

INQUIRY INTO LAW REFORM ISSUES REGARDING SYNTHETIC DRUGS

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Submission to the Legal Committee of the NSW Legislative Council Inquiry into law reform issues regarding synthetic drugs

CCL is committed to protecting and promoting civil liberties and human rights in Australia.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006). CCL was established in 1963 and is one of Australia's leading human rights and civil liberties organisations. Our aim is to secure the equal rights of everyone in Australia and oppose any abuse or excessive power by the State against its people.

We thank the Legal Committee for the opportunity to contribute to this inquiry.

Vast expenditures on criminalization and repressive measures directed at producers, traffickers and consumers of illegal drugs have clearly failed to effectively curtail supply or consumption. Apparent victories in eliminating one source or trafficking organization are negated almost instantly by the emergence of other sources and traffickers. Repressive efforts directed at consumers impede public health measures to reduce HIV/AIDS, overdose fatalities and other harmful consequences of drug use. Government expenditures on futile supply reduction strategies and incarceration displace more cost-effective and evidence-based investments in demand and harm reduction.¹

1. The war on drugs.

The war on drugs costs lives through overdoses, makes fortunes for criminals and encourages theft and burglary. It leads to the corruption of public officials and police. It fosters murders.

It diverts resources which could be used for other social purposes, including mitigating the health and social effects of drug use.

It makes criminals out of users, most of them young, many disadvantaged and some traumatised by child sex abuse. Those who are convicted are then ineligible to seek employment as public servants or police; and cannot travel to the United States. It crowds our prisons with young people who are thus enrolled in the university of crime.

The policy prevents the medical use of heroin and cannabis, with considerable cost to people at the end of their lives in particular. It prevents the use of psychoactive drugs in psychiatry.

¹ War on Drugs: Report of the Global Commission on Drug Policy, June 2011.



Instead, users die of overdoses, or are infected with HIV/AIDS, hepatitis and other diseases.

The policy discredits the law, which cannot stop the growing drug trade.

About 400 young Australians die each year from drug-related causes, as a result of our present laws. These deaths are preventable.²

The war on drugs has failed. It does not diminish drug manufacture or use.

A better policy is needed.

2. The introduction of new drugs.

New psychoactive drugs can be discovered by accident, as a side effect of research for medically useful compounds, or by a deliberate search for legal alternatives to banned drugs. They do not necessarily have 'the same effect as prohibited drugs'.³ Indeed, the law would be hard put to it to determine what effects are similar enough to those of a banned drug to count. Mephedrone[sic], for instance, is a synthetic stimulant closely related to amphetamines, but with hallucinogenic properties.⁴ It is manufactured to produce the combination of effects, not to be the same as any other drug.

The history of MDMA—ecstasy—is instructive also. It appears to have been invented by accident by Anton Kollisch, an employee of the pharmaceutical firm Merck, in the course of an attempt to create an alternative to hydrastinin, a drug clot medicine. It was investigated by Alexander Shulgin as number 109 of 179 drugs. After trying it out on himself, he encouraged its use by psychiatrists. Like LSD, it was used in medicine for some time before it was banned.

Banning drugs seriatim is doomed to failure, first because of the number that are available, and the readiness of experimenters to create new ones. One might ban a couple of dozen drugs today, and there would be replacements for them within a few months—maybe weeks.

² Bob Douglas and David McDonald, 'The Prohibition of Illicit Drugs is Killing and Criminalising our Children'; Report of a High Level Australia21 Roundtable.

³ The inquiry's terms of reference.

⁴ Dr Lucy Burns, National Drug and Alcohol Research Centre, University of New South Wales, <http://ndarc.med.unsw.edu.au/news/ecstasy-loses-its-shine-australia-and-worldwide-newer-synthetic-drugs-are-cause-concern>, accessed April 4 2012.



Banning is doomed, second, for the same reason the existing bans fail—demand is high, the banning massively inflates the prices, there are huge profits to be made, and some of that money can be used to protect the drug lords.

3. Comprehensibility.

Schedule 1 of the Drug Misuse and Trafficking Act 1985 (NSW), after listing more than 200 banned substances, includes the following:

Any substance that is an analogue of a drug prescribed in this Schedule, being 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,(viii) the conversion of a carboxyl or an ester group into an amide group.

This is comprehensible to a person with some 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 could not even learn what they are not permitted to buy, possess or sell without lengthy instruction.

Such laws are inherently undesirable—they are similar in some respects to “laws” that are kept secret from those who may be punished for not acting in accordance with them. They are unreasonable.

As more chemicals are found to have psychoactive properties, the approach exemplified in this schedule can only make things worse.

4. What is to be done?

Recognising the failure of prohibition, the CCL maintains that there should be a comprehensive review to identify which laws impact adversely on public health and require amendment, and should



explore and seek to implement workable alternatives to current policies. The Legal Committee is urged to recommend such a review.

Harm reduction should be the standard against which we measure the success or failure of drug laws and proposals for change.

Drug addiction and the use of dangerous drugs should be addressed as a health issue, not as a legal one.

We should look to regulate the sale and use of drugs which are now banned, as we regulate the sale and use of tobacco and alcohol.

Prison should not be a sentencing option for use or possession. The offences of the use of an illicit drug and the possession of a small quantity for personal use should be abolished.

The experience of other countries, especially Portugal, in which an approach other than banning the manufacture, sale, possession and use of drugs is used, should be carefully studied. Policies on drugs should be based on research evidence.

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This submission has been discussed by email with the members of the CCL Civil and Indigenous Rights, Police, Security and Antiterrorism Powers and Criminal Justice Subcommittee, the Committee and the Executive.