REPORT OF PROCEEDINGS BEFORE

LEGAL AFFAIRS COMMITTEE

INQUIRY INTO LAW REFORM ISSUES REGARDING SYNTHETIC DRUGS

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At Sydney on Monday 15 October 2012

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The Committee met at 10.15 a.m.

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PRESENT

Mr D. F. Perrottet (Chair)

Mr C. G. Barr
Mr S. B. Bromhead
Mr B. M. Doyle (Deputy Chair)

CHAIR: Good morning and thank you for attending the public hearing of the Legal Affairs Committee on law reform issues regarding synthetic drugs. I would like to introduce the members of the Committee—Steve Bromhead, the member for Myall Lakes, Clayton Barr, the member for Cessnock and Bryan Doyle, the member for Campbelltown. I am the Chair of the Committee. My name is Dominic Perrottet, and I am the member for Castle Hill. Today the Committee is hearing from a representative from the New Zealand Ministry of Health by telephone and a number of other stakeholders, including New South Wales Young Lawyers, the Eros Association, drug rehabilitation groups, representatives from the mining industry and Dr Alex Wodak from the Australian Drug Law Reform Foundation. I now declare the hearing open. In opening the hearing I remind everyone to switch off their mobile phones because they interfere with the Hansard recording equipment.

OLIVER CHARLES POPPELWELL, Manager, Sector and Services Policy, New Zealand Ministry of Health, before the Committee via teleconference, affirmed and examined:

CHAIR: I welcome our first witness, Mr Oliver Charles Poppelwell from the New Zealand Ministry of Health, who is speaking to us via telephone. Thank you for appearing before the Legal Affairs Committee today to give evidence. Mr Poppelwell, the hearing is being transcribed and if the Hansard reporter has any difficulty hearing certain things we may have to ask you to repeat what you have said so the transcript is accurate. Before we proceed do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Mr POPPELWELL: No, that is all perfectly clear, thank you.

CHAIR: In what capacity are you appearing before the Committee today?

Mr POPPELWELL: I am appearing on behalf of the Associate Minister of Health.

CHAIR: Would you like to make an opening statement before the commencement of questions by members of the Committee?

Mr POPPELWELL: Certainly. I will keep it fairly brief. Essentially, New Zealand has the same problem with synthetic drugs and other emerging substances that we see all around the world. In particular, last year we had a very widely available cannabis mimicking substance branded as Kronic, which was available from dairies and all that sort of thing, so it is extremely widely available, very visible and there was a great deal of public concern about it, particularly after we found that some of it had been, we think, contaminated accidentally with phenazepam, which is a benzodiazepine and a controlled drug and a drug that should not under any circumstances be mixed with alcohol. That was an enormous safety concern, so letting it carry on was untenable.

We discussed in some detail with our Minister a potential reaction to this. Our reaction was based on the two principles that people need to have a reasonable chance to know what the law is, what is and what is not forbidden, and that the substances and activities should only be prohibited on the grounds of safety, be that safety of the individual or public safety. What we have done is, as an interim solution, we have established legislation allowing what was called temporary class drug notices and what these allow the Minister of Health to do is declare that he has reason to believe that such and such a substance poses a risk to public health and he can by notice in our gazette prohibit those substances as though they were class C drugs.

Now we use a different classification system to you, I think. We have A, B, C. So A is the most risk, B medium and C lower, so cannabis is a class C drug. For example, benzodiazepine is a class B. Temporarily classified drugs have the same penalties as for class C drugs, so there is a maximum sentence of eight years imprisonment for manufacturing or supplying, except that we have not made personal possession and use for these things an offence.

The Minister can initially classify something for one year and that can then be renewed once. So the first two notices have been renewed just recently. This is an interim step while we develop new legislation, which will have the effect of prohibiting the sale of all psychoactive substances unless they have been proved by a regulator, which the legislation will set up.

Mr STEPHEN BROMHEAD: Mr Poppelwell, this is being recorded via teleconferencing so will you speak clearly and slowly?

Mr POPPELWELL: The new legislation will prohibit the sale of psychoactive substances unless they have been approved by a regulator, which we will set up. 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. The regime will not cover psychoactive products that are already regulated under any other enactments, such as alcohol and caffeine. We expect the new regulator to be in place by August next year, which is when the first batch of temporary notices will irrevocably expire. That is the main elements of the

regime. I am happy to go into more detail about any of that or answer any other questions the Committee may have.

CHAIR: In the testing regime, the figure I have seen suggests that the cost of such testing could be up to $2 million for manufacturers. Is that accurate? What is the time period? In New South Wales our testings is approximately six months. What would you envisage the time will be for testing to be taken by the Government?

Mr POPPELWELL: The Government will not be undertaking the testing; the testing is to be done by the sponsors of the new products. So the regulator will have to produce a list of recognised laboratories and testing facilities, but the idea is that the product sponsors/manufacturers do that testing at approved facilities and inform the regulator of the results. We would expect testing to take perhaps a year. It involves preclinical trials, so various laboratory batch tests, perhaps animal testing and then, once those safety tests have been passed, there will be trials on human volunteers. The cost of $1 million to $2 million is an estimate that we have been given by toxicologists we have talked to and by industry representatives as well, they have estimated that. The industry representatives have told us that they in no way see that as a barrier.

Mr CLAYTON BARR: My name is Clayton Barr and I am the member for Cessnock. As to testing, the $1 million to $2 million is testing for initial set up and the potential for sale. I wonder about the long-term effects of some of these products and how the Government will capture full fee, given that some of the effects may not be felt or seen for 5, 10 or 15 years—for example, think of how long it took us to prove the dangers of tobacco. Will the Government be out-of-pocket trying to track that down in 5 or 10 years time after initially approving it for sale?

Mr POPPELWELL: Part of the regulatory scheme involves monitoring of adverse effects by the National Poisons Centre at Otago University. So there is provision for longer term effects to be monitored that way. The point about tobacco is well taken. One of the things that the regulator would have to consider very carefully is whether any product that was smoked would be approved because we know, regardless of anything else about the substance, that smoking substances is inherently a health hazard. We think there is provision there for the potential longer term effects to be caught and the regulator will have the power to recall any product from the market if there is reason to suspect a safety issue.

Mr CLAYTON BARR: Who will pay for that ongoing analysis because you are going to charge the producer up front?

Mr POPPELWELL: Yes.

Mr CLAYTON BARR: Is that then going to be an oncost for the Government after initial approval?

Mr POPPELWELL: The safety monitoring is built into the cost estimates for the regulator and will be fully recovered by fees from the industry, and the industry, of course, pays for any recall itself as with medicines.

Mr CLAYTON BARR: If we could just follow the money trail for a second. I am not sure about tobacco sales in New Zealand but in Australia tobacco sales have a significant tax attached to them?

Mr POPPELWELL: Also the case here.

Mr CLAYTON BARR: Do you think these products will have a significant tax attached at the point of retail?

Mr POPPELWELL: Not initially. We have looked at that. The legislation will have provision for sales taxes to be put on but the thinking on that was that the primary purpose of the sales tax is to affect the price upwards. At the moment we do not have enough information about likely prices to make a judgement. What we have said is that we will have the provision to put on excise taxes and perhaps to set a minimum price for these things but that will be held in reserve until we have more information about the way the market will behave. The price will be a bit of a balancing act. On the one hand we do not want these things to be so cheap that that then creates, for want of a better word, an overconsumption problem but, on the other hand, we expect people will be comparing the cost of these substances with illegal, untested and more harmful drugs. We do not want to create

an incentive for people to move into the illegal market instead. So there will be provision for price controls but they will not be used initially.

CHAIR: What is the safety threshold for the testing you will be looking at in terms of the effects of these products?

Mr POPPELWELL: The proposed threshold is something that the toxicologists call a NOAEL, which stands for no observed adverse effect level. Obviously this will come into recommended dose as well but the idea is that any product that is approved for sale under this regime will need to have gone through testing and volunteers will need to have shown no adverse effects to the substance. It is the basic safety threshold, and that is once it has passed the other thresholds of acute toxicity and genotoxicity and that sort of thing.

Mr BRYAN DOYLE: My name is Bryan Doyle and I am the member for Campbelltown. You mentioned "dairies". We have a different understanding of that word in Australia. Will you outline to the Committee what a dairy is in New Zealand?

Mr POPPELWELL: You perhaps call them convenience stores or small shops. They might be known as corner shops as well; a fairly general but limited range of goods.

Mr BRYAN DOYLE: I think we call them milk bars here.

Mr POPPELWELL: Possibly milk bars but the sort of shop where you could go to buy the newspaper, perhaps a loaf of bread; they would have a small range of grocery goods as well.

Mr BRYAN DOYLE: You talked about a definition. How are you framing your definition? Is it to the intended effect of the drug?

Mr POPPELWELL: We have not got the precise definition that will be in the law at the moment but the intent is substances primarily presented, primarily manufactured, that sort of wording for a psychoactive effect. One thing we are quite aware of is that there are particular substances, so the likes of guarana juice or something like that, which do have a psychoactive effect by a strict definition but do not fall within what we want to capture with this legislation that is: not a recreational drug. We are looking at the moment at something like primarily manufactured or sold for a psychoactive effect. The other possibility which then arises is the old bath salts or plant food or whatever labelling. So to get around that the regulator will have a declaration power to say that a specified substance is covered by this regime rather than any other.

Mr BRYAN DOYLE: You talk about the industry. Is it pharmaceutical based or is it rogue chemists? What is the nature of the industry in New Zealand?

Mr POPPELWELL: It is a bit hard to say precisely because they do not like sharing information with us terribly much, but there seem to be about four reasonably sized firms who just deal in these things. So they are not really industrialised, if I can use that expression; they source the active ingredient for the product mostly from China and eastern Europe and then they will combine that with the dried plant matter for these marketable substances or with various tableting agents to form pills. So it is a relatively unsophisticated industry at this point, as far as we can tell, but quite profitable.

Mr DOMINIC PERROTTET: You raised earlier in your opening remarks the cost of the testing and the industry seeing that that would not be a problem to their continuing to manufacture these products. Is that consistent across all four of those firms?

Mr POPPELWELL: Yes. We have discussed reasonably extensively with the industry representatives what we are proposing to do and have had several meetings with representatives of all, we think, the big plants and some of the smaller ones, and they have been very clear that a cost of that magnitude is not going to be a dissuading factor for them, which I think says something about the profitability of these products.

Mr STEPHEN BROMHEAD: Two questions in one: How prevalent are synthetic drugs in New Zealand and have you guys done any studies on the health impacts of the synthetic drugs?

Mr POPPELWELL: I can answer them very, very quickly and then a little more extensively. We do not know what the prevalence is and we have not done any studies on the health effects, with a couple of

clarifications. We have had estimates ranging from between 5 and 10 per cent prevalence. These are based on the known prevalence of BZP use from some years ago before that was prohibited under our Misuse of Drugs Act. We think it is likely to be around that range but we cannot say for sure.

We have not done any detailed studies on the health effects of these products. That is partly because we are intending to control them, so our resources are best spent on preparing the controls, but also they change so rapidly, particularly given our temporary notices, so someone might have a product on the market for a month before we work out what is in it and then prohibit it. We have some data from our National Poisons Centre but that is about the best we have. We expect we will have some more useful information on the safety of some of these things following the introduction of the new regime.

Mr CLAYTON BARR: In terms of testing and in terms of effect, if the industry is putting a product forward and suggesting it is going to be safe for sale, will there also be a requirement on them to come up with a method of testing that could be used at, say, a job site? Obviously, there are lots of job sites where people are drug tested on their way into the job site just to make sure they are safe for work on that particular day. Will the industry be forced to come up with this so that we can potentially release the product and have the ability to test for the product at the same time?

Mr POPPELWELL: That is certainly something that we are considering as part of the development. We have had approaches in particular from our forestry industry along the same lines. So it really comes down to how easy that is going to be to do. But the positive word on that, I think, is that once this regime comes into place we expect there to be a far more limited number of products, at least initially, so the testing will be much easier for the agencies to do that. We are certainly quite keen on people having the ability to test for these things, which would be an even bigger concern for you with mining and enormously heavy machinery and things.

Mr CLAYTON BARR: School teachers and police officers are always the test for me in my head. I kind of think would I want a school teacher or a police officer to be under the effect of these legal drugs and doing what they are doing or do I want to be able to test for that?

Mr POPPELWELL: We definitely want people to be able to test for it. The precise mechanism of doing that we have yet to work out.

Mr DOMINIC PERROTTET: The temporary class drug notices which you referred to, can you explain a bit about how effective you found those—you touched on the fact that these products may only be on the market for a short period time—and the advantages you see of your new system and potentially some of the disadvantages in pursuing the regulated approach that you are taking?

Mr POPPELWELL: With the temporary class drug notices, this was definitely a very quick interim measure to get some sort of control while we developed new legislation. It is very difficult at this point to make a judgement on how effective it has been. We have classified, I think we are up to 31 substances now, but we are dealing with a range of substances. If we just look at the cannabis mimics, we know of around 2,000 individual 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. However, since the temporary class drug notice regime was introduced there has been a sharp decline in the availability of these products from what we would call areas of new milk bars, I think we agreed, and there has been a sharp reduction in the number of calls to our National Poisons Centre about them.

In terms of a permanent solution, it certainly is not and was never really intended to be. In terms of going some way to reducing the availability of these substances and their observed harm, that has gone some way towards doing that. But 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—the phrase the Minister has used—we are not playing catch-up all the time. Anything that goes through and is on the market has at least passed through some fairly stringent safety testing, which is not, of course, to say that these products will be safe in an absolute sense, and we are certainly not going to allow people to say that the products will be safe.

Mr DOMINIC PERROTTET: Just on that point: Say I am a manufacturer, I pay my $10 million and my product is approved, what is the Government's view in terms of the concern of the message that that may

send to young people in respect of taking drugs, whether they are in this form or in the form of a prohibited substance?

Mr POPPELWELL: There certainly would be a concern if people got the impression that we were talking, if I can be slightly flippant, government-approved party drugs. So there will be some fairly clear messaging about safety and the risks of taking any substance on the label and we will not be allowing manufacturers to be making claims of safety; they will be able to say that it has passed the testing. The phrase we are using was that of low risk of harm. Keeping them out of the sort of shops where younger people will be exposed to them, we think, will make some difference, though of course you cannot hide anything like this. The other thing we are investigating is the social marketing messages and whether this is included in the program of our health promotion agency. So it is a bit hard to say.

One of the things that you get with anything like this, and certainly some of the messages that we have got from people in letters is that the phrase people have said, "Well, if this stuff was harmful surely the Government would ban it or the Government wouldn't allow it to be sold." So there is that element to it which we intend to combat by retail restrictions and age restrictions and warning messages and so forth. But that really gets into a political question which I am not qualified to answer.

