weed?', Sydney Morning Herald, 12 June 2011, J Jones; 'Kronic users beware', Newcastle Herald, 9 June 2011

<sup>12</sup> Submission 8, National Cannabis Prevention and Information Centre, pp 4-6

<sup>13</sup> Submission 8, National Cannabis Prevention and Information Centre, pp 4-6

“Kronic” was the most abundant brand submitted for analysis with 80 samples analysed to date from six different products, followed by “K2” with 43 samples from 11 different products. ...

JWH-018 was the most prevalent synthetic cannabinoid detected followed by AM-2201 and RCS-4 in all the samples analysed at ChemCentre. The majority of samples contain more than one different synthetic cannabinoid.

Interestingly, a number of other novel drugs have been detected in these samples including phenazepam, 5-methoxy-N,N-diallyltryptamine (5-MeO-DALT) and 3,4-methylenedioxymethcathinone (Methylone), in addition to the synthetic cannabinoids.

New products claiming to be “Legal Highs”, “100% Cannabinoid Free” or claiming to “not contain JWH-18, JWH-73, CP47, CP497, HU-210 or any other chemical and/or plant ingredients prohibited by state or federal law” are being submitted to the laboratory weekly ....<sup>14</sup>

- 2.13 According to the NSW Government submission, NSW Police are aware of other emerging drugs such as methylenedioxypropylvalerone (MDPV) and methylmethcathinone (mephedrone or 4MMC), which are sometimes marketed as 'bath salts' with names such as 'Ivory Wave', 'Cloud Nine' or 'Vanilla Sky'.<sup>15</sup>
- 2.14 The Australian Crime Commission's 2012 report on illicit drugs states that the extent of synthetic cannabis use in Australia is unknown.<sup>16</sup>
- 2.15 The National Drug and Alcohol Research Centre noted that no data is currently collected on general population use of these drugs; however the Centre submitted that in Australia the problem with synthetic drugs is modest overall, with some data from drug using samples suggesting that use of the substances appears to be more prevalent in Europe and the UK.<sup>17</sup>
- 2.16 The Centre also cited data indicating that purchasing patterns in Australia are more likely to occur through friends or dealers than the internet, while noting that 'it is essential to understand the role of the Internet in the dynamics of drug markets, as these substances are increasingly marketed and sold globally via the Internet.' US, UK and Australian research shows that users report having experience with other illicit drugs. However, there is a lack of information on the use of such drugs, due to the constantly changing nature of the market.<sup>18</sup>
- 2.17 The Committee heard that estimates of mining industry use based on testing developed by ChemCentre indicated that 10% of workers on mine sites returned positive results during testing conducted across WA, with 30% of workers failing the drug test in one instance.<sup>19</sup>

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<sup>14</sup> Submission 9, ChemCentre, pp 2-4 and February 2012 Newsletter

<sup>15</sup> Submission 17, NSW Government, p 10

<sup>16</sup> Australian Crime Commission, *Illicit Drug Data Report 2010–11*, May 2012, p 122, <http://www.crimecommission.gov.au/publications/illicit-drug-data-report/illicit-drug-data-report-2010-11>

<sup>17</sup> Submission 10, National Drug and Alcohol Research Centre, pp 1-2

<sup>18</sup> Submission 10, National Drug and Alcohol Research Centre, pp 1-2

<sup>19</sup> Submission 8, National Cannabis Prevention and Information Centre, p 5

2.18 Inquiry participants noted that the Ecstasy and Related Drugs Reporting System (EDRS) provides some data on synthetic drugs. The EDRS is a national monitoring system for ecstasy and related drugs. It is intended to serve as an early warning system, identifying emerging local and national trends in markets for these drugs. The results are not representative of ecstasy and other drug use in the general population - survey participants are regular ecstasy/psychostimulant users who provide information on patterns of drug use and market trends. Table 1 below shows preliminary results from the 2012 EDRS survey on use of emerging psychoactive substances (EPS):

**Table 1: Emerging psychoactive substances (including synthetic cannabis)<sup>20</sup>**

Use of EPS in the six months prior to interview amongst REU/RPU, 2012

	National N=574	National N=607	NSW N=100	ACT n=51	VIC n=100	TAS n=100	SA n=92	WA n=90	NT n=12	QLD n=62
(%)	2011	2012								
Used an EPS	28	33	31	45	41	21	34	30	25	34
Used an EPS (including synthetic cannabis)	n.a	40	37	47	50	24	37	40	50	50
Synthetic Cannabinoid <sup>▲</sup>	6 (n=35)	15 (n=88)	12	16	16	4	11	18	42	27

**Source:** EDRS Regular ecstasy/psychostimulant user interviews

<sup>▲</sup> Synthetic cannabinoids reported include: K2/Kronic (n=49, 56%), Northern lights (n=3, 3%) Spice (n=3, 3%) and brand unknown (n=7, 8%)

2.19 The 2011 EDRS survey's results for drug trends in NSW also provides a picture of EPS use:

- Around one quarter (23%) of the sample reported life time mephedrone use and 14% reported past 6 month use. The more common way of obtaining mephedrone among this group was friends (53%) or dealers (35%) rather than the Internet (8%).
- Relatively low proportions of participants reported life time (1%) and past 6 month (<1%) use of Spice. The substances were mainly obtained through friends or dealers. A slightly larger proportion of participants (5%) believed that they had used another form of synthetic cannabinoid in the past 6 months.
- More detailed analyses of patterns of synthetic psychoactive substance use among participants from the 2010 survey suggested that the substances are

<sup>20</sup> National Drug and Alcohol Research Centre, *Australian Drug Trends 2012, Findings From The Ecstasy And Related Drugs Reporting System* (EDRS), 2012, [http://ndarc.med.unsw.edu.au/sites/ndarc.cms.med.unsw.edu.au/files/ndarc/resources/National\\_handout%20EDRS%202012\\_only.pdf](http://ndarc.med.unsw.edu.au/sites/ndarc.cms.med.unsw.edu.au/files/ndarc/resources/National_handout%20EDRS%202012_only.pdf)

used by a minority of regular ecstasy users in Australia, and patterns of use are infrequent.<sup>21</sup>

2.20 The National Cannabis Prevention and Information Centre submitted that there is a lack of data on the use of synthetic cannabis. However, the Centre referred to two studies of users, which indicated that respondents reporting lifetime use of Spice products were primarily male, with over 12 years of education. The main reasons for using the drug were curiosity, positive drug effect, relaxation and being undetectable in drug testing. A second study suggested similar reasons for use, in addition to the legality and easy availability of the products.<sup>22</sup>

2.21 The Committee heard from Dr Monica Barratt, Research Fellow with the National Drug Institute, regarding the results of her study of 316 Australian synthetic cannabis users, conducted via an online questionnaire. Dr Barratt told the Committee that the study showed that users of synthetic cannabis tended to be cannabis users who were seeking a legal alternative, and that synthetic cannabis could be more harmful than cannabis:

There are three points I would like to draw from this study that I think are important for the Committee to consider. The first is that the legality of synthetic cannabis products appears to be a really important reason for their first use. These results indicate that there is a demand for a legal cannabis-like product, certainly amongst the people who completed the survey. Secondly, almost all synthetic cannabis users in this study were already cannabis users. We did not find evidence that there were lots of people who had never used illicit drugs that suddenly began to use synthetic cannabis. Thirdly, evidence from this study and the wider literature point towards synthetic cannabis products being more harmful than cannabis itself, both due to the lack of information on ingredients within these products and the pharmacological profile of some of the synthetic cannabinoids.<sup>23</sup>

2.22 As noted above, almost all participants in Dr Barratt's study also reported cannabis use. Their median age was 27; one quarter reported an age of 35 years or over. They first used synthetic cannabinoids due to curiosity, legality, availability, effects, non-detection in drug testing and to reduce their cannabis use. The use of synthetic cannabinoids for therapeutic purposes, including pain relief, nausea, anxiety and insomnia, and to reduce or stop cannabis use, was also reported.<sup>24</sup>

2.23 Drug paraphernalia stores or 'head shops' were the most commonly reported method of purchase, followed by the Internet, friends, adult shops, tobacconists, family, and drug dealers. Median duration of synthetic cannabinoid use was 6 months, 35% reported use weekly or more often, and 7% reported daily use. Harms were widely reported but help-seeking was minimal.<sup>25</sup>

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<sup>21</sup> Submission 10, National Drug and Alcohol Research Centre, p 2

<sup>22</sup> Submission 8, National Cannabis Prevention and Information Centre, p 3

<sup>23</sup> Dr Monica Barratt, Research Fellow, National Drug Research Institute, Transcript of evidence, 22 October 2012, p 17

<sup>24</sup> M Barratt, V Cacic, S Lenton, 'Patterns of synthetic cannabinoid use in Australia', *Drug and Alcohol Review* (2012), pp 3-5

<sup>25</sup> M Barratt, V Cacic, S Lenton, 'Patterns of synthetic cannabinoid use in Australia', *Drug and Alcohol Review* (2012), pp 3-5

- 2.24 The Eros Association advised the Committee that, in terms of sales of synthetic cannabis products, approximately 30% of NSW sales occur online, with the industry estimated to be worth over \$600 million annually, and \$200 million in NSW.<sup>26</sup>
- 2.25 The 2011 EDRS survey results for drug trends in NSW suggested that online purchasing was not as common as expected and may indicate low availability in Sydney:
- Much of the media surrounding these emerging drugs has associated their use with online purchasing practices. Data from the 'online' module included this year suggests that online purchasing of drugs may not be as common as once thought. In 2011, less than one-in-ten REU [regular ecstasy users] had recently bought drugs online. Furthermore, participants often commented that their online purchases usually consisted of transactions with friends or dealers in their own city as opposed to international purchases and importation. This may explain the relatively low rates of EPS [emerging psychoactive substance] use in Sydney and may suggest that the availability of these drugs is also low.<sup>27</sup>

## HEALTH IMPACTS

- 2.26 Inquiry participants told the Committee that there is very limited information about the short and long term effects of synthetic drugs. The evidence received by the Committee focused on the effects of synthetic cannabis. Some inquiry participants told the Committee that side effects could be similar to those caused by cannabis use, while others argued that synthetic cannabis products have a limited risk of harm and could have therapeutic uses.
- 2.27 As synthetic drugs have only recently been available there is currently little data about their side effects or long term impacts. However, some inquiry participants observed that synthetic cannabis could be expected to have comparable side effects and harms to cannabis, as they affect the same parts of the brain. Detective Superintendent Nick Bingham, the Commander of the NSW Police Force's Drug Squad, described potential side effects and health problems to the Committee:

The health-related problems associated with the use of synthetic cannabinoids have been reported to be similar to those after cannabis use, but also include adverse reactions. Only Friday of last week, police attended a high school in Sydney's north-west after two students were reported for erratic behaviour after smoking the Ash products that were bought locally.

Psychological disorders, such as panic attacks, were among the frequently reported symptoms. These symptoms are also likely to occur after cannabis use in naive users or after using relatively high doses. Another potential problem observed is the unknown cumulative toxic effects these compounds may have. As a result, the severity of short-term effects experienced by synthetic cannabis users is a concern to Health and Police. If synthetic cannabinoid use increases, it is likely that the health

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<sup>26</sup> Answers to questions taken on notice at 15 October 2012 public hearing, Eros Association, p 1

<sup>27</sup> L Scott and L Burns, *NSW Trends in Ecstasy and Related Drug Markets 2011: Findings from the Ecstasy and Related Drugs Reporting System (EDRS)*, National Drug and Alcohol Research Centre, pp xx-xxi, [http://ndarc.med.unsw.edu.au/sites/ndarc.cms.med.unsw.edu.au/files/ndarc/resources/NSW\\_EDRS\\_2011.pdf](http://ndarc.med.unsw.edu.au/sites/ndarc.cms.med.unsw.edu.au/files/ndarc/resources/NSW_EDRS_2011.pdf)

cost and community impact will increase as a result of the similarities in effects between cannabis and synthetic cannabis.

... there is plenty of literature to suggest that cannabis does have adverse effects on fine motor skills and would affect driving skills. There is no reason to suggest that synthetic cannabinoids, which attract themselves to the same receptors in the brain, would not have a similar impairment effect.<sup>28</sup>

- 2.28 With regard to the potential adverse effects of synthetic cannabis products, Mr Paul Dillon, the Director of Drug and Alcohol Research and Training Australia and Communications Manager for the National Cannabis Prevention and Information Centre, also suggested they would be similar to cannabis:

... because it is a cannabinoid and works on cannabinoid receptors in the brain, you would imagine it would have similar effects. The effects that are reported in the literature tend to be around paranoia, anxiety, extreme mental health issues, which are very similar effects that some cannabis users experience with their drug of choice.<sup>29</sup>

- 2.29 Mr David McGrath, Director of Mental Health and Drug and Alcohol Programs, NSW Ministry of Health, observed that there is some evidence that synthetic cannabis substances have a more profound effect on the brain than cannabis and could therefore have more significant health impacts. Mr McGrath also noted that the changing nature of the individual compounds available makes it difficult to measure their effects:

... the particular compounds themselves are changing relatively frequently and so the impacts of individual compounds are difficult to measure over a period of time because some compounds drop out of the market as a result of different regulatory effects. But nonetheless, there does appear to be some evidence that some of the compounds that have been available are more effective in binding to the receptor sites in the brain.<sup>30</sup>

- 2.30 Inquiry participants noted that studies on the risks of such drugs are limited.<sup>31</sup> The NSW Government submission observed that long term effects of synthetic cannabis products are not known. As many of the chemicals present in the products have only recently been developed, there is a lack of data on their effects, adverse reactions or interactions with other drugs. Data is largely limited to research on one specific compound:

Almost all of the available published data on the harms relating to the use of synthetic cannabinoids by humans deal exclusively with the range of 'Spice' products and one particular compound - JWH-018.

NSW Health advises that the first case report related to a Spice product was published in 2009 after two of the authors smoked 0.3g of 'Spice Diamond'. The

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<sup>28</sup> Detective Superintendent Nick Bingham, Commander, Drug Squad, NSW Police Force, Transcript of evidence, 22 October 2012, pp 3-4

<sup>29</sup> Mr Paul Dillon, Director, Drug and Alcohol Research and Training Australia and Communications Manager, National Cannabis Prevention and Information Centre, Transcript of evidence, 22 October 2012, p 36

<sup>30</sup> Mr David McGrath, Director, Mental Health and Drug and Alcohol Programs, NSW Ministry of Health, pp 9-10

<sup>31</sup> Submission 5, NSW Young Lawyers Criminal Law Committee; Submission 17, NSW Government

effects reported included reddened conjunctivae, increased pulse rates, xerostomia (dry mouth), and an alteration of mood and perception.

Since that time there have been reports from across the world, in countries where these products have been available, of emergency presentations for a range of adverse effects, including tachycardia, agitation, excess sedation and a loss of consciousness as a result of their use.<sup>32</sup>

2.31 NSW Health warns that small doses may impair memory and thinking while heavy or regular use may cause problems with memory; confusion; anxiety; depression; hallucinations; paranoia; and psychoses.<sup>33</sup>

2.32 A participant in the inquiry recounted his son's experience with psychosis induced by synthetic cannabis use:

Our eldest son ... after many years of cannabis abuse, has been trying to rid himself of the habit for some time. As part of the process, he tried replacing with Kronic. On three occasions he had psychotic episodes that lasted for twelve or more hours. On the last occasion, his mother and I, in conjunction with an attending police officer, had him admitted to the mental health unit ... He spent ten days there.<sup>34</sup>

2.33 Participants in Dr Monica Barratt's study of synthetic cannabis users reported the following side effects:

- decreased motor co-ordination (38%)
- fast or irregular heartbeat (33%)
- dissociation (22%)
- dizziness (20%)
- paranoia (18%)
- confusion (18%)
- headache (18%)
- panic (14%)
- slurred speech (14%)
- sweating (14%)
- nausea or vomiting (9%)
- depression (4%)
- psychosis (4%).<sup>35</sup>

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<sup>32</sup> Submission 17, NSW Government, p 3, footnotes omitted

<sup>33</sup> NSW Health, Synthetic Cannabinoids Factsheet, [http://www0.health.nsw.gov.au/factsheets/drugandalcohol/synthetic\\_cannabis.html](http://www0.health.nsw.gov.au/factsheets/drugandalcohol/synthetic_cannabis.html)

<sup>34</sup> Submission 22, Name Suppressed, p 1

<sup>35</sup> M Barratt, V Cacic, S Lenton, 'Patterns of synthetic cannabinoid use in Australia', *Drug and Alcohol Review* (2012), pp 3-5

2.34 A greater number of side-effects were reported by males, those aged 18–25 years, bong users and those who drank alcohol while consuming synthetic cannabis.<sup>36</sup>

2.35 In discussing the side effects reported by the survey participants, Dr Barratt told the Committee that academic literature tended to contain case studies of the most serious side effects and harms of certain drugs. Dr Barratt pointed out that some participants in her study stated that they had not experienced any harms:

... The issue with a lot of this literature is that it is often case studies that are brought forward into the literature: someone from an emergency department reports that there were three people that they saw. It is going to be very much the extreme end of what is going on.

What we have done here is we have asked for a community sample rather than a sample of who is already in treatment and already at the emergency department, which is what we do not tend to see in the literature. We tend to see the hard end: what has gone wrong. It is important to see that; that is usually the most important thing to see. But that means that we do not see what does not go wrong. In this case study there is a proportion of people who claim they have not experienced harms. ... Maybe they have experienced harms that they are not aware of. That is possible. It is possible and also likely with all the drugs that we look at that we tend to see the most harmful.<sup>37</sup>

2.36 Despite this, the Eros Association submitted that the risks of herbal smoking blends to public health are generally low as the substances are diluted by inert herbal material. Furthermore, they submitted that reported adverse reactions and abusive use are rare relative to the total number of users, and can occur with inexperienced users:

Toxicological effects of the cannabinoids appear to be minor, as few adverse health effects have been seen except in very heavy users. Anxiety and panic attacks are the only side effects commonly reported from diluted smoking blends, and usually occur in inexperienced users who fail to follow dosage instructions or are not provide with information about usage.

It is very rare for consumers to take large enough doses to cause significant side effects aside from anxiety, though panic attacks have been reported in susceptible individuals following even fairly small diluted doses. Recent media reports have also linked strong coffee with these problems.<sup>38</sup>

2.37 The Eros Association also submitted that synthetic cannabinoids have a very low potential to result in death and, with the exception of certain compounds, generally do not cause physical or psychological dependence.<sup>39</sup>

2.38 ChemCentre advised that it undertakes work for the Office of the State Coroner in WA, analysing samples taken from unexplained or sudden deaths and that

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<sup>36</sup> M Barratt, V Cacic, S Lenton, 'Patterns of synthetic cannabinoid use in Australia', *Drug and Alcohol Review* (2012), pp 3-5

<sup>37</sup> Dr Monica Barratt, National Drug Research Institute, Transcript of evidence, 22 October 2012, p 19

<sup>38</sup> Submission 19, Eros Association, p 2

<sup>39</sup> Submission 19, Eros Association, p 4

'through this work, ChemCentre has been involved in several cases in the past year in which synthetic drugs, including synthetic cannabinoids, have been identified and implicated in recent deaths in WA.'<sup>40</sup>

- 2.39 In terms of potential harms and health effects, the Committee also notes recent media reports linking deaths and harmful side effects to the use of synthetic drugs, including the death of a Coffs Harbour man at the time the Committee's hearings were taking place.<sup>41</sup>

## DIFFICULTIES WITH REGULATION AND ENFORCEMENT

- 2.40 The Committee heard that emerging synthetic drugs raise a number of difficulties in terms of regulation. The burden of proving that products contain banned substances, delays in testing and lack of testing expertise and the large range of compounds that can be synthesised to circumvent bans, were some of the issues raised by inquiry participants.
- 2.41 In terms of detecting synthetic cannabis, the NSW Government advised that following the 2011 banning of some synthetic cannabinoids, retailers restocked with other products that were advertised as legal, as they did not contain any of the banned substances. Testing indicated that these claims were usually accurate; however, some products did contain banned substances.<sup>42</sup>
- 2.42 Police data showed that between July and December 2011, there were 168 detections of synthetic cannabinoids. Inaccurate or incomplete labelling, and the inconsistency of ingredients present difficulties for police in terms of determining whether products contain the banned types of synthetic cannabis. Individual samples must be analysed to accurately determine whether the product contains banned substances.<sup>43</sup>
- 2.43 According to the NSW Government, there have been successful prosecutions in relation to some synthetic drugs, which are analogues of illicit stimulants and therefore illegal:

Current analogue provisions of the DMTA [Drug Misuse and Trafficking Act] have resulted in successful prosecutions in respect of other synthetic drugs such as mephedrone (which is structurally similar to the prohibited substances methcathinone and cathinone).

Synthetic cannabinoids differ in chemical composition to cannabis/THC. There is also significant variation between different types of synthetic cannabinoids.<sup>44</sup>

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<sup>40</sup> Submission 9, ChemCentre, p 3

<sup>41</sup> R Holding, 'Naked and psychotic: legal cocaine substitute offers a deadly high', *Sydney Morning Herald*, 3 November 2012; R Holding, 'Herbal high 'cooked' us – victim', *Sun Herald*, 11 November 2012; J McCarthy, 'Expert warns of dangers of synthetic cannabis', *Newcastle Herald*, 22 January 2013; G Wingate-Pearse, 'Fake pot warnings', *Newcastle Herald*, 11 March 2013; J McCarthy, 'Synthetic users tell of bad effects', *Newcastle Herald*, 23 March 2013

<sup>42</sup> Submission 17, NSW Government, p 6

<sup>43</sup> Submission 17, NSW Government, p 6

<sup>44</sup> Submission 17, NSW Government, p 6

2.44 Legislative systems in place in NSW and other jurisdictions have been criticised for not keeping up with new synthetic drugs as they are created. As new substances are created, a lack of certainty arises in terms of their status, creating difficulties for consumers and police.

2.45 The Director of Public Prosecutions described some of the problems with the current system, including inadvertent breaches, inconsistency and delay:

It is important that the scheme of drug regulation is consistent and easy to apply. I note that there are problems in regard to synthetic cannabinoids as some analogues are prohibited in NSW and in other Australian jurisdictions and others are not. This creates a situation where consumers of these products, who cannot readily discern illicit substances by look or smell and may inadvertently be in contravention of the law. Related to this is the delay involved [in] forensic analysis of substances. In NSW it can take up to 6 months. This may create hardship for those charged with offences where the substance is ultimately found not to be on the DMT schedule.<sup>45</sup>

2.46 The NSW Young Lawyers Criminal Law Committee also pointed to the difficulties for consumers from the lack of clarity about whether substances are banned or not, observing that consumers of non-illicit synthetic cannabis 'may have great difficulty in distinguishing between products that are chemically, but not visually (or otherwise), distinct. This would lead to inadvertent contravention of the Act by innocent persons.'<sup>46</sup> The Young Lawyers Criminal Law Committee submitted that clear legislation is important both in terms of acting as a deterrent to potential offenders, and for law enforcement agencies in determining which substances are prohibited.<sup>47</sup>

2.47 Detective Superintendent Bingham told the Committee of the difficulties synthetic cannabis presents for police in enforcing the law. According to Detective Superintendent Bingham, if officers reasonably suspect that a banned compound is present in a substance they can seize it and submit it for analysis. However, if the person in possession of the substance tells police they purchased it because it was advertised as being legal, police are advised not to seize the product. Detective Superintendent Bingham explained the rationale for this:

The reasons are: firstly, the state of the mind of the person possessing the substance gives rise to an immediate defence in that they do not believe they possess a prohibited drug; and, secondly, it is possible the substance, especially if still packaged in its most recent incarnation, does not contain any of the banned substances.

The obvious implication is that it is impossible for a police officer to differentiate. It requires laboratory analysis to show what compound is being used. Even an admission from the person possessing the substance that it is one of the synthetic products they knew is banned is problematic as it is unlikely they would know the chemical make-up.<sup>48</sup>

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<sup>45</sup> Submission 3, Office of the Director of Public Prosecutions, p 1

<sup>46</sup> Submission 5, NSW Young Lawyers Criminal Law Committee, p 5

<sup>47</sup> Submission 5, NSW Young Lawyers Criminal Law Committee, p 8

<sup>48</sup> Detective Superintendent Nick Bingham, NSW Police Force, Transcript of evidence, 22 October 2012, pp 2-3

2.48 From July to December 2011 there were 168 seizures of synthetic cannabinoids, with 171 seizures occurring from January to October 2012. The majority of the seized products contained banned compounds. Detective Superintendent Bingham advised that relative to illicit drugs, the number of seizures was low:

Just to put that into context in relation to seizures, there were 106 synthetic cannabinoids seizures from January to June this year. With our mainstream illicit drugs, for cannabis there were 8,426 seizures; amphetamines, 2,448 seizures, 3,4-methylenedioxymethylamphetamine [MDMA] or ecstasy, 1,060; heroin, 572; cocaine, 434; and other drugs, 1,343. ... By comparison, it is small, but then that may have a lot to do with our advice in relation to seizure as well—that they have to be quite sure it is a prohibited drug.<sup>49</sup>

2.49 The Alcohol and Other Drugs Council of Australia highlighted the challenges posed by the speed with which new drugs are developed, while also noting that the internet enables cross-border sales of products to be conducted on a virtually anonymous basis. According to the AODCA, banned products are quickly replaced with slightly modified products that are legal. The process of discovering and assessing new products to determine their risk level, deciding whether any action should be taken and introducing legislative restrictions, is time-consuming, costly and ineffective:

Once a specific drug is banned, manufacturers will develop a slightly different product that is technically legal. The new product, which is packaged quite differently to the old product, is then marketed and sold over the internet and through other networks. Law enforcement officers then need to become aware of the new product and assess the risk posed by its consumption- is it indeed the product it is described as or is it in fact a new 'legal high' against which action needs to be taken? This process takes time. Once a decision is made that the product does in fact have similar properties to other banned substances, steps must be taken to declare the product illegal and have either temporary or permanent legislation enacted. The final stage in the process is the post legislation period during which distributors are required to remove the products from shelves.

During the time from product development to removal, consumers continue to be exposed to the product and at risk of harm. The strategy to ban individual substances by name does not appear to be working and the concern is that one day manufacturers will start producing substances that have the potential to do more harm than the original substances. Considerable costs are associated with this process, in terms of policing and court time as law enforcement agencies attempt to gather evidence, on the ground and through scientific analysis, and make a conviction for each new substance as it appears.<sup>50</sup>

2.50 The Committee heard that one of the difficulties with emerging synthetic drugs is the large amount of potential substances and chemical structures which can be used to produce synthetic drug products. The potential variations in chemical structures and chemicals used allow manufacturers to continually change the compounds used in their products, circumventing attempts to regulate or monitor them. Mr Oliver Poppelwell from New Zealand's Ministry of Health, commented on this in relation to regulating synthetic drugs in New Zealand:

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<sup>49</sup> Detective Superintendent Nick Bingham, NSW Police Force, Transcript of evidence, 22 October 2012, p 3

<sup>50</sup> Submission 18, Alcohol and Other Drugs Council of Australia, p 3

LEGAL AFFAIRS COMMITTEE  
EMERGING SYNTHETIC DRUGS

We have classified, I think we are up to 31 substances now, but we are dealing with a range of substances with the potential for there to be tens of thousands more. So it is not a problem that we can solve by individually prohibiting substances.<sup>51</sup>

2.51 According to the NSW Government submission, NSW Police 'believes that there are hundreds of synthetic cannabinoid compounds that could potentially produce similar effects to cannabis and other synthetic cannabinoids.'<sup>52</sup>

2.52 ChemCentre echoed the challenges raised by the changing synthetic drugs market. Identifying new drugs, in cases involving several structurally similar drug analogues is a lengthy, costly and highly technical process, which impacts on any prosecutions and the public health response to new drugs:

... obtaining certified reference material to unambiguously confirm these new drugs has involved much time and effort as well as a significant financial commitment, with each reference standard costing several hundred dollars for a few milligrams. Our current expenditure on these materials alone is approximately \$100,000. The number of companies able to supply these reference materials is limited and with the rapid release of new synthetic drugs onto the market there is an inevitable time lag before the reference standard is available. This can lead to delays in analysis being completed and subsequent delays in the courts. These delays also impact on the timely provision of information to guide public health response.<sup>53</sup>

2.53 ChemCentre observed that the composition of synthetic cannabis brands is changing, meaning that the same product can contain different chemicals: 'This means that all samples submitted have to be comprehensively analysed as the packaging is not a reliable indication of the contents.'<sup>54</sup>

2.54 The NSW Government outlined the experience after the 2011 banning of seven compounds in NSW, illustrating many of the points raised by inquiry participants. Manufacturers rapidly responded to the bans by developing products containing legal compounds that had similar brand names to the older, illegal products:

... manufacturers quickly resynthesised their products, replacing banned compounds with other synthetic cannabinoids not covered by the ban.

