

INQUIRY INTO LAW REFORM ISSUES REGARDING SYNTHETIC DRUGS

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Inquiry into law reform issues regarding synthetic drugs
by the
NSW Legislative Assembly Legal Affairs Committee
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Thank you for the opportunity to provide comment to the *Inquiry into law reform issues regarding synthetic drugs* by the NSW Legislative Assembly Legal Affairs Committee. ADCA is the national peak body representing the interests of the Australian non-government sector for alcohol and other drugs. It works collaboratively with the government, non-government, business and community sectors to promote evidence-based, socially just approaches aimed at preventing or reducing the health, economic and social harm caused by alcohol and other drugs to individuals, families, communities and the nation. In providing this submission, ADCA has consulted with members and working groups of ADCA, the state and territory peaks of the Alcohol and Other Drugs (AOD) sector, and other organisations with an interest in alcohol and other drugs.

The development of synthetic drugs has been around for some timeⁱ but has become thrust into the public consciousness recently as the development and sale of synthetic cannabinoids and an interest in 'legal highs' has become established. Last year saw States and Territories in Australia move quickly to ban certain synthetic cannabis compounds in an effort to stem the supply and use of products such as Kronik, Voodoo and other synthetic cannabinoids as reports of increased usage and adverse reactions in some people brought these types of products to the attention of the public. Little was known about the composition of these products, their potency and the impact on individual health. Analysis of similar products overseas revealed evidence that some products did not contain the ingredients claimed and some in fact contained controlled substances that made the products illegalⁱⁱ.

The NSW Inquiry is quite timely in light of the recent report by Australia21, *The Prohibition of Illicit Drugs is killing and criminalising our children and we are all letting it happen*ⁱⁱⁱ, which seeks to reopen the debate about drug use, regulation and control in Australia. The Legal Affairs Committee is concerned about whether current drug laws adequately cover synthetic cannabinoid products but perhaps the question should be whether banning such products in the first place is the right response to the growing use of synthetic drugs.

How might we control synthetic drugs?

If the answer is to control the use of synthetic drugs by banning their use, the next question is how will this be achieved? By naming the individual synthetic compounds on a list of banned products, the manufacturers of these products can simply use a slightly different compound to circumvent the law. A new product can appear with a different name and different packaging and be sold legally for as long as it remains unknown to law enforcement authorities. According to the Newcastle Herald on

December 19 2011, *Ban on synthetic cannabis Kronik fails*, such a response by manufacturers has already been observed in NSW. Similar observations have been found overseas (Dargan et al, 2011).

The challenge is that the speed of innovation is high^{iv} and the ability of governments to respond is often slow. In addition, the internet allows products to be sold almost anonymously and across state borders. The process goes roughly along the following lines. 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.

Instead of banning specific drugs by name or their chemical structure, other approaches are to ban substances that have a similar effect to the original drug or, as examined by Queensland^v, substances for which the *intention* is to have a similar effect, or ban all substances that affect specific receptors^{vi}. These approaches are not without their problems also. For example, how easy is it to prove *intent*? Are there circumstances where a cannabis-like effect might be an unintended consequence? If you name the receptor eg cannabis receptors as in the case of synthetic cannabinoid products, do manufacturers simply look for alternative compounds such as synthetic opioids.

And how will people that want to use these drugs react to their banning? Will they stop looking for these so-called legal highs, or will they look for alternative legal drugs that produce a desired effect? Or will they turn to illegal drugs, either those that are derived synthetically or the natural product? If the data on illegal drug use is anything to go by, most recreational drug users will switch to an alternative drug when the availability of their drug of choice diminishes. Some states and territories in Australia have *decriminalised* the use of cannabis^{vii}, with similar moves made overseas, therefore any move to criminalise the use of synthetic cannabis would be at odds with this policy direction.

Regulation as an option

So what is the alternative? One way of looking at the situation is to approach it as a consumer protection issue rather than a drug control issue. In New Zealand, there are calls to shift the onus of proof to the producer and/or distributor to demonstrate that a substance is safe for human consumption^{viii}, in the same way that pharmaceutical companies must meet stringent safety requirements before a drug is allowed onto the market, and food companies are required to demonstrate that food additives are safe for human consumption and meet labelling requirements. Worth noting is that food companies are required to list all ingredients on their label, including any allergens. Synthetic cannabinoids could be approached in a similar manner, particularly in light of the origins of their development associated with the anti-inflammatory, anaesthetic, and pain relief properties (Cary 2010).

The benefits of such an approach are many. From a legal perspective, replacing the criminalisation of people who use drugs with a public health approach undermines the role of illegal drug producers and organised crime, and allows law enforcement and the criminal justice system to concentrate on higher order issues. It means that those who may have been sentenced for relatively minor issues are kept out of our criminal justice and corrections systems, and avoids their association with more serious offenders.

From a social perspective, such an approach lessens the criminal element associated with illegal products, reduces stigma and other consequences associated with a recorded conviction. It reduces the risk of individuals moving into more serious and problematic drug use as their career, life opportunities and relationships are damaged. Importantly, it reduces the stigma and damage to families that are affected by association.