CHAIR: Would the view be that these products are potentially harmful but the difficulty of, I guess, restricting their use is overridden by the fact that they are able to get around, they are constantly changing and government policies have proven to be ineffective in banning these substances, so in a way this is the only solution to ensuring that these products remain safe?

Mr POPPELWELL: That is certainly our view, except we would not say they remain safe but sort of low risk and that products where we can demonstrate a high risk of harm are not available would be the big thing. To put it briefly, the position we are taking is that we know people want to take substances like this and what we are trying to do is reduce the risk of that behaviour. Our base position is still that in an ideal world no-one would be taking any psycho-active substance but we know that this is not an ideal world and people want to do that so the best thing we can do to protect the health of the public is to make that behaviour as low risk as we can. But I think our position would be that there is no perfect solution but we think this is the best one available, given what we know about what people want to do and the range of substances available.

Mr BRYAN DOYLE: Has addiction been a problem with synthetic drugs in New Zealand?

Mr POPPELWELL: We have anecdotal accounts of addictive like effects. We have got some accounts of quite severe withdrawal symptoms from some things. But the problem with measuring addiction with these things in particular is that we cannot make a solid judgement until people go and talk to addiction treatment services and the advice I have from the addiction treatment services is that very few people turn up to them with one addiction. It is generally multiple substances that they do. So we have no solid evidence that there is a specific addiction problem with these substances. We have some anecdotal accounts; we do not have a large increase in the number of people seeking addiction treatment.

Mr BRYAN DOYLE: From your view is there a criminal element involved in the manufacture of supply of these mimic drugs?

Mr POPPELWELL: I do not know. Certainly there are a lot of similarities between the legal and illegal markets—personal garage industries, soft-pressed pills, that sort of thing—so it is certainly possible but I do not know for sure.

Mr BRYAN DOYLE: You have mentioned Kronic and mimic cannabis. Are there any other mimic drugs like opiates that you have come into contact with in New Zealand as well?

Mr POPPELWELL: There has been an enormous number of them. The problem with these specific—I mean, these things are general though our focus has been mostly on the smokeable cannabis mimics—is there are, if you like, generic brands like K2 and Spice. Puff, I think, is another one. We are talking about very small plastic packets of dried plant matter in a folding cardboard sleeve so it is very easy to create a new brand and so on. So lots of different brands, of which Kronic was the most prominent here. At the moment there seems to be quite a lot of stuff being sold branded K2 and we have some reports of adverse effects from that, so we are having that tested at the moment. Spice is another one. The branding is similar to the substances, there is a lot of

opportunities and it is very easy for them to change so our focus has been very much on the constituent substances rather than the brands and we have found about 30 of those.

Mr BRYAN DOYLE: Has there been any attempt to mimic nicotine or alcohol?

Mr POPPELWELL: No, not that I am aware of. There has been a big focus on things that mimic the effects of cannabis and there are pills and things as well. The big thing with pills attempting to mimic the effects of ecstasy is how they are sold and my advice from the police is that pills sold in the illicit market are generally sold as ecstasy but it is very rare for them to contain MDMA.

Mr STEPHEN BROMHEAD: Do you have synthetic amphetamines?

Mr POPPELWELL: The pills, yes, most of the things being sold have at times been called ecstasy and sold that way are amphetamine-like substances of a greater or lesser strength.

Mr STEPHEN BROMHEAD: Are you aware of any other jurisdictions that are thinking about or implementing similar regulations?

Mr POPPELWELL: We are certainly aware that we have had inquiries from an awful lot of jurisdictions around the world. New Zealand is the first to have done anything like the temporary notices, though the United Kingdom is about to pass legislation setting out a similar regime. We are not aware of any other jurisdiction that is along the track to putting in a similar regulatory regime to what we are proposing. Though we have had inquiries from all around the world about this so it does seem to be something that people are very interested in because, as I said at the start, everyone has the same problem with these substances that New Zealand did.

CHAIR: What about the costs to the Government of setting up the new regime?

Mr POPPELWELL: There are some costs—I will see if I can find them. I am looking for the specific figures which I am having trouble finding through the document, although they are in the documents that I sent through to you. But we anticipate it would cost perhaps a million dollars a year to run it and that will be recovered in full from the industry by fees for products, registration and also fees for auditing and sundry other stuff. So there will be an initial cost to the Government which will then be recovered, over time, from the industry.

CHAIR: Thank you very much for appearing before the Committee today by telephone. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions that the Committee resolves to send through?

Mr POPPELWELL: Yes, certainly.

CHAIR: I thank you for your attendance today via telephone and for your participation in the hearing.

(The witness withdrew)

(Short adjournment)

THOMAS CARSON SPOHR, Chair and Solicitor, New South Wales Young Lawyers Criminal Law Committee,

EMMA JANE BAYLEY, Vice-Chair and Solicitor, New South Wales Young Lawyers Criminal Law Committee, and

DAVID HUGH PORTER, Member and Solicitor, New South Wales Young Lawyers Criminal Law Committee, affirmed and examined:

CHAIR: I now welcome representatives from the New South Wales Young Lawyers Criminal Law Committee. Thank you for appearing before our Legal Affairs Committee today. Before we proceed, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Mr SPOHR: I certainly do not, for my part.

Mr PORTER: No.

Ms BAYLEY: No.

CHAIR: Would any of you like to make an opening statement in respect of the hearing today?

Mr SPOHR: Thank you, Mr Chair. Only to the extent of pointing to our recommendations, both in our submission at page three, where we have summarised our recommendations, and at page seven where we have set out a number of questions. Our primary position is that any regulation of synthetic drugs, such as synthetic cannabinoids or other synthetic drugs, ought to be on the basis of evidence that the regulation ought to be understandable and that it ought to do no more than regulate to the extent of the harm that is available on that evidence. But beyond those preliminary points, there is nothing else that I was proposing to say.

CHAIR: I will commence with some questions and other Committee members will ask you some questions as well. Over the course of the day we are hearing from a number of groups, such as the Eros Association, Alex Wodak, of whom you would be aware as well, and earlier this morning from a representative of the New Zealand Ministry of Health. You may be aware of some of the developments that have been occurring in New Zealand. Before we get to discuss other jurisdictions, would you like to briefly outline your understanding of how synthetic drugs are regulated in New South Wales?

Mr SPOHR: I will hand over to Emma in a moment, who is the primary drafter of the submission. When the question is asked how they are regulated in New South Wales, it cannot go without being mentioned that the rider to schedule 1 of the Drug Misuse and Trafficking Act, which we have extracted at page eight of our submission in the middle paragraph, is almost incomprehensible to me as a lawyer who regularly deals with prosecutions relating to drugs. I do not know any experienced criminal lawyer who understands what that means, and a couple of those are people who have tertiary education in chemistry and who still did not understand what that meant.

To that extent, it is hard to comment on this without saying that that is hideously complicated and it will require at least some input from chemists and/or pharmacologists who may be able to put more content into phrases such as psychotropic properties and the other chemical distinctions that are made. But otherwise I might throw over to Emma and David. Emma?

Ms BAYLEY: Just by way of a brief summary, our understanding of the regulation of synthetic cannabinoid products only is that since 2011 seven of those chemical compounds have been added to the schedule to the Drug Misuse and Trafficking Act and made illegal in that way. As Thomas said, we do not and cannot know whether other similar or dissimilar synthetic cannabinoid products are also illegal via that analogue provision.

Mr PORTER: On the regulation point, something that is apparent to us is the utility of any regulation depends on the ability to enforce, according to those regulations, and that is where the rider that Thomas was referring to really lacks the utility in terms of being able to effectively prosecute or enforce the Act, due to the real evidentiary questions about whether or not something would qualify as an analogue.

Mr SPOHR: So the understandability question in terms of regulation is not an insignificant one in this area for this reason: 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 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. The issue of complication is a significant one in terms of regulation here, as is the marketing information that accompanies it.

CHAIR: In your submission you stated—and it is referred to in a number of submissions we received—that the testing period for these products would be approximately six months. In New Zealand they have introduced on a temporary basis temporary class drug notices. What do you think the effectiveness of those is and do you think it is something we should consider here?

Ms BAYLEY: The six-month waiting period for the provision of an expert report in criminal proceedings is a problem for prosecutors and defence—also a problem for investigators. If you have law-enforcement officers in the field attending a location they are not able to test, to our understanding, whether a product contains a synthetic cannabinoid of the seven that are illegal or a synthetic cannabinoid that might fall within one of the analogue provisions, and they are not able to test the person who may have handled or touched that substance. That is our understanding, although we have found a case suggesting there is test in urine for one of the synthetic cannabinoid products that we are aware of. We are not aware of the testing being currently available.

In the other models in other jurisdictions in putting a temporary banning order, the question seems to be how would that differ from the current system? 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. The question would be whether the temporary class banning orders provide better for a significant increase in speed with which that could occur. 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. I will pass to Mr Spohr the possible benefits of the temporary class ban.

Mr SPOHR: 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. At a Federal level it is done by the National Measurement Institute, I think it is called—NMI. 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 it take six months at the moment it will take longer than that if there were more than one prosecution.

The United Kingdom model in relation to temporary class drugs provides a decent model but, as Ms Bayley points out, we have a different system in any event in that the placing of illegal drugs into the schedule of the Drug Misuse and Trafficking Act already occurs by way of regulation. So, it could happen in theory relatively quickly anyway at the moment, at least on our understanding. The comparison to other jurisdictions is also fraught with difficulties because one does not necessarily know, going back to that six-month delay, whether their prosecution and defence agencies as well as the underlying forensic science agencies are better resourced to be doing this in the first place.

The Director of Public Prosecutions submission points out that they were not able to identify any New South Wales—that is not to say they do not exist, it is just hard to identify them. The point I propose to make there is, in delays in temporary class drug orders and the speed with which all those sorts of things move in other jurisdictions, one has to be cautious about comparing apples with apples. That being said, as Ms Bayley points out, 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, but that does not necessarily mean they are better, because at the moment, in theory, Parliament could pass, or the Executive could pass, a regulation declaring a particular drug as being on the schedule, at least on our understanding.

Ms BAYLEY: And, conversely, 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.

Mr STEPHEN BROMHEAD: The present system is catch up, is it not? The drugs are out there, they get tested somewhere and then they go on the schedule. The New Zealand proposal is that we turn that around, that nothing can go on to the market unless it goes through the process. The manufacturers have to apply, they pay a fee, it then goes through the laboratory tests, including tests on humans, and at the end of that period if it passes it then can be sold and marketed. Anything that does not go through that is illegal?

Mr SPOHR: That is a question of regulating, marketing and sale rather than possession and use. In theory that system has a lot to offer if one accepts there are significant harms and this is an area that deserves regulation in advance of potential harms. It is also a system that is de facto legitimisation of the research process which may or may not be a positive thing. Young Lawyers is not commenting one way or the other on that. But if one wants to completely regulate the market in the way that has been described, that is really a question of marketing, research and development rather than possession, use and supply of prohibited drugs. It is a slightly separate question.

It is also not clear to me, if that is the model that is adopted, that it is not necessarily the case that a person might do research into a synthetic cannabinoid and be committing an offence by manufacturing an analogue of a prohibited drug and may therefore themselves be committing a serious offence. It would require wholesale remodelling to adopt that model, to allow things to go through human testing and that sort of process. That requires a wholesale remodelling of how certain drugs at least get onto the schedule, and they would have to be deemed to be legal until such time as they fail that process. Otherwise the process is moot, put it that way. If it is legal to produce it in order to put it through the process, then that obviously de facto legitimises it until such time as it gets to the end of the process.

Mr STEPHEN BROMHEAD: Unless we impose a temporary restriction order; that is, it is restricted, it cannot be sold, it is illegal and there are penalties for possession, sale, distribution, supply and manufacture other than by the companies that have applied to have something approved under the new regime and they must wait for approval before it can be sold. What do you think of that idea?

Mr SPOHR: It is a model that looks a lot more like tobacco regulation than prohibited drugs. A lot of resources would have to go into research. As I said, we are not necessarily here to comment about whether the drugs themselves should be regulated. I do not know the infrastructure around testing of similar products. It strikes me that it is probably similar to tobacco regulation and I assume that there is an infrastructure around the chemistry and regulation of that industry. I cannot necessarily comment on that.

Mr STEPHEN BROMHEAD: Do any of you have much contact in your practices with people involved with synthetic drugs?

Mr SPOHR: I have never seen a prosecution of a matter like that. In another capacity as a member of the Law Society Young Lawyers Criminal Law Committee I asked my colleagues about this and none of them had ever seen a similar prosecution, but that does not mean they do not happen. Emma Bayley has a case from Queensland, but I do not know whether David Porter has.

Mr PORTER: No. To the extent that my clients have substance abuse issues, they are extremely serious and very entrenched. I would like to raise a point that Thomas Spohr mentioned earlier about the temporary order proposed and a research process relating to a synthetic cannabinoid product. We would do well to emphasise that there is still the distinct issue of personal possession and use and not necessarily arising from domestic manufacturer but small scale importation of substances that are marketed as legal overseas. There is still this vexing issue of a lack of intent to commit an offence. It is an issue we deal with throughout the criminal

law. However, it needs to be considered from that perspective as well. The regulation of any domestic manufacture is a separate issue from how individuals will be dealt with and how they may come into possession of these products, which can be relatively innocuous.

Ms BAYLEY: We are talking about potential benefits that we see as criminal lawyers between the United Kingdom system of temporary class bans and the New South Wales system of addition of drugs by regulation. As criminal lawyers we cannot speak about other options of minimising the use of these substances, currently or in the future, such as placing obligations on manufacturers or suppliers or increased information for users, or even the development of better testing itself, which may provide some disincentive to use substances that are marketed as untestable. We are not saying that those options should not be explored. However, we can speak about how to make substances legal in a way that clear, easy to understand and proportionate to the harm caused, and why we can see some benefit in the United Kingdom system of temporary class bans without addressing the obligations on manufacturers. In New Zealand, if there is increased speed and evidence and increased clarity of that evidence so that people know why those drugs are added—

CHAIR: You raised clarity in the submission. Apart from temporary drug orders, are there any approaches used in different jurisdictions that you have seen that the Government should consider? Perhaps there could be legislative changes to prohibit these substances.

Ms BAYLEY: There are some changes that could arguably lead to less clarity. 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. To an extent I have not answered the question of how to make it clearer, but we can certainly comment on how it could be less clear.

Mr SPOHR: The answer to the question is that we have not seen any scheme that could be adopted wholesale in New South Wales. The reasons include the resourcing issues I referred to earlier. As Emma Bayley said, the regulation of this area is complicated by those issues around lack of clarity. The best we can do is to say that it should be clear and suggest that chemists might be able to give some evidence about how it could be a made clearer and more straightforward. I apprehend that the issue about banning them is bound up in that question. It is not enough to say that we want to regulate this in advance and we want a model unless we can also say how an individual will determine whether a drug is legal or illegal. At the moment they must go to the schedule and they will not know unless they are a chemist. It will be marketed in a particular way.