Manufacturers of these products gave re-synthesised products new names that were similar to older products (for example, 'Northern Lights Golden Breeze' replaces 'Northern Lights', and 'Kronic' has been replaced by 'Kronic 2' or 'Black Label Kronic'). This suggests there may be an attempt to maintain some kind of 'brand loyalty'. ...<sup>55</sup>

2.55 The NSW Government highlighted the importance of testing in terms of determining whether a given substance is prohibited under the law:

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<sup>51</sup> Mr Oliver Poppelwell, Manager, Sector and Services Policy, New Zealand Ministry of Health, Transcript of evidence, 15 October 2012, p 5

<sup>52</sup> Submission 17, NSW Government, p 4

<sup>53</sup> Submission 9, ChemCentre, pp 2-3

<sup>54</sup> Submission 9, ChemCentre, pp 2-3

<sup>55</sup> Submission 17, NSW Government, pp 7-8

Regardless of the approach taken to prohibit synthetic drugs, ultimately some degree of testing will need to take place to determine whether a substance meets the criteria set in the legislation for a prohibited substance.

Where a substance is specifically prescribed, testing is required to identify the substance. This is the case for all seizures falling under the DMTA and provisions exist to facilitate the admission into evidence of analysts' certificates. Where a substance falls under a broader analogue provision, testing may be more complex.<sup>56</sup>

2.56 The NSW Minerals Council submitted that current testing methods are not as reliable or well developed as those used for alcohol and other drugs, and that 'the absence of an Australian Standard for testing of synthetic drugs presents problems for achieving a consistent approach to testing across industry that is accepted by members, workers and the community.'<sup>57</sup>

2.57 The NSW Young Lawyers Criminal Law Committee also highlighted the problems caused by delayed testing, with 6 month waiting periods resulting in inconvenience for both prosecuting lawyers and defendants:

... the Committee understands that there is currently often a six-month wait for the services of a forensic chemist in proceedings under the Act. If the offence relies on scientific definitions, it must be ensured that the technical services exist to evaluate suspected illicit substances. The current waiting periods for analysis are not fair to either the prosecution or defendants, although the Committee recognises that this is also not the fault of the labs involved.<sup>58</sup>

2.58 In the following chapters, the Committee examines Australian and international responses to synthetic drugs, before exploring proposed reforms to address the challenges posed by synthetic drugs, which were identified by inquiry participants.

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<sup>56</sup> Submission 17, NSW Government, pp 7-8

<sup>57</sup> Submission 20, NSW Minerals Council, p 2

<sup>58</sup> Submission 5, NSW Young Lawyers Criminal Law Committee, p 8

## Chapter Three – Current approach to controlling synthetic drugs

- 3.1 In this chapter, the Committee outlines the framework for drug regulation that operates in NSW, and examines criticisms of the system in terms of its utility for controlling emerging synthetic drugs.

### FRAMEWORK FOR REGULATING DRUGS IN NEW SOUTH WALES

- 3.2 The primary legislation concerning illicit substances in NSW is the *Drug Misuse and Trafficking Act 1985 (NSW)*. Schedule 1 contains a list of drugs and plants that are prohibited in NSW. Under section 44 of the Act, names or descriptions of prohibited substances may be added to the Schedule by regulation.<sup>59</sup> This means that substances can be prohibited without the need to pass amending legislation.
- 3.3 Schedule 1 of the Act also prohibits substances that are analogues of drugs listed in the Schedule, defined as ‘a substance that has psychotropic properties, is not separately specified in this Schedule and is, in relation to the drug, any of the following’:
- a) a structural isomer having the same constituent groups as the drug,
  - b) a structural modification obtained in one or more of the following ways:
    - i) the replacement of up to 2 carbocyclic or heterocyclic ring structures with different carbocyclic or heterocyclic ring structures,
    - ii) the addition of hydrogen atoms to 1 or more unsaturated bonds,
    - iii) the addition of 1 or more of the following groups having up to 6 carbon atoms in any alkyl residue, namely, alkoxy, cyclic diether, acyl, acyloxy, monoalkylamino and dialkylamino groups,
    - iv) the addition of 1 or more of the following groups having up to 6 carbon atoms in the group and being attached to oxygen, namely, alkyl, alkenyl and alkynyl groups (for example, ester groups and ether groups),
    - v) the addition of 1 or more of the following groups having up to 6 carbon atoms in the group and being attached to nitrogen, sulphur or carbon, namely, alkyl, alkenyl and alkynyl groups,
    - vi) the addition of 1 or more of the following groups, namely, halogen, hydroxy, nitro and amino groups,
    - vii) the replacement of 1 or more of the groups specified in subparagraphs (iii)–(vi) with 1 or more other groups so specified,

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<sup>59</sup> Submission 17, NSW Government, p 4

LAW REFORM ISSUES REGARDING SYNTHETIC DRUGS  
CURRENT APPROACH TO CONTROLLING SYNTHETIC DRUGS

viii) the conversion of a carboxyl or an ester group into an amide group.<sup>60</sup>

- 3.4 In essence, the current legislation contains an analogue provision that covers drugs that are structurally similar to existing illicit drugs, and the regulation making power to add to the schedule any drugs that fall outside the analogue provision.<sup>61</sup>
- 3.5 Schedule 1 also prescribes the quantities of each substance that trigger the offence provisions under the Act, ranging from small quantities to large traffickable quantities. Penalties for offences are significant, with the punishment for manufacturing a prohibited drug not involving commercial quantities carrying a maximum penalty of \$220,000, 15 years imprisonment, or both.<sup>62</sup>
- 3.6 In terms of the legal status of synthetic cannabis products, the NSW Government advised that there are two ways that a new synthetic drug variant can be illegal:

When new variants of synthetic cannabinoids are developed and marketed, in the short to medium term they will be illegal if a) they fall under the analogue provision or b) a regulation is passed adding the substance to Schedule 1. If the substance falls under a) it will be illegal from the time it was created. If it falls under b) it will be illegal from the date of the regulation.<sup>63</sup>

- 3.7 The NSW *Poisons and Therapeutic Goods Act 1966* regulates prescription, or pharmacy medication, as well as poisonous substances.<sup>64</sup> The *Poisons and Therapeutic Goods Act 1966* relies upon a 'Poisons List' which for the most part adopts the Federal Therapeutic Goods Administration's Standard for the Uniform Scheduling of Medicines and Poisons (SUSMP), with a few exceptions. Mr Bruce Battye of the NSW Ministry of Health explained the relationship between NSW drug and poisons legislation and the SUSMP:

Schedules 1 to 8 [of the Standard for the Uniform Scheduling of Medicines and Poisons] are adopted by reference into the New South Wales poisons list ... Schedule 9, as far as New South Wales are concerned, legally does not exist. We do not do anything with Schedule 9. As at 1 May this year, seven chemical groups have been put into the Standard for the Uniform Scheduling of Medicines and Poisons. But that has no effect [on New South Wales] unless either the individual substances are adopted into Schedule 1 of the Drug Misuse and Trafficking Act; or unless ... we went down the track of somehow adopting Schedule 9 by reference into Schedule 1 of the Drug Misuse and Trafficking Act.<sup>65</sup>

- 3.8 This means that, unlike other states and territories, NSW does not adopt Commonwealth decisions regarding the scheduling of prohibited substances into its drugs legislation. The Committee discusses state and Commonwealth scheduling processes in the following chapter, at paragraphs 4.71 to 4.86.

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<sup>60</sup> *Drug Misuse and Trafficking Act 1985* (NSW), Sch 1

<sup>61</sup> Ms Penelope Musgrave, NSW Department of Attorney General and Justice, Transcript of evidence, 22 October 2012, p 28

<sup>62</sup> Submission 5, NSW Young Lawyers Criminal Law Committee, pp 7-8

<sup>63</sup> Submission 17, NSW Government, pp 4-5

<sup>64</sup> Submission 5, NSW Young Lawyers Criminal Law Committee, p 2

<sup>65</sup> Mr Bruce Battye, Deputy Chief Pharmacist, Regulatory and Legal Services Branch, NSW Ministry of Health, Transcript of evidence, 22 October 2012, p 14

## Controls on synthetic drugs

- 3.9 In July 2011, the NSW Government added seven synthetic cannabinoids to Schedule 1 of the Drug Misuse and Trafficking Act. As a result, the sale and consumption of the seven added substances was banned from 1 July 2011, and businesses were provided with seven days to safely dispose of any products containing the substances.<sup>66</sup>
- 3.10 The supply and sale of the seven synthetic cannabinoids subsequently carried similar penalties to other scheduled drugs. It is relevant to note that the Drug Misuse and Trafficking Act provides lower maximum penalties for cannabis, but not for the seven synthetic cannabinoids that were scheduled in 2011.<sup>67</sup> The Cannabis Cautioning Scheme does not apply to minor offences involving the seven banned synthetic cannabinoids.<sup>68</sup>
- 3.11 The NSW Government advised the Committee that 'the analogue provisions (of Schedule 1 of the *Drug Misuse and Trafficking Act 1985*) and the ability to rapidly amend Schedule 1 are the two ways in which NSW legislation is able to respond to variations in illicit drugs.'<sup>69</sup>

## INQUIRY PARTICIPANTS' VIEWS OF CURRENT SYSTEM

- 3.12 The Committee heard differing views on the effectiveness of the current system as a way to control synthetic drugs. Participants noted that synthetic drugs are unlike traditional illicit drugs, in that they are marketed as legal and available for retail sale. When a particular chemical compound is banned, manufacturers can substitute it with another compound that is not illegal. This results in a lack of clarity for consumers about the legal status of a product and its health effects, and difficulties with enforcement and prosecution. On the other hand, the Committee heard that the current system offers a rapid way to respond to emerging drugs, through a regulation making power that can be used to prohibit new drugs within a matter of days.
- 3.13 Some inquiry participants commented favourably on the current NSW system of prohibiting individual substances and using the analogue provision to capture substances that are not specifically prohibited under Schedule 1.
- 3.14 With respect to the current approach of proscribing drugs under the Act as they are developed and identified, the NSW Government submitted that it is the

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<sup>66</sup> Drug Misuse and Trafficking Amendment (Prohibited Drugs) Regulation 2011

<sup>67</sup> Submission 5, NSW Young Lawyers Criminal Law Committee, p 9

<sup>68</sup> Detective Superintendent Nick Bingham, NSW Police Force, Transcript of evidence, 22 October 2012, p 2. Under the Cannabis Cautioning Scheme police can caution adult offenders for minor cannabis offences involving personal use. Offences eligible are possession or use of up to 15 grams (half the amount of a 'small quantity' of cannabis leaf under the Act) of dried cannabis leaf, stalks, seeds, or heads, or possession of equipment for administering cannabis: see NSW Police Force, Cannabis Cautioning Scheme, [http://www.police.nsw.gov.au/community\\_issues/drugs/cannabis\\_cautioning\\_scheme](http://www.police.nsw.gov.au/community_issues/drugs/cannabis_cautioning_scheme) and NSW Parliamentary Library Research Service, *Medical cannabis - Issues Backgrounder*, no 1, February 2013, p 2, [http://www.parliament.nsw.gov.au/prod/parliament/publications.nsf/key/Medicalcannabis/\\$File/Medical+cannabis,+Issues+Backgrounder+Feb+2013.pdf](http://www.parliament.nsw.gov.au/prod/parliament/publications.nsf/key/Medicalcannabis/$File/Medical+cannabis,+Issues+Backgrounder+Feb+2013.pdf)

<sup>69</sup> Submission 17, NSW Government, p 4

preferred way to prohibit drugs in Australia and internationally and provides certainty and a quick response:

While this approach does result in a window of opportunity during which new synthetic cannabinoids can be sold legally, it may provide the most certainty. It is also the prevailing drug enforcement strategy in Australia and jurisdictions around the world, and the reason why the DMTA specifically states that Schedule 1 may be amended by way of regulation, so as to allow new substances to be prescribed rapidly.<sup>70</sup>

- 3.15 ChemCentre submitted to the Committee that, following the 2011 scheduling of specific chemical compounds through Western Australian legislation, a decrease was identified in 'both the number of drug samples submitted for analysis and in the compounds detected in workplace testing samples.'<sup>71</sup>
- 3.16 According to the NSW Department of Attorney General and Justice, regulations adding substances to Schedule 1 can be implemented within hours of approval from the Governor of NSW, or can be delayed, should notification or training be necessary before the commencement of the prohibition of the newly scheduled substances.<sup>72</sup>
- 3.17 The NSW Government pointed to the success of previous prosecutions of offences regarding synthetic drugs such as the stimulant mephedrone (which the Committee was advised is structurally similar to the prohibited substances methcathinone and cathinone) under the current analogue provisions of the *Drug Misuse and Trafficking Act 1985* and argued that these were positive and practical outcomes of the current NSW legislation regarding synthetic drugs.<sup>73</sup>
- 3.18 It was also noted to the Committee that one of the benefits of this legislative approach towards synthetic drugs is the speed with which the NSW Government can prohibit individual substances by regulation, as described by Ms Emma Bayley of the NSW Young Lawyers Criminal Law Committee:
- The way drugs are added to the schedule is by regulation rather than the long process of being added by Act. There is already some speed in that process... if there were subsequent evidence to show a drug does not pose a risk, the drug could be removed from the schedule with the same speed that it is taken up.<sup>74</sup>
- 3.19 An additional advantage of the current system of specifically banning substances as they are identified is that there is certainty regarding the illegal status of individual substances. When substances are not specifically banned under Schedule 1 but may be analogues of scheduled substances, complex testing is required to assess whether the substance in question meets the definition of an analogue as defined under the *Drug Misuse and Trafficking Act 1985*.

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<sup>70</sup> Submission 17, NSW Government, p 8

<sup>71</sup> Submission 9, ChemCentre, p 3

<sup>72</sup> NSW Department of Attorney General and Justice, Answers to Questions on Notice, p 1

<sup>73</sup> Submission 17, NSW Government, p 6

<sup>74</sup> Ms Emma Bayley, NSW Young Lawyers Criminal Law Committee, Transcript of evidence, 15 October 2012, pp 9-10

3.20 Ms Penelope Musgrave from the Department of Attorney General and Justice told the Committee that the current legislation is capable of keeping up with synthetic drugs. However, with respect to the analogue provisions, she commented on the difficulty of proving that new synthetic drugs have a psychoactive effect in the absence of research and empirical evidence:

... The difficulty is in identifying whether that drug is an analogue, and testing it to see if that is the case, and if it is not an analogue you have then got the ability to add to the Act by way of regulation. Part of the difficulty is simply the nature of the industry and the fact that this Committee is looking at situations where we are dealing with marketed products where the constituent elements might be quite different sitting underneath it. There is a lack of evidence here and internationally about the effects of those drugs. I keep on using the word "psychoactive" and the analogue provision in New South Wales still retains that term as something that characterises or is the property that makes that substance one that should be subject to criminal legislation. So there are difficulties with the dearth of evidence about the psychoactive property of substances that are coming onto the market. So there are two critical evidentiary issues: the psychoactive element and the constituent chemical make-up.<sup>75</sup>

3.21 Other inquiry participants argued that the current system is not adequate to respond to the challenges presented by synthetic drugs. According to Detective Superintendent Nick Bingham, head of the NSW Police Force's Drugs Squad, 'the emergence of synthetic cannabinoids and other substances has challenged existing notions and legal definitions of what constitutes a drug and how emerging drugs can be managed effectively'.<sup>76</sup>

3.22 The potentially vast number of synthetic drugs that could be created to mimic the effects of illicit psychoactive substances was also raised as a criticism of traditional approaches of prohibiting individual substances one by one. Mr Oliver Poppelwell of the New Zealand Ministry of Health explained to the Committee that the problem of synthetic psychoactive drugs cannot be solved by individual prohibition, and that the New Zealand Government was aware of there being around 2000 individual substances that are cannabis mimics with the potential for there to be tens of thousands more.<sup>77</sup>

3.23 Mr Jeffrey Wegener from the NSW Users and AIDS Association echoed this point, telling the Committee that conventional drug laws will struggle to keep up with new synthetic drugs due to manufacturers constantly adapting formulas to avoid legal sanction:

I will mention something about the nature of these drugs. Manufacturers using research chemicals can change the formula of most synthetics by changing precursors and by this and similar technical innovation make classification with regard to legal sanctioning difficult. Manufacturers are able to move more quickly than government at times and presently seem to be undertaking an arms race in

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<sup>75</sup> Ms Penelope Musgrave, NSW Department of Attorney General and Justice, Transcript of evidence, 22 October 2012, p 28

<sup>76</sup> Detective Superintendent Nick Bingham, NSW Police Force, Transcript of evidence, 22 October 2012, p 3

<sup>77</sup> Mr Oliver Poppelwell, New Zealand Ministry of Health, Transcript of evidence, 15 October 2012, p 5

regard to outpacing and outwitting legislators. As many of these manufacturers are based overseas currently there is little to fear from our legal approaches.<sup>78</sup>

3.24 The Committee also heard criticisms of current provisions in the Drug Misuse and Trafficking Act. Participants expressed the view that the analogue provisions in the Act are overly technical and do not provide an effective way to control synthetic drugs. Detective Superintendent Bingham told the Committee that the analogue definition 'is extremely technical and virtually incomprehensible to most without a chemistry background'.<sup>79</sup>

3.25 Detective Superintendent Bingham outlined the difficulties with demonstrating that a substance is an analogue of a controlled drug. He told the Committee that exhaustive testing is required and each new chemical compound must be analysed and individually proven to be an analogue of a prohibited drug such as THC. Some synthetic cannabis compounds are not chemically similar to THC, and therefore do not meet the definition of an analogue:

... if the drug is not specifically listed in Schedule 1, there are difficulties encountered when having these substances analysed at the Forensic and Analytical Science Services as the Forensic and Analytical Science Services analysts record that no prohibited drug has been detected, and the police then need to rely on a forensic pharmacologist to provide a statement that this substance is covered under the analogue provisions of Schedule 1, due to having psychotropic properties.

The Forensic and Analytical Science Services has resolved this problem partially by providing certificates of analysis to show the substance is an analogue. However, if police are held to strict proof in court, a forensic pharmacologist would have to be called. Synthetic cannabinoids are not analogues of cannabis or tetrahydrocannabinol [THC]. They mimic the effects of THC while having a completely dissimilar chemical composition. In addition, many of the 200 or more synthetic cannabinoids are very different to each other. Because of this, synthetic cannabinoids are not automatically covered by analogue provisions, and adding one synthetic cannabinoid to the Drug Misuse and Trafficking Act does not mean that other synthetic cannabinoids are also covered.<sup>80</sup>

3.26 The lack of clarity for consumers in terms of whether certain products are illegal was another criticism of the current system. The NSW Young Lawyers Criminal Law Committee submitted that 'it is important that the legislation is easy to understand so that persons do not unknowingly commit offences.'<sup>81</sup>

3.27 The NSW Council for Civil Liberties discussed the analogue provision in the Act, arguing that it is incomprehensible to people without training in organic chemistry: 'For persons without the keys to understanding it, it is of no use. That is to say, they cannot know what they are permitted to buy, possess or sell. They

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<sup>78</sup> Mr Jeffrey Wegener, Policy and Advocacy Co-ordinator, NSW Users and AIDS Association, Transcript of evidence, 15 October 2012, p 22

<sup>79</sup> Detective Superintendent Nick Bingham, NSW Police Force, Transcript of evidence, 22 October 2012, p 3

<sup>80</sup> Detective Superintendent Nick Bingham, NSW Police Force, Transcript of evidence, 22 October 2012, pp 3-4

<sup>81</sup> Submission 5, NSW Young Lawyers Criminal Law Committee, p 8

could not even learn what they are not permitted to buy, possess or sell without lengthy instruction.<sup>82</sup>

- 3.28 Mr Thomas Spohr from the NSW Young Lawyers Criminal Law Committee explained the difficulties that consumers face in determining the legal status of synthetic cannabis products which, unlike mainstream illicit drugs, are available for retail sale and marketed as legal:

Synthetic cannabinoid products—unlike most other drugs, or probably all other drugs that are regulated under the Drug Misuse and Trafficking Act, with the exception of some that have legal medicinal use—are sold from stores that for all the world look legitimate. They are sometimes marketed on the basis that they are legal highs or that they are incense. A person who walks into a shopfront of a store and sees something that says that it is incense and not suitable for consumption, but that it is apparently legal, has no conceivable way of testing whether or not that is true beyond paying for an incredibly expensive report that will probably take six to 12 months to produce.

If a person came to me as a solicitor and said, "I am looking at purchasing this product which is marketed as a legal high. Is it legal or illegal?", I could not possibly answer that question on the current state of the legislation. I do not think any of us appearing on behalf of Young Lawyers could say that there is a better way of doing it because we are not chemists; so we do not know. But it is a serious concern in terms of the regulation of this product that it is marketed as being legal. There is almost no way of establishing, as an individual purchasing that product, whether or not that is true; nor indeed whether it is an analogue. If it were an analogue, you would have no way of establishing it. Even if it were labelled as being as such, you would not be able to establish it.<sup>83</sup>

- 3.29 The NSW Young Lawyers Criminal Law Committee submitted that further evidence was required to assess the adequacy of current legislation, for example, in terms of the prevalence and harms of synthetic drugs, their detection and any likely consequences of further regulation.<sup>84</sup>

- 3.30 A lack of clarity and proportionality with respect to the penalties under the Act was also raised by the NSW Young Lawyers Criminal Law Committee, who observed that penalties for cannabis and synthetic cannabis were not consistent:

Sections 32 and 33 of the Act provide lower maximum penalties for cannabis but not for the seven SCPs [synthetic cannabis products]. The Committee suggests that expert evidence on the relative harm posed by cannabis and cannabinoid products is required in order to determine whether the maximum penalties appropriately reflect the seriousness of the offences. On the face of the current evidence, it is not objectively clear why there should be a distinction.<sup>85</sup>

- 3.31 With regard to penalties, the NSW Users and AIDS Association acknowledged the potential harms that may be caused by new synthetic cannabinoids. However, they expressed concern about the consequences of expanding criminalisation:

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<sup>82</sup> Submission 12, NSW Council for Civil Liberties, p 3

<sup>83</sup> Mr Thomas Spohr, Chair and Solicitor, NSW Young Lawyers Criminal Law Committee, p 9

<sup>84</sup> Submission 5, NSW Young Lawyers Criminal Law Committee, p 7

<sup>85</sup> Submission 5, NSW Young Lawyers Criminal Law Committee, p 9

'We are concerned that further expansion of enforcement legislation would criminalise a large section of the population.'<sup>86</sup>

3.32 In evidence to the Committee, Detective Superintendent Bingham pointed to the discrepancy between the threshold quantities for cannabis and synthetic cannabis related offences:

While the intent of the legislation was to ensure synthetic cannabis products were treated as prohibited drugs and in a similar fashion to cannabis and the law relating to possession, use and supply, the threshold quantities applying to synthetic cannabinoids are out of step with cannabis. To demonstrate in relation to cannabis, in schedule 1 to the Drug Misuse and Trafficking Act a small quantity of cannabis is 30 grams, a trafficable quantity is 300 grams, and an indictable quantity is 1,000 grams. In comparison, in relation to synthetic cannabinoids, a small quantity is one gram, a trafficable quantity is three grams, and an indictable quantity is five grams.<sup>87</sup>

3.33 The Department of Attorney-General and Justice advised that Schedule 1 of the Act contains several entries related to cannabis, including for tetrahydrocannabinol (THC), which is the principal cannabinoid found in cannabis leaf, oil and resin and plants. Synthetic cannabinoids exist in a purely chemical form, which is sprayed on herbal matter and packaged for human consumption. According to the Department, inconsistencies in the composition of synthetic cannabis compounds meant that it was not possible to arrive at quantities that reflected their potency:

Due to the inconsistency in the composition of commercially available synthetic cannabinoids and the limited research available in relation to them, DAGJ was advised it was not possible to set quantities which reflected their potency. Consequently, the quantities for synthetic cannabinoids were set at the same quantities for THC. The quantities in the Schedule can be amended should evidence become available that other quantities are more appropriate.

When quantities are prescribed in the Schedule, a number of factors are taken into account. Depending on the nature of the change or addition to the schedule, consideration will be given to:

1. Schedules in other Australian jurisdictions
2. Advice from law enforcement, health, and industrial experts and groups
3. Other reports and findings by bodies such as the Intergovernmental Committee on Drugs.<sup>88</sup>

3.34 The Department has sought the advice of manufacturers and expert groups on factors such as common dosages for recreational users of particular substances and the risks associated with their use. Lower quantities prescribed for drugs such as heroin compared to cannabis leaf reflect the typical quantities used, as

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<sup>86</sup> Submission 15, NSW Users and AIDS Association, pp 2, 4-5

<sup>87</sup> Detective Superintendent Nick Bingham, NSW Police Force, Transcript of evidence, 22 October 2012, p 2

<sup>88</sup> Correspondence from the Department of Attorney General and Justice to the Chair, 14 May 2013

well as higher addiction potential and adverse health outcomes associated with heroin when compared to cannabis.<sup>89</sup>

## CONCLUSION

3.35 While some inquiry participants supported the NSW approach of prohibiting new synthetic drugs by regulation or through the use of the analogue provision, the Committee also heard evidence that the current framework for controlling drugs has not proved effective in responding to synthetic drugs. Constantly changing chemical compounds, a lack of clarity in terms of the legal status of products containing synthetic drugs and limited testing capability have limited the effectiveness of attempts to control synthetic drugs using existing laws. In the following chapter, the Committee outlines proposed reforms to the current framework.

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<sup>89</sup> Correspondence from the Department of Attorney General and Justice to the Chair, 14 May 2013

## Chapter Four – Proposed reforms to current framework

- 4.1 In this chapter, the Committee examines various options for reform to address difficulties with regulating synthetic drugs. Suggested reforms include the introduction of temporary drug bans, amendments to current analogue provisions and scheduling drugs through generic definitions. The Committee outlines steps taken in other jurisdictions, and the comments of inquiry participants in regard to these reforms. In the following chapter, the Committee makes recommendations for change to improve the current system for regulating synthetic drugs.

### INTRODUCING TEMPORARY DRUG CONTROLS

- 4.2 Some international jurisdictions have responded to synthetic drugs by using existing temporary scheduling powers, or by introducing provisions to enable temporary scheduling. These jurisdictions have different systems for drug regulation to that in place in NSW, in that drugs can only be permanently scheduled through the passage of amending legislation (that is, not by regulation), following a prescribed evaluation process. Inquiry participants' views on temporary drug controls are outlined below, followed by an examination of the use of temporary drug orders in the United Kingdom and New Zealand.