In terms of public health, a fundamental benefit is that these products are able to be regulated. An added benefit is that health professionals will have additional products available for managing health conditions. The production, distribution and sale of the synthetic drugs can be controlled with respect to composition of the product and its potency, quality and product safety. Regulation can also occur around legal age of purchase, advertising and marketing, labelling and distribution and sale. Furthermore, these products will be subject to taxation, the revenue from which together with costs offset by a reduced level of harm, can be used to fund prevention and education campaigns, treatment services for those that need them and any ongoing illicit production of drugs. Instead of playing catch-up as new compounds are developed to circumvent the listing of banned products, research can be conducted to determine the safety and efficacy of the product before being allowed to enter the market.

For the individual, a consumer protection/public health approach creates the opportunity to gain a better understanding of the impact on individual health. It is thought that recreational drugs of one

sort or another have been around since man started to learn cultivation techniques. There will always be people wanting to use drugs, as much as some may be opposed to their use. A public health approach allows individuals to better understand the product they are considering and help them make more informed choices. It minimises the risk and harm associated with their drug use and provides the opportunity to develop better outcomes for individuals who choose to use them. This translates into better outcomes for society.

Australia's resolution to the Commission on Narcotic Drugs

Indeed, earlier this year, along with a number of other countries, Australia sponsored a draft resolution to the fifty-fifth session of the Commission on Narcotic Drugs under the United Nations Office on Drugs and Crime. Under Agenda item 4, *Promoting international cooperation in responding to the challenges posed by new psychoactive substances*, the resolution called on the international community to consider alternatives to heavy-handed prohibition. Specifically, part 6 of the draft resolution "encourages Member States to consider a wide variety of responses, such as temporary and emergency drug control measures in response to an imminent threat to public health, the use of consumer protection, medicines legislation and hazardous substances legislation, and, where appropriate, to consider criminal justice measures aimed at preventing the illicit manufacture of and trafficking in new psychoactive substances". Note that this resolution, sponsored by Australia, calls for the use of consumer protection, medicines legislation and hazardous substances legislation and only refers to criminal justice measures in the context of illicit manufacturing and trafficking.

Relative level of harm

It is worth noting in the context of this Inquiry that the current classification of drugs does not necessarily reflect the level of harm associated with their use. Recent research in the UK^{ix} involved an assessment of the level of harm caused by 20 drugs according to 16 criteria ranging from intrinsic harms to social and health care costs. Cannabis scored lower than both tobacco and alcohol with respect to overall harm (in fact, alcohol scored highest in this category) and harm to self and harm to others. A rethink of the way in which we think about alcohol and drugs seems warranted.

Open, balanced and evidenced based

ADCA urges the Inquiry to consider the research and be open to the debate about the best way to address the issue of drug use. The report of the Global Commission on Drug Policy^x released last year says that prohibition has failed, 'with devastating consequences for individuals and societies around the world. It is important that this debate occurs in an open and transparent manner. Whichever direction the Inquiry takes, a holistic and evidence-based approach to this important public health issue is essential that acknowledges the human rights of the individual and the many and varied environmental and social factors that may lead a person to problematic alcohol and drug use. At the

very least, as the Global Commission on Drug Policy recommends, let's remove the criminal penalties associated with low level personal drug use and concentrate efforts on organised crime and drug trafficking.

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ⁱ Cary P, 2010 *Spice, K2 and the problem of synthetic cannabinoids* National Drug Court Resource Centre, USA

ⁱⁱ Dargan P, Hudson S, Ramsey, J & Wood, D 2011 *The impact of changes in UK classification of the synthetic cannabinoid receptor agonists in 'Spice'* International Journal of Drug Policy 22 (2011) 274 – 277

ⁱⁱⁱ Douglas B & McDonald D, 2012 *The Prohibition of Illicit Drugs is killing and criminalising our children and we are all letting it happen* Report of the Australia21 Roundtable held January 2012

^{iv} Griffiths P, Sedefov R, Gallegos A, Lopez, D 2010 *How globalization and market innovation challenge how we think about and respond to drug use: 'Spice' a case study* Addiction, 105, 951–953

^v Dixon, Banning 2011 *Kronic and Other Synthetic Drugs: The Criminal and Other Legislation Amendment Bill 2011 (Qld)* Research Brief 2011/No. 26 Queensland Parliamentary Library

^{vi} Warharft, G 2011 *Not for human consumption? The banning of synthetic cannabinoids* Of Substance vol 9 no.3

^{vii} National Cannabis Prevention and Information Centre 2011 *Cannabis and the law*

<http://ncpic.org.au/workforce/alcohol-and-other-drug-workers/cannabis-information/factsheets/article/cannabis-and-the-law> NCPIIC Nov 2011

^{viii} Dunne P 2011 All synthetic cannabis products to be banned www.beehive.govt.nz (the official website of the government of New Zealand) downloaded from <http://www.beehive.govt.nz/release/all-synthetic-cannabis-products-be-banned> 16 April 2012

^k Nutt D, King L and Phillips L 2010 *Drug harms in the UK: a multicriteria decision analysis* The Lancet, Volume 376, Issue 9752, Pages 1558 - 1565, 6 November 2010

^x Global Commission on Drug Policy 2011, *War on Drugs: report of the Global Commission on Drug Policy*, Rio de Janeiro downloaded on 16 April 2012 from http://www.globalcommissionondrugs.org/wp-content/themes/gcdp_v1/pdf/Global_Commission_Report_English.pdf