In answer to an earlier question, it may be that any regulation might require regulation of marketing as well. However, we are not aware of any model that could be adopted wholesale in New South Wales unless one is also willing to put a great deal of money and resources into the underlying chemistry and prosecution resources in terms of police, legal prosecutors, defence and others. There is no wholesale model that can be adopted. I hope that answers the question in some form.

Mr CLAYTON BARR: Mr Porter, you referred to a product being legal elsewhere. Were you talking about things marketed as bath salts or whatever in another country being purchased online and imported?

Mr PORTER: I was indicating that that is something which happens and which can be anticipated to happen. We can anticipate that people will have those apprehensions. When talking about synthetic cannabinoid products we are dealing with the indicia of the transaction. If people walk into a shop or go to a website there will be different factors at play in their mind in making the purchase from a legal perspective. I am simply saying that those different factors and different variations distinguish this from the approach we would take in relation to a drug that was manufactured, distributed and sold without any of that implication of legality.

I do not say that it would not fall under the scheme, but that it is an irrelevant factor in terms of how you implement a scheme and how to best frame the scheme to have a deterrent effect rather than an enforcement effect. There is not as much utility in the resources we are talking about and the very technical questions that would attach to prosecutions involving these products. If there is a way to frame the scheme to avoid

prosecutions and transactions in the first place, that has greater utility for everyone involved in the criminal justice system.

Mr SPOHR: There might be some suggestion that it may not be illegal to import at least some of them. We are not absolutely sure about that, but it looks like it may not be illegal to import them. Depending on the substance, it might be illegal to possess it once you are here. It might be illegal to sell it. I suppose the underlying point though is to realise that not all SCPs that appear in Australia or in New South Wales are manufactured in New South Wales or necessarily even in Australia. I am sorry, I cut you off.

Mr CLAYTON BARR: I was going to ask a slightly different question relating to legislation. I do not have a background in law. When Federal ban is imposed, is the current New South Wales legislation set up such that it is automatically adopted and enforceable in New South Wales, or is that not the case?

Mr SPOHR: Sort of. There is a schedule, the name of which Emma has written down somewhere and which I can never remember the name.

Ms BAYLEY: The Standard for the Uniform Scheduling of Medicines and Poisons.

Mr SPOHR: We normally refer to it as being the Poisons Standard and I think the legislation refers to it as the Poisons Standard. It is adopted in New South Wales by a regulation of pretty much the same name and it adopts the Commonwealth legislation with a couple of conditions and some amendments. As a general proposition, the Poisons Standard in New South Wales adopts the Federal legislation, but I do not think it is true to say that if it is in the Federal Poisons Standard that it is necessarily a prohibited drug in New South Wales. I think it follows that it is probably a prohibited poison. I am not absolutely sure on that and I can take it on notice if it assists. However, my understanding in terms of prohibited drugs as distinct from poisons and restricted substances is that they are not necessarily automatically picked up in New South Wales.

The first port of call for any criminal lawyer who wants to know whether or not a particular drug is illegal in New South Wales will be schedule 1 to the Drug Misuse and Trafficking Act. As far as I am aware, schedule 1 does not pick up any Federal provisions. It is fiendishly complicated to follow it all the way through, but I can take the question on notice and we can establish at least whether or not it is regulated as a poison. I think the answer is that it is probably regulated as a poison if it is regulated in that standard that Emma read out.

Mr CLAYTON BARR: If you would not mind taking it on notice because we have received 20-odd submissions and after reading through them I still am not clear on whether fairly recent Federal legislation is part of New South Wales legislation. Emma, as the main author you referred frequently in the submission to the concept of harm. You gave a great example of how the term "similar" can be interpreted in many different ways. Do you have any suggestion or idea about defining "harm"?

Ms BAYLEY: In a general sense, we use the word as a global term and just said harm generally. Obviously, it could encompass mental or physical harm to an individual. Obviously it could encompass short-term and long-term harm. It could also be useful to consider a specific harm that might be caused to particular individuals people, say, by way of previous history of mental illness or something that they need to do during the day or for their occupation that requires them to operate machinery. The other thing to consider with synthetic cannabinoid products is that because people—investigators, suppliers, takers—do not know what is in the substance they are taking, you would also want to consider the harm when more than one synthetic cannabinoid product is mixed with another one or with a different drug.

The reason why we have talked about harm is that we see that as a key focus of drug regulation. You are not regulating for the point of it; you are regulating a substance that poses a risk of harm to people in the community. The reason why we stress obtaining evidence on that point is that we know that there does not seem to be enough of it. There does not seem to be enough evidence about which particular synthetic cannabinoid products cause harm and what dosage causes harm or what strength or potency causes harm. To the extent that there should be some evidence of what harm is posed by a particular drug before it is regulated, we support that.

Mr SPOHR: For the United Kingdom temporary class drugs model, the Advisory Council on the Misuse of Drugs is required to produce full advice on a drug's harm and all available evidence. The council did a report into a drug known as methoxetamine and under the headings "Acute Harm" and "Chronic Harm" deals with all the different varieties of harm that are available. A lawyer's response to the question is "harm in all its

forms". I know that does not help very much, but limiting it would probably be difficult. If you try to define it, as Emma has pointed out, there are a thousand different ways and harms.

Ms BAYLEY: What is harder to define substantively is the risk of harm. If you have a substance that may cause, say, a psychotic episode in an individual with a history of psychotic illness and if they take a specific dosage for a specific period of time combined with another particular substance, that is a risk. The question of which risks are considered acceptable before you would consider regulating that substance for the entirety of the population for any or a lower dosage is something we cannot comment on.

Mr BRYAN DOYLE: Who do you think should bear the cost and expense of determining whether one of these potential substances is harmful or safe for the community?

Mr SPOHR: As a general proposition, the burden of proof in relation to criminal matters means that that expense almost by definition falls onto the prosecution, by which I mean in a global sense. I do not mean that that means it falls on a particular agency—the DPP. I just mean that it falls essentially on the State because if the State regulates something by making it illegal, the State has to prove beyond reasonable doubt that it meets the definition that it is described as having. If there is a dispute about it, unfortunately the State also bears the onus of proving that in a chemical or other sense. Unfortunately, I think the answer to that question is that the State has to bear that burden.

CHAIR: Do you have any information in respect to the costs involved in such testing?

Mr SPOHR: I do not, apart from a general observation that reports of this kind cost in the order of thousands of dollars, not hundreds of dollars, per report. Emma was talking earlier in another place about the cost of research of tests.

Ms BAYLEY: If you can see the costs divided into two stages, so that you are exploring other options for placing obligations on manufacturers and suppliers—on matters of licensing or some sort of regulating of these products before they get to the market—we are not aware of those costs and cannot comment on who should bear them. I suppose there is an in between stage when the Parliament is considering whether to add one of the substances to the regulation and what evidence it needs to be satisfied that that substance should be added to the regulation before it makes that regulation. The cost of that presumably would be borne by the State as well. The final stage that Mr Spohr was mentioning was that once you have a law that states that a particular list of substances are illegal it quite properly falls to the prosecution to prove that that person had that substance at that time, on that day, in that place and be able to prove that beyond reasonable doubt.

Mr BRYAN DOYLE: I have a hypothetical question for the young lawyers. If an entrepreneur approaches you and says, "I have this wonderful chemical substance which I have imported from overseas and I wish to market it in New South Wales but so far as I understand it, it mimics what is a prohibited drug", what would be your advice to that entrepreneur as to how to go about conducting his business legally?

Mr SPOHR: In the short term part of my advice would have to be that it would be very hard to be sure that whatever they are importing is legal. The next part will be that you will have to get advice from a chemist and, potentially, from a pharmacologist. I have divided that up. I do not absolutely understand the distinction between pharmacologists and chemists from their perspective, but from the point of view of the current analogue definition it says "psychotropic" which is about the physical effects on a human being. So they would probably need to get advice about whether it has psychotropic effects and whether it falls within one of those isomers or analogues that are set out in the definition. Once they have that advice they would need to establish that it is not regulated in its importation, which probably it is not if it does not fall within the schedule.

They would need to check that it is not illegal for possession, sale and use and to do that they would look currently at the New South Wales Drug Misuse and Trafficking Act. More importantly, they would need a chemist, in conjunction with a lawyer, to look at that definition and establish that it ticks essentially none of those boxes, if I can put it that way. Even if we accepted that all of that were true, as the hypothetical lawyer I do not know whether I would be confident that it would, therefore, be legal to sell the product. But I am afraid that is the way that entrepreneurship works. They bear a particular risk and that may be that that person would build it into his or her cost model. That is all business after that point. But that is the procedure that would need to be gone through. In relation to the advice to give to them, we would proceed with an extraordinary amount of caution. It is a very difficult area to know the answer to.

Mr PORTER: If I can add one thing to that it would be that aside from the question of whether what they are doing is legal, I would probably be advising them that someone will assume that it is illegal and that they will find, even if what they are doing is legal, their business will suffer a high level of scrutiny and they may even suffer enormous personal and financial setbacks. We have the separate question of reasonable suspicion and it goes back to the issue that Mr Spohr opened with: There is no way for an individual to know what is inside a given packet. That person probably will get attention from law enforcement agencies at some point even if what he or she is doing is legal.

Mr BRYAN DOYLE: Given that final point, how would you advise that honest and reasonable entrepreneur who wants to conduct an honest and legitimate business to address that risk?

Mr PORTER: I would refer to what Mr Spohr suggested. They are going to expect to outlay significant sums of money in order to obtain the sort of expert report and invest a lot in quality control and assurance.

Mr SPOHR: I pick up on the words "honest and reasonable" which are terms of art in criminal law. An honest and reasonable mistake of fact, in some contexts, might provide a defence. It would be quite possible for persons to believe honestly and with all their being that what they are holding is perfectly legal. The question about whether that belief is reasonable is much harder. In this context whether that belief is reasonable requires them to have an inordinate amount of evidence. It might be perfectly true to say, "I bought a pallet of this stuff online under the honest belief that it was not regulated in Australia" and some lovely person probably in Eastern Europe or Holland or where some of these products are slightly less regulated said, "It is fine in Australia" and I absolutely believed them. One could not say that that belief was reasonable until such time as they did all those tests. That will be a burden to them if they are worried about the risk in the long term.

CHAIR: If the Committee sends additional questions in writing, the replies will form part of your evidence and may be made public. Would you be able to provide a written reply to any further questions within 21 days?

Mr SPOHR: Absolutely.

(The witnesses withdrew)

(Short adjournment)

FIONA PATTEN, Chief Executive Officer, Eros Association, affirmed and examined:

CHAIR: Thank you for appearing before the Legal Affairs Committee to give evidence. Before we proceed, do you have any questions concerning the procedural information sent to you in relation to the witness and hearing process?

Ms PATTEN: No, thank you.

CHAIR: Do you wish to make an opening statement?

Ms PATTEN: Yes. Following the submission that we sent to you, we see that the introduction of the synthetic highs industry is a real game changer in the same way as the internet was a game changer for communications. Using traditional methods of prohibition will not be successful. Certainly we are seeing all the experts and the majority of the submissions you have received agreeing that prohibition is not the answer and that it has failed somewhat miserably over the past 40 years. We are seeing police officers, prosecutors and even the occasional politician recognising that. It goes as far back as the former Prime Minister John Gorton in the 1960s who pushed for legalisation. It has been a long path.

Our association represents hundreds of retailers who are currently selling these types of products. The sale of these products is worth in the hundreds of millions of dollars in Australia. In New South Wales there would probably be 200 to 300 outlets. I do not have a figure for the sales within just New South Wales. In our submission we support a strong regulatory model rather than a model of prohibition. We see the attempt by the Therapeutic Goods Administration [TGA] to expand the definition or create a catchall as problematic not only from a prosecution point of view but also from the point of view of more dangerous substitute substances from an opioid background going in rather than synthetic cannabinoids. Conversations we have heard support this.

We support age restrictions on the sale of the product, restrictions on where it can be sold, how it can be advertised, how it can be distributed and possibly how it can be manufactured. The Eros Association would support a system such as that recently announced by the New Zealand Government in its proposal to move into a form of testing with a reverse onus of proof placed on the manufacturer to prove that the product has passed certain levels of harm.

CHAIR: What types of products do you think fall within the term "synthetic drugs" and can you provide the Committee with a brief understanding of the range of synthetic drugs that are available in New South Wales as well as other jurisdictions?

Ms PATTEN: I cannot give you an exact number but in most of the major retailers you would probably see up to 20 to 30 different products. There would be the synthetic cannabinoid products which are acting as an alternative to cannabis. You would also see some products that are providing alternatives to 3,4-methylenedioxymethamphetamine [MDMA] or some of the ecstasy or amphetamine-like products. They are covering the whole range of different currently illicit drugs. There are different brands using different types of substances. I could not give you all the chemicals or substance names that have been used but there is a lot.

Mr STEPHEN BROMHEAD: From your experience how prevalent is the use of synthetic drugs in New South Wales?

Ms PATTEN: As I say, the industry is now worth hundreds of millions of dollars—so fairly prevalent. What we are seeing from the evidence is that most people who are attracted to these products and who are purchasing the products are not first-time drug users. They have used drugs in the past and they have used illicit drugs and they are choosing these products because they are more readily available, they are a legal alternative or they are using them for therapeutic effects. I do not think we are finding first-time drug users going in and buying these products. We are seeing that the age of the user or the age of the customer in the adult stores is possibly over 30. It is not the 18 to 25 age group, it is a slightly older age group that is attracted to finding a legal alternative to cannabis, for example.

Mr CLAYTON BARR: Is this an online customer base or a walk-in retail store?

Ms PATTEN: It is both.

Mr CLAYTON BARR: Is there any way to give a breakdown of sales?

Ms PATTEN: I would have to take that question on notice. There are 20-plus websites based in Australia supplying these types of products. What percentage of the market is held by the bricks and mortar tobacconists, adult stores and high head stores I do not know. I do not know the breakdown of whether we are selling more online than offline. I would suspect that the offline sales would still exceed the online sales. That is not taking into account people buying from overseas websites of course, which would be an unknown for us.

CHAIR: What are your thoughts on how these drugs are marketed as legal alternatives to prohibited drugs?

Ms PATTEN: One of our concerns is where they are marketed and whether minors have access to it. I think that should be a concern for us all. We would advocate that these products be restricted to age restricted premises, where the product could not be marketed to minors. As with all substances that have some level of harm advertising needs to be considered and regulated.

Mr CLAYTON BARR: In your submission you speak about the effects of cannabinoids. Your submission states: "Toxicological effects of the cannabinoids appear to be minor … Anxiety and panic attacks are the only side effects commonly reported …usually occurring in inexperienced users." Where does that come from—from what background, research or investigation into the health impacts and health treatments? On what basis do you write something like that?