#### Inquiry participants' views

- 4.3 During the inquiry, the introduction of temporary drug notices was raised as a possible adaption to the current system of prohibiting individual substances as they are identified. Some inquiry participants noted that temporary bans may provide a faster response to emerging drugs, while other expressed the view that the current NSW system of prohibiting drugs by regulation is an inherently speedy process.
- 4.4 The NSW Director of Public Prosecutions described the United Kingdom's system of temporary class drug orders to the Committee. Mr Babb submitted that the basis of the orders is a rapid response to new drugs, and that this was a practical response:
- The United Kingdom has introduced a system of temporary bans on new "legal highs", called Temporary Class Drug Orders. The ban operates while the substance is assessed by experts. The rationale for these orders is to enable a quick response to a new substance becoming available. This appears to be a pragmatic approach to the issue of emerging dangerous substances.<sup>90</sup>
- 4.5 The NSW Young Lawyers Criminal Law Committee commented that while the implementation of a system of temporary class drug orders similar to New Zealand and the United Kingdom could 'potentially provide some flexibility and transparency that the current system in New South Wales does not always have',

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<sup>90</sup> Submission 3, NSW Director of Public Prosecutions, p 2

the fact that the current system allows for the prohibition of substances by regulation means that the speed of the current approach may not be substantially improved by introducing temporary class drug orders.<sup>91</sup>

- 4.6 In evidence to the Committee, Ms Emma Bayley from the NSW Young Lawyers Criminal Law Committee, said that the key question – in addition to the issue of a fast response – is whether temporary orders would provide a more transparent process for assessing a drug prior to its classification:

The other question would be whether with the temporary class ban there is better provision for more publicly available information for testing and more evidence at that initial stage to know why it is that particular drug has been added to the schedule. If a system were to create better evidence by chemists of which drugs are to be added to the schedule and why, that would be good, but we are not aware of how it is that the seven synthetic cannabinoid products were placed in the Act by regulation and whether there is some evidence to be gathered before that could happen.<sup>92</sup>

- 4.7 Mr Thomas Spohr told the Committee that although comparisons with other jurisdictions were difficult, temporary drug order systems in place in the United Kingdom and New Zealand models 'are good models and they potentially provide some flexibility and transparency that the current system in New South Wales does not always have.'<sup>93</sup>

- 4.8 The Committee also heard that temporary orders may assist police with enforcing bans on synthetic drugs. Detective Superintendent Nick Bingham, Commander of the NSW Police Force's Drug Squad, explained to the Committee that if a New Zealand style temporary drug notice was placed on a substance in NSW, it would give police the power to seize substances, analyse them and prosecute for related offences, if required.<sup>94</sup>

- 4.9 Temporary notice systems in the United Kingdom and New Zealand do not criminalise the possession and use of synthetic drugs. Detective Superintendent Bingham told the Committee that this approach should be considered in NSW. He stated that supply and manufacturing offences should be prosecuted but possession could instead be handled through seizure of the substance, in order to 'alleviate investigation and prosecution time and not criminalise users who believe they are buying a legal product.'<sup>95</sup>

## United Kingdom

- 4.10 The United Kingdom has sought to control synthetic drugs by defining them in broad categories (discussed in detail from paragraph 4.58) and through the introduction of temporary bans.

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<sup>91</sup> Mr Thomas Spohr, NSW Young Lawyers Criminal Law Committee, Transcript of evidence, 15 October 2012, pp 9-10

<sup>92</sup> Ms Emma Bayley, NSW Young Lawyers Criminal Law Committee, Transcript of evidence, 15 October 2012, p 9

<sup>93</sup> Mr Thomas Spohr, NSW Young Lawyers Criminal Law Committee, Transcript of evidence, 15 October 2012, p 10

<sup>94</sup> Detective Superintendent Nick Bingham, NSW Police Force, Transcript of evidence, 22 October 2012, p 4

<sup>95</sup> Detective Superintendent Nick Bingham, NSW Police Force, Transcript of evidence, 22 October 2012, p 4

- 4.11 Under the *Misuse of Drugs Act 1971* controlled substances are listed in one of three classes and penalties for offences such as importation, possession and supply are set. The Advisory Council on Misuse of Drugs (ACMD) is established as an independent advisory body, which makes recommendations to government about the classification and scheduling of drugs, conducts inquiries into emerging substances, and considers matters on referral from Ministers.<sup>96</sup>
- 4.12 Amendments to add or remove a drug from classification are made through Orders in Council, which are laid before Parliament and approved by a resolution of both Houses before being signed by the Queen. The Secretary of State must consult the ACMD before drafting an Order, but is not bound to accept its recommendation.<sup>97</sup>
- 4.13 In August 2010, the Minister for Crime Prevention announced legislation allowing for temporary bans of new drugs, aimed at providing a faster response to emerging 'legal high' substances. The legislation would give police the power to confiscate suspected substances and enable the UK Border Agency to seize shipments entering the UK.<sup>98</sup> The *Police Reform and Social Responsibility Act 2011* enabled the Home Secretary to place new psychoactive substances under temporary control by making a temporary class drug order.
- 4.14 To qualify as a temporary class drug, a substance must not already be controlled. In addition, the Home Secretary requires the endorsement of the ACMD to make a temporary control order, on the basis that a substance is being, or is likely to be, misused and is having, or is capable of having, harmful effects. Parliament must agree to an order within 40 sitting days of the Home Secretary making the Order.<sup>99</sup>
- 4.15 In correspondence to the Committee, the UK Home Office explained that the consultation phase of the temporary drug control process is similar to the process for permanent drug control under the Misuse of Drugs Act; however it is an expedited process. Preliminary consideration of a drug's health harms is undertaken by the ACMD, and a recommendation is then made to the Home Secretary:

The advisory and consultation process leading to a temporary class drug order is similar to the (permanent) drug control process under the Act in that the Home Secretary must consult with and/or receive a recommendation ("initial advice") from the ACMD before taking a decision on making a temporary class drug order. If the Home Secretary makes a referral to the ACMD under the temporary control power, the ACMD has only up to 20 working days to provide initial advice. During this period the ACMD prepares initial advice based on available evidence of health harms of the NPS (as well as other available evidence, such as prevalence of use and availability).

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<sup>96</sup> UK Home Office, <http://www.homeoffice.gov.uk/agencies-public-bodies/acmd/>

<sup>97</sup> Misuse of Drugs Act 1971, s 2 and House of Commons Science and Technology Committee, *Drug classification: making a hash of it?*, Fifth report of session 2005-06, July 2006, p 23, <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmsctech/1031/1031.pdf>

<sup>98</sup> UK Home Office, 'Temporary bans to fight back against 'legal highs'', Media release, August 2010, <http://www.homeoffice.gov.uk/media-centre/press-releases/fight-legal-highs>

<sup>99</sup> UK Home Office, Temporary Class Drugs Factsheet, <http://www.homeoffice.gov.uk/publications/alcohol-drugs/drugs/temporary-class-drug-factsheet?view=Binary>

There is no need for a review of ‘social harm’ at the temporary control stage (it will still be required alongside the review of health harms in the ACMD’s advice to Government on permanent control).<sup>100</sup>

- 4.16 Temporary class drug orders come into immediate effect and are in force for up to 12 months. Substances under a temporary order are controlled drugs and all offences under the Misuse of Drugs Act apply, except for the offence of simple possession (possession for personal use) which is not an offence. Law enforcement officers have search and seizure powers if they have reasonable grounds for suspecting a person is in possession of a temporary class drug. They may seize, detain and dispose of a suspected temporary class drug.<sup>101</sup>
- 4.17 According to the Home Office, temporary orders mean that the ACMD has adequate time to provide full advice on a drug, and enable the Government to convey a public health message about new synthetic drugs. Other benefits cited include the ability to take enforcement action and enabling a decision to be made on permanent control after consideration of full expert advice, with Parliament enacting any necessary legislative control measures before the temporary order expires.<sup>102</sup>
- 4.18 In correspondence to the Committee, the UK Home Office stated that the drug orders allow the ACMD to examine the social and health harms of a temporary class drug, while at the same time restricting its availability through police enforcement and retailer self-regulation:

A temporary class drug order gives the Government’s statutory, independent body of drug experts ... time (up to 12 months) to prepare full advice on the health and social harms of the temporary class drug(s) in relation to permanent control under the Act. Meanwhile, it helps to curtail the availability of temporary class drugs in the UK: most suppliers self-regulate (cease to order/advertise for sale and surrender stocks to police) by the time the order comes into force; UK law enforcement is able to take action against illicit activities involving temporary class drugs at and within UK borders; public health and prevention messages inform the public of the health harms/risks and temporary control provisions.<sup>103</sup>

- 4.19 The Home Office states that, although legislative action to control drugs is the favoured response, temporary orders can allow for a faster response to new drugs:

The parliamentary procedure to permanently control a drug under the 1971 Act - following consideration of the Advisory Council on the Misuse of Drugs’ full advice on a drug’s harms and all available evidence - remains the preferred approach.

However, the use of the temporary control power will be considered if there is such concern about a drug that a faster legislative response is necessary to protect the

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<sup>100</sup> Correspondence from the UK Home Office to the Chair, 12 March 2013, p 1

<sup>101</sup> Maximum penalties are 14 years’ imprisonment and an unlimited fine on indictment, and 6 months’ imprisonment and a £5,000 fine on summary conviction. UK Home Office, Temporary Class Drugs Factsheet, <http://www.homeoffice.gov.uk/publications/alcohol-drugs/drugs/temporary-class-drug-factsheet?view=Binary>

<sup>102</sup> UK Home Office, Temporary Class Drugs Factsheet, <http://www.homeoffice.gov.uk/publications/alcohol-drugs/drugs/temporary-class-drug-factsheet?view=Binary>

<sup>103</sup> Correspondence from the UK Home Office to the Chair, 12 March 2013, p 1

public. Parliament retains full scrutiny over the use of the power under the parliamentary process adopted by the Government.<sup>104</sup>

- 4.20 The first temporary class drug order in March 2012 prevented the sale, possession and distribution of methoxetamine.<sup>105</sup> The ACMD had advised the Government that the substance was a close analogue of ketamine, and could cause hallucinations, catatonia and dissociative effects.<sup>106</sup> The ACMD concluded that the drug was being misused and there was a potential for harm, and recommended that it be subject to a temporary order. The drug, which was marketed as a safe alternative to ketamine, will be controlled for 12 months while the ACMD determines whether or not it should be permanently controlled.<sup>107</sup>
- 4.21 In terms of the impact of the temporary class drug order, the UK Home Office advised the Committee that:
- Over 70 websites stopped offering methoxetamine for sale by the time the temporary class drug order took effect in April 2012.
  - Police made 49 seizures of methoxetamine in the first 6 months of the temporary class drug order. The Serious Organised Crime Agency estimates that over 8 kgs of the drug were seized during this period; the ACMD noted in its full advice on methoxetamine the potential impact of its temporary class drug order on availability/prevalence in the UK.
  - The Serious Organised Crime Agency leads the UK law enforcement response to UK and internationally-based websites selling controlled drugs and new synthetic drugs. The agency has been involved in over 120 sites being closed down in the past year - offences under the Misuse of Drugs Act (supply, possession and importation) apply to online sale of illicit drugs.<sup>108</sup>
- 4.22 In October 2011, the ACMD released a report on new psychoactive substances. The report discussed temporary drug orders, and concluded that they should be used sparingly and appropriately, and not as a substitute for full control under the Misuse of Drugs Act, but rather as a proportionate mechanism to prevent harms if a swift response is needed. It was noted that successful implementation of the orders depends on the ACMD having access to evidence and resources to provide reference standards and undertake risk analysis of substances, collect data on acute toxicity and, where necessary, pharmacology studies.<sup>109</sup>

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<sup>104</sup> UK Home Office, Temporary Class Drugs Factsheet, <http://www.homeoffice.gov.uk/publications/alcohol-drugs/drugs/temporary-class-drug-factsheet?view=Binary>

<sup>105</sup> UK Home Office, 'Mexxy' to be illegal from tonight'; Media release, April 2012, <http://www.homeoffice.gov.uk/media-centre/news/mexxy-illegal>

<sup>106</sup> Advisory Council on Misuse of Drugs, *Statement of Evidence: Methoxetamine*, March 2012, <http://www.homeoffice.gov.uk/publications/agencies-public-bodies/acmd1/statement-methoxetamine?view=Binary>

<sup>107</sup> UK Home Office, 'First 'legal high' banned under new power', Media release, March 2012, <http://www.homeoffice.gov.uk/media-centre/press-releases/first-'legal-high-banned>

<sup>108</sup> Correspondence from the UK Home Office to the Chair, 12 March 2013, pp 4-5

<sup>109</sup> Advisory Council on Misuse of Drugs, *Consideration of the Novel Psychoactive Substances ('Legal Highs')*, October 2011, pp 23, 25-29, 35-6

## New Zealand

- 4.23 In New Zealand, drugs are regulated under the *Misuse of Drugs Act 1975*. Classification is based on the risk of harm a drug poses to individuals or society by its misuse. To classify a substance as a controlled drug, the Minister must consult with and consider the advice of an expert advisory body on certain criteria set out under the Act. The Minister then makes a recommendation to the Governor-General that an Order in Council be made to amend the schedules in the Act.<sup>110</sup>
- 4.24 Temporary orders to control drugs were introduced in response to concern about synthetic cannabis. Concern that synthetic cannabis products were increasing in availability, reported adverse effects, and the lack of quality control standards were cited as reasons for the 12 month temporary bans. Bans to control all 43 synthetic cannabis products on the market were announced in August 2011. By May 2013, the Government had temporarily scheduled 35 synthetic substances.<sup>111</sup>
- 4.25 Temporary drug orders were not considered to be an effective long-term strategy by the New Zealand Ministry of Health as they 'dealt with immediate concerns but postponed the need to assess harm and make permanent classification decisions.' It was considered that the long term use of temporary bans would not resolve the 'onus issue', with the Government continually being required to react to the emergence of new substances.<sup>112</sup> The orders were an interim measure while the Government developed a new legislative regime (discussed in detail in chapter 5).
- 4.26 Under the system, the Minister of Health issues a Temporary Class Drug Notice notifying a drug's temporary classification status. The classification comes into force a minimum of 7 days after the notice is published.
- 4.27 Notices expire after one year, or when the drug is otherwise classified. A committee assesses substances for risk of harm and recommends to the Minister whether substances should be classified as a controlled drug, a restricted substance, or remain unregulated. The Minister may extend the notice period to obtain advice on longer term regulation.
- 4.28 Temporarily classified drugs are treated as Class C controlled drugs in that import, export, manufacture, supply and sale of the drugs is illegal, with similar penalties as for Class C drugs. However possession (under 56 grams) or use is not a criminal offence.<sup>113</sup>

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<sup>110</sup> *Misuse of Drugs Act 1975* (NZ) s 3A, schedules 1 to 3 list Class A to C drugs, s 4B sets out criteria for assessing a drug

<sup>111</sup> Associate Health Minister, 'All synthetic cannabis products to be banned', Media release, 1 August 2011, <http://beehive.govt.nz/release/all-synthetic-cannabis-products-be-banned> and Correspondence from New Zealand Ministry of Health to the Chair, 17 January 2013, p 1

<sup>112</sup> New Zealand Ministry of Health, *Government Response to the Law Commission's Report 'Controlling and Regulating Drugs – a review of the Misuse of Drugs Act 1975'*, September 2011, p 6, <http://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements/government-response-law-commissions-report-controlling-and-regulating-drugs-review-misuse-drugs-act>

<sup>113</sup> The maximum penalty for importing, manufacturing and/or supplying Class C substances is eight years imprisonment. Associate Health Minister, 'All synthetic cannabis products to be banned', Media release, 1 August

- 4.29 In terms of enforcing the bans, the New Zealand Ministry of Health advised that the following action had been taken:
- The New Zealand Customs Service carried out over 100 interceptions from August 2011 to November 2012 involving substances covered by temporary notices. Around 800 kilograms of drugs were seized and forfeited; the majority were seized after the first temporary bans as 'returned products' from other countries. Around 50 kilograms were forfeited as new imports. The Customs Service recently began prosecutions for importations in breach of temporary notices.
  - New Zealand Police have not commenced any prosecutions for commercial supply (possession is not an offence), due to the low quantities of products seized; costs of testing; continued use of new substances that have not been scheduled; and retailers' genuine confusion about legislation and product ingredients.
  - Police have focussed on educating enforcement staff and working with retailers to improve compliance. Most have been compliant and have chosen to give up products or stop selling them. In these cases, no further action has been taken.
  - A minority who continue to sell have been targeted by health enforcement agents and police. Some received warnings for breaching the Misuse of Drugs Act. A small number of prosecutions are underway for the sale of smokable synthetic cannabis products to persons under 18 years, in breach of the Smoke-free Environments Act.
  - Around 50 to 100 products containing synthetic cannabis and a number of 'party pill' products have been removed from retail sale.<sup>114</sup>
- 4.30 In correspondence to the Committee, the Ministry of Health advised that although the bans had only been intended as a temporary solution, it considers the use of temporary class drug notices and the enforcement approaches to have been 'relatively successful.' The Ministry stated that it believes the notices have significantly reduced the availability of products to persons under 18 years of age.<sup>115</sup>

## AMENDING ANALOGUE PROVISIONS

- 4.31 Possible simplification of the analogue provision in the Drug Misuse and Trafficking Act was raised by participants in the inquiry. In the section below, the Committee examines inquiry participants' views on this proposal, before outlining efforts in the United States and Queensland to use analogue provisions in responding to synthetic drugs.

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2011, <http://www.beehive.govt.nz/release/all-synthetic-cannabis-products-be-banned> and *Misuse of Drugs Act 1975* s 6

<sup>114</sup> Correspondence from New Zealand Ministry of Health to the Chair, 17 January 2013, pp 1-2

<sup>115</sup> Correspondence from New Zealand Ministry of Health to the Chair, 17 January 2013, p 2

## Inquiry participants' views

- 4.32 The analogue provision of the *Drug Misuse and Trafficking Act 1985* was raised as a potential area for legislative improvement during the inquiry. The Committee heard from various inquiry participants that current lengthy and complex testing procedures and the technical language within the analogue provision meant that its utility for controlling synthetic drugs was limited. Testing is discussed in detail from paragraph 4.109.
- 4.33 Although the Committee was advised that the analogue provision has been successfully used in prosecutions in relation to a synthetic stimulant, mephedrone, some inquiry participants were of the view that the provision had difficulties in controlling other drugs, such as synthetic cannabis compounds. The NSW Government submission observed that synthetic cannabinoids 'differ in chemical composition to cannabis/THC. There is also significant variation between different types of synthetic cannabinoids.'<sup>116</sup>
- 4.34 Detective Superintendent Nick Bingham also observed that the effects of synthetic cannabis products can vary widely, and that some synthetic cannabis compounds may not have a psychotropic effect on the brain, while others can have an effect that is significantly more potent than THC.<sup>117</sup> It may also be the case that the drug is an analogue but it can be difficult to prove that it has in fact 'psychotropic properties'.
- 4.35 The Committee heard evidence that a simplification of the current analogue provision could assist enforcement and prosecution. Detective Superintendent Nick Bingham confirmed that it was the view of the NSW Police Force that the term 'psychotropic' should be removed from the analogue provision, as pharmacological advice to the NSW Police Force had been that 'it is difficult, if not impossible, to prove psychotropic unless you have a human trial.'<sup>118</sup>
- 4.36 Detective Superintendent Bingham suggested that changes to the analogue provision may improve the current system of prohibiting substances individually and catching any substances which are developed to mimic prohibited substances:
- If we could simplify the analogue clause to being defined as, "structurally similar to a prohibited drug or a substance that is supplied with the effect of, or the intended effect of, or the purported effect of a prohibited drug," that would simplify things greatly and cut out any technical argument. Take away the psychotropic properties issue and talk about structural isomers.<sup>119</sup>
- 4.37 The NSW Minerals Council submitted in favour of an amendment that would cover substances intended, or apparently intended, to have a substantially similar pharmacological effect to already prohibited substances, arguing that 'this type of regulation will capture those substances being marketed as a synthetic

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<sup>116</sup> Submission 17, NSW Government, p 6

<sup>117</sup> Detective Superintendent Nick Bingham, NSW Police Force, Transcript of evidence, 22 October 2012, p 7

<sup>118</sup> Detective Superintendent Nick Bingham, NSW Police Force, Transcript of evidence, 22 October 2012, p 7

<sup>119</sup> Detective Superintendent Nick Bingham, NSW Police Force, Transcript of evidence, 22 October 2012, p 7

alternative to a prohibited drug without having to actually establish that there are similar pharmacological effects.<sup>120</sup>

- 4.38 The NSW Young Lawyers Criminal Law Committee commented on the analogue provision's complexity and lack of clarity. However, Ms Emma Spohr from the NSW Young Lawyers Criminal Law Committee cautioned against an amendment to the wording that would be ambiguous and difficult to interpret:

When you measure an analogue, you are talking about these drugs being illegal and these drugs that are similar to those drugs should also be illegal. When you talk about that analogue or that similarity, you can measure it in different ways. With the current analogue provision you can say that they are similar because they have a certain chemical structure, because they have certain effects on people generally, because they have certain effects on the individual who is charged or because they have certain effects, in a medical sense, on certain brain receptors. What would be less clear would be to suggest that some substances are similar because they have similar intended effects. We see that as very unclear because it is not easy to understand whose intention is to be looked at in that question.<sup>121</sup>

- 4.39 In response to the suggestion that the provision simply cover synthetic drugs that are intended to have the same effect as prohibited drugs, the NSW Government pointed to problems with analogue provisions in the United States, and argued that 'an intent-based approach does not appear to have benefits over the existing fact-based approach under Schedule 1 of the DMTA'.<sup>122</sup> The NSW Government advised that an interagency working group had considered removing "psychotropic properties" from the provision in 2000, but 'the view was expressed that a test beyond a mere similarity to a scheduled substance was necessary so as to avoid criminalising the possession of benign substances, and that the rapidity with which a substance could be added to Schedule 1 ameliorated concerns regarding the test.'<sup>123</sup>
- 4.40 The Committee notes however that substances can be removed from Schedule 1 of the Drug Misuse and Trafficking Act in a similar way to which they were added, should they be deemed to be benign substances.
- 4.41 The NSW Government submission acknowledged that the phrase "psychotropic properties" was not used in any other Australian jurisdiction, and had not been included in the definition adopted by the Model Criminal Code's report on Serious Drug Offences. However, the NSW Government argued that 'vague references to similar pharmacological effects and similar terms lack determinate meaning and lend themselves to potentially varying expert opinions.'<sup>124</sup>
- 4.42 According to the NSW Government, removing the psychotropic part of the analogue provision may make it simpler to prove that a drug is an analogue, and reduce disputes between expert witnesses. However, it may not be so successful in capturing substances, such as synthetic cannabinoids, which are significantly

<sup>120</sup> Submission 20a, NSW Minerals Council, p 1

<sup>121</sup> Ms Emma Bayley, NSW Young Lawyers Criminal Law Committee, Transcript of evidence, 15 October 2012, p 11

<sup>122</sup> Submission 17, NSW Government, p 7

<sup>123</sup> Submission 17, NSW Government, p 8

<sup>124</sup> Submission 17, NSW Government, p 7

different in structure to a prescribed substance. Amendments to the current provision would still necessitate expert testing, which could be disputed:

One solution to this problem may be to focus on the effect of the substances on specified receptors in the human brain. Synthetic cannabinoids work by activating cannabinoid receptors in the brain. A number of US jurisdictions have sought to ban synthetic cannabinoids by prohibiting substances which have a similar effect on cannabinoid receptors as THC.

... Testing would be required to show it has the requisite effect. This form of testing might be more complex or open to dispute.<sup>125</sup>

- 4.43 In evidence to the Committee, Ms Penelope Musgrave from the NSW Department of Attorney General and Justice acknowledged that there were difficulties with the analogue provision, particularly in 'identifying whether a drug is an analogue, and testing it to see if that is the case'. She commented on the lack of evidence about the effects of synthetic drugs, and the impact this has on proving their properties:

I keep on using the word "psychoactive" and the analogue provision in New South Wales still retains that term as something that characterises or is the property that makes that substance one that should be subject to criminal legislation ... there are difficulties with the dearth of evidence about the psychoactive property of substances that are coming onto the market.<sup>126</sup>

- 4.44 Ms Musgrave told the Committee that, regardless of the wording of the provision, there will be a need to test and analyse synthetic drugs in order to prove that they are an analogue under the Act:

At the moment the onus is on the prosecution to establish that substance falls into the schedules, and I do understand it is a real challenge for Health at the moment as there are so many new substances that are out there. The question is not so much how it is described but who bears the onus of establishing that. In the criminal law at the moment the onus is on the prosecution to establish that that substance is a criminal substance under the Act. Yes, that aspect is a challenge.

There are some aspects of it that are fairly fundamental to the system. When one looks at the analogue provision it is initially quite confronting in that it is in very technical language. But I do not think that is necessarily the issue with the analogue provision. The issue is that the substance has to be taken, tested and analysed and that evidence put before the court.<sup>127</sup>

- 4.45 Evidence received during the inquiry demonstrated that the vast number of synthetic drug compounds and their differing effects and properties raises difficulties with the current analogue provision. Other jurisdictions have experienced similar difficulties and have sought to amend their analogue provisions, or use other means to control synthetic drugs, as outlined below.

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<sup>125</sup> Submission 17, NSW Government, p 9

<sup>126</sup> Ms Penelope Musgrave, NSW Department of Attorney General and Justice, Transcript of evidence, 22 October 2012, pp 28-29

<sup>127</sup> Ms Penelope Musgrave, NSW Department of Attorney General and Justice, Transcript of evidence, 22 October 2012, p 29

## United States

- 4.46 In the United States, the analogue provisions were considered to be a problematic way to respond to synthetic drugs, and legislative scheduling of substances has been the preferred approach.
- 4.47 The federal *Controlled Substances Act 1970* regulates importation, manufacture, distribution, possession and use of drugs, other substances and precursors.<sup>128</sup> Regulated drugs are placed into one of five schedules, based on their safety, intended medical use, potential for abuse and addictiveness.<sup>129</sup> Substances can be removed from control, added to a schedule, rescheduled, or transferred from one schedule to another. From Schedules I to V, substances decrease in their potential for abuse.<sup>130</sup> The Attorney General may also order that a drug be temporarily scheduled in Schedule I, if they find that it is necessary to avoid an imminent hazard to public safety.<sup>131</sup>
- 4.48 The federal *Anti-Drug Abuse Act 1986* covers substance analogues, which are not legally controlled but are pharmacologically and/or structurally similar to Schedule I or II controlled substances. Where substance analogues are identified for human consumption with no legitimate medical use, they are regarded as if they were a drug listed under Schedule I of the Controlled Substances Act.<sup>132</sup>
- 4.49 In terms of possible action to control synthetic drugs, the Drug Enforcement Administration (DEA) identified difficulties with treating the drugs as analogues under the *Anti-Drug Abuse Act 1986* and stated that the "analogue" process to prevent diversion and abuse of synthetic cannabinoids and stimulants is not adequate to address the problem', due to difficulties with prosecutions, summarised below:
- Additional investigation is necessary for every analogue case to determine whether the substance was intended for human consumption.
  - Forensic chemists can testify as to laboratory analysis results to identify a controlled substance; however, additional testimony is needed from experts in different scientific disciplines to establish that a substance is an analogue.
  - In criminal prosecutions, an additional burden is on the government to establish, through experts in chemistry and pharmacology, that a substance is substantially similar in chemical structure and pharmacological activity to a schedule I controlled substance. Expert testimony is subject to opposing views from other expert chemists and pharmacologists.

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<sup>128</sup> US states have their own legislation for scheduling drugs and establish differing penalties. For example, while ecstasy is a Schedule I drug in Florida with a maximum penalty of 30 years in prison for selling, California has not scheduled ecstasy and does not penalise its sale and possession: House of Commons Science and Technology Committee, *Drug classification: making a hash of it?*, Fifth report of session 2005-06, July 2006, p 10, <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmsctech/1031/1031.pdf>

<sup>129</sup> US Code Title 21 section 812

<sup>130</sup> Drug Enforcement Administration, Department of Justice, *Drugs of Abuse*, D Joseph (ed), 2005 ed, p 1, <http://www.justice.gov/dea/pubs/abuse/doa-p.pdf>

<sup>131</sup> US Code Title 21 section 811(h)

<sup>132</sup> Drug Enforcement Administration, Department of Justice, *Drugs of Abuse*, D Joseph (ed), 2005 ed, p 5, <http://www.justice.gov/dea/pubs/abuse/doa-p.pdf>

- A successful prosecution under the analogue provision does not render the substance an analogue in subsequent prosecutions. Each prosecution must establish that a particular substance meets the definition of an analogue.

