

INQUIRY INTO LAW REFORM ISSUES REGARDING SYNTHETIC DRUGS

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Date Received: 5/04/2012

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Law reform issues regarding synthetic drugs (Inquiry)

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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.

What are the problems?

Governments and other authorities around the world face a problem of an ever increasing diversity of new synthetic drugs. In the first half of the 20th C, concerns about harms resulting from plant based drugs – opium and derivatives, coca and derivatives, cannabis and derivatives – gave rise to the 1925 Second Opium Commission meeting in Geneva held under the League of Nations. This meeting led to a series of international treaties which were negotiated and agreed. These treaties in turn were gathered together and became the 1961 Single Convention under the United Nations. Increasing concern about new synthetic drugs (such as amphetamine and barbiturates) led to the 1971 Convention on Psychotropic Substances. Thus concerns about synthetic (i.e. manufactured in factories) drugs are not new. Specifically, these concerns centre on adverse effects on the health and well being of people consuming synthetic drugs. Though the international and national response was perhaps not intended initially to rely so heavily on drug law enforcement, this is what eventuated. Politicians from President Nixon on found that fear campaigns based on a tough response to psychoactive drugs were very effective.

Over time, plant based drugs have become increasingly overshadowed by concerns about synthetic drugs. To some extent, plant based drugs could be controlled by aerial and satellite surveillance. The vagaries of the weather were an additional problem for persons cultivating plants from which drugs could be derived. Synthetic drugs overcame these problems for drug producers and traffickers. Legislators responded by banning the new synthetic drugs. But enterprising chemists identified new drugs that had not yet been prohibited and began producing, distributing and selling these. The development of the internet

increased the advantages for drug producers and sellers compared to drug law enforcement.

It has taken politicians and communities a long time to accept that this is a futile exercise. The Serenity Prayer of Alcoholics Anonymous is a useful reminder of the need for wisdom: 'God grant me the serenity to accept the things I cannot change; the courage to change the things I can; and the wisdom to know the difference'.

What we cannot change, except perhaps at the margins, is the desire of many people in our community to want to consume mood-altering drugs. Consumption of -mood altering drugs seems to be universal in virtually all cultures in all countries and at virtually all periods in history. What we are able to achieve is to nudge people to consume less dangerous drugs in smaller quantities and in less damaging ways. These are very worthwhile endeavours and help to substantially reduce the health, social and economic costs of mood-altering drugs. Unfortunately, effective approaches seem less popular than ineffective or even harmful approaches. There is little evidence of the wisdom needed to distinguish between what might be desirable but is not achievable and what is a less ambitious and still worthwhile objective but is achievable.

Government policy is usually adopted in response to synthetic drugs before there is adequate knowledge of the risks of the new synthetic drugs. Another problem is the inconsistency between similar jurisdictions for similar offences. This raises the potential issue of lack of proportionality. Inevitably scarce resources are squandered on a futile exercise. The only beneficiaries are the drug producers and traffickers who get free publicity for their new product and lucrative profits.

What causes these problems?

Drugs are, among other things, commodities that are bought and sold. Where there is a demand there will be, sooner or later, a supply. What drives the drugs market is the same factor that drives the market for cars, toothbrushes, houses or automobiles: profit. The annual turnover for illicit drugs was estimated less than a decade ago by UNODC to be \$322 US billion. Profits of an Afghanistan drug trafficking organisation were estimated by a UK government research centre to represent 26-58% of turnover. Drug traffickers increase the price of their goods to compensate for their perceived risk. The higher the risk, the higher the price and therefore the more lucrative the profit.

The Global Commission on Drug Policy released a statement on the ineffectiveness of drug policy reliant on drug law enforcement on 2 June 2011 in New York City. Those taking part in this press conference included a former UN Secretary General (Mr Kofi Annan), a former US Secretary of State (Mr George Shultz), a former Chairman of the US Federal Reserve (Mr Paul Volcker), the former Presidents of Brazil, Mexico, Colombia and Switzerland and Sir Richard Branson.

The more Draconian the policy response to drugs, the more dangerous the drugs available in the market. The converse is likely to also apply. That is, the Iron Law of

Prohibition is that very dangerous drugs drive less dangerous drugs out of the market.

What should our objectives be?

The aims of drug policy should be to reduce deaths, disease, crime and corruption associated with drug consumption or our responses to drugs. We should also aim to reduce the number of persons serving prison sentences for drug related offences and government expenditure.

What should be done to achieve these objectives?

It is pointless passing yet more legislation banning yet more drugs knowing that within a few days replacement drugs will be developed and be available for sale. Drugs have to be re-defined as primarily a health and social issue. Funding for health and social responses should be increased to the same level as that enjoyed by drug law enforcement. The benefits of conventional drug demand education are modest. But drugs problems seem to be considerably lower in less unequal countries and greater in countries with greater inequality.

What stops communities doing what should be done?

Politics.

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