Ms PATTEN: That would be involved with some of the work that Dr Monica Barratt—who will be giving evidence before the Committee next week—was undertaking. We also get a lot of feedback from customers about this. We have got customers coming directly back into stores saying, "That did nothing for me" or "That was stronger than I expected". It is that information that we are receiving direct from people purchasing the product. We are not seeing people coming in with incredibly dramatic stories to tell.

Mr CLAYTON BARR: One of the stopovers on our journey in this inquiry was to a drug rehabilitation centre. We asked experienced drug users about the effects, the different highs, lows or whatever. They spoke about anxiety, panic attacks and paranoia, long periods of sleeping while others spoke about long periods of being awake. When I read that statement in your submission I asked myself where it had come from.

Ms PATTEN: It comes from the consumers coming back to us and speaking about their experiences and from looking at different varieties. 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. But whether that, in looking at what has been proposed in New Zealand, would come out from the testing required for these products to come onto the market or to be scheduled in New Zealand, they would have to have dosages and that type of information. If it was put back into a regulatory model you would probably find a lot of that research would come out in the testing of the products.

Mr CLAYTON BARR: In a regulated process would you see that as a product carrying on its packaging potential exactly what is in that product?

Ms PATTEN: Yes.

CHAIR: Is there any understanding at your level that the contents of the products sold at the tobacconists or adult shops that you represent may differ even though the labelling may remain the same? As Mr Barr said, the Committee did a trip to the Hunter Valley where it visited a rehabilitation centre. I found—and this has also come through in some of the submissions—the varying effects these products can have very interesting. The impression I got was that in some instances a single individual who was using the same product was having a vastly different effect. What is your understanding of that?

Ms PATTEN: They certainly could. As the Therapeutic Goods Association and the New South Wales Government have prohibited substances, it does not necessarily mean that the product name will change but the substance that it contains may change. You might have, for example, Green High, which might have originally

contained a JWH substance and when the JWH substance was prohibited it was replaced with another substance but the name may not have changed.

CHAIR: Is that a concern? A number of the people that you represent could potentially be selling products but they are not across their effects in terms of the variance in harm of what would appear to be the same product?

Ms PATTEN: It is unregulated and it is uncontrolled, and I do not necessarily support that. Eros has worked in the area of censorship for so many years and we have been a supporter of regulation. We have been a supporter of a classification scheme that educates the consumer about what they are about to see. So we would see the same objectives as a desirable outcome, that there was more information so the consumer did know and so the retailer did know. At the moment sometimes all that retailers will know is that it does not contain any of the banned substances. That is what they will know. They will not necessarily know what it does contain. I do not think any of us, even doctors, can tell the effect because we have not done any research on these products yet.

Mr CLAYTON BARR: Would you agree if these things were to be available through regulation that some of the effects could be contrary to a work environment and that some people should not work—I think you alluded to this earlier—under the effects of some of these substances? If you agree with that, what do you understand of testing regimes and testing processes to detect the presence of these?

Ms PATTEN: I understand we are just reaching a point where we have got some testing procedures for some of the substances. Many people should not work under the effect of alcohol or under the effect of other prescription medications, even non-prescription pharmacy medications. We call them recreational drugs; we do not call them work enhancement drugs. I would see certainly those sorts of warnings. Once you regulate it and know what you have got in the product then it is far easier to develop workplace testing for that product. Interestingly, the NSW Mineral Council was suggesting if you prohibited these drugs it made it easier to fit into its regulatory and disciplinary procedures.

I found that interesting because of its disciplinary procedures for alcohol. Alcohol is a legal product and I would have thought if it was legal that it was even easier to regulate. All the evidence is showing in the United Kingdom and places where we have outlawed or prohibited substances that the usage has not gone down. I think we are seeing that in Australia as well, as we have outlawed certain substances we have not seen people say, "That's it. I am not going to purchase this product anymore." They just find the next product to purchase.

Mr CLAYTON BARR: Based on the NSW Minerals Council submission, it accepts that alcohol is a legal product but it does not accept that men and women should be turning up for work under the influence of alcohol?

Ms PATTEN: Absolutely.

Mr CLAYTON BARR: I put to you then the flipside of that conversation. If we do not have a test for something, which means someone can turn up for work under the influence and we are unable to test it, should that then almost by default make it a substance that we do not want people to have access to because we cannot test for it?

Ms PATTEN: I do not think so. Our testing is not 100 per cent across the board. There are other products we do not test for that may affect people's ability to work. Developing a safe place is not just on testing; it has to be done on a range of approaches to make a workplace safe. Testing is only one of the tools in doing that. Education, responsibility for your peers and instilling those sorts of practices are also very necessary in any workplace in reducing the dangers and harms of people being affected by drugs in the workplace. I do not think just because you cannot test for something would necessarily mean that it should be prohibited, and even then once it is prohibited it does not necessarily mean that people are not going to use it.

Mr BRYAN DOYLE: So the Eros Association is concerned about making sure that products are safe before they are provided to customers?

Ms PATTEN: We would like to see that. At the moment I think it is unregulated. We try to look at the research and the manufacturers certainly, I think, would be working with a do-no-harm approach. However, when you are working in this relatively unregulated area you will probably find that with some of our non-members, there are some cowboys out there. But also we would support regulation. We would support testing.

And to the extent that we can do that as an industry, we do, in ensuring that we do not think the product is particularly harmful.

Mr BRYAN DOYLE: Do you think there are unsafe products currently being sold?

Ms PATTEN: I do not think that you would call it unsafe. I think everything has a level of risk or a level of harm and some may be greater than others. But I would not be able to say that one was more harmful than the other, but I do think that we could certainly improve.

Mr BRYAN DOYLE: Are some of the substances being sold addictive?

Ms PATTEN: I am aware that there have been some studies to say that some of the JWH products could have a level of dependence. I suspect, as with cannabis and other recreational drugs, some of that could be largely psychological rather than a physical dependence. But again the research is not there to adequately tell you, with the 40 different substances or so, the effects of every single one of them.

Mr BRYAN DOYLE: If the industry is so profitable and legitimate, would there be any problems with having these substances pre-tested before they are released on to the community?

Ms PATTEN: At the moment there is no schedule, there is no avenue for that to occur. So at the moment, no. If a product was tested and you went through all of the same testing that you might go through for Viagra or panadol or whatever it might be, currently because these products have a psychotropic effect they are automatically prohibited under the TGA schedule. That may change with the New Zealand approach that is saying, "Yes, you go through the testing and prove to us that the level of harm is here or here and then we will allow that product to come onto the market." The industry is very supportive of that approach.

Mr BRYAN DOYLE: So you have the hypothetical entrepreneur approach. If the Eros Association said, "I have got"—

Ms PATTEN: I have a few of them sitting there.

Mr BRYAN DOYLE: "I have this wonderful mind-altering synthetic drug I would like to market through your outlets." What would be your standard response to that?

Ms PATTEN: Not being lawyers, ours will probably be a quicker one than the young lawyers before me, but it would be, "Does it contain any of the scheduled substances?" "Would you say that it may get caught under some of the TGA's cannabinomimetic definitions?" They would be the first two easy tests to look at. At that point I would say, "There possibly is no law for that product."

Mr BRYAN DOYLE: I find your response very interesting. It actually focussed purely on the legalities. There was no concern as to the safety of the community. Would that be one of your concerns that you would raise? Is this safe to sell to adults and children?

Ms PATTEN: Yes. I would hope that any entrepreneur was not coming in with saying something, "Here's something that will kill people. I'd like to sell it."

Mr BRYAN DOYLE: But you have not included that would be one of your concerns.

Ms PATTEN: No, but my first questions would be about whether they could legally sell it. I take your point.

CHAIR: Just on the safety issues, as you said, there is not that much research in this area. These are emerging substances and every jurisdiction across the world is looking at ways in which these products can either be successfully prohibited or regulated. Obviously there is some research, and you may have read some of the submissions that we received as part of our inquiry. Some of the effects that have been reported in respect of these substances have included increased pulse rates, alteration of mood and perception. There were some case studies in which a man from Western Australia died; severe reaction such as a 17-year-old girl who became violent and crazy after inhaling a drug; a 23-year-old man who presented with vomiting and reported seizure activity; and three 16-year-old boys presented themselves separately to an emergency department due to chest pain after smoking a synthetic cannabinoid product, K2, although diagnosed with a myocardial infarction.

Other reports examining primarily the chronic abuse of Spice "clearly demonstrates signs of an addiction and withdrawal symptoms similar to those observed with cannabis use". A 20-year-old patient reported smoking a product for eight months and when he ceased use he developed unrest, a drug craving, nocturnal nightmares, profuse sweating, nausea, tremor and headache. There was another very recent report in 2011 which provided eight case reports of psychosis associated with synthetic cannabinoids and concluded collectively these suggest that use of these products is associated with acute psychosis as well as exacerbations of previously stable psychotic disorders. Obviously, as lawmakers this is of significant concern to us that these products are out there. It is an emerging product and as someone representing an industry where these products are sold, what is your view in terms of clearly what would appear to be concerns over the safety of these products on the wider population?

Ms PATTEN: Just to pick up on one of those points, the reported death in Western Australia, we know that that had nothing to do with the use of a synthetic substance; the man was up for a heart transplant and was an extremely unwell person. The post-mortem found that the use of a synthetic cannabinoid had absolutely no effect, had nothing to do with his death. But, yes. Considering the hundreds and possibly thousands of users in Australia, I think that we are not seeing huge numbers reporting but it is of a concern and it is of a concern because we do not know how much those people took or what substance they took. So while we keep prohibiting substances, we do not enable our industry to work out safe dosages, work with chemists and pharmacologists to find safe limits on this product to restrict it.

You do not want 16-year-olds taking any form of psychotropic substance, whether it is an artificial cannabinoid or whether it is actual cannabis. We do not want to see minors having easy access to these products. For people with existing psychosis, obviously again products like this would not be healthy; neither probably would alcohol be healthy in those circumstances. I do not like to compare alcohol but what we try to do with alcohol is we try to regulate it, we try to educate people about approach dosages, we try to minimise the harm through regulation, control of its supply, control of its advertising, and research and information. That to me would seem the most successful approach to reducing harm of these products.

Mr CLAYTON BARR: I am not sure if alcohol and tobacco would get through this.

Ms PATTEN: I am not sure either.

Mr CLAYTON BARR: You described a real absence of background research, and yet in the absence of background research and knowledge of the effects of these things, we have, I think you said, 200 to 300 outlets with people willing to sell the product here in New South Wales. I go back to my previous question about the tests because I have been thinking about that process. We have made frequent reference to New Zealand and the potential regulatory framework for New Zealand. I put to you that something should be potentially illegal, if we cannot test for it. In a regulatory framework, would it be reasonable for the manufacturer to not only provide the product but also to do enough background research to provide a strong test with high credibility, at the same time as they present the product? To go back to my point that if we cannot test for something, should it be illegal, would that then give genuineness to a product, if it also has a test with it?

Ms PATTEN: I would think that the producers of these products should be treated no differently to any other pharmacological company. So, if Pfizor has to go through a certain number of tests to prove that their products should be available on the market, then our product would be expected to undertake a similar level of testing. On the point that we make it illegal, the problem is that making these drugs illegal does not stop them being available and we know that prohibition has not stopped drugs being available in our society. So I think we need to look at another option and that is why I think looking at things like testing and regulation is a better proposal than saying: Let us just try and make this illegal. That is not working and it is not working with illicit drugs. I know a lot of the submissions are saying that continual prohibition on this product will be futile and we need to look at an alternative. I think a high level of, and high requirement for, testing would be a successful outcome.

Mr CLAYTON BARR: I think you said earlier that the industry was worth about $200 million or $300 million a year in sales?

Ms PATTEN: Yes.

Mr CLAYTON BARR: In New South Wales, what would it be?

Ms PATTEN: Let us say, a quarter of that. I will actually go and investigate those figures in more detail.

Mr CLAYTON BARR: That is fine. I think, when talking about a national statistic, we generally factor in that New South Wales carries about 30 per cent of that. That is an annual term?

Ms PATTEN: Yes.

Mr CLAYTON BARR: In the sale and retail of these products, is any government taxing attached to any of these products, outside the GST?

Ms PATTEN: Not outside GST, but there would certainly be GST and that would be an avenue worth pursuing. I understand that New Zealand is looking at the taxation of these products as well. We would certainly be open to that. We would also be very open to greater restrictions on where these products are sold. We would have some concerns if petrol stations, convenience stores and non-age-restricted venues were selling this product and that is a concern for the industry.

CHAIR: If a similar regime were set up in Australia in respect of synthetic drugs, as in New Zealand, how confident are you, in terms of the testing available, that the manufacturers would be successful in having their products allowed on to the market, following what would be a strenuous testing regime?

Ms PATTEN: In speaking to the manufacturers, I believe they are relatively optimistic that they can meet the high levels of testing and meet those levels of risk, to make it on to the market, that it is possible. If you look at X-rated films, which I guess is where the Eros Association historically started, the only place that has a strictly regulated and controlled sale of X-rated films is the Australian Capital Territory. That is where you can only buy Federally-classified X-rated films from a licensed operator.

In New South Wales you can buy anything because it is totally unregulated. That is because the product is illegal but the legislation is difficult to enforce. So, in its heyday, I would have said 10 years ago we were selling 13 million X-rated films in New South Wales per year, even though it was an illegal product. It was being sold as unclassified, material that would be refused classification, material that was beyond community standards. In the Australian Capital Territory where we regulated it, licensed it and controlled it, that did not happen. That is still the case. I can see there is an analogy here for that.

CHAIR: In summary, you would be in support of the approach that New Zealand has taken. Would you be in favour of the temporary class orders or temporary prohibition on these products that has been currently under way in New Zealand, given the concern in respect of some of the safety issues that have arisen today?

Ms PATTEN: It would be great if there was a test to find a level of harm before prohibiting a product. In Australia, it seems that when a product comes out, it is not tested to see whether it is addictive or causes harm. The minute it comes out, it is a new product on the market and it is prohibited. There is nothing to say that it has a fairly low level of harm and is probably not much different than having a couple of beers after work. We are not doing that sort of testing now. If governments were able to prove that the product was harmful, then yes, we would support the prohibition of it. But at the moment governments are not making that test but are just prohibiting a product as soon as it becomes available. I do think that a regulatory environment is a much better way to control these substances and minimise the harm that they may or may not cause.

Mr CLAYTON BARR: Medically it is up to the drug companies, the pharmaceutical companies, to prove that it is not harmful. You just said the Government does not know if it is harmful or not harmful, so the medical fraternity has to prove their product is not harmful and go through all those tests before it is released on to the market. Should this industry do the same?

Ms PATTEN: Yes, but governments have to provide us with an avenue for that. Currently there is no avenue for that.