- 4.50 The DEA concluded that, due to these factors, direct scheduling of the substances under the Controlled Substances Act was a preferable response.<sup>133</sup>
- 4.51 Due to the constantly changing nature of synthetic cannabinoids and the time required by the DEA to schedule a new drug, it was proposed that Congress could directly legislate to schedule new substances. In June 2012, 26 cannabimimetic agents and other synthetic drugs were added to schedule I of the Controlled Substances Act, and temporary scheduling powers were extended to two years, with an extension of one year. This amendment was enacted on 9 July 2012.<sup>134</sup>

## Queensland

- 4.52 There have been recent moves to amend the analogue provisions in Queensland legislation, in order to include drugs that are intended to have an effect that is similar to that of an existing prohibited drug. This proposed amendment is aiming to capture emerging synthetic drugs.
- 4.53 In Queensland, the *Drugs Misuse Act 1986* (Qld) prohibits the trafficking, manufacture, supply and use of dangerous drugs and prescribes penalties for these offences. Dangerous drugs are listed in Schedules 1 and 2 of the *Drugs Misuse Regulation 1987*. The definition of dangerous drug in the *Drugs Misuse Act 1986* includes drugs that have a chemical structure substantially similar to that of a listed drug, and a substantially similar pharmacological effect.<sup>135</sup>
- 4.54 In September and November 2011, the Queensland Government added a number of substances, including various synthetic cannabinoids, to Schedule 2 of the *Drugs Misuse Regulation 1987*.<sup>136</sup>
- 4.55 On 13 October 2011, the then Attorney General, the Hon Paul Lucas MP, introduced a Bill that proposed amendments to the definition of 'dangerous drug' to include substances 'intended, or apparently intended, to have a substantially similar pharmacological effect' to a drug already listed as a dangerous drug in Schedule 1 or 2.<sup>137</sup> The Bill lapsed with the dissolution of the Queensland Parliament prior to the 2012 Queensland General Election.
- 4.56 Following the election, the new government also introduced similar legislation. The Queensland Attorney General, in announcing the proposed changes, commented that the amendment sought to cover all synthetic drugs that are manufactured to mimic an existing illicit drug:

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<sup>133</sup> US Department of Justice, 'The Dangers of Synthetic Cannabinoids and Stimulants', Written Statement of Joseph T Rannazzisi, Deputy Assistant Administrator, Office of Diversion Control, DEA, Senate Caucus on International Narcotics Control, 6 April 2011, p 11, [http://www.justice.gov/dea/speeches/110412\\_testimony.pdf](http://www.justice.gov/dea/speeches/110412_testimony.pdf)

<sup>134</sup> US Congress, Congressional Record, 112th Congress (2011-2012), Senate, 24 May 2012, Food and Drug Administration Safety and Innovation Act, p S3546

<sup>135</sup> *Drugs Misuse Act 1986* (Qld), s 4

<sup>136</sup> *Drugs Misuse Amendment Regulation (No.1) 2011* (Qld) and *Drugs Misuse Amendment Regulation (No.2) 2011* (Qld)

<sup>137</sup> Criminal and Other Legislation Amendment Bill 2011 (Qld) Clause 45(2)

In order for a synthetic drug to be banned under the current legislation it must have a substantially similar pharmacological effect to an illegal drug, but this is hard to prove. Drug cooks come up with new mixtures of synthetic drugs that have the same effect but are not yet banned because the chemical make-up is slightly different from a listed substance.

The changes to the Drugs Misuse Act will cast the net wider to capture all synthetic drugs that are 'intended' to have the same effect as a scheduled dangerous drug. This will provide us with a 'stop-gap' measure to ban drugs between the time they hit the market and are then added as a scheduled drug.<sup>138</sup>

4.57 This amendment to the *Drugs Misuse Act 1986* was passed in April 2013.<sup>139</sup>

## PROHIBITING BROAD CATEGORIES OF SUBSTANCES

4.58 Another approach taken to synthetic drugs has been to control them pre-emptively through the use of broad categories that cover many different chemical compounds. This is aimed at avoiding the need to individually schedule new compounds that are developed to circumvent existing bans. In the section below, the Committee outlines inquiry participants' views on the proposal, and examines the use of this approach in Australia and the United Kingdom.

4.59 A potential advantage of this approach is the possibility that the majority of new and harmful synthetic drugs released in NSW would be captured within broad categories prohibited in NSW legislation. This would remove the requirement for the list of individual prohibited substances to be continually updated as new variations of synthetic drugs are identified, tested, and found to require prohibition.

### Inquiry participants' views

4.60 During the inquiry Dr Monica Barratt referred the Committee to academic research on legislation banning broad categories of synthetic drugs. Van Amsterdam et al. described the approach of using legislation banning broad categories of synthetic drugs as follows:

The Generic Legislation Model prohibits clusters of substances, that is, clusters of compounds showing similarity with the chemical structure of an existing drug. Introduction of the generic system is an attempt to introduce 'future proof' legislation which 'is always a step ahead of the illegal producers.' It bans all existing drugs and those analogues still to appear in the future, rather than assessing individual drugs and listing them individually in a List model.<sup>140</sup>

4.61 The NSW Government could act to prohibit broad categories of substances in two ways. Firstly, it could adopt Schedule 9 of the Commonwealth Standard for the Uniform Scheduling of Medicines and Poisons (SUSMP). This would prohibit in NSW substances that are prohibited federally by the Therapeutic Goods

<sup>138</sup> The Hon Jarrod Bleijie MP, 'Government clamps down on synthetic drugs', 18 November 2012, <http://statements.qld.gov.au/Statement/2012/11/18/government-clamps-down-on-synthetic-drugs>

<sup>139</sup> *Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Act 2013* (Qld) s 40

<sup>140</sup> J van Amsterdam, D Nutt and W van den Brink, 'Generic Legislation of new psychoactive drugs', *Journal of Psychopharmacology*, published online 23 January 2013, p 3, <http://jop.sagepub.com/content/early/2013/01/17/0269881112474525>

Administration, including broad groups of synthetic drugs. Alternatively, the Government could directly add broad groups of substances to Schedule 1 of the *Drug Misuse and Trafficking Act 1985*, independent of the Commonwealth scheduling process. Commonwealth scheduling of substances is discussed in detail in the following section, at paragraph 4.73.

- 4.62 In its submission to the Inquiry, the NSW Government advised the Committee that the integration of bans of substance groups recommended by the TGA into NSW legislation is a possibility that is currently being considered by the Government:

NSW Government agencies are currently considering whether and how restrictions along the lines proposed by the TGA can be implemented into NSW legislation (specifically, into Schedule 1 of the *Drug Misuse and Trafficking Act 1985*).<sup>141</sup>

- 4.63 Ms Penelope Musgrave from the Department of Attorney General and Justice indicated that the Department had begun initial discussions about adopting Schedule 9 into the *Drug Misuse and Trafficking Act*, however the process had not moved past the departmental level at the time of the Committee's public hearing.<sup>142</sup>

- 4.64 The NSW Minerals Council supported this option in their evidence to the Committee. The Minerals Council advised that the prohibition of the known groups of synthetic cannabinoids and the 'catch-all' group 'synthetic cannabinomimetics' currently identified in the SUSMP would be the most effective approach towards the regulation of synthetic drugs in NSW. The Minerals Council advised that these prohibitions could be incorporated into existing legislation by amending the *Drug Misuse and Trafficking Act 1985*.<sup>143</sup>

- 4.65 In their submission to the inquiry Coal Services Health also recommended a move to ban broader categories of synthetic drugs, and indicated that legislation should be amended to give effect to Schedule 9 of the SUSMP:

The actual regulation of these chemical substances (synthetic drugs and the chemicals used in their manufacture) relies on the states and territories to either implement or amend existing legislation giving effect to the SUSMP. This could be done by prohibiting the list of the 8 known groups of synthetic cannabinoids identified in the SUSMP (to capture any individual substances within those groups which are not specifically prohibited) and synthetic cannabinomimetics (except where separately and specifically scheduled) that serves to capture those chemical compounds that are designed to mimic the effects of THC (the active chemical compound found in the cannabis plant).<sup>144</sup>

- 4.66 The NSW Police Force also supported a move to incorporate Schedule 9 of the SUSMP into NSW legislation, so that substances added to Schedule 9 are

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<sup>141</sup> Submission 17, NSW Government, p 10

<sup>142</sup> Ms Penelope Musgrave, NSW Department of Attorney General and Justice, Transcript of evidence, 22 October 2012, p 30

<sup>143</sup> Submission 20, NSW Minerals Council, pp 2-3

<sup>144</sup> Submission 1, Coal Services Health, p 2

automatically prohibited by NSW legislation. Detective Superintendent Nick Bingham told the Committee that the TGA's scheduling of groups of substances:

... aims to capture all synthetic cannabinoid groups in order to address the problem regarding manufacturing altering synthetic cannabinoids to avoid bans and will make it easier to police as police can have confidence all synthetic cannabinoids will be prohibited.<sup>145</sup>

- 4.67 Detective Superintendent Bingham told the Committee of the difficulties with identifying the multitude of individual synthetic cannabis compounds that can be used in manufacturing synthetic cannabis products. He advised that it may be easier technically to identify broader groups of chemical families, if the relevant analytical standards were available:

At this time it would be very difficult to identify every compound, but it may be possible to identify the chemical family in which the compounds reside. One of the main issues, though, is that our Forensic and Analytical Science Services [FASS] requires the analytical standards for seven banned compounds to provide evidentiary certification. The Forensic and Analytical Science Services would need to be consulted to determine what standards would be required for the larger synthetic cannabinoid family and what impact this would have on their operations.<sup>146</sup>

- 4.68 In terms of the processes involved in Commonwealth and state scheduling, Ms Musgrave told the Committee that other states adopt Schedule 9 of the SUSMP into their poisons legislation, but not their drugs legislation:

What I can tell you is that no other State automatically adopts Schedule 9 into their parallel Drug Misuse and Trafficking Act. What they do is adopt it, on occasion, into their Poisons and Therapeutic Goods Act. The reason why it cannot be automatically adopted into the offence based legislation is that they all have quantities.<sup>147</sup>

- 4.69 According to Ms Musgrave, before Schedule 9 is incorporated into NSW legislation, consideration would need to be given to the quantities of each illicit substance that would activate the offence provisions under the Act:

So you have to have some independent thought process go into what quantity should attach to a chemical before it is adopted into the schedule. Under the Drugs Misuse and Trafficking Act, each substance that is listed has a quantity that triggers off various offence provisions under the Act, so that separate process has to be undertaken before it can go into the Drugs Misuse and Trafficking Act.<sup>148</sup>

- 4.70 The quantities prescribed for various synthetic cannabis offences are discussed further at paragraph 4.86.

- 4.71 There were criticisms of broad banning of substances raised by various participants during the Inquiry, notably the possibility of limiting scientific and

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<sup>145</sup> Detective Superintendent Nick Bingham, NSW Police Force, Transcript of evidence, 22 October 2012, p 4

<sup>146</sup> Detective Superintendent Nick Bingham, NSW Police Force, Transcript of evidence, 22 October 2012, p 2

<sup>147</sup> Ms Penelope Musgrave, NSW Department of Attorney General and Justice, Transcript of evidence, 22 October 2012, p 29

<sup>148</sup> Ms Penelope Musgrave, NSW Department of Attorney General and Justice, Transcript of evidence, 22 October 2012, p 30

medical research as a result of large (and mostly unstudied) categories of substances being prohibited.<sup>149</sup>

- 4.72 It is relevant to note that the SUSMP currently allows access to substances or classes of substances that are prohibited under Schedule 9 for strictly controlled medical or scientific research or for analytical, teaching or training purposes with the approval of Commonwealth and/or state or territory health authorities.<sup>150</sup>

### Commonwealth and relevant states and territories

- 4.73 Some Australian states have sought to ban synthetic drugs through the use of wide definitions to capture possible variations in chemical makeup, and prevent manufacturers from circumventing bans by making minor modifications to chemical compounds in their products. Many states have done this by adopting the Therapeutic Goods Administration’s (TGA’s) Standard for the Uniform Scheduling of Medicines and Poisons, which uses group bans for synthetic cannabis.
- 4.74 The TGA is the national regulatory authority with responsibility for regulating goods including medicines, medical devices, blood and blood products, to ensure they are of an acceptable standard.<sup>151</sup>
- 4.75 The TGA’s Standard for the Uniform Scheduling of Medicines and Poisons (SUSMP) promotes uniform scheduling of substances and uniform labelling and packaging in Australia.<sup>152</sup> The SUSMP classifies medicines and chemicals into schedules for inclusion in relevant state and territory legislation. Substances are assessed by the TGA and then classified according to the level of regulatory control over their availability necessary to protect public health and safety. The SUSMP consists of nine schedules of substances ranked in terms of safety and intended availability, as follows:<sup>153</sup>

<b>Schedule 1</b>	Not currently in use
<b>Schedule 2</b>	Pharmacy Medicine
<b>Schedule 3</b>	Pharmacist Only Medicine
<b>Schedule 4</b>	Prescription Only Medicine OR Prescription Animal Remedy
<b>Schedule 5</b>	Caution
<b>Schedule 6</b>	Poison
<b>Schedule 7</b>	Dangerous Poison
<b>Schedule 8</b>	Controlled Drug
<b>Schedule 9</b>	Prohibited Substance

<sup>149</sup> Submission 15, NSW Users and AIDS Association, p 3

<sup>150</sup> Australian Government Department of Health and Ageing, 'Final Decisions & Reasons for Decisions by Delegates of the Secretary to the Department of Health and Ageing', July 2011, pp 5-6

<sup>151</sup> Therapeutic Goods Administration, 'TGA Basics', <http://www.tga.gov.au/about/tga.htm>

<sup>152</sup> Submission 17, NSW Government, p 5

<sup>153</sup> Therapeutic Goods Administration, 'Scheduling basics', <http://www.tga.gov.au/industry/scheduling-basics.htm> and 'The Poisons Standard (SUSMP)', [www.tga.gov.au/industry/scheduling-poisons-standard.htm](http://www.tga.gov.au/industry/scheduling-poisons-standard.htm)

- 4.76 Substances added to Schedule 9 are prohibited by law, except for when required for medical or scientific research, or for analytical, teaching or training purposes with approval of Commonwealth and/or state or territory health authorities.<sup>154</sup>
- 4.77 The SUSMP, as it affects access to and the supply of medicines and poisons, is given legal effect through relevant state and territory drugs, poisons and controlled substances legislation.<sup>155</sup> Australian states and territories use the SUSMP as a basis for their own scheduling of therapeutic substances, and most states currently adopt the SUSMP into their own legislation by reference.<sup>156</sup> However, specific differences exist between states and territories in relation to the substances that are illicit in each jurisdiction.
- 4.78 In July 2011 the TGA added eight individual synthetic cannabinoids to Schedule 9 of the SUSMP, thus prohibiting them under Commonwealth law.<sup>157</sup> During the assessment of these substances, the TGA sought advice from representatives of Australian jurisdictions with expertise in drugs and poisons regulation. Reports of abuse and misuse were noted, and a decision was made that the danger associated with the drugs' use warranted limiting their use to strictly controlled medical and scientific research.<sup>158</sup>
- 4.79 In February 2012 the following groups of synthetic cannabinoids were included in Schedule 9, to capture any individual substances that had not been separately specifically scheduled:
- Benzoylindoles, cyclohexylphenols, dibenzopyrans, naphthoylindoles, naphthylmethylindoles, naphthoylpyrroles, naphthylmethylindenes and phenylacetylindoles.<sup>159</sup>
- 4.80 A decision was also made to include a group entry for 'synthetic cannabinomimetics' to cover synthetic cannabinomimetic substances except where they had been separately specifically scheduled. This prohibition came into force on 1 May 2012.<sup>160</sup>
- 4.81 States and territories differ in terms of whether they adopt the TGA's scheduling decisions into their relevant drugs legislation. As noted in chapter 3, NSW does not adopt Schedule 9.

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<sup>154</sup> Standard for the Uniform Scheduling of Medicines and Poisons No. 3, June 2012, p iv

<sup>155</sup> Therapeutic Goods Administration, 'Contacts for State/Territory drugs & poisons units', <http://www.tga.gov.au/industry/scheduling-st-contacts.htm>

<sup>156</sup> R F W Moulds, 'Drugs and poisons scheduling', *Australian Prescriber*, January 1997, <http://www.australianprescriber.com/magazine/20/1/12/3>

<sup>157</sup> ACT Government Health Directorate, 'Synthetic Cannabinoids (Synthetic Cannabis)', <http://health.act.gov.au/publications-reports/fact-sheets/synthetic-cannabis>

<sup>158</sup> Therapeutic Goods Administration, 'Final Decisions & Reasons for Decisions by Delegates of the Secretary to the Department of Health and Ageing', 7 July 2011, p 15, <http://www.tga.gov.au/pdf/scheduling/scheduling-decisions-1107-final-a.pdf>

<sup>159</sup> Standard for the Uniform Scheduling of Medicines and Poisons No. 3, June 2012, Sch 9

<sup>160</sup> Therapeutic Goods Administration, 'Final Decisions & Reasons for Decisions by Delegates of the Secretary to the Department of Health and Ageing', 1 February 2012, pp 126-127, <http://www.tga.gov.au/pdf/scheduling/scheduling-decisions-1202-final.pdf>

4.82 Western Australia's *Poisons Act 1964* reproduces and modifies Schedule 9 of the SUSMP.<sup>161</sup> Substances scheduled in the Poisons Act are consequently included in the Misuse of Drugs Act, which enables police enforcement and prosecution for relevant offences. Western Australia has acted to schedule certain substances before they were added to the Commonwealth SUSMP.<sup>162</sup> In June and August 2011 two groups of synthetic cannabinoids were added to Schedule 9 of the *Poisons Act 1964*, thereby banning their supply, sale or possession.<sup>163</sup> A synthetic stimulant was scheduled in February 2012, before being later listed as a prohibited substance in the SUSMP in May 2012.<sup>164</sup>

4.83 Victoria also adopts the SUSMP. Substances added to the SUSMP are controlled under the *Drugs, Poisons and Controlled Substances Act 1981* (Vic).<sup>165</sup> Victoria has also passed specific legislation to ban generic groups of drugs, with the aim of capturing broader groups of substances. In the second reading speech on the Bill, the Minister for Police and Emergency Services stated that:

... the bill widens the ban on synthetic cannabinoids by expanding Schedule 11 to include eight generic chemical classes of synthetic cannabinoids and relevant quantities. The aim is to capture all currently known synthetic cannabinoids, as well as emerging synthetic substances that fit within the identified classes.

Classes of synthetic cannabinoids are already controlled in Victoria as schedule 9 poisons under the national poisons standard and hence the unauthorised supply, possession and use of these substances is prohibited under Victoria's poisons control regime. By adding eight generic chemical classes of synthetic cannabinoids to schedule 11 of the *Drugs, Poisons and Controlled Substances Act 1981*, the bill aims to boost the deterrent effect of Victoria's controls by enabling the higher penalties applicable to the possession and trafficking of illicit drugs to be applied to synthetic cannabinoids.<sup>166</sup>

4.84 The Act also added five synthetic substances to the *Drugs, Poisons and Controlled Substances Act 1981*, including three used as alternatives to illicit drugs.<sup>167</sup>

4.85 Substances listed in Schedule 9 of the SUSMP are also prohibited in the Australian Capital Territory, the Northern Territory, South Australia, Queensland and Tasmania.<sup>168</sup>

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<sup>161</sup> Queensland Parliamentary Library, 'Banning Kronic and Other Synthetic Drugs: The Criminal and Other Legislation Amendment Bill 2011 (Qld)', December 2011, p 5, <http://www.parliament.qld.gov.au/documents/explore/ResearchPublications/ResearchBriefs/2011/RBR201126.pdf>

<sup>162</sup> Submission 21, Western Australian Drug and Alcohol Office, pp 2-3

<sup>163</sup> The Hon Helen Morton MLC, 'WA Government reacts to ban more synthetic cannabinoids', 5 August 2011, <http://www.mediastatements.wa.gov.au/Pages/StatementDetails.aspx?StatId=4560&listName=StatementsBarnett>

<sup>164</sup> Submission 21, Western Australian Drug and Alcohol Office, p 2

<sup>165</sup> Victorian Government Department of Health, 'Fact Sheet - Synthetic cannabinoids are prohibited in Victoria,' December 2012, <http://docs.health.vic.gov.au/docs/doc/Synthetic-cannabinoids-are-prohibited-in-Victoria--fact-sheet>

<sup>166</sup> *Drugs, Poisons and Controlled Substances Amendment Bill 2012*, the Hon Peter Ryan MP, Second Reading Speech, 30 August 2012

<sup>167</sup> *Drugs, Poisons and Controlled Substances Amendment Bill 2012*, the Hon Peter Ryan MP, Second Reading Speech, 30 August 2012

<sup>168</sup> *Medicines, Poisons and Therapeutic Goods Act 2008* (ACT), ss 13, 15, Queensland Parliamentary Library, 'Banning Kronic and Other Synthetic Drugs: The Criminal and Other Legislation Amendment Bill 2011 (Qld)', December 2011,

LAW REFORM ISSUES REGARDING SYNTHETIC DRUGS  
PROPOSED REFORMS TO CURRENT FRAMEWORK

4.86 As noted at paragraph 4.68 in the section above, states that adopt the SUSMP must prescribe relevant quantities of prohibited substances for specific offences under their respective drug laws. There is inconsistency between states in terms of which synthetic drugs they prohibit. However, certain synthetic cannabis compounds are banned by most states. The table below shows prescribed quantities for synthetic cannabis related offences in NSW and some of the other states that adopt the SUSMP. The table shows that there are significant differences between states in the amounts prescribed for similar offences.

**Table 2: Prescribed quantities for selected synthetic cannabis compounds banned in jurisdictions that adopt the SUSMP<sup>169</sup>**

Jurisdiction and compound	NSW	WA	SA	VIC
JWH-18	Traffickable quantity: 3 gr Small quantity: 1 gr Indictable quantity: 5 gr Commercial quantity: 0.5 kg Large commercial quantity: 2 kg	Amount of prohibited drug determining court of trial: 500 gr Amount giving rise to presumption of intent to sell or supply: 100 gr Amount of prohibited drugs for purposes of drug trafficking: 3 kg	Large commercial quantity (mixed): 12.5 kg or 100 DDUs Commercial quantity (mixed): 2.5 kg or 20 DDUs* Traffickable quantity (mixed): 250 gr or 10 DDUs Small quantity not prescribed	Large commercial quantity: 10 kg Commercial quantity: 1 kg Traffickable quantity: 3 gr Small quantity: 1 gr
JWH-073	Traffickable quantity: 3 gr Small quantity: 1 gr Indictable quantity: 5 gr Commercial quantity: 0.5 kg Large commercial quantity: 2 kg	Amount of prohibited drugs determining court of trial: 500 gr Amount giving rise to presumption of intent to sell or supply: 100 gr Amount of prohibited drugs for purposes of drug trafficking: 3 kg	Large commercial quantity (mixed): 12.5 kg or 100 DDUs Commercial quantity (mixed): 2.5 kg or 20 DDUs Traffickable quantity (mixed): 250 gr or 10 DDUs Small quantity not prescribed	Large commercial quantity: 10 kg Commercial quantity: 1 kg Traffickable quantity: 3 gr Small quantity: 1 gr
CP47,497	Traffickable quantity: 3 gr Small quantity: 1 gr Indictable quantity: 5 gr Commercial quantity: 0.5 kg Large commercial quantity: 2 kg	Amount of prohibited drug determining court of trial: 500 gr Amount giving rise to presumption of intent to sell or supply: 100 gr Amount of prohibited drugs for purposes of drug trafficking: 3 kg	Large commercial quantity (mixed): 12.5 kg or 100 DDUs Commercial quantity (mixed): 2.5 kg or 20 DDUs Traffickable quantity (mixed): 250 gr or 10 DDUs Small quantity not prescribed	Large commercial quantity: 10 kg Commercial quantity: 1 kg Traffickable quantity: 3 gr Small quantity: 1 gr

**Note:** \* DDU means discrete dosage unit

p 5 and Submission 17, NSW Government, pp 5-6,  
<http://www.parliament.qld.gov.au/documents/explore/ResearchPublications/ResearchBriefs/2011/RBR201126.pdf>

<sup>169</sup> *Drugs, Poisons and Controlled Substances Act 1981* (Vic) Sch 11; *Controlled Substances (Controlled Drugs, Precursors and Plants) Regulations 2000* (SA) Sch 1; *Misuse of Drugs Act 1981* (WA) Sch IV, V, VII; *Drug Misuse and Trafficking Act 1985* (NSW) Sch 1

## United Kingdom

- 4.87 Generic definitions covering broad groups of substances have also been used in the United Kingdom. In its 2009 advice to the Home Secretary on synthetic cannabinoids, the Advisory Council on the Misuse of Drugs (ACMD) reported that samples of Spice had been analysed and found to contain synthetic cannabinoids believed to be more potent than THC. The ACMD proposed that a new generic definition of synthetic cannabinoids be used to control the substances to prevent manufacturers from subverting the law by switching to different chemical compounds, which have a similar effect.<sup>170</sup> In December 2009 synthetic cannabinoids were scheduled as Class B substances under the *Misuse of Drugs Act 1971*, using a generic definition.<sup>171</sup>
- 4.88 The Home Office advised that, as part of the regulatory impact assessment for generic definitions, the UK Home Office consults with relevant experts on whether a generic definition may cover potentially legitimate uses of certain compounds:
- Due to the chemical complexity of some drugs (i.e. synthetic drugs and NPS), the ACMD may choose to provide a generic definition to capture existing and/or potential derivative compounds in such instances. The Home Office will consult with legal advisers, forensic services, healthcare and industry (i.e. chemical – through lead government departments) on any generic definition provided by the ACMD, to identify any possible legitimate and/or medicinal uses to take into account for regulatory impact assessments.<sup>172</sup>
- 4.89 In 2010, the emergence of new synthetic drugs trading as "bath salts" and "plant food" or known as mephedrone and cathinones was reported. The ACMD's 2010 advice on cathinones noted the rapid increase in mephedrone use, and fatalities connected to its use. The ACMD recommended that a wide generic definition be used to control cathinone derivatives.<sup>173</sup> As with cannabinoids, the Government added the substances to Class B of the Act.<sup>174</sup>
- 4.90 Following the ban, National Poisons Information Service data indicated that enquiries on mephedrone had dropped significantly. The Service observed that 'these changes suggest that the legal control of mephedrone ... had an impact on the frequency of associated toxicity. It is acknowledged, however, that reductions

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<sup>170</sup> Advisory Council on the Misuse of Drugs, *Consideration of the major cannabinoid agonists*, July 2009, p 3, <http://www.homeoffice.gov.uk/acmd1/acmd-report-agonists?view=Binary>

<sup>171</sup> Misuse of Drugs Act 1971 (Amendment) Order 2009, and Explanatory Memorandum to the Misuse of Drugs Act 1971 (Amendment) Order 2009, [http://www.legislation.gov.uk/ukxi/2009/3209/pdfs/ukxiem\\_20093209\\_en.pdf](http://www.legislation.gov.uk/ukxi/2009/3209/pdfs/ukxiem_20093209_en.pdf)

<sup>172</sup> Correspondence from the UK Home Office to the Chair, 12 March 2013, p 5

<sup>173</sup> Advisory Council on the Misuse of Drugs, *Consideration of the cathinones*, March 2010, pp 12-14, 19, 31, <http://www.homeoffice.gov.uk/publications/agencies-public-bodies/acmd1/acmd-cathinodes-report-2010?view=Binary>

<sup>174</sup> Misuse of Drugs Act 1971 (Amendment) Order 2010, Misuse of Drugs Act 1971 (Amendment No 2) Order 2010 and UK Home Office, *A change to the Misuse of Drugs Act 1971: Control of mephedrone and other cathinone derivatives*, <http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2010/010-2010/>

in media reports and increasing familiarity of healthcare professionals with these substances may also have contributed to the observed pattern.<sup>175</sup>

- 4.91 The ACMD's 2011 report on new psychoactive substances illustrates that gaps can occur even with wide generic bans. The experience with synthetic cannabis and cathinones shows that new chemical substances that fall outside the prohibited generic classes will continue to be developed:

ACMD made an extensive recommendation for a chemical generic ban covering virtually all known synthetic cannabinoids, in five distinct chemical classes, recommending that they be made Class B drugs under the MDA ... These recommendations were accepted and passed into law in December 2009. In light of the identifications of substances such as RCS-4 and AM-694 ..., it is clear that loopholes have already been found and these substances are legally available. The use of synthetic cannabinoids ... illustrates the increasing sophistication of the chemists responsible ... Further there is published evidence that products containing synthetic cannabinoids remain widely available [and] that newer synthetic cannabinoid receptor agonists that fall outside the legislation are also now available ...

Despite the broad chemical generic ban on psychoactive cathinones imposed in April 2010, suppliers were able to find some loopholes, and within days a naphthyl derivative, Naphthylpyrovalerone (commonly referred as NRG-1) which lay outside the generic scope was offered for sale by internet retailers – advertised as “the legal alternative to mephedrone”.<sup>176</sup>

- 4.92 In terms of the effectiveness of comprehensive definitions to control new synthetic drugs, the UK Home Office advised the Committee that the majority of new synthetic drugs reported through the European Monitoring Centre for Drugs and Drug Addiction in 2011 were already controlled in the UK:

[The] European Database on New Drugs created in 1997 monitors 280 NPS to date. Their large majority are controlled drugs in the UK: 80% of phenethylamine-type NPS, 92% of piperazine derivatives, 90% of cathinones - mostly by way of generic definitions. Of the 49 NPS reported to the EMCDDA in 2011, only 17 were reported more than once by the UK. Of these 17, 14 are already controlled drugs.<sup>177</sup>

- 4.93 In October 2012, the ACMD produced a further report on synthetic cannabis. The report acknowledged limited data on patterns of harm and the lack of toxicological screening to determine substances responsible in cases of harm. However, it noted reports of physical harm and potentially severe adverse effects, and an increase in enquiries on synthetic cannabinoids on the National Poisons Information Service online clinical toxicology database. The ACMD

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<sup>175</sup> National Poisons Information Service, *Annual Report 2010/2011*, pp 29-30, [http://www.hpa.org.uk/webc/HPAwebFile/HPAweb\\_C/1317130944236](http://www.hpa.org.uk/webc/HPAwebFile/HPAweb_C/1317130944236)

<sup>176</sup> Advisory Council on the Misuse of Drugs, *Consideration of the Novel Psychoactive Substances ('Legal Highs')*, October 2011, pp 57, 60, <http://www.homeoffice.gov.uk/publications/agencies-public-bodies/acmd1/acmdnps2011?view=Binary>

<sup>177</sup> Correspondence from the UK Home Office to the Chair, 12 March 2013, p 5

recommended that additional synthetic cannabis compounds covered by a generic definition be controlled under the Misuse of Drugs Act.<sup>178</sup>

## USING CONSUMER PROTECTION LEGISLATION AND OTHER LEGISLATION

- 4.94 Some inquiry participants raised the possible use of other legislation, as part of a broader response to synthetic drugs. It should be noted that limited evidence regarding the feasibility of using other legislation to regulate synthetic drugs was received by the Committee.
- 4.95 In correspondence to the Chair of the Committee, Commissioner Rod Stowe of NSW Fair Trading provided information regarding the product safety provisions of the Australian Consumer Law, which is enacted in NSW under the *Fair Trading Act 1987*. Mr Stowe explained that Commonwealth, state and territory Ministers are able to impose bans on consumer goods or product-related services in certain circumstances, and that there are two types of bans which can be imposed:
- An interim ban which can be imposed by a state or territory Minister and lasts for sixty days and can be extended by thirty additional days; and
- A permanent ban which can only be imposed by the Commonwealth Minister.<sup>179</sup>
- 4.96 Bans can be imposed on a consumer good if it appears to the Minister that it will or may cause injury to any person, or if a reasonably foreseeable use (including misuse) of consumer goods of that kind will or may cause injury to any person.<sup>180</sup> The Commissioner also noted that Australian Consumer Law places an obligation on suppliers to notify the Commonwealth Minister within 48 hours of becoming aware that a person has 'suffered serious injury or death associated with a consumer good or product related service.'<sup>181</sup>
- 4.97 Once an interim ban has taken place, a person or corporation must not engage in trade or commerce, supply, offer for supply, manufacture, possess or have control of consumer goods of that particular kind. A person who fails to comply with an interim or permanent ban may be found guilty of a criminal offence. The maximum fine is \$220,000 for an individual and \$1.1 million for a corporation.
- 4.98 An advantage of product bans under the safety provisions of the Australian Consumer Law is that they can ban products themselves rather than chemical compounds or drugs which may be more difficult to ascertain. These product bans issued by the Department of Fair Trading can be broadened to include a description of the goods to capture a range of products under the temporary ban.

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<sup>178</sup> Advisory Council on the Misuse of Drugs, *Further consideration of the synthetic cannabinoids*, October 2012, pp 4-5, citations omitted, <http://www.homeoffice.gov.uk/publications/agencies-public-bodies/acmd1/synthetic-cannabinoids-2012?view=Binary>

<sup>179</sup> Correspondence from Commissioner of Fair Trading to the Chair, received 21 December 2012, p 1

<sup>180</sup> Correspondence from Commissioner of Fair Trading to the Chair, received 21 December 2012, p 1

<sup>181</sup> Correspondence from Commissioner of Fair Trading to the Chair, received 21 December 2012, p 2

- 4.99 Another advantage of temporary product bans is the swift manner in which the Minister can issue the bans which could provide a rapid response to emerging synthetic drugs as they come on to the market.
- 4.100 The difficulty however is the temporary nature of the bans given they can only be imposed for sixty days and extended for an additional 30 days. As set out earlier forensic testing of the substances to determine whether they contain a prohibited substance, an analogue of a prohibited substance or whether they pose a health risk to consumers can take up to 6 months.
- 4.101 For these bans to be effective the period of time in which a temporary ban can remain in force will need to be extended. This can only occur by way of amendment to the *Competition and Consumer Act 2010* (Cth) by the Federal Parliament.

### Approaches in other jurisdictions

- 4.102 The use of other legislation in response to synthetic drugs has been considered in other jurisdictions. During deliberations over its response to the issue of synthetic drugs, the New Zealand Government considered using national hazardous substances legislation to control psychoactive substances, on the basis that a psychoactive substance could be defined as toxic under the New Zealand *Hazardous Substances and New Organisms Act 1996*.<sup>182</sup> Under the Act a pre-approval scheme operates for the importation of toxic chemicals and other hazardous substances, and consideration was given to whether it would be possible for the New Zealand Environmental Protection Authority to treat and regulate synthetic drugs in the same way as other hazardous substances.<sup>183</sup>
- 4.103 The New Zealand Ministry of Health considered that use of the national hazardous substances legislation could create public confidence about the safety profile of approved products, and acknowledged that changes would be required to the hazardous substances legislation for it to work with the intended regulation of psychoactive substances.
- 4.104 Ultimately, the Ministry of Health did not support the option of using established legislation to regulate synthetic drugs, and instead pursued the alternative of introducing a new regulatory scheme (discussed in chapter 5). The Ministry concluded that the costs in adapting the hazardous substances legislation for the intended new purpose would probably approximate a new, specifically designed regulatory scheme.<sup>184</sup>

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<sup>182</sup> New Zealand Ministry of Health, Government Response to the Law Commission's Report *Controlling and Regulating Drugs – a review of the Misuse of Drugs Act 1975*, September 2011, pp 6-7, <http://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements/government-response-law-commissions-report-controlling-and-regulating-drugs-review-misuse-drugs-act>

<sup>183</sup> New Zealand Ministry of Health, Government Response to the Law Commission's Report *Controlling and Regulating Drugs – a review of the Misuse of Drugs Act 1975*, September 2011, p 13, <http://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements/government-response-law-commissions-report-controlling-and-regulating-drugs-review-misuse-drugs-act>

<sup>184</sup> New Zealand Ministry of Health, Government Response to the Law Commission's Report *Controlling and Regulating Drugs – a review of the Misuse of Drugs Act 1975*, September 2011, p 14,

4.105 The UK's House of Commons Home Affairs Committee conducted an inquiry into drugs policy during 2011-2012, tabling its report in December 2012. During the inquiry, the Committee heard evidence that police attempts to limit the supply of new drugs were hampered by financial pressures and by retailers seeking to evade the law. The Association of Police Officers suggested that legislation should focus on the obligations of retailers in terms of the safety of their products:

... consideration should be given to the Head Shop owner being made accountable for all the products they sell and to be potentially liable for any subsequent harm or injury they may cause to a purchaser or user of the product. Although in general they are unlicensed, some forces have worked in partnership with Local Authorities (regarding by-laws) and Trading Standards departments (regarding consumer legislation) in an attempt to bring some form of control to this area of business.<sup>185</sup>

4.106 The Home Affairs Committee recommended that the Government provide guidance to authorities such as trading standards departments and citizens' advice bureaux on action that could be taken under existing trading standards and consumer protection legislation. The Home Affairs Committee argued that other businesses providing dangerous goods would be prosecuted, and retailers selling untested psychoactive substances should be liable for any harms resulting from their sale:

A restaurant which gave its diners food poisoning, a garage which left cars in a dangerous state, or a shop which sold dangerously defective goods could all be prosecuted for their negligence. Retailers who sell untested psychoactive substances must be liable for any harm the products they have sold cause. It is unacceptable that retailers should be able to use false descriptions and disclaimers such as "plant food" and "not for human consumption" as a defence where it is clear to all concerned that the substance is being sold for its psychoactive properties and the law should be amended.<sup>186</sup>

4.107 The UK Association of Chief Police Officers issued a guidance document on policing new synthetic drugs. The Guidance document seeks to provide information on the appearance and effects of new synthetic drugs, and to recommend a consistent national approach to policing the possession and distribution of these substances and temporary class drugs in the UK. The Guidance covers policing procedures, relevant offences and powers to police new synthetic drugs.

4.108 The document notes that head shops may be selling products that are not controlled under the Misuse of Drugs Act, and that other legislation may also be used to prosecute retailers. Consumer protection and product safety regulations and the Medicines Act 1968 are identified as offering an alternative avenue for enforcement. It is noted that retailers should be officially warned in writing about

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<http://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements/government-response-law-commissions-report-controlling-and-regulating-drugs-review-misuse-drugs-act>

<sup>185</sup> House of Commons Home Affairs Committee, *Drugs: Breaking the Cycle*, Ninth report of session 2012-13, Volume 1, December 2012, p 65,

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/184/184.pdf>

<sup>186</sup> House of Commons Home Affairs Committee, *Drugs: Breaking the Cycle*, Ninth report of session 2012-13, Volume 1, December 2012, p 66,

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/184/184.pdf>

the products they sell, using a suggested letter template for police to deliver to head shops. The letter warns retailers that the substances they sell may contain controlled substances. Police are advised to work with other authorities to ensure that retailers comply with relevant laws:

The policing of head shops should be a joint approach between the police, local authorities and other agencies, such as Trading Standards.

... It is important that suppliers of NPS are warned, by official letter, that the substances they sell may contain controlled substances, as this will put the onus on the supplier to ensure that none of their products contain controlled substances.

Physical attendance at the head shops (rather than simply posting a letter) will provide an opportunity to gather intelligence about what products are being sold as well as acting as a reminder to proprietors that the police and local authorities maintain an interest in their activities.<sup>187</sup>

## RESEARCH AND TESTING

- 4.109 Inquiry participants commented on the lack of testing capability for detecting synthetic drugs and the delays that can occur with testing. The Committee heard that the length of time that is currently required for testing represents a significant disadvantage for law enforcement bodies, prosecutors, and defendants during any legal proceedings involving synthetic drug related offences.
- 4.110 The lack of detailed, accurate information about the chemical compositions of synthetic drugs, their origins and the health effects of their use was also noted by a substantial number of people who participated in the Inquiry. A number of inquiry participants expressed support for further research into synthetic drugs and their effects.<sup>188</sup>
- 4.111 The National Drug and Alcohol Research Centre particularly noted that the international approach towards emerging synthetic drugs could be categorised as one that has involved making significant and important policy decisions at short notice, with very little substantial and existing information about the substances themselves available to assist with the decision making process.<sup>189</sup>
- 4.112 The Committee heard that there are a potentially staggering number of chemical compounds that can replicate the effects of traditional drugs. This presents a significant challenge for testing and research.
- 4.113 The NSW Young Lawyers Criminal Law Committee observed that methods for detecting and analysing synthetic cannabis products are limited: 'There are apparently no known field tests that will detect the majority of synthetic

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<sup>187</sup> Association of Chief Police Officers, *ACPO Guidance on policing new psychoactive substances including temporary class drugs*, 2011, pp 10-11, <http://www.acpo.police.uk/documents/crime/2012/CBADrugsPsychoactiveNov2011.pdf>

<sup>188</sup> Submission 4, Ms Margaret Morgan, p 1; Submission 14, Ms Maureen Steele, p 2

<sup>189</sup> Submission 10, National Drug and Alcohol Research Centre, p 2

cannabinoids. Blood tests for the detection of synthetic cannabinoids are only available in some laboratories. Urine tests are not yet fully developed.<sup>190</sup>

- 4.114 The NSW Young Lawyers Criminal Law Committee also pointed to delays in testing and argued that adequate services should be made available to analyse drugs:

... there is currently often a six-month wait for the services of a forensic chemist in proceedings under the Act. If the offence relies on scientific definitions, it must be ensured that the technical services exist to evaluate suspected illicit substances.<sup>191</sup>

- 4.115 Detective Superintendent Nick Bingham from the NSW Police Force outlined the resulting difficulties for people who are caught in possession of suspected banned synthetic drugs, and charged without evidence that they have committed an offence:

First, to address the length of time: It would take anywhere between three and six months for a non-urgent analysis. The implications are that if the police officer seizes a product and charges someone without an analysis being done, that means a person has gone through at least the police system and has been put through the charge room and experienced the entire trauma that entails without even prima facie evidence that they are in possession of a prohibited drug. Our advice is that if you are going to seize then seize it, have it analysed but do not charge until the product comes back as a prohibited drug. Certainly that is not happening in every case.<sup>192</sup>

- 4.116 Mr Thomas Spohr from the NSW Young Lawyers Criminal Law Committee told the Committee that the six month wait for testing is related to resourcing. Mr Spohr observed that if there were an increase in regulation and enforcement around synthetic drugs, this would have an impact on demand for testing, and there would need to be a corresponding increase in resources provided for testing services:

The first part of the question related to the six-month delay in relation to testing. That is a slightly separate issue insofar as that is a resourcing issue. Currently I think most of that testing is done by NSW Health. ... That is a resourcing issue around the amount of time it takes to produce the reports. It goes without saying that if it is six months at the moment and there were an increase in regulation of this, there would have to be an increase in resource allocation to the testing because inevitably if it takes six months at the moment it will take longer than that if there were more than one prosecution.<sup>193</sup>

- 4.117 Lack of testing capability is also an issue for industries such as mining where workers use synthetic drugs to avoid detection in workplace drug testing. The NSW Minerals Council highlighted for the Committee the difficulties that exist for employers in being able to test workers for synthetic drug use, given that to a large extent effective testing programs have not been established. Mr Andrew

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<sup>190</sup> Submission 5, NSW Young Lawyers Criminal Law Committee, p 6

<sup>191</sup> Submission 5, NSW Young Lawyers Criminal Law Committee, p 8

<sup>192</sup> Detective Superintendent Nick Bingham, NSW Police Force, Transcript of evidence, 22 October 2012, p 6

<sup>193</sup> Mr Thomas Spohr, NSW Young Lawyers Criminal Law Committee, Transcript of evidence, 15 October 2012, p 9

McMahon from the Minerals Council told the Committee that the lack of testing facilities was well known among employees in the mining industry:

... our industry is well-known for having a very significantly advanced drug and alcohol testing regime across the industry. People know that when you come to work in the mining industry you are going to get drug and alcohol tested. It is common knowledge that we cannot test for a large proportion of the synthetic drugs. People believe we cannot touch them, so to speak, because we cannot get a positive result. Our members have shared with us that they will know that somebody is off their face or not quite right at work and they have no way that they can test for it.<sup>194</sup>

- 4.118 Ms Fiona Patten from the Eros Association told the Committee that further research was needed to accurately determine the risk of harm associated with particular synthetic cannabis compounds:

I do not think anyone in my association would say that any product like this is not without risk. What has been difficult is the lack of research. When you look at something like Dr Barratt's research there is no information about actually what substance they were taking. Was it JWH-018 or was it an AM product? What was the product? What was the quantity? What was the dosage that the person took? We would really advocate for more research to be done in those areas and to really specify things like that.<sup>195</sup>

## IMPROVING EDUCATION AND PUBLIC AWARENESS

- 4.119 Participants in the inquiry noted that the public had access to very limited information in regard to synthetic drugs, and particularly in relation to their chemical composition and the potential health effects of their use.
- 4.120 Inquiry participants expressed the view that education was important in conveying messages to young people and workers in industries such as mining about the potential harms of drug use. Mr Mark Ferry, Deputy Chief Operating Officer with the Ted Noffs Foundation, gave evidence to the Committee regarding the need for education on synthetic drugs, particularly for young people. Mr Ferry said that, in his experience, young people who were clients of the Ted Noffs Foundation's drug treatment services were unsure of the risks associated with synthetic drug use:

... broadly speaking... our clients are not very knowledgeable not so much of the effects [of synthetic drugs] but of the associated risks, whereas they tend to be fairly good on risks associated with other drugs and alcohol... They are pretty good on that but when you brought the synthetics in the level of knowledge really was not there.<sup>196</sup>

- 4.121 According to Ms Melissa Stott, a counsellor with the Ted Noffs Foundation, young clients who she had spoken to about synthetic drugs told her that, unlike with conventional illicit drugs, they were unaware of safe dosages when using synthetic drugs, which could be an overdose risk:

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<sup>194</sup> Mr Andrew McMahon, NSW Minerals Council, Transcript of evidence, 15 October 2012, pp 32-33

<sup>195</sup> Ms Fiona Patten, Eros Association, Transcript of evidence, 15 October 2012, p 16

<sup>196</sup> Mr Mark Ferry, Ted Noffs Foundation, Transcript of evidence, 15 October 2012, p 26

They have talked about how they do not know exactly how much to take, so it is easy to overdose [OD] on the drugs sometimes. There are other types of speed that you can buy online and also mephedrone. They know that they have to have more, but they do not know [how much], whereas with other drugs, they know more about ecstasy and they know more about speed because it is more readily available. They talk to each other and they know how much they can take without overdosing.<sup>197</sup>

4.122 Mr Ferry indicated that in his view, education should be provided to young people on new synthetic drugs and the risks associated with their use. Mr Ferry stated that he believed the best approach to educating young people about the risks associated with drug use would involve plain English and the provision of clear facts in a 'fairly straight-up approach.'<sup>198</sup>

4.123 Mr Paul Dillon of Drug and Alcohol Research and Training Australia stated that one of the challenges with conveying accurate educational information about synthetic drugs is the lack of information available about the drugs:

The other great challenge for us ... is that we know nothing about these compounds. If we want to be effective in terms of giving people quality information, so that they may make well-informed choices, we have to make sure that whatever we put out there is accurate ... It has to be real. Kids do not believe us anyway; and the more information we put out there that is not accurate, the less they will believe us. My concern is that when we do have something that we know is harmful, and we absolutely know the risk for those who use it, kids are simply not going to believe the warnings we put out there because we have cried wolf too many times. So we need to collect information on what we know, and then put it out there in an honest way. It may not be necessarily politically friendly to say, "We don't know," but at least it is honest.<sup>199</sup>

4.124 Mr Dillon advocated for factual public education regarding a drug's effects to be provided when it is prohibited: 'if we are going to ban it let us do it the sensible way and let us put out some education at the same time we ban it, to provide information to people about what we know. Even if it is that we do not know anything, it is better than just policing.'<sup>200</sup>

4.125 Mr Dillon argued that when substances are banned without accompanying public education or other measures by government, use of those substances noticeably increases.<sup>201</sup>

4.126 Mr Andrew McMahon of the NSW Minerals Council advocated for better regulation and education on the dangers of drugs to ensure high standards of workplace health and safety in the mining industry.<sup>202</sup>

4.127 In evidence to the Committee, Ms Sue Gilroy from Coal Services Health stated that the solution to synthetic drugs 'lies in a dual approach involving regulation

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<sup>197</sup> Ms Melissa Stott, Ted Noffs Foundation, Transcript of evidence, 15 October 2012, p 24

<sup>198</sup> Mr Mark Ferry, Ted Noffs Foundation, Transcript of evidence, 15 October 2012, p 27

<sup>199</sup> Mr Paul Dillon, Drug and Alcohol Research and Training Australia, Transcript of evidence, 22 October 2012, p 33

<sup>200</sup> Mr Paul Dillon, Drug and Alcohol Research and Training Australia, Transcript of evidence, 22 October 2012, p 35

<sup>201</sup> Mr Paul Dillon, Drug and Alcohol Research and Training Australia, Transcript of evidence, 22 October 2012, p 35

<sup>202</sup> Mr Andrew McMahon, NSW Minerals Council, Transcript of evidence, 15 October 2012, p 31

but even more so in education about the risks of these drugs.<sup>203</sup> Ms Gilroy told the Committee that in her view, the approach towards emerging synthetic drugs should be similar to previous education campaigns about the dangers of traditionally used drugs:

We need to better explain their [synthetic drugs] dangers and the risk they pose to the health of those who use them ... We need to build on the great work that we have already done in our schools to warn our children of the dangers and within our workplace to further educate on the dangers of drugs, and each of us needs to look out for our mates and work for a zero tolerance approach to anything that places our workmates and safety at risk.<sup>204</sup>

4.128 In terms of current mining industry initiatives, Ms Gilroy advised that she had compiled research on synthetic drugs and published a press release, and that Coal Services Health runs drug and alcohol programs which cover synthetic drugs:

... we have drug and alcohol programs that we deliver to the industry on an ongoing basis. While that includes other illicit and legal drugs, it now covers synthetic drugs as well. We are constantly educating people in the industry on the effects of these drugs, how they can be detected and how they can affect your life and the safety of your workplace. The message is, "Don't come to work having used these substances."<sup>205</sup>

4.129 The Committee heard that better education and resources on synthetic drugs are also needed by those working in the drug treatment field. The lack of information available for people working in the drug rehabilitation sphere was noted by Dr Monica Barratt, who explained to the Committee that while fact sheets were created and distributed regarding synthetic cannabis and its use when it was first noticed, she was aware that professionals in drug rehabilitation were looking for more information. Dr Barratt described such professionals as saying 'We need to know more. We need to be able to talk to our clients who are coming in and discussing this fake weed.'<sup>206</sup>

4.130 While there were calls for government to play a greater role in providing education and awareness about new synthetic drugs to the public, and particularly to young people, caution was advised by Mr David McGrath of the NSW Ministry of Health, who explained to the Committee that an education campaign had been considered by the Ministry, but that there could be unexpected consequences of such exposure:

My concern is de facto marketing by bringing the substance to the attention of those people who are currently unaware that this substance exists. So you need to be really careful because there are in the community a broad range of different target markets. The population is very broad. And even within those who might be at risk of deciding to make a poor choice in terms of using a substance, they are not an homogenous group either. So it is important to know exactly what you intend to achieve by targeting a particular group with a given outcome. Given that usage rates for cannabis across the community have dropped substantially in the past 10 years,

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<sup>203</sup> Ms Sue Gilroy, Coal Services Health, Transcript of evidence, 15 October 2012, p 30

<sup>204</sup> Ms Sue Gilroy, Coal Services Health, Transcript of evidence, 15 October 2012, p 30

<sup>205</sup> Ms Sue Gilroy, Coal Services Health, Transcript of evidence, 15 October 2012, p 33

<sup>206</sup> Dr Monica Barratt, National Drug Research Institute, 22 October 2012, p 23

particularly in our target cohorts, at this stage I would be guarded about strongly promoting a message that this substance is available for that particular cohort.<sup>207</sup>

4.131 Mr Paul Dillon also discussed the possible effects of an education campaign regarding new synthetic drugs. With regard to the risk of education promoting awareness about the availability of drugs and potentially increasing their use among young people, Mr Dillon observed that this was only a danger for drugs that are readily available: 'The whole issue about raising awareness and possibly promoting use really does only relate to drugs that they have easy access to. I do not think it really works for a lot of other drugs that are difficult to get. Most of these drugs are not as simple as going somewhere and picking them up from your local deli ...'<sup>208</sup>

4.132 In terms of creating awareness for young people in schools about synthetic drugs and their effects, Mr Dillon expressed concern about the removal of funds from the NSW Department of Education and Communities' Drugs Unit as, in his view, the unit had been successful in developing drug education resources.<sup>209</sup>

4.133 Mr Dillon commented that early education for young people may be an effective means of communicating the risks involved in using emerging substances which had not been sufficiently tested and for which the health effects were unknown:

If young people are not using them and you get good accurate information early, then hopefully you can prevent them from even being interested in them ... If you are talking to year tens about synthetics, a message that would be very, very effective would be, "We know nothing about these. It would be like us feeding a chemical to a rat. What would you do?" We would be investigating what that would do to a rat. These are new compounds. That would be a very effective prevention message for a child who is not involved in it.<sup>210</sup>

## CO-ORDINATED, CROSS AGENCY RESPONSE

4.134 Internal government groups have been established in some jurisdictions to implement a co-ordinated government approach to emerging synthetic drugs. The Western Australian Drug and Alcohol Office explained to the Committee the role of one such group, the Western Australian Emerging Psychoactive Substances Review Group, which was created 'in order to address the impact of new synthetic drugs on the community in Western Australia.'<sup>211</sup>

### The European early warning system

4.135 In Europe when Member States receive information regarding an emerging psychoactive substance, detailed information is forwarded to the European Police Office (Europol) in the Hague and to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) in Lisbon.

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<sup>207</sup> Mr David McGrath, NSW Ministry of Health, Transcript of evidence, 22 October 2012, p 13

<sup>208</sup> Mr Paul Dillon, Drug and Alcohol Research and Training Australia, Transcript of evidence, 22 October 2012, p 37

<sup>209</sup> Mr Paul Dillon, Drug and Alcohol Research and Training Australia, Transcript of evidence, 22 October 2012, p 38

<sup>210</sup> Mr Paul Dillon, Drug and Alcohol Research and Training Australia, Transcript of evidence, 22 October 2012, pp 37-38

<sup>211</sup> Submission 9, ChemCentre, p 4

- 4.136 If Europol and EMCDDA consider that the information provided by the Member States on a new psychoactive substance merits further collection and analysis, this information is presented in the form of a Europol-EMCDDA Joint report, which is submitted to the Council, the EMA and the Commission.
- 4.137 The information in the Joint Report includes:
- a chemical and physical description, including the name under which the new psychoactive substance is known;
  - frequency, circumstances and/or quantities in which a new psychoactive substance is encountered;
  - means and methods of manufacture of the new psychoactive substance and the involvement of organised crime in the manufacture or trafficking;
  - indications of the health and social risks associated with the new psychoactive substance, including the characteristics of users;
  - whether or not the new substance is currently under assessment, or has been under assessment, by the UN system;
  - whether or not the new psychoactive substance is already subject to control measures at national level in a Member;
  - chemical precursors, mode and scope of the established or expected use of the new substance and any other use of the new substance.
- 4.138 Based on the Joint Report, the council by a majority of its members may request a risk assessment of the health and social risks, caused by the use of, the manufacture of, and traffic in, a new psychoactive substance, the involvement of organised crime and possible consequences of control measures.<sup>212</sup>

### **Western Australia's Emerging Psychoactive Substances Review Group**

- 4.139 In evidence to the Committee, the WA Drug and Alcohol Office described the role of the Emerging Psychoactive Substances Review Group as follows:
- To work across government to comprehensively address issues regarding emerging psychoactive substances in Western Australia, enable high-level across government advice and guidance for issues relating to emerging psychoactive substances, develop, coordinate and monitor agency activities relating to emerging psychoactive substances and highlight areas for future focus of activity.<sup>213</sup>
- 4.140 Members of the Emerging Psychoactive Substances Review Group communicate any decisions made by the group to their own organisation, provide support to

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<sup>212</sup> European Monitoring Centre for Drugs and Drug Addiction, Early warning system, [www.emcdda.europa.eu/themes/new-drugs/early-warning](http://www.emcdda.europa.eu/themes/new-drugs/early-warning)

<sup>213</sup> Submission 21, Western Australian Drug and Alcohol Office, pp 1-2

other agencies regarding emerging psychoactive substances and encourage internal agency focus on emerging substances.<sup>214</sup>

- 4.141 According to the WA Drug and Alcohol Office, the Group has established a risk-based regime, which aims to identify new substances, establish potential harm from their use, monitor their prevalence, and agree on thresholds for action in response to identified substances. The Group also works to identify mechanisms for controlling the availability of substances and advises government on recommended action.<sup>215</sup>
- 4.142 Membership of the Emerging Psychoactive Substances Review Group includes senior representatives from key government departments: the WA Drug and Alcohol Office (Chair), Western Australia Police, Department of Health – Pharmaceutical Services Branch, Western Australian ChemCentre, Department of Commerce – Consumer Protection, and a representative from the Australian Customs and Border Protection Service.<sup>216</sup>

## NATIONAL CONSISTENCY

- 4.143 The importance of a nationally consistent approach to synthetic drugs was raised during the inquiry. In this section, the Committee discusses inquiry participants' views and outlines current intergovernmental approaches to synthetic drugs.