CHAIR: Thank you. There were a couple of questions that you will take away on notice. Following our public hearing today and also next Monday, the Committee may have some supplementary questions which

we would send to you in writing and your answer would form part of the evidence and be made public. Would you be happy to provide answers to any further written questions from any members of the committee?

Ms PATTEN: Yes, certainly.

(Luncheon adjournment)

SAM WILLIAM WILSON, Adolescent and Family Counsellor, Ted Noffs Foundation,

MELISSA ANN STOTT, Adolescent and Family Counsellor, Ted Noffs Foundation,

MARK RICHARD FERRY, Deputy Chief Operating Officer, Ted Noffs Foundation, and

JEFFREY COLIN WEGENER, Policy and Advocacy Coordinator, New South Wales Users and AIDS Association Inc., affirmed and examined:

CHAIR: Thank you for appearing before the Legal Affairs Committee to give evidence. Do you have any questions concerning the procedural information sent to you in relation to the witness and the hearing process?

Mr FERRY: No.

CHAIR: Would any of you like to make opening remarks in respect of the submission that you have made or any contributions?

Mr WEGENER: We are on the same page as many people who have made submissions. There are harms caused by these new drugs. The question is how to deal with those harms. That is the significant issue. I have a short introductory statement. On behalf of the New South Wales Users and AIDS Association [NUAA] I wish to thank you for the opportunity to make these comments. NUAA is the peak drug user organisation in New South Wales and a peer organisation comprised of drug users, their friends and allies. We work to reduce harms associated with drug use and undertake consumer engagement in the drug treatment field. We are funded primarily by the New South Wales Ministry of Health.

The issue of emerging synthetic substances is one that is receiving much media attention lately. There have certainly been cases where harm to people has occurred and strategies to overcome these harms are obviously needed. That is our main focus here today. We support a regulatory approach rather than a drug prohibition approach to control these new synthetic substances. We report this regulation paradigm for the following reasons. New synthetics are continually emerging and conventional drug laws will struggle to work with them. A range of reports have recently questioned the efficacy of drug prohibition approaches including the Australia21 report and the 2012 report of the International Global Commission on Drugs. We also feel that regulation rather than prohibition will allow a health first approach with emphasis on consumer safety rather than on criminalisation.

Let us take the points that I have mentioned in order. 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 regard to outpacing and outwitting legislators. As many of these manufacturers are based overseas currently there is little to fear from our legal approaches. The most likely people to suffer are once again users rather than drug dealers themselves.

The Australia21 and the Global Commission on Drug Policy report are two recent publications questioning the efficacy of the war on drugs and prohibition in general. The Australia21 report argues that young people in particular pay the price for a war that largely has been ineffective. On the other hand decriminalisation in Portugal has been working for them, lowering overdoses and drug-related harms by up to half and lessening by half the number of people using drugs. This approach has more in common with regulation than prohibition. If positive health outcomes and less problematic drug use is the goal then regulation rather than prohibition is more effective.

We support the position of the Alcohol and Other Drugs Council of Australia [ADCA] which asks the Government to try a different approach. For NUAA the third and primary reason for the focus on a regulatory approach is that we believe it will allow a health-based approach to the use of synthetics by an individual and a consumer safety approach by manufacturers and governments. A consumer safety approach with the manufacturer having to present a safety profile in order to be licensed along with other controls, such as age restriction, toxicity and other component control could be included.

I finish off with an important point. Stigma and discrimination are in part a consequence of the legal status of people who use illicitly. Stigma and marginalisation can limit life opportunities for those criminalised. In addition, emerging synthetics which are not regulated but still available, as most illicit drugs are, may have more potential for physical harm if left outside a regulatory framework. If there is one point I would like to leave the Committee with it is that there are unintended consequences when drug laws criminalise people who do not otherwise undertake criminal activity. We have an opportunity to introduce a different paradigm to our approach to drugs. The New South Wales Users and AIDS Association would like to see one that values health and inclusiveness. We believe a regulatory approach rather than a criminal one is best suited to this aim.

CHAIR: Would the members of the Ted Noffs Foundation like to make an opening statement?

Mr FERRY: Since we were contacted in regard to this as an organisation, and with Ms Stott and Mr Wilson, we took a survey throughout our organisation and the young people we work with to gain a bit more information from the young people. The Ted Noffs Foundation runs a number of different treatment services focusing on young people from 12 to 25 years of age. That includes two residential treatment facilities or rehabs, one in Randwick and one in Canberra. Those are for young people from 14 to 18 years of age. We also work in 18 schools across New South Wales providing drug and alcohol counsellors as well as a range of other smaller treatment services predominantly, not always, aimed around drugs and alcohol.

It was quite interesting for us and we have learnt quite a bit in the past few weeks ourselves. It was not as prevalent as I first thought across the young people that we deal with. However, I think all the young people were aware of it. The overriding opinion of the young people is that if you can get the real thing why would you bother with synthetics, but they came up with a number of interesting things as to why they would bother—things such as because it does not show up in their urine. As a rehab facility we take urine as a way of keeping the place safe. So that was an interesting aside for us.

One of the interesting things for us is that the standard testing for urine does not include synthetics. You can test for them but you have to pay more. They indicated at different times that dealers themselves had been selling the synthetics at a much more inflated rate than you could get in the shops. One of the interesting things, a little quirky, was that some of the tobacconists and other places you could get them would not sell them to someone under the age of 18, which I thought was interesting. We have a number of different insights we can offer from young people as to their opinion about the different drugs and their availability and what have you.

CHAIR: Fantastic. We will open up to questions and I guess we will probably target both organisations and your experiences. Obviously Mark and Ted Noffs, you have a great focus towards young people, but from the experience of both organisations, who do you see—and it would obviously anecdotal at your end—as the more prevalent users in society of these products?

Mr WEGENER: I think that is difficult because obviously there is a large degree of an invisible population of people using it. I have spoken to colleagues in other States. For instance, it is interesting that Western Australia and Queensland seem to have as large, if not larger, numbers of people experimenting or using these substances. I do not think the Committee has seen the recent Ecstasy and Related Drugs Reporting System [EDRS], which shows Queensland and Western Australia. My colleague in Perth tells me that in their lot, those people are, like, minors. Those people fly out and want to have perhaps a wild weekend in Perth, but then there are people who would rather look nice would be law-abiding. I guess that brings you back to some of the concerns I made in my statement.

Mr FERRY: I suppose from our perspective, it seemed that all the young people we talked to were aware of the drugs. Indeed most of our staff were quite well aware of them as well. I think it was possibly the more serious users—and I am talking from a treatment perspective here—or the young people who were more entrenched in drug use and longer-term drug use were probably more likely to have used or tried the different drugs. Some of the less inexperienced, for want of a better term, had heard of them but had not really dabbled in them. It was more the serious users who had actually tried them, though I think their opinion was probably that they were not that good in comparison.

CHAIR: Jeffrey Wegener spoke about some of the effects that have been quoted anecdotally. In terms of the discussions you have had with many young people, have you heard any of the adverse effects or have any admitted to any adverse effects that they have had?

Ms STOTT: It depends which synthetic drug you are talking about. They are cannabinoids. It is not as good as cannabis. It does not give as good an effect and it does not last as long, but they just get it when they cannot get cannabis. They go and get that instead or to pass urine tests. They are the young people who have obviously learnt. Like, maybe their families have had a criminal history, or they hang out with other older young people who have had a criminal history, and they are learning how to pass the urines from people who have passed them in the past.

CHAIR: Has anyone mentioned any harmful effects of the product that they used?

Ms STOTT: Not from the Kronic or the K2 but they talk about the bath salts, the negative effects of that, and they have heard about that in the media as well. 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, 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.

Mr WILSON: In regard to the synthetic cannabinoids, there were one or two clients that did report in one of their reports that the effects were not as strong as the standard cannabis that they were getting hold of, but also as far as adverse effects are concerned, there were things like headaches. There were one or two reports of headaches and there were one or two talking about cannabis overdose—sort of greening out, dizziness and vomiting, and things like that.

CHAIR: Did any of them discuss experiencing a different range of effects when taking the same product, or what they believed to be the same product?

Ms STOTT: Yes.

Mr CLAYTON BARR: So different one week from the next.

Ms STOTT: Yes.

Mr CLAYTON BARR: They bought chronic one week Kronic, they got A, B and C, and they bought Kronic the next week and got X, Y and Z.

Ms STOTT: Yes because there are all different types of Kronic—K1, K2 and I do not know if K3 is available now. They all have different types of effects. They said what is happening is the K brand is getting better. It is matching more the cannabis effect. So they are changing the carbons or whatever to make better effect, or whatever they are doing.

Mr STEPHEN BROMHEAD: Has there been any talk of addictions or long-term detrimental effects from the use?

Mr WILSON: Particularly in our residential treatment services, we are dealing with young people who are experiencing substance dependence, so to substances like cannabis, alcohol and different stimulants like amphetamines and ecstasy. Their experience of the synthetic cannabinoids is more if they cannot get hold of their preferred substance. Their experience with it is usually quite minimal so it is a one-off type of thing. From the reports that we have got, there was definitely not the sort of prolonged use that would develop a dependency to it.

Mr STEPHEN BROMHEAD: Was there any with the synthetic amphetamines?

Ms STOTT: Yes. With the speed, the synthetic amphetamines and the synthetic ecstasy, they seemed to be using that more regularly than the cannabinoids. They are getting the same type of effect.

Mr STEPHEN BROMHEAD: Did they talk about any detrimental effects?

Ms STOTT: Yes, the same detrimental effects as amphetamines and ecstasy.

Mr STEPHEN BROMHEAD: Were there any long-term medical conditions that have continued?

Ms STOTT: Yes, the physical detriment. Lots of them have the speed pills. They are the ones bought on line and they are just taking them like they would normally take speed, ice or ecstasy. They are having the same long-term effects as those drugs.

Mr WILSON: But there probably would not be any kind of way of discerning which drug was responsible for what—whether it fits into that unit as a synthetic speed or the amphetamines.

Mr FERRY: The majority of the kids we work with are poly drug users. They will have a main drug but they tend to use a range of drugs.

CHAIR: In terms of the attraction towards synthetic drugs, do you think the major factor would be availability? Since they cannot obtain access to the prohibited substances they might be using, do you see that as the main reason?

Ms STOTT: That is why even the dealers are selling it them—because they cannot get access to amphetamines. They are selling the synthetic drugs that are more easily available.

Mr FERRY: There definitely seemed to be a choice. If they had a choice between, say, cannabis and a cannabinoid, they would choose cannabis. So it was around availability and not so much price, really. I do not think that tended to come into it.

Ms STOTT: No.

Mr FERRY: It was more around what was available. If it was not available, that was a second choice, I suppose.

CHAIR: Where is the common place that they would be obtaining these substances?

Ms STOTT: Dealers, tobacconists, sex shops, happy herb places.

Mr CLAYTON BARR: Retail versus online: in your experience, would most people use retail?

Ms STOTT: The cannabinoids are retail. Online is the amphetamines, the ecstasy, the bath salts, and dimethyltryptamine [DMT]. They are online. They just order them.

Mr CLAYTON BARR: Jeff, in your opening remarks and indeed in your submission, you talk about a regulatory approach as opposed to or in conjunction with a law enforcement approach. To have regulation, by default, do we not have to have law enforcement around people who do not act within the regulation? Do you understand what I am asking?

Mr WEGENER: Yes.

Mr CLAYTON BARR: Do you have any thoughts on how you strike that balance? Obviously if the regulation is too hard, people can still buy online, or if something fails to meet the regulation standard, people can still buy online. We cannot do these things in isolation, can we?

Mr WEGENER: No, and I certainly see your point. I acknowledge that. I guess I have not got the primary research, but this puts the onus onto a manufacturer to prove that there is some sort of safety profile. Now, I know that that may cost millions of dollars, but so be it. That is what initially attracted me to the so-called New Zealand way of thinking about that. That is what is being tossed up there.

Mr CLAYTON BARR: New Zealand was one of the submissions. We heard from them as part of the group earlier today.

Mr WEGENER: Yes.

Mr CLAYTON BARR: If it goes down to a regulation process do you see the packaging, labelling as potentially carrying the ingredient of the product? Is that what you imagine the regulation might look like?

Mr WEGENER: I think there is such a big spectrum that you could not even think about where it would start. You would have to start off at a very small level, from a trial. In my submission I have a small table drawn up by an addiction specialist from London who goes through these. When people often think about not having a drug prohibition they think all of a sudden it is going to be there. That is not what I think of at all; I think of a totally different scenario. For instance, harmful drugs are not freely available through doctors. There is a very distinct criterion for getting that. 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 and I think there is a lot of looking for options.

Mr CLAYTON BARR: In talking to your young people is there any sense of almost self-imposed regulation from the industry, particularly the retail industry—for example, about the display of the product in the shop, is it for sale to everyone or is it for sale to only people over 18, do you have to show identification? Is there any sense that the retail exchange is somehow regulated?

Mr WILSON: I think particularly with the young people that we are dealing with it probably comes down to something more simple—that is, if it is sold at one of these outlets then it must be okay. That does not totally answer the question but that is where they are sort of starting. Their decision-making starts at that point.

Ms STOTT: They hide it. The tobacconists hide it so you have to ask for it. It is not open on display. Sometimes our young people can get it but it is normally when there is no-one else in the shop. So if there are other people in the shop they will ask for identification. Sometimes some tobacconists will not sell it to under 18s, it just depends on which shop you go to.

Mr FERRY: I think it is fair to say there is a branding around most drugs but especially with the synthetic. If you look at the K1 and K2, it is implied that K2 is better than K1. That is what we got from the young people. They are getting better. I think there is an implied branding already, the word of mouth and what have you that happen with that.

Mr CLAYTON BARR: Correct me if I am wrong but I get the sense that there is something going on in these young people's lives in terms of quality drug use. Drugs are almost like a buffet and they will go and check them all out, but they are not necessarily returning to the synthetics unless they forced because nothing else is available. It that loosely correct?

Mr FERRY: Loosely I think that is probably a fair comment. They do not seem to be their drug of choice if they do have a choice. When we say "polydrug use" it does not mean they are using the whole spectrum and some people prefer different types. I think the earlier comment that it is more about they are a second choice or a stopgap rather than something—we are talking with our clients about the tip of the iceberg in some respects.

Mr CLAYTON BARR: The New Zealand gentleman earlier today mentioned the drug benzodiazepine, or something similar to that, and the real dangers of mixing that product with alcohol. If you just took that synthetic drug by itself it was okay but boom if you mixed it with alcohol.

Mr STEPHEN BROMHEAD: What he said was the Kronic was contaminated with that other drug. In other words, you do not know what you are buying in the packet and when you mix it with alcohol it has an adverse effect.

Mr CLAYTON BARR: Did any of your young people speak about having particular effects when they took a synthetic and then had some alcohol? Or did the topic just not come up?