### Inquiry participants' views

- 4.144 The Committee heard from various participants about the importance of a nationally uniform approach towards synthetic drugs in Australia, and the potential difficulties that individual jurisdictions could face if they act individually and inconsistently in response to this issue.
- 4.145 The legal status of specific synthetic drugs differs between Australian jurisdictions. In their submission to the inquiry, the NSW Young Lawyers Criminal Law Committee advised the Committee that, in particular, the existing provisions regarding the prohibition of synthetic cannabinoid products are not consistent across Australian jurisdictions.<sup>217</sup>
- 4.146 The NSW Young Lawyers Criminal Law Committee recommended that 'the Inquiry ... have regard to interstate legislation and liaise with interstate and federal authorities with a view to adopting a consistent national approach.'<sup>218</sup>
- 4.147 The NSW Minerals Council also expressed support for a national approach to synthetic drugs: 'NSWMC firmly believes that the regulation of synthetic drugs must be done in a nationally uniform manner.'<sup>219</sup>

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<sup>214</sup> Submission 21, Western Australian Drug and Alcohol Office, pp 1-2

<sup>215</sup> Submission 21, Western Australian Drug and Alcohol Office, p 2

<sup>216</sup> Submission 21, Western Australian Drug and Alcohol Office, pp 1-2

<sup>217</sup> Submission 5, NSW Young Lawyers Criminal Law Committee, p 5

<sup>218</sup> Submission 5, NSW Young Lawyers Criminal Law Committee, p 3

<sup>219</sup> Submission 20, NSW Minerals Council, p 2

- 4.148 The Honourable Rob Knight MLA, the former Northern Territory Minister for Justice and Attorney General, advised the Committee that consistent national laws are important in terms of enforcement:

From an enforcement perspective, it is important that the states and territories have comparable prohibitions on synthetic cannabinoids, similar to uniform prohibitions regarding cannabis and amphetamines, and that all states and territories make it illegal to manufacture, possess, use, sell and supply the same substances and derivatives.<sup>220</sup>

- 4.149 The Western Australian Drug and Alcohol Office commented to the Committee that state-based action towards synthetic drugs can only be part of a solution to the problem, and that a broader, national approach would be required for optimum results. The Office particularly highlighted the importation of synthetic substances and interjurisdictional trade in synthetic substances as issues that can only be effectively responded to via national action.

Most of the emerging psychoactive substances are sourced from outside Western Australian borders. It is apparent that national action to prevent importation and interjurisdiction trade and require these products to establish their fitness for human consumption is preferred.

Banning synthetic cannabinoids in Western Australia only provides part of the solution and a national and broader response is required.<sup>221</sup>

- 4.150 The Committee heard from a number of inquiry participants that a large amount of the supply of synthetic drugs to the public in NSW and in Australia was via the internet, and included the importation of synthetic drugs from other countries.

### Current intergovernmental approaches

- 4.151 The Standing Council on Law and Justice (SCLJ) is a standing council established by the Council of Australian Governments (COAG), comprising the Attorneys General of the Commonwealth and states and territories, the Western Australian Minister for Corrective Services and the New Zealand Minister of Justice.<sup>222</sup>

- 4.152 With regard to synthetic drugs, the SCLJ's 2011-12 Annual Report stated that during the year, Ministers had discussed this emerging issue 'noting that Police Ministers are examining options for a nationally consistent response to synthetic cannabinoids. Ministers agreed to consider options for a national response.'<sup>223</sup>

- 4.153 In October 2012, the SCLJ discussed the issue of synthetic drugs in Australia and noted that the Intergovernmental Committee on Drugs (IGCD) 'has been tasked with overseeing work on emerging psychoactive and synthetic drugs.'<sup>224</sup>

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<sup>220</sup> Submission 16, The Hon Rob Knight, Former Northern Territory Minister for Justice and Attorney General, p 1

<sup>221</sup> Submission 21, Western Australian Drug and Alcohol Office, p 4

<sup>222</sup> NSW Government, 'Standing Council on Law and Justice', <http://www.sclj.gov.au>

<sup>223</sup> Standing Council on Law and Justice, *Annual Report 2011-12*, p 5, <http://www.sclj.gov.au/agdbasev7wr/sclj/documents/pdf/sclj%20annual%20report%202011-12.pdf> accessed 20 February 2013

<sup>224</sup> Australian Government National Drug Strategy, 'Agenda paper 15 – Correspondence from Standing Council on Law and Justice re: synthetic drugs', 17 October 2012,

LEGAL AFFAIRS COMMITTEE  
PROPOSED REFORMS TO CURRENT FRAMEWORK

- 4.154 The IGCD gives policy advice to Ministers on drug-related matters and is responsible for implementing the National Drug Strategic Framework. It is made up of senior officers representing health and law enforcement in each Australian jurisdiction, experts in identified priority areas, and representatives from the New Zealand Police and the New Zealand Ministry of Health.<sup>225</sup>
- 4.155 In correspondence to the IGCD's Chair, the SCLJ noted that it had a strong interest in ensuring that legislation responding to synthetic drugs was robust and adaptable, and consequently it was seeking support for the following proposals:
- Attorney-Generals in each jurisdiction, including New Zealand, to be given the opportunity to be represented on the Illicit Drug Working Group;
  - Consideration of the New Zealand approach to this issue by the Illicit Drug Working Group; and
  - The Illicit Drug Working Group to be tasked to consider the potential impact of the *Mutual Recognition Act 1992* (Cth) and the *Trans-Tasman Mutual Recognition Act 1997* (Cth) on the current (and any future) controls established in response to new psychoactive and synthetic drugs.<sup>226</sup>
- 4.156 This chapter has outlined proposals for reforms to the current framework for controlling synthetic drugs and the evidence received on these proposals. The following chapter contains the Committee's recommendations for reform.

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<http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/members-igcd-agenda-8nov12-bris-agenda15>

<sup>225</sup> Queensland Parliamentary Library, 'Banning Kronic and Other Synthetic Drugs: The Criminal and Other Legislation Amendment Bill 2011 (Qld)', December 2011, p 11, <http://www.parliament.qld.gov.au/documents/explore/ResearchPublications/ResearchBriefs/2011/RBR201126.pdf> and Australian Government, National Drug Strategy, Intergovernmental Committee on Drugs, <http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/igcd-lp>

<sup>226</sup> Australian Government National Drug Strategy, 'Agenda paper 15 – Correspondence from Standing Council on Law and Justice re: synthetic drugs', 17 October 2012, <http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/members-igcd-agenda-8nov12-bris-agenda15>

## Chapter Five – Committee's comments and recommendations

- 5.1 The preceding chapters have discussed the current system for regulating synthetic drugs and proposed reforms to this system. This chapter contains the Committee's comments and recommendations for reform to address the issues and challenges raised by synthetic drugs.
- 5.2 Throughout the inquiry the Committee heard evidence that synthetic drugs are a complex problem and raise unprecedented challenges. The Committee considers that these issues are best dealt with through a broad, multi-faceted response. A combination of strategies is required in order to effectively improve the established processes and systems in NSW regarding the government's response to synthetic drugs. The following recommendations are aimed at improving the tools that authorities currently have to respond to the availability of new synthetic drugs. They focus on better control options, improving knowledge and public information about the drugs, and better co-ordination, both between state agencies and on a national level.

### ANALOGUE PROVISION

- 5.3 The Committee heard from multiple inquiry participants that the technical language of the current analogue provision within the *Drug Misuse and Trafficking Act 1985* is 'virtually incomprehensible to most without a chemistry background' and that as a result its usefulness for law enforcement officers was limited.<sup>227</sup> The NSW Young Lawyers Criminal Law Committee indicated in their submission that clarity of legislation is important for various reasons: so that people do not unknowingly commit offences, so that clear legislation deters potential offenders, and so that law enforcement agencies can easily understand what substances are prohibited.<sup>228</sup>
- 5.4 The Committee heard that the analogue provision should be simplified and the requirement for a substance to be proven to have 'psychotropic properties' before it can be proven to be an analogue should be removed.
- 5.5 The Committee is of the view that the 'psychotropic properties' reference within the analogue provision increases the difficulty for law enforcement and for prosecutors to prove relevant offences. Due to the potentially subjective and highly technical nature of the chemical effects of synthetic drugs on the human brain, the Committee is of the view that the analogue provision would be more practical and clearer if the need for a substance to have 'psychotropic properties' were removed.
- 5.6 Evidence was obtained that indicated that the analogue provision had been used successfully for the prosecution of some substances; however, the Committee notes that the provision may not be useful for other substance types, such as

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<sup>227</sup> Detective Superintendent Nick Bingham, NSW Police Force, Transcript of evidence, 22 October 2012, p 3

<sup>228</sup> Submission 5, NSW Young Lawyers Criminal Law Committee, p 8

synthetic cannabinoids.<sup>229</sup> Simplifying this provision may assist the government in responding to some emerging synthetic drugs. However, the Committee is of the view that this should not be the only response, as the analogue provision may not be practicable for a wider variety of synthetic drug compounds, and thus should be complemented by other government measures.

- 5.7 The Committee is aware that improved testing capability is also a key aspect of the effectiveness of the analogue provision, as current testing procedures are slow and often do not cover new synthetic drugs. The Committee discusses testing at paragraph 5.55.
- 5.8 Amending the analogue provision to remove the 'psychotropic properties' requirement may reduce the burden of proving that a substance meets the definition of a drug analogue. The Committee is of the view that removing the requirement to prove that a substance has 'psychotropic properties' will capture more substances whilst simplifying the test required in determining whether a substance is an analogue of a prohibited substance.

## RECOMMENDATION 1

**That the Attorney General introduce legislation to amend Schedule 1 of the *Drug Misuse and Trafficking Act 1985* to remove the requirement for analogues of prescribed drugs to have "psychotropic properties".**

## SCHEDULE 9 OF THE STANDARD FOR THE UNIFORM SCHEDULING OF MEDICINES AND POISONS

- 5.9 The Commonwealth TGA and other jurisdictions in Australia and internationally have taken the approach of prohibiting synthetic drugs by banning broad chemical groupings or categories which encompass a number of similar synthetic compounds.
- 5.10 The majority of states incorporate the Commonwealth Standard for the Uniform Scheduling of Medicines and Poisons (SUSMP) into their drug control legislation. If NSW adopted Schedule 9 of the SUSMP, it would bring NSW in line with the majority of other Australian jurisdictions which currently adopt Schedule 9. It would mean that groups of synthetic compounds already listed in Schedule 9, and any groups added by the TGA in the future, would be controlled within NSW.
- 5.11 The NSW Police Force told the Committee that adopting scheduling that encompasses broad groups of substances would make bans easier to enforce, particularly in relation to synthetic cannabis which may not be captured by the analogue provision.
- 5.12 There are significant variations between Australian states in the quantities they prescribe for synthetic drug related offences (discussed in chapter 4). In order to integrate Schedule 9 into NSW legislation, specific quantities would need to be determined for relevant offences such as manufacturing and supply, for each substance group. Notably, the Committee heard evidence from the NSW

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<sup>229</sup> Submission 17, NSW Government, p 6

Government indicating that the Department of Attorney General and Justice is exploring the feasibility of integrating Schedule 9 into NSW legislation.<sup>230</sup>

- 5.13 The Committee is of the view that prohibiting structurally similar groups of synthetic drugs through integrating the Schedule 9 list of prohibited substances into NSW legislation has substantial merit and should be implemented by the Government.
- 5.14 The Committee notes that the TGA undertakes a thorough, transparent evaluation process when it considers substances for addition to the SUSMP. The Committee is of the view that NSW should prohibit synthetic drugs that the TGA has determined to warrant strict control, due to risk of harm.
- 5.15 The integration of Schedule 9 into NSW legislation would mean that NSW could avoid unnecessary duplication in testing and evaluation that would occur if a NSW Government agency was required to conduct similar evaluation and testing of emerging synthetic drugs.
- 5.16 A further advantage of the integration of Schedule 9 into NSW legislation would be that it constitutes a step towards a nationally uniform approach to synthetic drugs, an important consideration given the number of inquiry participants who called for a national approach to the issue.
- 5.17 The Committee acknowledges evidence received during the Inquiry, which indicated that the banning of broad categories of substances could have an impact upon future research into the possible therapeutic uses of certain synthetic drugs.
- 5.18 The Committee notes that the TGA provides an exemption for research involving substances that are included in Schedule 9, with authorisation from state/territory governments. The Committee considers that, should Schedule 9 be adopted in NSW, it should be very clear that research undertaken by authorised organisations for medical and scientific purposes is exempted from any ban. This would allow specific synthetic drug compounds to be studied for potential therapeutic uses, while they remained prohibited for use by the wider public.
- 5.19 As with the other reform proposals recommended by the Committee, we recognise that any attempt to prohibit categories of synthetic drugs should constitute part of a broad approach towards this issue. Other jurisdictions have used a combination of approaches including generic bans, and individual controls for new compounds that do not fall within a group ban. In this regard, the Committee notes that the NSW Government would still be able to control individual substances by specifically adding them to the *Drug Misuse and Trafficking Act 1985*.
- 5.20 The Committee also notes that in order to incorporate Schedule 9 of the SUSMP into the *Drug Misuse and Trafficking Act 1985*, specific quantities for offences would need to be prescribed for each substance or group that is prohibited.

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<sup>230</sup> Ms Penelope Musgrave, Department of Attorney General and Justice, Transcript of evidence, 22 October 2012, p 30

## RECOMMENDATION 2

**That the NSW Government incorporate Schedule 9 of the Standard for the Uniform Scheduling of Medicines and Poisons into NSW legislation, to facilitate a nationally consistent approach towards emerging synthetic drugs.**

**As new substances are incorporated from Schedule 9, specific quantities for relevant offences will need to be prescribed in NSW legislation.**

**In incorporating Schedule 9, the Government should ensure that there is provision for authorised bodies to undertake research into banned synthetic drug compounds for medical and scientific purposes.**

## CONSUMER PROTECTION

- 5.21 The Committee heard evidence about how synthetic drug products in NSW were being sold through retailers. In evidence to the Committee, Mr Paul Dillon noted that some tobacconists sold synthetic drug products to minors and that young people knew where they could obtain the products. However, the Committee also heard evidence from the NSW Police Force that the majority of retailers do not sell synthetic drugs to children and young people.<sup>231</sup>
- 5.22 The Committee heard that retailers of synthetic drugs were largely unaware of the ingredients of the products they sell, their possible health effects on users and that they may contain illegal or analogue compounds.<sup>232</sup> The Committee heard evidence regarding consumer protection measures in other jurisdictions. In correspondence to the Committee, the New Zealand Ministry of Health advised that some retailers in New Zealand are being prosecuted for the sale of smokable synthetic cannabis products to persons under 18 years, which is a breach of the New Zealand *Smoke-free Environments Act 1990*.<sup>233</sup>
- 5.23 The Committee notes that in NSW, if retailers provide synthetic drugs designed to be smoked to people under the age of 18, which meet the definition of 'non-tobacco smoking products', offences may apply under the *Public Health (Tobacco) Act 2008*.<sup>234</sup>
- 5.24 The Committee is particularly concerned that some retailers in NSW may be providing synthetic drugs to young people under 18. Although retailers may not be aware of the contents of the synthetic drug products they sell and the dangers they may entail, such products should not be sold to minors.
- 5.25 The Committee heard evidence that under the Australian Consumer Law bans can be imposed on consumer goods that may cause injury and it is an offence for retailers to sell such goods.<sup>235</sup> In the Committee's view, NSW Fair Trading and the NSW Police Force should work with retailers that sell synthetic drugs to improve

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<sup>231</sup> Detective Superintendent Nick Bingham, NSW Police Force, Transcript of evidence, 22 October 2012, p 6

<sup>232</sup> Ms Fiona Patten, Eros Foundation, Transcript of evidence, 15 October 2012, p 17

<sup>233</sup> Correspondence from New Zealand Ministry of Health to the Chair, dated 17 January 2013, p 2

<sup>234</sup> *Public Health (Tobacco) Act 2008* (NSW), s 22

<sup>235</sup> Correspondence from Commissioner of Fair Trading to the Chair, received 21 December 2012

awareness of these laws and ensure that the products they sell meet existing consumer protection laws and do not harm consumers.

- 5.26 As noted in chapter 4, product bans under the safety provisions of the Australian Consumer Law provide for state Ministers to issue interim bans on products. Temporary product bans can be rapidly issued by the Minister, thereby providing a quick response to products appearing on the market. Once a ban is imposed on a consumer product, a person or corporation must not engage in trade or commerce, supply, offer for supply, manufacture, possess or have control of consumer goods of that particular kind. Failure to comply with an interim ban may be a criminal offence, with maximum penalties including a \$220,000 fine for an individual and \$1.1 million for a corporation.
- 5.27 The Committee considers that imposing these bans on emerging synthetic drugs would provide an additional tool to target the retail sale of products containing potentially harmful synthetic drugs. This would mean that emerging synthetic drug compounds could be prohibited through broad category bans and individual listing under the *Drug Misuse and Trafficking Act 1985*, as well as through interim bans on synthetic drug products under the Australian Consumer Law. Once bans are imposed, police would be able to work with NSW Fair Trading to develop enforcement strategies focusing on approaching retailers directly to inform them of bans and penalties applying under consumer and drug laws.
- 5.28 Currently, interim product bans can only be imposed for 60 days and extended for an additional 30 days. The Committee considers that interim product bans would be a useful tool in responding to synthetic drugs. However, in order for these bans to be effective and workable, there should be provision for products to be banned for up to 6 months. The Committee is recommending that the Minister for Fair Trading write to the responsible Commonwealth Minister to request an amendment to the *Competition and Consumer Act 2010* (Cth) to enable state ministers to issue interim product bans for up to 6 months.
- 5.29 The Committee is recommending that the NSW Government introduce a system whereby the Minister for Fair Trading issues interim product bans on synthetic drug products. The interim period would enable banned products to be tested to determine whether they contain compounds that are prohibited either through the SUSMP or under the *Drug Misuse and Trafficking Act 1985* (including as analogues). On the expiry of an interim period, the state Minister could write to the relevant Federal Minister requesting a permanent ban on products that contain dangerous compounds. Should a permanent ban be issued by the Federal Minister, the product would then be banned nationally. In the Committee's view, a nationally consistent and co-ordinated approach to controlling these products would be the most effective way to protect the public from potential harm.

### RECOMMENDATION 3

**That the Minister for Fair Trading issue interim bans under the provisions of the Australian Consumer Law on synthetic drug products, as consumer goods of a kind that will or may cause injury to any person.**

## RECOMMENDATION 4

**That the Minister for Fair Trading write to the responsible Commonwealth Minister to request an amendment to the *Competition and Consumer Act 2010 (Cth)* enabling interim product bans to be imposed by state ministers for up to 6 months.**

## ENFORCEMENT

- 5.30 The Committee acknowledges that there are difficulties with enforcing the current legislation regarding synthetic drugs in NSW, and recognises that any changes to current legislation will need to be accompanied by the provision of education and training to the NSW Police Force so that new legislation is effectively enforced.
- 5.31 It is clear to the Committee that the increase in newly emerging synthetic drugs is difficult to police for a number of reasons. The Committee heard during the Inquiry that police officers do not seize possibly illegal synthetic drug products from retailers and users due to testing processes being lengthy and expensive, and due to the current legislation being overly technical and difficult to understand. The real possibility that individuals in possession of synthetic drug products may not realise they contain banned chemical compounds also compromises law enforcement, particularly when individuals may have had no intent to use or possess an illegal substance.
- 5.32 The Committee is of the view that, if implemented, our recommendations, a more streamlined analogue provision and the adoption of Schedule 9 of the SUSMP, as well as the introduction of interim bans issued by the Fair Trading Minister, will provide a framework that is easier for the public to understand and for police officers to enforce. Increased efforts to educate the public regarding synthetic drugs should assist to make individuals aware of the potentially illegal nature of substances they purchase, and the Committee's recommendation for a co-ordinated, interdepartmental approach (discussed below) will improve testing capabilities. It will also assist police and prosecutors in enforcing the law by making it easier to detect synthetic drug compounds in particular products.
- 5.33 The Committee heard evidence of the use of temporary drug notices in overseas jurisdictions such as New Zealand and the United Kingdom. However, these jurisdictions have very different frameworks for drug prohibition, in that substances can only be permanently prohibited through the introduction of primary legislation, which occurs following an assessment of the substance by an advisory body and a recommendation to prohibit it.
- 5.34 In NSW the legislative framework facilitates a more rapid prohibition of substances through the addition by regulation of specific drugs to the *Drug Misuse and Trafficking Act 1985*. This system provides an avenue for emerging substances to be rapidly prohibited once they have been identified. It is apparent that the current NSW system provides advantages in terms of the speed with which substances can be controlled in comparison to other jurisdictions such as New Zealand and the United Kingdom. The Committee therefore does not consider that the introduction of a temporary drug notices is necessary in NSW.

- 5.35 As noted in the previous section, the Committee is recommending the introduction of interim product bans under the Australian Consumer Law. The NSW Police Force told the Committee that temporary bans would assist police by providing greater clarity in enforcing bans on products. The Committee considers that the implementation of interim product bans will provide greater clarity for law enforcement officers.
- 5.36 The Committee considers that following any changes to NSW legislation, the focus for law enforcement officers working in the area of synthetic drugs should be on working with NSW Fair Trading to assist retailers to ensure that they are aware of and comply with relevant legislation regarding synthetic drugs.
- 5.37 In correspondence to the Committee, the New Zealand Ministry of Health described the police response to synthetic drugs in New Zealand as being focused on 'educating enforcement staff and working with local authorities and retailers to improve compliance' with the current New Zealand system of temporarily banning substances.<sup>236</sup>
- 5.38 In the Committee's view, interim bans, incorporating Schedule 9 of the SUSMP into NSW legislation, and providing guidance and specialised training will give added clarity to police in enforcing the law. This will assist them both in terms of policing more serious manufacturing and supply offences, and in working with retailers and users to ensure they do not purchase illegal and potentially harmful synthetic drugs.
- 5.39 As noted by the Committee in chapter 4, the UK Association of Chief Police Officers has issued a guidance document on policing new synthetic drugs. The Committee considers that a similar guidance document, combined with improved training for police, would greatly improve police awareness of synthetic drugs and police powers to enforce the law. It would also mean that enforcement of synthetic drugs is undertaken in a consistent way, with better co-ordination between police and other agencies including Fair Trading. The provision of specific advice and training to police on approaching retailers that sell synthetic drug products will result in more effective and proactive enforcement and improved awareness of the law.

## RECOMMENDATION 5

**That NSW Fair Trading and the NSW Police Force work with retailers of synthetic drugs to ensure that products available for sale in NSW meet consumer protection requirements under the Australian Consumer Law and the *Fair Trading Act 1987 (NSW)*, and that retailers are aware of their legal responsibilities and the offences associated with the sale of consumer goods that may cause injury.**

## RECOMMENDATION 6

**That the NSW Police Force provide specialised training to police officers on synthetic drugs and their powers to seize them and arrest individuals suspected of committing offences.**

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<sup>236</sup> Correspondence from New Zealand Ministry of Health to the Chair, dated 17 January 2013, p 1

## RECOMMENDATION 7

**That the NSW Police Force develop guidelines for policing synthetic drugs. The guidelines should cover the appearance of synthetic drugs, their effects, relevant offences under drugs legislation and consumer laws and police powers to seize the drugs. Advice on policing retailers that sell synthetic drug products should also be covered, including a template letter notifying retailers of the possible consequences of selling products containing illegal synthetic drugs.**

## INTER-AGENCY CO-ORDINATION

- 5.40 The Committee has noted that the complex nature of synthetic drug use and supply means that there are a number of government agencies which may initially become aware of a new synthetic drug. Law enforcement agencies may obtain substances in concert with a seizure of traditionally used drugs, substances may be identified by the Ministry of Health through users appearing at hospital emergency wards, and NSW Fair Trading may come across new synthetic drugs as a result of complaints or feedback from consumers. Each agency has relevant expertise and could contribute to a co-ordinated response.
- 5.41 The Committee also notes the success of the Early Warning System currently operating in Europe and the co-ordination between Member States and Europol and the EMCDDA in obtaining information on emerging synthetic drugs and assessing public health risks associated with those substances. The Committee is of the view that an Early Warning System based on the European Model should be implemented in Australia.
- 5.42 Early identification, intervention and action are key aspects of an optimal government response to any new synthetic drugs being released to the public. The Committee is therefore of the view that a close relationship should be established between NSW Government agencies that have relevant expertise in synthetic drugs. This would allow for information to be communicated between organisations quickly and for a co-ordinated, rapid and cross agency approach to the release of a new synthetic drug.
- 5.43 The Committee recommends that the Government establish a specific interdepartmental group comprised of senior officers of relevant NSW Government agencies which have exposure to and expertise in the issues relevant to synthetic drugs in order to facilitate clear communication between organisations and a more co-ordinated response to new synthetic drugs.
- 5.44 As discussed earlier, a similar interdepartmental group in Western Australia (the Emerging Psychoactive Substances Review Group) was brought to the Committee's attention by the Western Australian Drug and Alcohol Office. The Group is made up of relevant Western Australian government organisations and representatives from the Australian Customs and Border Protection Service.<sup>237</sup> The involvement of the Customs Service may facilitate the communication of issues regarding synthetic drug importation to relevant state government agencies. The Committee notes that the Western Australian response to

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<sup>237</sup> Submission 21, Western Australian Drug and Alcohol Office, pp 2-3

synthetic drugs was rapid and co-ordinated, and that the state was at the forefront of the synthetic drugs issue due to its impact on the mining industry.

- 5.45 The Committee supports the adoption of a similar multi-agency response to synthetic drugs in NSW, as part of a broad, co-ordinated approach to the challenges raised by synthetic drugs. The Committee also considers that Australian states should work together to develop an early warning system modelled on the European Early Warning System.

## RECOMMENDATION 8

**That the NSW Government establish a specific interdepartmental senior officers group, with representatives from the NSW Police Force, the Department of Attorney General and Justice, NSW Health and NSW Fair Trading, to facilitate a co-ordinated government response to synthetic drugs.**

## RECOMMENDATION 9

**That the NSW Government recommend to the Intergovernmental Committee on Drugs that a national early warning system modelled on the European Early Warning System be implemented in Australia. The system would provide knowledge and awareness of emerging synthetic drugs and the public health risks associated with them.**

## EDUCATION AND PUBLIC AWARENESS

- 5.46 Throughout the Inquiry the importance of providing accurate and clear information about synthetic drugs and their dangers to the public was stressed to the Committee. The need for clear and accurate public information was highlighted as being particularly important for vulnerable groups of the community, such as young people and individuals who currently use drugs. The Committee was concerned to hear reports and evidence about the possible health impacts of synthetic drugs and therefore considers that public awareness should focus on the health effects of taking synthetic drugs. It is vital that the community understands the dangers of newly emerging synthetic drugs.
- 5.47 The Committee heard evidence that professionals who work with drug users in rehabilitation centres have been seeking further information about synthetic drugs in order to further their own knowledge about these substances and to provide accurate information about their effects to their clients.<sup>238</sup> Professionals who work with young drug users told the Committee that currently there is extremely limited knowledge among individuals who use synthetic drugs about their chemical composition, origins and possible risks associated with their use.<sup>239</sup>
- 5.48 The Committee considers that the provision of education to vulnerable groups about synthetic drugs and the potential growth in their use is an important aspect of any future government response to this issue. However, the Committee also notes the potential for public and media attention to result in an increase in drug use, particularly among young people.

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<sup>238</sup> Dr Monica Barratt, National Drug Research Institute, Transcript of evidence, 22 October 2012, p 23

<sup>239</sup> Mr Mark Ferry, Ted Noffs Foundation, Transcript of evidence, 15 October 2012, p 26

LEGAL AFFAIRS COMMITTEE  
COMMITTEE'S COMMENTS AND RECOMMENDATIONS

- 5.49 While the Committee heard a lot about the need for increased public awareness of synthetic drugs and their possible health effects, the Committee also acknowledges comments made by Mr Dillon and representatives of the NSW Ministry of Health in relation to unforeseen adverse effects of public awareness and the possibility that awareness campaigns could become 'de facto marketing' for dangerous and illegal products.<sup>240</sup>
- 5.50 The Committee notes Mr Dillon's comments that the prohibition of drugs should be accompanied by a public education campaign.<sup>241</sup> The Committee recognises that there is a need for the public to be made aware when a particular synthetic drug is prohibited and encourages the Government to take steps to ensure that this information is widely available to people in NSW.
- 5.51 The Committee considers that public awareness and education are a key part of an effective government response to the emergence of new synthetic drugs in NSW. Currently, it appears that limited and inadequate information is available to the public regarding synthetic drugs. The Committee heard that a substantial variety of synthetic drugs are available to the public and new substances are introduced regularly. As a result, the Committee considers that the public should be made aware as soon as possible after a potentially dangerous substance is identified in the community.
- 5.52 A further advantage of a government education and public awareness campaign regarding synthetic drugs would be that such a campaign would convey to the public that products containing synthetic drugs that are marketed as being legal may not be, and that individuals may be committing an offence and risking their health by purchasing and using synthetic drugs. The Committee notes that any awareness campaign in relation to synthetic drugs and their potential harms should be carefully developed and targeted to reach vulnerable groups in the community.
- 5.53 More specifically the Committee is of the view that a public awareness campaign should be centred around online content which would provide information to the public on the dangers of synthetic drugs and to retailers of their liability should they be selling a product that includes a prohibited substance or is subject to an interim product ban.
- 5.54 The Committee also believes that the online content should provide an avenue through which members of the public can provide information to the NSW Government in relation to synthetic drug products as well as about retailers who sell products which may contain prohibited substances or be subject to an interim ban issued by the Minister for Fair Trading.

## RECOMMENDATION 10

**That the NSW Government develop and deliver a public awareness campaign to educate the community about synthetic drugs. The campaign should target vulnerable groups, including young people.**

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<sup>240</sup> Mr David McGrath, NSW Ministry of Health, Transcript of evidence, 22 October 2012, p 13

<sup>241</sup> Mr Paul Dillon, Drug and Alcohol Research and Training Australia, Transcript of evidence, 22 October 2012, p 35

## RECOMMENDATION 11

**That the NSW Government develop an online website to publicise warnings about synthetic drugs to:**

- 1. ensure that the public is informed of potentially dangerous products being available for sale in NSW;**
- 2. ensure that retailers are aware of and comply with relevant legislation regarding synthetic drugs; and**
- 3. provide an avenue for the public to provide information to the NSW Government on synthetic drug products and on retailers who are selling products which may be prohibited or subject to an interim ban.**

## RESEARCH AND TESTING

5.55 It is clear from the evidence heard by the Committee that currently there are difficulties in identifying new synthetic drugs once they are released in NSW, and in being able to test for the existence of banned synthetic compounds (for example, synthetic cannabinoids) within particular retail products. The effectiveness of a response to this issue is dependent upon the ability to detect and test for illegal substances, and it appears that current testing capability is insufficient for efficient policing and enforcement of relevant legislation.

5.56 Evidence received during the inquiry indicated that the lack of adequate testing creates difficulties for employers in industries, such as the mining industry, where employees have used synthetic drugs to avoid workplace drug testing. It is also problematic in terms of law enforcement and prosecution. The Committee heard evidence of 6 month delays in testing procedures. The length of time that is currently required for testing is an impediment for law enforcement bodies, prosecutors, and defendants during any legal proceedings involving synthetic drug offences. Inquiry participants told the Committee that testing facilities would be further strained if regulation and enforcement efforts increased.

5.57 The Committee also heard that there is a lack of sufficient research and data regarding synthetic drugs and their effects. This lack of knowledge presents difficulties in terms of educating the public about synthetic drugs, and providing resources for counsellors at treatment facilities to discuss synthetic drugs with their clients.

5.58 The Committee recognises that there is a high potential for new mimic substances to be released into the community to circumvent individual substance bans. This is a key problem in terms of implementing an effective response to the supply of synthetic drugs in NSW. Additional expertise in terms of testing and research is essential to the success of any measures to control synthetic drugs. It is also critical in terms of informing the public about the effects of emerging drugs.

5.59 A co-ordinated, interagency approach will ensure that better information is available about emerging synthetic drugs and their detection. It will also improve knowledge of the health effects of such substances. The Committee has

recommended that an interdepartmental senior officers group lead the government's response to synthetic drugs. The members of this group will have the knowledge and expertise to review current research and testing processes, and to develop solutions to fill gaps in knowledge. The Committee notes that other jurisdictions, in particular ChemCentre in Western Australia, have led the development of testing techniques. In undertaking its role the interdepartmental group should seek to work with experts in other jurisdictions to utilise existing knowledge and share expertise about synthetic drugs.

## RECOMMENDATION 12

**That the interdepartmental senior officers group (recommendation 8) monitor the effectiveness of current scientific research and testing procedures to detect newly emerging synthetic drugs.**

## NEW ZEALAND'S REGULATORY SCHEME

5.60 New Zealand's response to synthetic drugs has differed from that of other jurisdictions. The New Zealand Government has decided to implement a new approach to synthetic drugs, in response to recommendations for drug law reform made by the New Zealand Law Commission.

### Background

5.61 In New Zealand, drugs are regulated under the *Misuse of Drugs Act 1975*. Controlled drugs are classified as Class A, B or C substances for the purpose of fixing penalties for their importation, production, supply, possession and use. The Act sets out the process for classifying drugs and the factors to be considered in drug classification decisions. Classification is based on the risk of harm a drug poses to individuals or to society by its misuse, from very high risk for Class A to moderate risk for Class C.<sup>242</sup>

5.62 A statutory Expert Advisory Committee on Drugs (EACD) provides specialist information to the Health Minister on drug regulation and classification; reviews controlled substances; makes recommendations about the scheduling of new substances; and promotes public awareness.<sup>243</sup>

5.63 The *Misuse of Drugs Amendment Act 2005* provided for new substances to be classed as restricted, thereby regulating their sale rather than prohibiting them. The EACD had recommended a restricted substances regime be introduced for drugs that posed a low risk of harm. BZP was the only substance briefly classified as restricted under this regime, before being reclassified as a controlled drug.<sup>244</sup>

5.64 According to the New Zealand Law Commission, 'problems with the definitions

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<sup>242</sup> *Misuse of Drugs Act 1975* (NZ) s 3A, schedules 1 to 3 list Class A to C drugs.

<sup>243</sup> *Misuse of Drugs Act 1975* (NZ) s 5AA and New Zealand Government, National Drug Policy New Zealand, <http://www.ndp.govt.nz/moh.nsf/indexcm/ndp-committees-eacd>

<sup>244</sup> New Zealand Law Commission, *Controlling and regulating drugs*, Issues Paper 16, February 2010, pp 56-57, 168, [http://www.lawcom.govt.nz/sites/default/files/publications/2010/02/Publication\\_143\\_455\\_IP16%20-%20Controlling%20and%20Regulating%20Drugs.pdf](http://www.lawcom.govt.nz/sites/default/files/publications/2010/02/Publication_143_455_IP16%20-%20Controlling%20and%20Regulating%20Drugs.pdf) and *Controlling and regulating drugs November 2010 - A review of the Misuse of Drugs Act 1975*, Report 122, April 2011, p 8, [http://www.lawcom.govt.nz/sites/default/files/publications/2011/05/part\\_1\\_report\\_-\\_controlling\\_and\\_regulating\\_drugs.pdf](http://www.lawcom.govt.nz/sites/default/files/publications/2011/05/part_1_report_-_controlling_and_regulating_drugs.pdf)

used to determine the scope of the restricted substances regime mean legislative change is required before it could ever be used again.' The Law Commission observed that statutory definitions rendered the regime ineffective, as they prevented a broad range of substances from being scheduled as restricted:

Substances that are controlled drugs, controlled drug analogues, medicines, foods, or hazardous substances cannot be scheduled and regulated as restricted substances; they are expressly excluded. ... Accordingly, there appear to be no psychoactive substances that can be scheduled and brought within the regime.<sup>245</sup>

- 5.65 Amendments in 2011 to the *Misuse of Drugs Amendment Act 2005* resolved this inconsistency by enabling hazardous substances, tobacco products and herbal smoking products to be classed as restricted.<sup>246</sup>

### Initial response to synthetic drugs

- 5.66 From 2006 synthetic drug brands advertised as providing users with a "legal high", as an alternative to cannabis, began appearing in New Zealand.<sup>247</sup> The use of these drugs has been compared to the use of the synthetic stimulant benzylpiperazine (BZP). BZP became a commonly used drug between 2000 and 2006. Legally available for 5 years, it was initially classified as a restricted substance in 2005 before being listed as a Class C controlled drug in 2008.<sup>248</sup>
- 5.67 In March 2009, three synthetic cannabis products were analysed and found to contain the active chemical CP 47,497, which was substantially similar in chemical structure to THC. This meant that these products contained an illegal analogue of THC. Products containing CP 47,497 were removed from sale. New products containing legal substances immediately became available. Some of these included JWH substances marketed under the name Kronik. Because JWH compounds were not controlled under the *Misuse of Drugs Act 1975*, and did not have a similar chemical structure to any controlled drugs, it remained legal to possess, use and sell these products.<sup>249</sup>
- 5.68 The EACD assessed the JWH substances and concluded that they should be controlled as restricted under the *Misuse of Drugs Amendment Act 2005*, reasoning that there was not enough evidence of harm to warrant stricter scheduling.<sup>250</sup>

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<sup>245</sup> New Zealand Law Commission, *Controlling and regulating drugs November 2010 - A review of the Misuse of Drugs Act 1975*, Report 122, April 2011, p 120, [http://www.lawcom.govt.nz/sites/default/files/publications/2011/05/part\\_1\\_report\\_-\\_controlling\\_and\\_regulating\\_drugs.pdf](http://www.lawcom.govt.nz/sites/default/files/publications/2011/05/part_1_report_-_controlling_and_regulating_drugs.pdf)

<sup>246</sup> Misuse of Drugs Amendment Act 2011 (No 2) s 15

<sup>247</sup> S E Palmer, 2010, *Addiction*, Vol 105, *Warning: Legal Synthetic Cannabinoid-Receptor Agonists such as JWH-018 May Precipitate Psychosis in Vulnerable Individuals*, (letter to the Editor) New Zealand.

<sup>248</sup> New Zealand Ministry of Health, Regulatory Impact Statement: New regulatory regime for psychoactive substances, October 2012, p 4, <http://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements/new-regulatory-regime-psychoactive-substances>

<sup>249</sup> Expert Advisory Committee on Drugs, *The JWH Substances: Preliminary Assessment*, July 2010, pp 2-3, [http://www.ndp.govt.nz/moh.nsf/Files/ndp-advice-docs/\\$file/jwh-compounds-eacd-29jul-eacd.pdf](http://www.ndp.govt.nz/moh.nsf/Files/ndp-advice-docs/$file/jwh-compounds-eacd-29jul-eacd.pdf)

<sup>250</sup> Expert Advisory Committee on Drugs, Minutes of meeting held on 11 November 2010, pp 6-7, <http://www.ndp.govt.nz/moh.nsf/indexcm/ndp-committees-eacd-minutes>

- 5.69 The Associate Health Minister initially agreed to the recommendations to restrict the substances; however, due to an increase in available products, public concern, reported adverse effects, and a lack of quality control standards, temporary bans on synthetic cannabis were implemented (as discussed in detail in chapter 4).<sup>251</sup>

### New Zealand Law Commission report

- 5.70 The New Zealand Law Commission undertook a review of the *Misuse of Drugs Act 1975*. In its 2011 report, the Commission concluded that existing regulatory regimes were fundamentally flawed, and that there was no mechanism available to regulate new psychoactive substances before they appeared on the market:

Some new substances, because of their chemical structure, are analogues and come within the controlled drugs regime, but most do not. New psychoactive substances can be manufactured, imported and sold without restriction until they are proven to be harmful and scheduled either as restricted substances or controlled drugs. In practice, there is a significant time lapse between when new substances start to become available for use and when authorities have gathered sufficient evidence on patterns of use and their effects to determine whether they should be scheduled. There is then a further time lapse while scheduling is undertaken. During this period, potentially harmful psychoactive substances are marketed and sold without restriction.<sup>252</sup>

- 5.71 The Commission recommended that the *Misuse of Drugs Act 1975* be repealed and replaced. In terms of new psychoactive drugs, key recommendations were:
- A new regime with a separate criteria and approval process for regulating new psychoactive substances.
  - Under the regime, anyone who wishes to manufacture, import or distribute a new psychoactive substance should be required to apply for an approval for the substance before doing so.
  - Certain criteria should be applied by the regime's regulator when deciding whether a psychoactive substance should be issued an approval, including harms and benefits of using the drug and whether they can be effectively managed, consequences of any proposed regulation or prohibition (including the cost); and possible displacement effects that might occur due to the way other substances are regulated.
  - Approved substances should be able to be legally manufactured, imported and supplied subject to regulatory controls.
  - Controls should encompass age restrictions for purchase, advertising, promotion, packaging and labelling, and sale and supply at certain premises.
  - If a new substance is not approved, but the substance is not classified as a

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<sup>251</sup> Associate Health Minister, 'All synthetic cannabis products to be banned', Media release, 1 August 2011, <http://www.beehive.govt.nz/release/all-synthetic-cannabis-products-be-banned> and *Misuse of Drugs Act 1975* s 6

<sup>252</sup> New Zealand Law Commission, *Controlling and Regulating Drugs: A Review of the Misuse of Drugs Act 1975*, report 122, April 2011, p 8

prohibited drug, it should be illegal to manufacture, import or distribute it, but not illegal to possess or use it.

- Offences and maximum penalties should be established for manufacturing, importing, or supplying unapproved psychoactive substances and other offences.<sup>253</sup>

5.72 The Commission also recommended that classification decisions should be made by Parliament and the Executive's power to prohibit and classify drugs by Order in Council should be removed.<sup>254</sup>

### New regulatory regime

5.73 In its response to the report, the New Zealand Government indicated that it would introduce a new regulatory regime for emerging psychoactive drugs, consistent with the Commission's proposals.<sup>255</sup>

5.74 In July 2012, Cabinet agreed to new legislation for low-risk psychoactive substances, which would 'address the rapid growth in unregulated party pills and other legal highs by prohibiting the importation and supply of all psychoactive substances other than those that have met safety and manufacturing requirements, or are already regulated'. More specifically, the Cabinet agreed to:

- a. establish a pre-market approval regime for substances primarily taken to induce a psychoactive effect
- b. base the approval for manufactured products on consistent toxicological and behavioural data
- c. establish a new regulator within the Ministry of Health to manage assessments, approvals, and surveillance
- d. fund the regulator through full cost recovery
- e. make unapproved substances prohibited imports under the Customs and Excise Act 1996 and require approval for importation
- f. transitional provisions following enactment that will allow the continuing sale of some psychoactive products provided they are undergoing assessment by the regulator
- g. review the regulatory scheme five years after commencement.<sup>256</sup>

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<sup>253</sup> New Zealand Law Commission, *Controlling and Regulating Drugs: A Review of the Misuse of Drugs Act 1975*, report 122, April 2011, pp 23-28

<sup>254</sup> New Zealand Law Commission, *Controlling and Regulating Drugs: A Review of the Misuse of Drugs Act 1975*, report 122, April 2011, p 28

<sup>255</sup> New Zealand Ministry of Health, *Government Response to the Law Commission's Report 'Controlling and Regulating Drugs – a review of the Misuse of Drugs Act 1975'*, September 2011, <http://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements/government-response-law-commissions-report-controlling-and-regulating-drugs-review-misuse-drugs-act>

<sup>256</sup> New Zealand Ministry of Health, *Cabinet paper - Regulation of Psychoactive Substances: Further Policy Decisions*, October 2012, p 1, <http://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements/new-regulatory-regime-psychoactive-substances>

5.75 In evidence to the Committee, Mr Oliver Poppelwell from New Zealand's Ministry of Health summarised the way the new regime will work. Fundamentally, sale of psychoactive substances will be prohibited unless they are approved by a regulator:

The approval will be based on safety tests similar to those for new medicines. Then the other elements of the new regulatory regime will be retail restrictions, which will include no sale to people under the age of 18, no sales from dairies or supermarkets or the sort of shops where you can expect children to gather and frequent, and fairly stringent labelling requirements, which will include, for example, the requirement to list all of the ingredients of the product and to list the National Poisons Centre number.<sup>257</sup>

5.76 Mr Poppelwell told the Committee that the main benefit of the scheme is that it does not rely on a reactive response to synthetic drugs:

... this is a class of substances where there is a virtually unlimited number of new molecules that people can use for them. So doing it in retrospect is always going to be a losing battle. We think that the big advantage of our proposed new regime is that we will be doing it all in advance, so that ... we are not playing catch-up all the time.<sup>258</sup>

5.77 The legislation is expected to be enacted by August 2013, before the first temporary class drug notices permanently expire.<sup>259</sup>

### **Inquiry participants' views**

5.78 A high proportion of the contributors to the Inquiry expressed their support for the New Zealand regulatory scheme for new psychoactive substances, and the potential benefits that such a scheme could bring to NSW were outlined by various participants. Ms Fiona Patten specified that the Eros Association would support a regulatory system similar to that announced in New Zealand where the 'onus of proof is placed on the manufacturer to prove that the product has passed certain levels of harm.'<sup>260</sup>

5.79 Some inquiry participants submitted that potential revenue gain for government through the taxation of the sale of new, legal psychoactive substances that had passed safety tests would be a positive result of implementing a New Zealand-style regulatory scheme in NSW. One participant argued that any potential revenue from taxation should be earmarked for funding intervention strategies for users of synthetic drugs and for education regarding their use.<sup>261</sup> The Alcohol and other Drugs Council of Australia similarly put to the Committee that potential tax revenue could be 'used to fund prevention and education campaigns,

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<sup>257</sup> Mr Oliver Poppelwell, Manager, Sector and Services Policy, New Zealand Ministry of Health, Transcript of evidence, 15 October 2012, p 2

<sup>258</sup> Mr Oliver Poppelwell, Manager, Sector and Services Policy, New Zealand Ministry of Health, Transcript of evidence, 15 October 2012, p 5

<sup>259</sup> New Zealand Ministry of Health, *Cabinet paper - Regulation of Psychoactive Substances: Further Policy Decisions*, October 2012, p 1, <http://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements/new-regulatory-regime-psychoactive-substances>

<sup>260</sup> Ms Fiona Patten, Eros Association, Transcript of evidence, 15 October 2012, p 15

<sup>261</sup> Submission 13, Name Suppressed, p 2

treatment services for those that need them and (prevent) any ongoing illicit production of drugs.<sup>1262</sup>

- 5.80 Mr Jeffrey Wegener of the NSW Users and AIDS Association noted that a similar approach to the New Zealand regulatory scheme could be trialled in NSW and the results of the regulatory trial could be assessed for its benefits:

If this different approach – what I call the regulatory approach – were to be adopted I think it would have to start small and would have to be trialled. I think there is a lot of good will about that at the moment.<sup>263</sup>

- 5.81 Dr Monica Barratt explained to the Committee that, while the implementation of a new regulatory scheme towards synthetic drugs would entail a substantial cost, a more efficient way forward would be for the producers of the synthetic drugs to bear most of the costs, rather than government. Dr Barratt noted that the scheme would rely on the manufacturing industry, who would profit from a system where synthetic drugs were regulated, paying the substantial costs to have their products safety tested before they could be considered for regulation.<sup>264</sup>

- 5.82 Dr Barratt indicated that in her view, the main advantage of a New Zealand style regulatory scheme for synthetic drugs would be that it is a 'circuit-breaking legislative response', which directly responds to the issue of newer drugs being developed and released to replace older drugs that have been banned.<sup>265</sup>

- 5.83 A positive consequence of a regulatory approach towards synthetic drugs which was referred to by inquiry participants was the effect it would have on criminal enterprise.

- 5.84 The Alcohol and other Drugs Council of Australia put to the Committee that ending the criminalisation of people who use these drugs would undermine the role of illegal drug producers and organised crime and would allow law enforcement and the criminal justice system to concentrate on other issues.<sup>266</sup>

- 5.85 Support for a regulatory model similar to the approach proposed in New Zealand was expressed to the Committee by Detective Superintendent Nick Bingham, who commented that the New Zealand approach:

...is something that is agreeable to the representatives of synthetic cannabinoid retailers, suppliers and manufacturers, and suggest that New South Wales take a similar stance... I think the New Zealand approach is reasonable. I think a retailer, distributor or manufacturer who wants to put a product on the market, regardless of what the product is, the onus should be on them to ensure that product is safe.<sup>267</sup>

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<sup>262</sup> Submission 18, Alcohol and other Drugs Council of Australia, p 4

<sup>263</sup> Mr Jeffrey Wegener, NSW Users and AIDS Association, Transcript of evidence, 15 October 2012, p 26

<sup>264</sup> Dr Monica Barratt, National Drug Research Institute, Transcript of evidence, 22 October 2012, p 26

<sup>265</sup> Dr Monica Barratt, National Drug Research Institute, Transcript of evidence, 22 October 2012, p 26

<sup>266</sup> Submission 18, Alcohol and other Drugs Council of Australia, p 4

<sup>267</sup> Detective Superintendent Nick Bingham, NSW Police Force, Transcript of evidence, 22 October 2012, pp 4, 7

LEGAL AFFAIRS COMMITTEE  
COMMITTEE'S COMMENTS AND RECOMMENDATIONS

- 5.86 Ms Penelope Musgrave of the NSW Department of Attorney General and Justice, when asked for her perspective regarding the New Zealand approach to regulation of synthetic drugs, made the following comments:

I can appreciate completely where New Zealand has come from ... It is an interesting proposal. I think it is one that is deserving of a lot of attention ... It breaks the nexus with the criminal action to the extent that it is only when you subsequently breach that there is criminal action and the onus would be on the prosecution to establish that the product that is the subject of the charge was the one that they should not have been selling in that way ... It is a new way of approaching it and, yes, I would say that it is one that is deserving of some attention.<sup>268</sup>

- 5.87 In response to a question regarding possible difficulties in adopting a New Zealand style approach to regulating synthetic drugs, Ms Musgrave stated that it would be desirable for there to be national consistency in legislation if such an approach was to be pursued. Ms Musgrave commented that legislation could be implemented by the Commonwealth or an agreement could be reached between all Australian jurisdictions regarding a uniform approach to the issue. Ms Musgrave indicated she believed that there is a willingness to look at a uniform approach towards the synthetic drugs issue across the Australian states and territories.<sup>269</sup>

- 5.88 Mr Thomas Spohr of the NSW Young Lawyers Criminal Law Committee argued that theoretically, the New Zealand system of regulating synthetic drugs has 'a lot to offer' if one accepts there are significant harms (associated with the use of such substances) and that this is an area that deserves regulation in advance of potential harms.<sup>270</sup>

- 5.89 The New Zealand style regulatory scheme was also supported by the National Cannabis Prevention and Information Centre, which submitted to the Committee that the public needs to be educated about the risk posed by synthetic drugs, and that proactive legislation should be enacted in order to place the onus of proof about the safety of synthetic psychoactive products on their manufacturers.<sup>271</sup>

## COMMITTEE COMMENT

- 5.90 The Committee notes that during the Inquiry significant support was expressed by participants for New Zealand's approach to regulating synthetic drugs. Participants to the Inquiry submitted that a regulatory regime such as in New Zealand would address many of the challenges that are posed by emerging synthetic drugs at a limited cost to government, and the potential benefits of the New Zealand system were discussed at length.

- 5.91 Possible benefits of the New Zealand approach that were brought to the Committee's attention include the onus of proof being reversed, thereby forcing

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<sup>268</sup> Ms Penelope Musgrave, NSW Department of Attorney General and Justice, Transcript of evidence, 22 October 2012, p 29

<sup>269</sup> Ms Penelope Musgrave, NSW Department of Attorney General and Justice, Transcript of evidence, 22 October 2012, p 30

<sup>270</sup> Mr Thomas Spohr, NSW Young Lawyers Criminal Law Committee, Transcript of evidence, 15 October 2012, p 10

<sup>271</sup> Submission 8, National Cannabis Prevention and Information Centre, p 8

manufacturers to prove that their products are safe before they can be sold, the possibility that regulated substances available under the New Zealand approach may be safer than illicit drugs and that a New Zealand approach may result in the increased collation of important data regarding synthetic drugs and information on their possible effects on users.

- 5.92 Due to the current preliminary stage of implementation for the New Zealand regulatory scheme it is important to consider that the outcomes from such a regulatory model have yet to be tested or evaluated. The Committee is of the view that any consideration of a similar regulatory scheme in an Australian jurisdiction should be treated with caution, given the concept's untested nature and the uncertainty regarding any results that such an approach may cause.
- 5.93 On balance the Committee is not recommending that a similar approach to New Zealand be taken in NSW. The Committee is concerned that a scheme where the government can approve a possibly harmful substance that is designed to mimic the effects of prohibited drugs for public consumption may lead to a perception that substance abuse is condoned by government. The Committee is mindful that the regulatory approach proposed in New Zealand could be perceived to be a form of decriminalisation of harmful synthetic drugs. The Committee also holds concerns regarding the possibility that the use of synthetic drugs designed to mimic prohibited drugs may lead individuals to use other illegal substances.
- 5.94 The Committee has also considered the possibility that the appeal of synthetic drugs to the public may be of a temporary nature, and as a result the expense and time needed to establish and implement a distinct regulatory scheme for synthetic drugs may not be warranted.
- 5.95 A further difficulty in relation to the NSW Government adopting a new approach to synthetic drugs by implementing a New Zealand style regulatory scheme is that such a move will result in distinct differences between NSW and other Australian jurisdictions in terms of whether certain substances are prohibited or not. In the Committee's view, the most prudent approach would be for Australian jurisdictions to monitor the implementation of the New Zealand scheme and to implement any reforms to Australian laws in a nationally consistent manner.
- 5.96 It is clear that the importation of synthetic drugs across Australian borders and the use of the internet to sell and purchase such substances is a significant issue. The Committee is of the view that such significant reform to drug regulation should be conducted on a national level, as has occurred in New Zealand. The involvement of, and consultation with, Commonwealth Government organisations including the Australian Federal Police, the Australian Quarantine and Inspection Service and the Australian Customs and Border Protection Service may be needed if in future the Australian Government and other state and territory governments collaborate to develop a uniform national response to synthetic drugs and their internet trade and international importation.
- 5.97 Although the Committee has reservations about aspects of the New Zealand approach, we are of the view that the implementation of the system should be monitored and evaluated by Australian governments. The Committee notes that the Intergovernmental Committee on Drugs has recently been tasked with

evaluating the reforms to government policy that are being implemented in New Zealand. The Committee supports the Intergovernmental Committee on Drugs' evaluation of the New Zealand regulatory scheme and supports the consideration of a national response to any results from the implementation of the New Zealand regulatory scheme. Should the New Zealand scheme prove to be an effective response to synthetic drugs, consideration could be given to implementing a similar, national response in Australia.