Mr WILSON: That one did not really come up for us particularly. When Mr Ferry talked about our client group, particularly the synthetic cannabinoid would be something that would be used when their primary drug of concern but also other types of things were not available. So it would be something that they would possibly use by itself.

Mr FERRY: It is probably fair to say broadly speaking that our clients were not very knowledgeable not so much of the effects but of the associated risks, whereas they tend to be fairly good on the risks associated with the other drugs and alcohol. They are different if you mix this with this. They are pretty good on that but when you brought the synthetics in the level of knowledge really was not there.

Mr STEPHEN BROMHEAD: You deal with 14-year-olds up to 25 years?

Mr FERRY: In our residential it is 14 years to 18 years, in our other services it is sort of 12 years to 25 years.

Mr STEPHEN BROMHEAD: What about over 30 years?

Mr FERRY: No, we do not really deal with them.

CHAIR: Mr Wilson you said you were of the view that because these products are available either at a tobacconist or an adult shop then it is okay for young people to use these products—

Mr WILSON: No, that was a young person's perception.

CHAIR: Do you think that could potentially lead to a view amongst young people that prohibited drugs are also permissible in society? Do you see a mixed message going out by allowing these products to be available to the public?

Mr WILSON: It is different to what they are used to. Their primary sort of experiences are in the standard cannabis, alcohol and stimulants and things like that and they have formed views around their use whether it be primary care givers, peers, through experimentation themselves and the types of salient learning experiences they have around those drugs. I could not comment as to what they would think about their beliefs around if it was different for, say, synthetic drugs and different from the others. I do not know what they would believe about that or what their views on that would be.

Mr BRYAN DOYLE: Of the drug issues you are facing, where do the synthetics rank in relation to other drugs?

Mr WILSON: As far as causing problems for our target young people? We have not collected data as such on how regular use is and how many young people have experience in the use of different synthetic drugs. Our primary target group, particularly the ones that we work with in the residential settings, their primary drugs of concern are the non-synthetic drugs. The synthetic drugs are a substitution type of experience usually when the primary drugs of concern are not available.

Mr BRYAN DOYLE: At this stage the synthetic drugs tend to be more expensive than the real drugs?

Mr WILSON: From the reports we have from the young people they are pretty much the same but sometimes more expensive but I think it depends on where it is coming from. If it is from a tobacconist or the happy herb shop or a sex shop then it could be a certain type of price. I think when you have certain dealers in the community who are dealing in normal cannabis and cannot obtain that for the people who want to buy from them then they will get hold of synthetic ones and try to make money from it, so they might sell it at a higher price. We had that report from a couple of the young people who we surveyed.

CHAIR: Are you of the view that there should be a greater educational awareness campaign in respect of these synthetic drugs for young people? If so, what form of education campaign do you believe would be effective?

Mr FERRY: I think education is always a good thing. In going through this exercise it is one of the things we realised we need within our treatment regime to focus on a bit more. As to what form that should take, I am not sure off the cuff to say this or that, but I always think with young people is really good to speak plain English to give them the facts. They are going to make up their own minds whether you like it or not so really try not to mince words, just be quite straight with them: This is what it is, this is what it does, this is what it can do. I think in there also are some of the potentially unknown effects especially from different batches to different things. A fairly straight-up approach is one we would advocate in talking about them.

CHAIR: You also run a program called PALM—a program for adolescent life management—a program assisting young people with drugs and those issues. Can you explain to the Committee how that program operates and the effects you have seen it has on young people?

Mr FERRY: Yes. It is an up to three-month program for young people aged 14 to 18, both males and females. We have a 16-bed unit at Randwick and we also have a 10-bed unit in the Australian Capital Territory. As the name suggests, it is a program for adolescent life management. We do not just focus on drugs and alcohol because it is an holistic issue. Sometimes drugs and alcohol can be the main issue; a lot of the time drugs and alcohol are the secondary issue and there are other issues. We deal with everything from drugs and alcohol to mental health, living skills, vocation and education. It is really about them spending three months with us and really trying to put their lives back together, so to speak, focusing on the different aspects they need to focus on.

We then follow them for up to three to five years and try to keep in contact and support them through the process. We adopt the harm minimisation approach. That means whilst in residential service they have to be drug and alcohol free, and we take urines and we have breathalysers to try to ensure that. It does not always happen. When the young people leave, most, if not all of them—well, not all, but nearly all of them—plan that they will be using something in the future, be it drugs or alcohol. What sort of 16-year-old is going to say I am never going to take drugs or alcohol again?

Mr CLAYTON BARR: A liar.

Mr FERRY: Exactly. It is fairly unlikely. So we work with them around safe use. A lot of that can be from having an alcoholic drink and then try a drink of water. There are lots of different things, and relapse prevention plans that we work with young people on. But it is very much a journey, not an event.

Mr CLAYTON BARR: Mr Wegener, can I ask you a question about your submission? At the end of the conclusion it says:

> We also have concerns that the current technological environment also calls for innovation in drug policy control …

Can you help me out with that?

Mr WEGENER: Sure. I guess what I am saying years that when I look at this list, it is the absolute tip of the iceberg. That is the beginning. The manufacturers—and this is one of the concerns I suppose with synthetic cannabinoids—are impersonating something natural but they make such complex chemical cocktails and that could change tomorrow. How do you deal with that? How do you classify that? Normally we used to say: That is marijuana and that is that. This is a different world.

Mr CLAYTON BARR: So you are talking about the technological environment of the manufacturers?

Mr WEGENER: Yes. One point that a colleague mentioned to me, because some of the these substances are meant to mimic real compounds, naturally occurring compounds, one problem with them is they are made for research or industrial chemicals, and that can lend itself to more harm for some reason. That is a very broad comment, I know, but the fact that with different versions of whatever can be created in there somewhere, one of them probably has the potential for more harm, so that is a concern.

Mr CLAYTON BARR: We had this conversation earlier; you guys deal with harm and it is not just confined to the social harm?

Mr WEGENER: Yes.

Mr CLAYTON BARR: How do you possibly measure that?

Mr WEGENER: Sure. That is why I mentioned the stigma. It is a huge thing that people carry around. How do you measure that? That is a difficult thing. With other drugs there are things like toxicity, and with cannabinoids and amphetamines we see a lot of mental problems and psychological problems, and I suppose once again that comes back to toxicity.

CHAIR: We are also hearing evidence next Monday. If you would be happy once we have concluded the public hearings, the Committee may write to you with some follow-up questions. If you would be prepared to answer those questions they can form part of the public hearing today. Would you be happy if the Committee was to write to you and request further information?

Mr FERRY: Certainly.

(The witnesses withdrew)

ANDREW PETER McMAHON, Director, People and Skills, NSW Minerals Council, and

SUE GILROY, Acting General Manager, Coal Services Health, sworn and examined:

CHAIR: Before we start, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Mr McMAHON: No.

CHAIR: If you would like to make an opening statement in respect of your attendance here, that would be great.

Ms GILROY: I have written it out because I am a bit of a novice at this. Coal Services Health has over 50 years experience in providing health services to the coal and related industries in New South Wales, developing a wide range of expertise and experience in issues associated with workers health and safety. With regard specifically to drug and alcohol testing, we have been providing this service since 1996 and were in fact the first external provider of this service to the coal industry in New South Wales. There is no doubt that a range of community views exist around the use of illicit drugs. The debate on whether cannabis should be decriminalised has been ongoing for many years and will continue into the future. With the recent advent of a range of synthetic drugs, the debate has become even more complex with no foreseen clear solution. Often the debate is framed around a person's individual freedom of choice. In the workplace, though, the main concern is safety and ensuring that all workers are protected.

The New South Wales coal mining industry is at the forefront of delivering a safe work environment for all employees and employers. Over many years innovative mining methods and a focus on health and safety have made the New South Wales coal mining industry the safest in the world. This has been achieved through the collaborative work between employers and employees to develop robust policies and procedures around the use of drugs in the workplace. An example of the many initiatives that have been implemented is a program of on-site drug screening to ensure that no-one is put at risk through the use of illicit drugs and even through some legal medications that are on the market.

For mining, why is it that the arrival of synthetic drugs poses such a risk to this enviable safety record? In short, the answer is that these new drugs are difficult to detect with the existing drug screening products available. Whereas most real drugs can be detected through a simple on-site test, these synthetic products do not show up on a lot of occasions. While some new tests are starting to make their way on to the market, the American experience shows that the manufacturers of these synthetic drugs will simply change the formula, making them increasingly more difficult to detect with on-site screening devices. I am not sure about you but I would not want to be operating large mobile equipment in a coalmine under the influence of drugs or I certainly would not want one of my loved ones working in the same environment where someone is influenced by these drugs and thinking that they are harmless.

What is the way forward? The call for these products to be banned is not about denying personal freedom. Action is needed because the evidence indicates that these products are harmful. The solution then lies in a dual approach involving regulation but even more so in education about the risks of these drugs. Reports have shown that synthetic cannabis is potentially up to 100 times stronger than regular cannabis. These products are not designed for human use and were never developed for such use, and little is known about their short-term and long-term health effects. Early indications show that they can result in paranoia, heart palpitations, nausea, high blood pressure and hallucinations.

Synthetic drugs that are designed to mimic the effect of other illicit drugs need to be treated in the same way as those illicit drugs. We need to better explain their dangers and the risk they pose to the health of those who use them. In mining, a strong culture of looking after your mates has been encouraged and developed. This same culture now needs to be applied to our attitude towards not just synthetic drugs but all drugs in the entire community and the workplace. 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. The arrival of synthetic drugs adds a new layer of complexity to an already complex issue. Only through working together as a community and adopting a multifaceted approach to this challenge will we have any chance of success.

CHAIR: Mr McMahon, would you like to make an opening statement?

Mr McMAHON: New South Wales miners have the best mine health and safety record in the world. Health just is not important inside the mines; we also believe we need to take care of miners' health above the ground to ensure that they are safe, whether they are open cut or underground. We work on a range of different issues that are constantly working to improve the mental and physical health of our New South Wales miners and their families. As part of that effort, we are actively engaged in this battle against drugs in the workplace and in the wider community. Synthetic drugs, as I am sure you are aware, are chemicals made to mimic the effects of illegal substances like marijuana and ecstasy. These drugs can be hard to police because manufacturers alter the chemical makeup to skirt the existing laws, which also means that users are unlikely to know what is in them, more concerning what the short-term and long-term effects of using them may be and therefore how they will be at work.

We are committed to ensuring our New South Wales miners have a healthy and safe workplace, no matter how big the challenge. But the inadequate regulation of synthetic drugs makes it difficult for New South Wales miners to properly address work health and safety issues. That is why the industry wants to be part of this discussion on an effective regulation, and by pushing for effective regulations and advocating for better education on the dangers of drugs we are determined to make sure that we keep our world-leading reputation for workplace health and safety.

CHAIR: In your submission to the inquiry you stated that the inadequate regulation of synthetic drugs makes it difficult for the New South Wales minerals industry to properly address work health and safety issues relating to drug and alcohol misuse. When was the use of synthetic drugs within the New South Wales mining industry first identified? In your view, how prevalent is the current use of synthetic drugs in the New South Wales minerals industry?

Mr McMAHON: It probably came to our attention that this was a fairly significant issue following the Western Australian ground-breaking testing regime that was done. That was where the Kim Centre actually developed the first test, and some of our members started to use that. It was known it was out there because you would see on the main street that this stuff was being sold. Until we could start to get some hard data—I think that was approximately two years or might have been a bit less—the statistics I heard from the first mine that got tested in Western Australia were quite alarming but we have not had a thorough, I suppose, mine test that has been shared with me per se to say how wide but I think as we saw when we discussed this at Cessnock with a range of industry members they were all very aware that it was across their sites from anecdotal bits and pieces. I guess the problem has been that when that first test came out on Kronic, the manufacturers of Kronic immediately started changing their formula and by the time it started to become, for want of a word, popular out there the testing regime could no longer tell us whether they were on these newer versions.

CHAIR: Mr McMahon, do you know what the level was when they first tested for Kronic? You referred to the first breakthrough test, do you know what was the level of positive hits?

Mr McMAHON: I would have to go to my colleagues at the Chamber of Minerals and Energy in Western Australia. They have that data. I know it was high for the one site but I know they did a fairly blanket test.

CHAIR: Roughly what, 10, 20, 30 per cent?

Ms GILROY: It was about 10 per cent. I thought I may have had it here but I have not. It was around 10 per cent, that initial—

CHAIR: Can you take that question on notice?

Mr McMAHON: Yes.

Ms GILROY: Yes.

CHAIR: What do you think are the costs involved in testing for these substances and do you believe that a test could be created that would be able to capture a variety of these products that are in use?

Ms GILROY: I am presuming you mean an instant test, an on-site device?

CHAIR: Yes.

Ms GILROY: I think it could be developed but because there are so many metabolites and synthetic drugs that have developed, the expense of developing a device that could detect the whole list would probably be prohibitive. I am not the expert there, I do not manufacture these products but I think that because the people who develop these substances are aware of what can be detected in these devices, they tend to change the ingredients of these substances. JWH-018 was one of the originals and the decline in that is substantial because it is included in some of the test kits that are out there at the moment. They are trying to get that out of the product and put other substances or metabolites in there to replace that. Getting back to your question, getting a device to be able to detect them all is probably not something—but I am not the expert there either.

Mr CLAYTON BARR: Andrew, can I ask a question about the submissions because you ended up making two submissions. I premise this with a reference to the conversation in Cessnock several months ago but with this being recorded on the Hansard and available through a public document, even if we end up doubling up on some of this, your comments would be appreciated because the insight we got that day is part of the platform for what we are doing now. Your supplementary submission refers particularly to:

> Recent incidents have shown that it can be difficult to obtain the evidence to provide that a synthetic substance has a substantially similar pharmacological effect. New South Wales Minerals Council believes that further improvement to the legislation to prevent this loophole—

et cetera. The concept of the "substantially similar pharmacological effect", is that based on legislation being used elsewhere in other States?

Mr McMAHON: In Queensland—our Queensland Resources Council counterparts alerted us to this and then we shared where we were going. With the Western Australian Chamber of Minerals and Energy and the Queensland Resources Council we are actively working together on this particular issue and on a range of issues. They alerted us that they had banned a range of substances before New South Wales had and had used similar words and were alerted, by their regulator, that they were not going to be able to do anything anyway, because they could not prove this particular fact. So they were going to amend the legislation in Queensland to somewhere along these lines. That was the basis for the supplementary submission. We found that out and submissions were still open so we thought we should have that in.

Mr CLAYTON BARR: So Queensland set up a piece of legislation where they tried to capture the main ones and then similar ones, but the legal processes identified that saying "similar" was not going to be—

Mr McMAHON: That is my understanding, yes.