### RECOMMENDATION 13

**That the NSW Government continue its work on the Intergovernmental Committee on Drugs' response to synthetic drugs, including evaluating and monitoring the implementation of the New Zealand regulatory scheme.**

## Appendix One – List of Submissions

1	Coal Services Health
2	Mr Evert Rauwendaal
3	Office of the Director of Public Prosecutions
4	Ms Margaret Morgan
5	NSW Young Lawyers Criminal Law Committee
6	National Drug Research Institute
7	Corrective Services NSW
8	National Cannabis Prevention and Information Centre
9	ChemCentre
10	National Drug and Alcohol Research Centre
11	Australian Drug Law Reform Foundation
12	New South Wales Council for Civil Liberties
13	Name Suppressed
14	Ms Maureen Steele
15	NSW Users and AIDS Association Inc
16	Northern Territory Minister for Justice and Attorney General
17	NSW Government
18	Alcohol and other Drugs Council of Australia
19	Eros Association
20	NSW Minerals Council
20a	NSW Minerals Council
21	Western Australian Drug and Alcohol Office
22	Name Suppressed
23	Stargate International

## Appendix Two – List of Witnesses

15 October 2012, Parliament House

Witness	Position and Organisation
Mr Oliver Poppelwell	Manager, Sector and Services Policy <i>New Zealand Ministry of Health</i>
Mr Thomas Spohr	Chair
Ms Emma Bayley	Vice Chair
Mr David Porter	Member <i>NSW Young Lawyers Criminal Law Committee</i>
Ms Fiona Patten	Chief Executive Officer <i>Eros Association</i>
Mr Jeffrey Wegner	Policy and Advocacy Co-ordinator <i>NSW Users and AIDS Association Inc</i>
Mr Mark Ferry	Deputy Chief Operating Officer
Ms Melissa Scott	Adolescent and Family Counsellor
Mr Sam Wilson	Adolescent and Family Counsellor <i>Ted Noffs Foundation</i>
Mr Andrew McMahon	Director, People and Skills <i>NSW Minerals Council</i>
Ms Sue Gilroy	A/General Manager <i>Coal Services Health</i>
Dr Alex Wodak AM	President <i>Australian Drug Law Reform Foundation</i>

22 October 2012, Parliament House

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Witness	Position and Organisation
Detective Superintendent Nick Bingham	Commander, Drug Squad <i>NSW Police Force</i>
Mr David McGrath Mr Bruce Batty	Director, Mental Health and Drug and Alcohol Office A/Chief Pharmacist, Pharmaceutical Services, Legal and Regulatory Branch <i>NSW Health</i>
Ms Monica Barratt	Research Fellow <i>National Drug Research Institute, Curtin University</i>
Ms Penny Musgrave	Director, Criminal Law Review Division <i>NSW Department of Attorney General and Justice</i>
Mr Paul Dillon	Director <i>Drug and Alcohol Research and Training Australia</i>

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## Appendix Three – Visit of inspection

### 2-3 July 2012 - Visit to Hunter region

On Monday 2 and Tuesday 3 July 2012 the Committee on Legal Affairs travelled to the Hunter region as part of the Committee's inquiry into law reform issues concerning synthetic drugs. The purpose of the visit was to consult with stakeholders in the region and obtain further information in relation to the use and availability of synthetic drugs in the region.

All committee members (Mr Dominic Perrottet MP, Mr Bryan Doyle MP, Mr Stephen Bromhead MP, Mr Clayton Barr MP and Ms Sonia Hornery MP) and one staff member (Ms Emma Wood) attended the visit.

### Meetings

Over the course of two days the Committee met with a number of stakeholders at various venues.

#### Monday 2 July 2012

##### *Mining industry representatives*

*11.00 am – 12.30 pm*

The Committee met with the following people at Cessnock Performing Arts Centre:

- Andrew McMahon – Manager Health and Safety, Employment and Skills, NSW Minerals Council
- Mark O'Neill - General Manager, Coal Services Health
- Dan Nowak – Safety & Training Superintendent, Liddell, Xstrata Coal NSW
- Robin Hendry – Safety & Training Manager, Mangoola, Xstrata Coal NSW
- Tofieq Shahwali – Graduate, Xstrata Coal NSW
- Emma Spokes – Superintendent Health and Hygiene, BHPBilliton Mt Arthur Coal
- John Hamson – Superintendent Production – currently Acting Mine Manager, BHPBilliton Mt Arthur Coal

##### *Cessnock Police Station*

*2.00 pm – 3.00 pm*

The Committee met with the following people:

- Chief Inspector David Robinson
- Inspector Andrew McDonald
- Sergeant Darren Waters

*We Help Ourselves, Cessnock*  
3.15 pm – 5.30 pm

The Committee<sup>272</sup> met with:

- Mr Garth Popple, CEO, We Help Ourselves
- Staff and residents of We Help Ourselves

Tuesday 3 July 2012

*John Hunter Hospital*  
9.00 am – 10.45 am

The Committee met with the following people:

- Mr Michael Symonds, General Manager, John Hunter Hospital
- Dr Conrad Loten, Staff Specialist, John Hunter Hospital Emergency Department
- Ms Diana Williamson, Clinical Nurse Consultant, John Hunter Hospital Emergency Department
- Professor Ian Whyte, Director, Clinical Toxicology and Pharmacology, Calvary Mater Newcastle
- Ms Tracy Muscat, Nurse Unit Manager, Calvary Mater Newcastle
- Dr Tony Gill, Senior Staff Specialist, Drug and Alcohol Services
- Mr Rohan Holland, Research Officer, Drug and Alcohol Services
- Station Officer Ken Iles (Hamilton Station)
- Intensive Care Paramedic Adam Butt (Hamilton Station)

*Drug Court, Toronto*  
11.30 am – 1.00 pm

The Committee met with the following people:

- Judge Paul Cloran
- Staff from the ODPP, Legal Aid Commission and caseworkers that assist the Drug Court.

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<sup>272</sup> Ms Sonia Hornery sent her apologies for this meeting.

# Appendix Four – Extracts from Minutes

## Minutes of Proceedings of the Legal Affairs Committee (no. 4)

11:05am, Thursday, 16 February 2012  
Room 1136, Parliament House

### Members Present

Mr Perrottet (Chair), Mr Barr, Mr Bromhead, Mr Doyle

### Apologies

Ms Hornery

The Chair commenced the meeting at 11:05am.

## 1. Confirmation of Minutes and matters arising

Resolved on the motion of Mr Bromhead, seconded by Mr Barr:  
That the minutes of the meeting of 23 November 2011 be confirmed.

## 2. Potential inquiry into issues relating to synthetic drugs

### Briefing note

The Committee noted the briefing note circulated to members.

### Draft terms of reference

The Committee discussed the draft terms of reference.

Resolved, on the motion of Mr Bromhead, seconded by Mr Doyle:  
That the Legal Affairs Committee inquire into and report on law reform issues regarding the prohibition of synthetic drugs, which are designed and manufactured to have the same effect as prohibited drugs. The Committee will consider the adequacy of current NSW legislation and any other related matters.

### Indicative inquiry timeline

The Committee discussed the indicative inquiry timeline.

### Stakeholder list

A list of stakeholders was circulated to Committee members.

### Advertising

Resolved, on the motion of Mr Bromhead, seconded by Mr Doyle:

That the Committee advertise the call for submissions to the inquiry on the Committee website by 27 February 2012, and in the Sydney Morning Herald, and write to relevant stakeholders with a closing date of 5 April 2012.

### Media statements

The Committee discussed circulating a media release.

### **3. Date and time of next meeting**

The Committee discussed the date and time of the next meeting.

It was raised that the Committee may wish to meet with representatives from NSW Health and the Department of Attorney General and Justice to obtain background information on issues associated with the inquiry into synthetic drugs. Committee staff to organise appropriate briefings for the next meeting.

### **4. General business**

The committee adjourned at 11:27 am until 8 March 2012.

## **Minutes of Proceedings of the Legal Affairs Committee (no. 5)**

9:04am, Thursday, 8 March 2012  
Room 1136, Parliament House

### **Members Present**

Mr Perrottet (Chair), Mr Barr, Mr Bromhead, Ms Hornery

### **Apologies**

Mr Doyle

The Chair commenced the meeting at 9:04am.

### **1. Confirmation of Minutes and matters arising**

Resolved on the motion of Ms Hornery, seconded by Mr Bromhead:  
That the minutes of the meeting of 16 February 2012 be confirmed.

### **2. Inquiry into issues relating to synthetic drugs**

The Chair welcomed the following representatives from NSW Health and the Department of Attorney General and Justice who briefed the Committee on issues concerning the current inquiry into synthetic drugs:

- Mr Bruce Battye, Acting Chief Pharmacist, NSW Health
- Mr David McGrath, Director of Mental Health & Drug and Alcohol Programs, NSW Health
- Ms Penny Musgrave, Director, Criminal Law Review Division, Department of Attorney General and Justice
- Mr Jonathan Lee, Criminal Law Review Division, Department of Attorney General and Justice

The committee adjourned at 10:10 am until a date and time to be determined.

## **Minutes of Proceedings of the Legal Affairs Committee (no. 6)**

9:03am, Thursday, 10 May 2012  
Room 1136, Parliament House

## **Members Present**

Mr Perrottet (Chair), Mr Barr, Mr Bromhead, Mr Doyle, Ms Hornery

Staff in attendance: Carly Maxwell, Emma Wood, James Orchiston, Ben Foxe

## **1. Confirmation of Minutes and matters arising**

Resolved on the motion of Mr Bromhead, seconded by Mr Doyle:  
That the minutes of the deliberative meeting of 8 March 2012 be confirmed.

## **2. Inquiry into issues relating to synthetic drugs**

### **a. Correspondence received for information**

The Committee noted receipt of correspondence from the following organisations:

- Compensation Authorities Staff Division, dated 2 April 2012
- Therapeutic Goods Administration, dated 4 April 2012
- NSW Public Defenders, dated 27 April 2012

### **b. Submissions - consideration of and approval for publication**

Resolved, on the motion of Mr Bromhead, seconded by Ms Hornery:  
That the Committee authorise the publication of submissions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, and 20a.

Resolved, on the motion of Mr Bromhead, seconded by Mr Doyle:  
That the Committee authorise the partial publication, with name suppressed, of submission 13.

The Committee considered submission no 17 received from the NSW Government.

Resolved, on the motion of Mr Bromhead, seconded by Mr Doyle:  
That the Committee write to the Premier seeking further details about matters raised in submission no 17.

### **c. Proposed visit to the Hunter region**

The Committee discussed a proposal to visit the Hunter region to consult with stakeholders who could provide information relevant to the inquiry. The Committee agreed to consider possible stakeholders in the region and provide recommendations prior to the next meeting.

The Committee agreed that the visit should comprise two days.

Resolved, on the motion of Mr Bromhead, seconded by Ms Hornery:

That the Committee resolve to write to the Speaker to seek approval for the Committee to visit the Hunter region to consult with relevant stakeholders and obtain further information in relation to the use and availability of synthetic drugs in the region.

**d. Briefing note on other jurisdictions**

The Committee noted a briefing note composed by Committee staff regarding the approaches other jurisdictions are taking to the issue of synthetic drugs.

**e. Forward planning**

The Committee noted a briefing note composed by Committee staff outlining an indicative timeline for the inquiry into issues relating to synthetic drugs.

The committee adjourned at 9:17am until 9am, Thursday 14 June 2012.

**Minutes of Proceedings of the Legal Affairs Committee (no. 7)**

9:02am, Thursday, 14 June 2012  
Room 1136, Parliament House

**Members Present**

Mr Perrottet (Chair), Mr Bromhead, Mr Doyle, Ms Hornery

**Apologies**

Mr Barr

Staff in attendance: Carly Maxwell, Emma Wood, Ben Foxe

**1. Confirmation of Minutes and matters arising**

Resolved on the motion of Mr Bromhead, seconded by Ms Hornery:  
That the minutes of the deliberative meeting of 10 May 2012 be confirmed.

**2. Inquiry into issues relating to synthetic drugs**

**a. Correspondence received for information**

The Committee noted receipt of correspondence from the Hon Michael Mischin MLC, Parliamentary Secretary to the Attorney General, Western Australia, dated 8 May 2012.

**b. Submissions – consideration of and approval for publication**

Resolved, on the motion of Mr Bromhead, seconded by Ms Hornery:  
That the Committee authorise the publication of submission 21.

**c. Proposed visit to the Hunter region**

The Committee noted a draft itinerary for the Committee's visit to the Hunter region on Monday 2 and Tuesday 3 July 2012. Discussion ensued.

**3. Date and time of next meeting**

The Committee discussed the next meeting to be held following the winter recess.

The committee adjourned at 9:09am until a date and time to be determined.

## **Minutes of Proceedings of the Legal Affairs Committee (no. 8)**

9:06am, Thursday, 12 September 2012  
Room 1136, Parliament House

### **Members Present**

Mr Perrottet (Chair), Mr Doyle, Mr Barr, Mr Bromhead

### **Apologies**

Ms Hornery

Staff in attendance: Helen Minnican, Carly Maxwell, Emma Wood, Benjamin Foxe

### **1. Confirmation of Minutes and matters arising**

Resolved, on the motion of Mr Bromhead, seconded by Mr Doyle:

That the minutes of the deliberative meeting of 14 June 2012 be confirmed.

### **2. Correspondence received for information**

The Committee noted receipt of correspondence from Ms Margaret Mitchell, Member of the Scottish Parliament, dated 29 June 2012.

### **3. Inquiry into issues relating to synthetic drugs**

#### **a. Correspondence regarding the inquiry received for information**

The Committee noted receipt of correspondence forwarded from the office of Ms Hornery, dated 10 July 2012.

#### **b. Submissions – consideration of and approval for publication**

Resolved, on the motion of Mr Bromhead, seconded by Mr Doyle:

That the Committee authorise the partial publication, with name and identifying details suppressed, of submission 22.

#### **c. Proposed visit to the Hunter region**

The Committee noted a report, prepared by Committee staff, regarding the Committee's visit to the Hunter region in July 2012.

#### **d. Public Hearings**

Resolved, on the motion of Mr Bromhead, seconded by Mr Doyle, that the Committee conduct two public hearings on Monday 15 October and Monday 22 October with the potential to invite the following witnesses and/or others identified by Committee staff:

- Department of Premier and Cabinet

- Attorney General's Department
- Office of the Director of Public Prosecutions
- Drug Court of NSW
- NSW Police
- NSW Health
- Therapeutic Goods Administration
- Mr Paul Dillon, National Cannabis Prevention and Information Centre
- Dr Lucy Burns, National Drug and Alcohol Research Centre
- Ms Monica Barratt, National Drug Research Institute
- Ministry of Health, New Zealand
- Drug and Alcohol Office, Western Australia
- NSW Minerals Council
- We Help Ourselves
- NSW Users and AIDS Association Inc
- NSW Young Lawyers Criminal Law Committee
- Eros Association.

Resolved, on the motion of Mr Bromhead, seconded by Mr Doyle, that where necessary the Chair write to the Speaker seeking approval for funds to cover the cost of travel expenses for witnesses so as to enable them to attend the public hearings on 15 and 22 October 2012 to give evidence in relation to the Committee's inquiry.

#### **4. General Business**

Mr Barr brought the Australia 21 Alternatives to Prohibition report regarding approaches to drug policy to the Committee's attention. Discussion ensued.

Committee staff circulated an update regarding the development of legislation in New Zealand regarding synthetic drugs. Discussion ensued.

The committee adjourned at 9:17am until 15 October 2012.

### **Minutes of Proceedings of the Legal Affairs Committee (no. 9)**

2:01pm, Wednesday, 10 October 2012  
Room 1254, Parliament House

#### **Members Present**

Mr Perrottet (Chair), Mr Doyle, Mr Barr  
Mr Bromhead (via teleconference)

#### **Apologies**

Ms Hornery

Staff in attendance: Carly Maxwell, Emma Wood

#### **1. Confirmation of Minutes and matters arising**

Resolved, on the motion of Mr Bromhead, seconded by Mr Barr:

That the minutes of the deliberative meeting of 13 September 2012 be confirmed.

## **2. Inquiry into issues relating to synthetic drugs**

- Request from Eros Association for additional witness to appear at public hearing

The Chair indicated to the Committee that the Eros Association requested an additional witness appear before the Committee at a public hearing on Monday 15 October.

Discussion ensued.

Resolved on the motion of Mr Bromhead, seconded Mr Barr that the Committee only hear from Ms Fiona Patten at the public hearing on Monday 15 October.

The committee adjourned at 2:06 pm until 9:00 am 15 October 2012.

## **Minutes of Proceedings of the Legal Affairs Committee (no. 10)**

9.12am, Monday, 15 October 2012  
Waratah Room, Parliament House

### **Members Present**

Mr Perrottet (Chair), Mr Doyle, Mr Barr, Mr Bromhead

### **Apologies**

Ms Hornery

Staff in attendance: Carly Maxwell, Emma Wood, Dora Oravec, Benjamin Foxe

## **1. Deliberative meeting**

### **a. Confirmation of Minutes**

Resolved, on the motion of Mr Bromhead, seconded by Mr Barr, that the minutes of the deliberative meeting of 10 October 2012 be confirmed.

### **b. Media orders**

Resolved, on the motion of Mr Bromhead, seconded by Mr Barr, that the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 15 October 2012 in accordance with the NSW Legislative Assembly's guidelines for coverage of proceedings for parliamentary committees.

### **c. Publication orders**

Resolved, on the motion of Mr Bromhead, seconded by Mr Barr, that the corrected transcript of evidence given today be authorised for publication and uploaded on the Committee's website.

### **d. Correspondence**

The Committee noted correspondence received from the Premier, dated 11 October 2012.

## **2. Public hearing: Inquiry into issues relating to synthetic drugs (10.09am)**

Mr Poppelwell gave evidence via telephone, pursuant to Standing Order 295.

The press and the public were admitted. The Chair opened the public hearing and, after welcoming the witness, gave a short opening address.

Mr Oliver Poppelwell, Manager, Sector and Services Policy, New Zealand Ministry of Health, affirmed and examined. Mr Poppelwell made a brief opening statement.

The Chair commenced questioning the witness, followed by other members of the Committee. Evidence concluded, the Chair thanked the witness for his evidence.

Mr Thomas Spohr, Chair, NSW Young Lawyers Criminal Law Committee, Ms Emma Bayley, Vice Chair, NSW Young Lawyers Criminal Law Committee and Mr David Porter, Member, NSW Young Lawyers Criminal Law Committee, affirmed and examined. Mr Spohr made a brief opening statement.

The Chair commenced questioning the witnesses, followed by other members of the Committee.

Evidence concluded, the Chair thanked the witnesses for their attendance. The witnesses withdrew.

Ms Fiona Patten, Chief Executive Officer, Eros Association, affirmed and examined. Ms Patten made a brief opening statement.

The Chair commenced questioning the witness, followed by other members of the Committee.

Evidence concluded, the Chair thanked the witnesses for her attendance. The witness withdrew.

The Committee took an adjournment at 12:38pm and resumed the public hearing at 2:00pm.

Mr Jeffrey Wegner, Policy and Advocacy Co-ordinator, NSW Users and AIDS Association Inc, Mr Mark Ferry, Deputy Chief Operating Officer, Ted Noffs Foundation, Ms Melissa Stott, Adolescent and Family Counsellor, Ted Noffs Foundation and Mr Sam Wilson, Adolescent and Family Counsellor, Ted Noffs Foundation, affirmed and examined. Mr Wegner and Mr Ferry made brief opening statements.

The Chair commenced questioning the witnesses, followed by other members of the Committee.

Evidence concluded, the Chair thanked the witnesses for their attendance. The witnesses withdrew.

Mr Andrew McMahon, Director, People and Skills, NSW Minerals Council and Ms Sue Gilroy, A/General Manager, Coal Services Health, sworn and examined. Mr McMahon and Ms Gilroy made brief opening statements.

The Chair commenced questioning the witnesses, followed by other members of the Committee.

Evidence concluded, the Chair thanked the witnesses for their attendance. The witnesses withdrew.

Dr Alex Wodak AM, President, Australian Drug Law Reform Foundation, affirmed and examined. Dr Wodak made a brief opening statement.

The Chair commenced questioning the witness, followed by other members of the Committee.

Evidence concluded, the Chair thanked the witness for his attendance. The witness withdrew.

The public hearing concluded at 4:08pm.

The committee adjourned at 4:08 pm until 22 October 2012.

## **Minutes of Proceedings of the Legal Affairs Committee (no. 11)**

11.18am, Monday, 22 October 2012  
Waratah Room, Parliament House

### **Members Present**

Mr Perrottet (Chair), Mr Doyle, Mr Barr, Mr Bromhead, Ms Hornery

Staff in attendance: Carly Maxwell, Emma Wood, Dora Oravec, Benjamin Foxe

## **1. Deliberative meeting**

### **a. Confirmation of Minutes**

Resolved, on the motion of Mr Bromhead, seconded by Mr Barr, that the minutes of the deliberative meeting of 15 October 2012 be confirmed.

### **b. Media orders**

Resolved, on the motion of Mr Bromhead, seconded by Mr Barr, that the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 22 October 2012 in accordance with the NSW Legislative Assembly's guidelines for coverage of proceedings for parliamentary committees.

### **c. Publication orders**

Resolved, on the motion of Mr Bromhead, seconded by Mr Barr, that the corrected transcript of evidence given today be authorised for publication and uploaded on the Committee's website.

## **2. Public hearing: Inquiry into issues relating to synthetic drugs (11.31am)**

The press and the public were admitted. The Chair opened the public hearing and, after welcoming the witness, gave a short opening address.

Detective Superintendent Nick Bingham, Commander, Drug Squad, NSW Police Force, affirmed and examined. Detective Superintendent Bingham made a brief opening statement.

The Chair commenced questioning the witness, followed by other members of the Committee. Evidence concluded, the Chair thanked the witness for his evidence.

Mr David McGrath, Director, Mental Health and Drug and Alcohol Office, NSW Health, affirmed and examined. Mr Bruce Battye, Acting Chief Pharmacist, Pharmaceutical Services, Legal and Regulatory Branch, NSW Health, sworn and examined. Mr Battye made a brief opening statement.

The Chair commenced questioning the witnesses, followed by other members of the Committee.

Evidence concluded, the Chair thanked the witnesses for their attendance. The witnesses withdrew.

The Committee took an adjournment at 12:46pm and resumed the public hearing at 2:00pm.

Ms Monica Barratt, Research Fellow, National Drug Research Institute, affirmed and examined. Ms Barratt made a brief opening statement.

The Chair commenced questioning the witness, followed by other members of the Committee. Evidence concluded, the Chair thanked the witness for her attendance. The witness withdrew.

Ms Penny Musgrave, Director, Criminal Law Review Division, NSW Department of Attorney General and Justice, affirmed and examined.

The Chair commenced questioning the witness, followed by other members of the Committee.

Evidence concluded, the Chair thanked the witness for her attendance. The witness withdrew.

Mr Paul Dillon, Director, Drug and Alcohol Research and Training Australia and Communications Manager, National Cannabis Prevention and Information Centre, sworn and examined. Mr Dillon made a brief opening statement.

The Chair commenced questioning the witness, followed by other members of the Committee. Evidence concluded, the Chair thanked the witness for his attendance. The witness withdrew.

The public hearing concluded at 4:11pm.

The committee adjourned until a date and time to be determined.

## **Minutes of Proceedings of the Legal Affairs Committee (no. 12)**

9.04am, Thursday, 22 November 2012  
Room 1153, Parliament House

### **Members Present**

Mr Perrottet (Chair), Mr Doyle, Mr Barr, Mr Bromhead

### **Apologies**

Ms Hornery

Staff in attendance: Carly Maxwell, Dora Oravec, Benjamin Foxe

## **1. Confirmation of Minutes and matters arising**

Resolved on the motion of Mr Bromhead, seconded by Mr Barr, that the minutes of the deliberative meeting of 22 October 2012 be confirmed.

## **2. Inquiry into issues relating to synthetic drugs**

### **a. Submissions – consideration of and approval for publication**

Resolved, on the motion of Mr Bromhead, seconded by Mr Barr, that the Committee authorise the publication of submission 23.

### **b. Consideration and publication of questions taken on notice at public hearings**

Resolved, on the motion of Mr Bromhead, seconded by Mr Barr, that the answers to questions taken on notice by the NSW Young Lawyers Criminal Law Committee, the Eros Association, Coal Services Health and Dr Monica Barratt be authorised for publication and uploaded on the Committee's website.

### **c. Reform options**

The Committee noted a briefing note prepared by Committee staff regarding law reform options pertinent to the inquiry. Discussion ensued.

The Committee agreed to write to government representatives in the United Kingdom, the United States of America and New Zealand, in order to obtain further information regarding the practical implementation of temporary class drug orders in those jurisdictions and associated issues regarding enforcement, searches and restrictions on online supply of relevant substances.

The committee adjourned at 9:22am until a date and time to be determined.

## **Minutes of Proceedings of the Legal Affairs Committee (no. 13)**

9.00am, Thursday, 23 May 2013  
Room 1153, Parliament House

### **Members Present**

Mr Perrottet (Chair), Mr Barr, Mr Bromhead, Mr Doyle, Ms Hornery

Staff in attendance: Ms Rachel Simpson, Ms Dora Oravec, Mr Benjamin Foxe

## **1. Confirmation of minutes**

Resolved, on the motion of Mr Bromhead, that the minutes of the deliberative meeting of 22 November 2012 be confirmed.

2. \*\*\*

### 3. Inquiry into law reform issues regarding synthetic drugs

#### a. Answers to questions taken on notice

Resolved, on the motion of Mr Doyle, that the Committee authorise the publication of answers to questions taken on notice by the Department of Attorney General and Justice.

#### b. Correspondence

Resolved, on the motion of Mr Bromhead, that the committee authorise the publication of correspondence received from:

- NSW Commissioner for Fair Trading advising of product safety provisions of Australian Consumer Law
- New Zealand Ministry of Health regarding the implementation of temporary drug notices in New Zealand
- UK Home Office regarding the implementation of temporary drug controls in the UK
- NSW Attorney-Generals' Department regarding threshold quantities in the *Drug Misuse and Trafficking Act 1985*.

#### c. Consideration of Chair's draft report

The Chair's draft report, having been previously circulated, was taken as read.

The Chair tabled an amendment to chapter 5, that the final sentence of paragraph 5.8 be omitted and the following words inserted instead 'The Committee is of the view that removing the requirement to prove that a substance has 'psychotropic properties' will capture more substances whilst simplifying the test required in determining whether a substance is an analogue of a prohibited substance.'

The Chair's draft report, as amended, was considered by the Committee.

The Committee agreed to consider the recommendations of the draft report first, before considering the body of the report chapter by chapter.

Resolved, on the motion of Mr Bromhead, that Recommendation 1 be adopted.

Resolved, on the motion of Mr Bromhead, that Recommendation 2 be adopted.

Resolved, on the motion of Mr Bromhead, that Recommendations 3 and 4 be adopted.

Resolved, on the motion of Mr Barr, that Recommendation 5 be amended by omitting the words 'particularly to young people' following the word 'injury'.

Resolved, on the motion of Mr Bromhead, that Recommendation 5, as amended, be adopted.

Resolved, on the motion of Mr Bromhead, that Recommendations 6 and 7 be adopted.

Resolved, on the motion of Mr Bromhead, that Recommendations 8 and 9 be adopted.

Resolved, on the motion of Mr Doyle, that Recommendations 10 and 11 be adopted.

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Resolved, on the motion of Mr Barr, that Recommendation 12 be adopted.

Resolved, on the motion of Mr Bromhead, that Recommendation 13 be adopted.

Resolved, on the motion of Mr Bromhead, that:

- 1) The draft report, as amended, be the report of the Committee and that it be signed by the Chair and presented to the House.
- 2) The Chair and Committee staff be permitted to correct stylistic, typographical and grammatical errors.
- 3) Once tabled, the report be published on the Committee's website.

4. \*\*\*

## 5. General Business

Resolved, on the motion of Mr Bromhead, that the Committee's appreciation for the work of the Chair and of the Committee staff be noted.

The Committee adjourned at 9:43 pm until a date and time to be determined.