CHAIR: We have heard today from a number of people. One element that has come through is that a number of people who are using these products may use them as substitutes for prohibited drugs. And something that was said was that the fact that these products are available in tobacconists and the like, perhaps provides the impression to potential users that these substances are okay. I would have thought that, in your industry, Sue and Andrew, that you would be attracting a different type of user, perhaps somebody who would not be regular drug users. Do you think the fact that these products are readily available in stores such as tobacconists, provides the impression to people in your industry that these products are okay and safe to use?

Ms GILROY: I think we have worked very hard to spell out that fact in the mining industry, but I think there remains a certain number of people who, because these products are readily available, whilst they might understand the severity of what they can do and that they are not good for you, because they are readily available they still tend to purchase them. As to using these products instead of, I would say they are using them as well as, not instead of, prohibited substances.

Mr McMAHON: I think, as we have discussed previously, 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 at 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. As we have heard at

Cessnock, they have given them something where they can sit down and do some work for a while, because there is no way we can prove that they are actually impaired at work.

Because we do have a significant drug and alcohol testing regime, we think that probably people have switched to the synthetic drugs because of our inability to tell any more, whereas previously we used to be able to tell. We still have a large number of instances throughout the industry on an ongoing basis with particularly tetrahydrocannabinol [THC] protection but not so much with alcohol these days. The people who work in the industry have matured and understood the reasons why. I think we still need to tackle some of the reasons why people are taking any kind of substance at all. It has been proposed that there is a range of issues and that our workers are just a subset of the community.

However, we do recognise that we have shift work and work away from home, so there are some people who might be doing something because of that. We acknowledge that there are other pressures that probably our industry has to address and we are trying to do that. For example, we are having a mental health symposium later this month to try to start to flesh out how we address some of the other issues to try to alleviate why somebody might be taking these substances. We are not doing this in a one dimensional aspect. Our feeling is that that is the main reason why miners would probably move to it, because they cannot get detected.

CHAIR: That educational campaign that you have run in the industry, can you talk about that in terms of the work you have put into raising awareness of the risks and dangers involved in taking synthetic drugs?

Mr McMAHON: I think after the Kronic came out and we got some press around the particular issue, certainly the Minerals Council approached Coal Services to see what we could do. You may or may not be aware that the Minerals Council is a half share owner of Coal Services so we work closely with them, as well as through our own internal Occupational Health and Safety committee within the industry association. We shared as much information as we could and it has been disseminated through the company's normal health programs. I will ask Sue to talk about what we did with Coal Services.

Ms GILROY: Initially when it came to our attention, around two years ago, I did some further digging and continued investigation. I gathered some information together which was quite scary when it first came to the surface. The information showed that these things were available and could be bought on the Internet and at that time they were legal. So we did a news release which, in essence, was information gathering. We put it out to the industry to say: This is here, this is what is happening, this is what it can do to you and how it can affect your people.

Then when it was legislated I did another news release, which updated them on the developments. Along with that 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."

Mr McMAHON: In May this year, Paul Dillon from Drug and Alcohol Research and Training Australia presented a paper to our large annual health and safety conference, which was attended by 550 of the leading health and safety people in the industry, including chief executive officers. On the second morning of the conference he presented some startling statistics and images, including websites that I did not know existed where you can buy and trade drugs using a bitcoin currency. He also showed us how many synthetic drugs are known and discovered each year. A large proportion are not the Kronic style. There is even synthetic cocaine and so on, which is even more concerning. He shared a strong message, but also warned us about knee-jerk reactions and the value of education campaigns. We take that seriously and will continue to work with it.

As was stated at Cessnock, there is a missing loop in that people can retort, "Oh no, that is legal", and we have nothing to come back with. That affects part of the education campaign. Going back to the question, if it is available at tobacconists it is certainly sending the wrong message. Mr Bromhead asked us to find some photos in the main street, but I do not think we did. However, I certainly remember seeing it advertised in the main street and the Muswellbrook and Singleton newspapers certainly had evidence when the original story broke.

CHAIR: So you believe these products should remain prohibited until a manufacturer can show there are no adverse effects?

Mr McMAHON: Absolutely. We do not know what they do at the moment. We are charged by the Work Health and Safety Act to manage all risks as far as reasonably practical. Our experience with drug and alcohol over the past century as they have evolved has shown us the damaging effects that they can have and how they can impact on us at work. Therefore, we are mindful of it and want to keep working on it. When we do not have any information—we do not know the impacts and we cannot test for it—it is hard to manage all the risks. That is why it is a key priority for us. Of course, people are free to do what they want to do in their own home. That argument is put and that is a discussion we should have as a society. However, when someone turns up to work they must be fit to do their job. Our experience has shown us that drugs and alcohol can have an impact on that and that is why we continue to push hard.

Mr CLAYTON BARR: You said that there is a gap in terms of something being legal and that that impacts on the ground with regard to when we can say that workers should not be under the influence. The Committee has received a number of submissions suggesting that we should regulate drugs in terms of the harm they do. If a drug were regulated and available as a legally purchasable product but not testable, would that create a massive problem for your industry?

Mr McMAHON: Yes.

Mr CLAYTON BARR: One of the things I have been interested in throughout this process is the path we might follow if we regulate and the testing is done at the same time—and it must be testable if it is regulated. If it were testable, that would solve many of the problems facing the industry. If it were immediately testable—for example, by doing a urine test at the door—would you then apply the same drug policies procedures?

Mr McMAHON: We have a great deal of definitive evidence about the impact of alcohol and drugs. There is a difficult line about the impairment caused by drugs and a great deal of research is still being undertaken into the amount that causes impairment, and that includes the argument about THC still being in the system. However, sites have agreed policies with workers about zero tolerance or whatever it might be to allow for that. We need a system where if we know it exists we probably also need the evidence to say what would impair someone doing their job if they were on that substance and we must also be able to test for it. We also do not know at the moment if we test for it and it turns up whether it was taken some time ago or half an hour ago while the worker was sitting in the car park.

I did not believe that people were that deliberate and that they took stuff before going to work. However, I have seen video footage taken at a coal power station in Victoria of someone walking out to their car and shooting up and then walking back in to do their shift. That was not discovered until an incident occurred and the CCTV footage was dug out. Obviously some people have a problem and they need to feed it. That scared the living daylights out of me as a health and safety person working to manage all the risks on a site. We need to understand when they take it how long it will impair them in the same way that we must know about the impact of alcohol. We do not stop people drinking the night before a shift as long as they do not breach the site limit, whether it is 0.05 or zero.

Mr CLAYTON BARR: Do you need that research or do you establish that in the enterprise agreement in consultation with the occupational health and safety committee, which includes workers? Does it need that research or can you sit around a table and say that in the absence of research and simply because of commonsense concerns we want this in the enterprise bargaining agreement and get everyone on board? Could it contain a clause stating that if someone is tested—if there is a test in the future—and they have used the drug that they can be stood down for a day, a week or whatever?

Mr McMAHON: We could certainly take that to our members. From what Paul Dillon said at the conference and thereafter, we are going to be behind the eight ball on this for a long time. There is stuff that we do not even know exists, although some internet forum does. I do not want to go there. We have a fairly mature culture in the mining industry around this issue and that is certainly a possibility. Whether it will address some of the concerns about impairment, I do not know. That is because we do not have a test and do not know the impact.

CHAIR: You took a question on notice about the Western Australian testing, which I think you said was around 10 per cent. How long ago was that?

Mr McMAHON: That was 2011.

CHAIR: You have subsequently run a significant education campaign raising awareness of the harm that synthetic drugs can do in the workplace. Do you believe that that figure has significantly decreased since you embarked on that approach?

Ms GILROY: Even though we often cannot detect a substance on site, some sites still do blanket tests—that is, they screen everybody. That is a collect-and-send scenario. They collect the samples and send them to a laboratory for further tests to find further metabolites. We are still getting positive screens today. It probably has not decreased the use. The detection has not decreased, and I cannot comment on use because we are not testing everybody. There are certainly still individuals using substances in the mining industry.

Mr BRYAN DOYLE: Do you have an amnesty process that allows people to disclose voluntarily that they have a problem and seek assistance?

Ms GILROY: That is site specific.

Mr McMAHON: Many sites have those programs. It varies depending on the maturity of the culture at some of those sites and the relationships involved. It is certainly something we try to encourage. From an industry point of view we are looking to ensure that this is on the conference agenda again next year. Where are we going to? What is the next step? The next step is continuing to make sure that we get the information out there.

Ms GILROY: Most sites are not one strike and you are out. It is usually one strike and if you have a problem we can help you. I think Mr McMahon would agree that most policies include help, if it is detected through drug screening. Any good drug and alcohol policy or procedure is about deterring people going to work when under the influence. It is not about detecting them—yes, we want to detect them if they are at work—the whole idea behind policies and procedures is to deter them from going to work.

Mr BRYAN DOYLE: Detection is the last line of defence?

Ms GILROY: Absolutely, it is a bit like your PPE, it is deterring them from going to work. As Mr McMahon said, what they do in their own recreational time is up to them but they are not to go to work under the influence of these drugs.

Mr CLAYTON BARR: You referred to JWH018 being detectable.

Ms GILROY: It is in some products. The levels vary. It is difficult to comment on specific products and their reliability. A lot of them say they can test for two metabolites, one of which is usually JWH018. It is being detected in some of the positive screens we have but sometimes it is not.

Mr CLAYTON BARR: You said that that test became available about two years ago?

Ms GILROY: No, the test did not, not the on-site screening ones.

Mr McMAHON: I think it was about 12 months ago they came out.

Ms GILROY: They started developing once that Western Australian story broke. They started developing and even into late 2011 I would probably argue there still was not a product. It was probably in the past nine months.

Mr McMAHON: The ChemCentre in Western Australia was the only laboratory that could detect anything to do with it for basically all of 2011. Everything was going over there which also created an issue because we had to ship everything all the way over there. It is only in the past six months that a few laboratories on the east coast have geared up for it. But then some back down because there was a larger range of products; it was not all based on just that one metabolite. They thought maybe they were not going to find anything so people will stop using us so they geared up to be able to start testing.

CHAIR: Is any stage research being undertaken to expand the ability to test for these products in your industry?

Ms GILROY: Recently a symposium was held in Hobart that you are probably aware of on synthetic drugs. I have the paper delivered by ChemCentre and certainly the evidence shows that it is looking at more metabolites and expanding their testing regime. Obviously ChemCentre are the experts. I am not the expert, I am only going on the information that they have provided in the article.

Mr CLAYTON BARR: Is the industry being driven by the ability to beat workplace tests or by the laws of the land? If it had been two years ago I would have suggested that they were looking to avoid being detected in a workplace but if it is last year that fits in with legislation. The legislation changed and banned JWH018.

Ms GILROY: Yes.

Mr CLAYTON BARR: Yes, of course they moved. So it was not about the fact that they could not have any detected in tests; it was probably more to do with the legislation.

Ms GILROY: Yes, because they were moving away from what was legislated.

Mr CLAYTON BARR: The Minerals Council submission talks about the need for Federal national legislation. Is any State doing it better at the moment?

Mr McMAHON: No, I do not believe there is. I think Queensland stalled. Today I spoke to my counterparts in Queensland and they mentioned the Standard for the Uniform Scheduling of Medicines and Poisons and the work that the Federal Government has done. They spoke to the Government and asked it to do that. It said it would look at it but nothing has happened. I do not know whether anybody is doing it any better than anybody else at the moment. It certainly is a complex issue.

Mr BRYAN DOYLE: Have other nations taken a different approach?

Mr McMAHON: I have not looked beyond that stage. I know I had a discussion with Paul about catching up on that at some stage. He is pretty much across the international scene as well but I have not had an opportunity yet.

CHAIR: You referred in your submission to providing clarity for employees relating to substances that they cannot use. Do you say that if these substances were prohibited it would deliver a clear message and it would assist your industry in dealing with the rising issue of synthetic drugs?

Mr McMAHON: I agree. Members have said to us, "I have had advice to say it is a legal product, and I am allowed to take it." It is not on the banned list. They have been caught with it. I cannot remember the precise example but I think they were caught with it in a donga or something like that. Somebody said they could not have it and they said, "No, I can. Do you want me to prove it?" While we still have that it undermines our education campaign and our drug and alcohol campaign. It just undermines that whole safety message. I am under no illusion that there are some societal issues that are more behind that. I am talking about the young males who have plenty of income and basically when they finish shift and get the nearest beer.

CHAIR: If the Committee has further questions would you be happy to answer them within 21 days after the Committee sends them to you at the conclusion of the hearings next Monday? Are you happy for them to form part of your evidence?

Mr McMAHON: Yes.

Ms GILROY: Yes.

(The witnesses withdrew)

ALEXANDER DAVID WODAK AM, President, Australian Drug Law Reform Foundation, affirmed and examined:

CHAIR: Would you like to make an opening statement before I hand over to the Committee for questions?

Dr WODAK: I am now retired. I was the director of the alcohol and drug services at St Vincent's Hospital until June 30. I am President of the Australian Drug Law Reform Foundation and that is the capacity in which I am appearing today. What I would like to say is that the case for global drug prohibition is collapsing in Australia, but even more so in other parts of the world. This has been a fixture in Australia and around the world for decades now but the evidence for it is diminishing and there is a strong move to try to find another way of dealing with this difficult problem. What we are talking about today—the identification of new illicit substances at an ever increasing rate—is a manifestation of the collapse of prohibition.

I am a director of Australia21 which is a Canberra-based independent non-political think tank and we released two reports, one on drug policy in April and then a second report in September this year. Both reports were based on discussion papers and then roundtables. Each roundtable had about 20 prominent citizens taking part in those roundtables and the reports were developed from the roundtable discussions. The reports, putting the two together, concluded that drug prohibition had failed comprehensively and that other countries were now developing more realistic and effective ways of dealing with illicit drugs. Australia should start to look at what other countries are doing in moving away from prohibition. As part of that whole process Mr Mick Palmer, former Commissioner of the Australian Federal Police, said on a couple of occasions that Australian police were better trained, resourced and effective than ever but, at best, had a marginal impact on the drug trade. A lot of people were very impressed to hear that.

This process is going on around the world. The debate is not just occurring in Australia. At the United Nations General Assembly in New York last month the presidents of three Latin American countries—Mexico, Columbia and Guatemala—said that drug prohibition has failed and we do not know what we have to do next but we have to do something that works better than prohibition. In August the President of Uruguay sent a bill to the legislature of Uruguay that sets out how he thinks Uruguay should cultivate and then sell cannabis. On 6 November, three weeks from now, the citizens of three states of the United States, namely, Colorado, Washington State and Oregon, are going to vote on three citizens-based referenda that will, if they get a majority, impose a taxation and regulation regime on cannabis in those three states. Two other states are voting about medicinal cannabis. It is not me and the Australian Drug Law Reform Foundation that have some weird ideas; this is a serious question around the world.

New Zealand is a country of which we should take a lot of notice. It has been at the forefront of major changes around the world. It was the first country to give women the vote. It was the first country in the world with the eight-hour work day and so on. New Zealand is now developing a system where people who want to sell a currently illicit drug will be able to if they can prove that the drug is safe to sell. They are developing a regulatory system for that. I have worked in the alcohol and drug field for a long time and I am sure many of you will know the serenity prayer of Alcoholics Anonymous which encourages us to have the courage to change what can be changed, the serenity to accept what cannot be changed and the wisdom to know the difference. Whether or not we like it there is not much we can do about the current demand for illicit drugs. People want to take them whether or not we like it.

What we can change is the expensive, ineffective and often counterproductive way we respond to illicit drugs, namely, with drug law enforcement. I hope increasingly the community will have the wisdom to distinguish between these different approaches. Cannabis prohibition costs a lot of money. We do not know how much. It is very difficult to identify the benefits and not too hard to identify some of the very serious collateral damage caused by cannabis prohibition. Part of that damage is the encouragement of an illegal industry to proliferate a new range of substances that are legal on Monday but become illegal on Tuesday and then they move on and develop something else. That is what we are talking about today. In the European Union 20 such new substances were identified in 2008—24 in 2009, 24 in 2010 and 49 such new substances in 2011. This is a growing problem around the world.

CHAIR: You speak primarily about prohibited drugs and prohibition. Have you had much professional experience dealing with the rise of specifically synthetic drugs? And in respect of the synthetic drugs do you

have any background relating to the harms that can be associated with these products for sale in their current form via tobacconists and adult bookshops and the like?

Dr WODAK: I have not. I did not ask the patients I saw whether or not they were taking them. They would occasionally volunteer that they were taking them, but not usually. I do not recall ever seeing a patient in 30 years who identified that he or she had a problem as a result of taking a particular new synthetic drug. We have very little information about these drugs and yet parliaments in other parts of the country have been quick to respond with some fairly heavy penalties. I think in Western Australia it is a $20,000 fine and 20 years in jail and in South Australia it is a $2,000 fine and two years in jail. That also is an indication of the uncertainty and lack of information about those drugs and yet legislation has been passed and people are receiving very heavy criminal sanctions for drugs of unknown safety.

CHAIR: From the work we have done in the course of conducting this inquiry there is emerging research in respect of the issues of synthetic drugs and this is anecdotal evidence in relation to some of the side effects of some of these products. Are you of the view that there is a cause for concern in respect of the potential health effects of synthetic drugs that are sold in these stores?

Dr WODAK: No-one feels comfortable about members of the community consuming things that are not safe. The question for me is why they are coming on the market. I think they are coming on the market because people can make a lot of money from selling them and they can make a lot of money from selling them because of the prohibition approach we have. It may still work politically—although that is starting to change—but it certainly does not work as a public policy. That is now increasingly being recognised. The United Nations Secretary-General Ban Ki-moon said on 7 May 2009 that we should be decriminalising drugs.

CHAIR: You raised the New Zealand approach whereby they have suggested that the onus should revert back to the manufacturers of these products; that they should go through testing that could cost them up to $2 million to pursue to ensure there are no harmful effects; but in the meantime the drugs should be prohibited. Do you believe that is the correct approach to take?

Dr WODAK: I did not hear that.

CHAIR: I refer to the approach in New Zealand where the committee has come back and potentially will be putting a bill to Parliament next year in August. As part of that approach the onus of proof, in relation to the safety of those products, will revert back to the manufacturers. A comprehensive testing regime will be established which could cost them up to $2 million.

Dr WODAK: Yes.

CHAIR: They will not be able to sell these products until such time as it is established that there are no negative side effects or health impacts. Are you saying that you agree with the approach taken in New Zealand?

Dr WODAK: With one notable exception and that is that I understand—although I have not read or heard this directly from New Zealand—that the new approach will not be rigorously evaluated. I think anything we do should be rigorously evaluated. If it works we should know that and if it does not we should know in what way it does not work. This is a difficult area for everybody and I acknowledge it must be very difficult for you and your colleagues to know exactly what to do. It is not clear. I think we have to try new things and the approach New Zealand is adopting seems to be a rational approach. Ultimately we have to accept that there is strong demand for these drugs. If no legal source is available clearly people buy them from illegal sources. Illegal sources will always emerge. If we believe that these and other drugs are dangerous it seems to me that the worst thing we can do is to set up a system that guarantees that Al Capone is the monopoly supplier, which is the situation we are in at the moment.

Mr CLAYTON BARR: Dr Wodak, do you believe that we need a national approach or can States get it done on a State-by-State basis?

Dr WODAK: National approaches always sound more attractive to me but I think, sadly, the political reality is that they are very difficult to achieve. We may end up spending a lot of time and energy trying to get a national approach and finding that one or other of the States or Territories will not subscribe to this. If we could get a national approach of course I would favour that.

The history of all of this is that the Commonwealth of Australia was represented at a League of Nations meeting in Geneva in 1924-25 and the Commonwealth of Australia came back from that meeting and wrote to the States and Territories and said, "We want you to prohibit cannabis." That was in the 1920s. New South Wales wrote back and said, "We do not seem to have this drug you call cannabis in this State but if it is good enough for the Commonwealth of Australia to want us to ban it, we will ban it." I gather that the Commonwealth/State relationships are not quite as cosy as that these days but if it could be nationally arranged through the Council of Australian Governments that would be wonderful.

Mr CLAYTON BARR: In relation to the synthetics in focus here today, currently is any State doing better at it?

Dr WODAK: There is quite a variation in the States at the moment. Western Australia seems to be keen to go backwards—they have gone backwards.

Mr CLAYTON BARR: In what way?

Dr WODAK: In the sense that in the 1990s there was some research done comparing the more liberal approach taken in South Australia with the more draconian approach taken in Western Australia. The study involved comparing cannabis offenders in the two States. The cannabis offenders in Western Australia were more likely to break up a relationship, more likely to lose a job, more likely to lose accommodation and more likely to be hostile to the community. There were a lot of very unattractive consequences of that draconian approach. In terms of the effectiveness of the two approaches, the South Australian and the Western Australian offenders were equally likely to have the intention of reoffending using cannabis again. That was work that was commissioned by the Commonwealth and published by the National Drug Strategy. Western Australia on the basis of that study liberalised its approaches and the Barnett Government has gone back towards the previous approach a year or two ago.

Mr CLAYTON BARR: In Western Australia mining is obviously a significant industry and there is the potential for a worker to turn up under the influence of a synthetic drug. My litmus test is always around school teachers and police officers—that is, the police officer carrying a gun and the teacher who is going to stand up in front of the class and teach my child. How do you balance the need to move away from criminalisation and towards legalisation with the need to have some work environments where, from an occupational health and safety perspective if nothing else, we are able to be sure that people are not under the influence? How would you strike that balance?

Dr WODAK: Good question.

Mr CLAYTON BARR: Do you think it is unreasonable for me to assert that we need to have some workplaces where people need not to be influenced by drugs? Is it reasonable for me to put that?

Dr WODAK: Yes, it is but the problem we have is that we have excellent ways of testing whether people are under the influence of alcohol. Alcohol has a very well understood, very predictable physiology. There is a very close correlation between blood-alcohol concentration and the risk of road crashes going back to work done in Michigan in 1964—Grand Rapids, Michigan. That now is very solid and will stand up to any legal battering it receives in any courtroom in the world. That is not the case with cannabis and it would be even less the case with synthetic cannabinoids about which we know even less than we know about cannabis. We can test for cannabis and we can say that it is present or easy is not present, but cannabis intoxication is much more difficult and now with synthetic cannabinoids it is even more difficult. I think really what we are doing is that we are pushing a market into developing more problems for us, rather than pushing the market into developing fewer problems for us.

Yes, we would all love to see people going to work in their occupations in a way that is safe for them and others but our current policy is not delivering that, if anything it is pushing things the other way with psychoactive drugs that people are taking now that we know very little about and it will take us years or decades to develop good testing. Even from the 1964 Grand Rapids study that I mentioned, it was 10 or 15 years before we had solid science around alcohol-road crash deaths.

Mr CLAYTON BARR: Is it fair for me to assume that we have such good data on alcohol because alcohol is a legal substance and data is so much more difficult to gather on cannabis or synthetic cannabinoids

because they are illegal, which effectively makes them underground and that means people are less likely to admit or acknowledge usage?

Dr WODAK: No, that is not the reason. The reason is because of the physiology of alcohol. Alcohol is water-soluble and therefore it dissolves readily in the blood. The correlation between blood alcohol and breath alcohol is very predictable, so if you measure breath alcohol you know what blood alcohol is. If you know what blood alcohol is, because of the huge amount of evidence that was acquired, we have got a good ability to estimate the risk of having a road crash. None of that applies with cannabis because it is fat soluble. The difficulty is that cannabis gets into the bloodstream, it rapidly leaves the bloodstream, it then goes into the fat in the body and then sometime later it comes from the fat in the body back into the bloodstream. It is a very complicated and difficult area of pharmacology.

Mr CLAYTON BARR: I read a report a couple of years ago that suggested that one bong, one pipe, one joint of cannabis or marijuana would have an effect on driving equivalent to about 15 standard drinks of alcohol. I do not know where the research came from or how testable it was. You suggested earlier, and you have a lot more knowledge about this than I do, that there was not any of that research. I am telling you that I have read a report where this was being put to people. Are you familiar with any of that type of research that might have come up?

Dr WODAK: I am familiar with that kind of research—

Mr CLAYTON BARR: But you are not convinced by it.

Dr WODAK: —but the assertion that you have made would not be scientifically correct. There is still a lot of debate about whether cannabis contributes to road trauma. The preponderance of evidence now suggests that it does, but there is still evidence against that we have not really been able to understand. The real problem with cannabis and road safety is when cannabis is used together with alcohol—that is really very dangerous. There have been some advances in our understanding about the road trauma risks of cannabis use. The big advance in a lot of the research done in Australia was—the scientists were blinded as to whether a person had taken cannabis or not—the drivers who had died in car accidents were examined and some had cannabis on board and some did not. A couple of studies have been able to show that drivers with cannabis on board had a greater chance of a death that was not due to equipment failure.

CHAIR: The Committee has received a submission from the National Cannabis Prevention and Information Centre. Part of that submission stated:

> Further studies have discovered that there is also variability in the combinations and concentrations of the synthetic cannabinoids within Spice products such that using different brands, or even different batches of the same brand, can produce dramatically different effects.

In your view and understanding is there a risk that users of such products could have a range of different harmful effects at a different level?

Dr WODAK: This is a rapidly changing field. I do not think anybody can really say today exactly what the situation is; it will not become clear for years to come. But in my view driving that uncertainty is our commitment to cannabis prohibition long after I think it was clear that cannabis prohibition has achieved very little at great cost.

Mr BRYAN DOYLE: Do you think a better approach would be to require manufacturers or producers of drugs to test their products and then prove to a certification board that their products are safe for distribution in the community?

Dr WODAK: I think that is the direction we have to go. Of course we would have to define what "safety" means. We have the benefit of being able to draw upon some decades of comparable kind of research in the area of therapeutic medicines. Obviously there are some differences between trying to prove the safety of a therapeutic medicine and a recreational substance but also it means we are not starting from scratch. I think that is a logical place to start, but whatever we do and whatever this Committee recommends, I hope one of the recommendations will be a very strong commitment to rigorously evaluate what we are doing, including collecting data before we do anything and then collecting data after some policy comes in.

Mr BRYAN DOYLE: You mentioned before evaluation, especially in respect of the New Zealand experiment. What sort of evaluation would you expect or suggest they should run?

Dr WODAK: A good question. I cannot answer that question because I think we need to know more about what they have in mind and I have only read some of the material that is available. But I do know there is only one country in the world where we actually have before and after evaluation data when a drug policy was introduced and that is the Czech Republic. The Czechs, after they threw out communism, went through a liberal phase in terms of drug policy and then they decided to recriminalise everything, and it was the recriminalising phase that was evaluated. What Tomas Zabransky and his colleagues did in Prague was they sat down with the legislators and worked out five hypotheses that the legislators believed would happen with the new legislation and then they tested that when the legislation came in and they collected data before and they collected data afterwards. That is the only time that drug policy legislation has ever been tested in the world in that way, and that is what I am hoping New Zealand will do and likewise New South Wales. There is plenty of time now to start thinking, if you propose some changes, about what you hope those changes would achieve and the very least I think we should be able to test those and that means collecting data before and afterwards.

Mr BRYAN DOYLE: In relation to synthetic drugs, is the future we are facing perhaps an indeterminate number of chemical combinations that can be used to achieve some sort of chemical nirvana for users?

Dr WODAK: I think it is not clear what the market wants. The longest piece of evidence that we have of studying psycho-active substances is the consumption of alcohol after Britain became the first country in the world to introduce alcohol taxation in 1700. We have data from beer, spirits and wine consumption in Britain over almost 300 years, and what that shows is an absolutely staggering amount of volatility; it is a very volatile market. The illicit drug market is also very volatile. Drugs go in and out of fashion for reasons we do not really understand, just like alcoholic beverages went in and out of fashion in those 300 years you can see on the graph. With most of the very sudden fluctuations in alcohol consumption in Britain over 300 years, we do not really have a clue as to why alcohol consumption suddenly went up or suddenly went down. Sometimes we do. Likewise with illicit drugs. We do not really understand why the market is so volatile. Nevertheless it is a market and when we try to prevent the supply of drugs in the presence of strong and continuing demand we all know what happens.

Al Capone or his counterparts provide the substances, and very often the unintended negative consequences of that policy, as with alcohol prohibition in the United States, are very severe and include significant amounts of corruption. Just on that point, I am probably the oldest person in the room and I can remember when betting on horse races was prohibited unless you were at a racecourse. So we developed this industry of special price bookmakers—SP bookmaking—which was illegal, but very pervasive, very common. Unfortunately what also became common was rampant police corruption. Your counterparts started to realise in the 1970s that this was going nowhere and had the good sense to make off-course betting legal and provided totalisator agency boards that allowed for people to bet on horse races and the next stage the TABs were sold. I think we can learn a lot from that experience. When the community wants a commodity or a service, they will look for it and someone will supply it. The prohibition of off-course betting, up until the 1970s, caused great damage in the community, just as the prohibition of legal cannabis is causing great damage. That is why we are here.

CHAIR: Thank you for attending today. As you may be aware, the Committee is also conducting hearings next Monday. Following those Committee hearings the members of the Committee may wish to ask you some additional questions. If you respond to those questions, that would form part of your evidence. Would you be happy if the situation arose that we may write to you with further questions?

Dr WODAK: Yes, certainly. I have given my email address on the sheet.

(The witness withdrew)

(The Committee adjourned at 4.10 p.m.)