

Families and Friends for Drug Law Reform (ACT) Inc

Committed to preventing tragedy that arises from illicit drug use



NEWSLETTER

July 2013

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NEXT MEETING

Thursday, July 25th, 7.30pm

St Ninian's Uniting Church hall,

cnr Mouat and Brigalow Sts, LYNEHAM Meetings are followed by refreshments and time for a chat.

International drug remembrance day: Dedication of a tree at Kings Cross, starting 1pm on Tuesday 22nd July 2013 at Lawrence Hargrave Park, Ward Ave., Potts Point on the roof of Kings Cross car park.

Drug Law Reform Party: The Australian Electoral Commission has now registered the party as a political party. It is standing candidates at the forthcoming federal elections in a number of jurisdictions. Any takers for the ACT?

EDITORIAL

The Kiwis show us how to do things differently.

Events this month in Wellington have shown that Australia is separated from New Zealand by not just the Tasman Sea. On 17 July our cousins across the water enacted as law the bill we mentioned in the April newsletter. It permits the marketing under strict regulation of psychoactive substances that "pose no more than a low risk of harm" as judged by a "Psychoactive Substances Regulatory Authority" consisting of the Director-General of Health advised by a committee that "may comprise up to 6 members who between them must have appropriate expertise in—

- (a) pharmacology; and
- (b) toxicology; and
- (c) neurosciences; and
- (d) medicine; and
- (e) any other areas the Authority considers relevant."

The authority is under an obligation to approve a psychoactive product if it is satisfied that: "the degree of harm that the product poses to individuals using the product is in no more than a low risk of harm." The step was taken in response to the advent of "new recreational drugs".

In introducing the legislation to Parliament the Associate Minister of Health explained that the existing New Zealand legislation "was never designed for an environment in which dozens of new substances can be brought to the market in the space of just a few weeks." Yes, this incredibly innovative legislation was put forward by the current centre-right National Party New Zealand government and supported by the Labour opposition.

On the other side of the ditch there was a political consensus of another sort. With the vocal support of the Federal Labor government the Liberal National governments in New South Wales and Victoria took hurried steps to ban a synthetic LSD compound (known on the internet as 25B-NBOME). This was prompted by the death of a young man who had obtained it from a friend who in turn had bought it over the internet.

On 12 June Brian McConnell wrote a letter remonstrating with the federal Health Minister, Tanya Plibersek, for her thoughtless support of the Australian bans. Brian's letter is on the Families and Friends website.

So in Australia we have the usual Pavlovian reaction of prohibition. In New Zealand we have recognition that the perpetual banning of the plethora of new drugs is participation in an endless game of cat and mouse which, as the associate Health Minister said, "can actually have the perverse effect of increasing the range of emerging drugs. This proliferation of poorly understood chemicals and their widespread use should concern all of us. We need an enduring solution, and that is what this bill is all about." Indeed the endless flow of new psychoactive substances poses a challenge quite beyond the capacity of the cumbersome international and national drug control mechanisms to regulate. Indeed some see this challenge as presaging the end of drug prohibition. A more detailed summary of the bill that became the act is set out in the minister's first reading speech in introducing the bill to the House of Representatives. This is set out below.

The New Zealand action is significant for a number of reasons:

- (a) recognition that prohibition buttresses a black market for drugs.

- (b) Recognition that the usual response of banning drugs cannot cope with the increasing availability of new designer drugs devised by ingenious chemists to circumvent existing bans.
- (c) Recognition that the community may be better protected by a regulatory system that permits the marketing of substances that have a low risk of harm.
- (d) Recognition that the government's role is to reduce risk rather than to attempt the impossible and eliminate risk.
- (e) Entrusting the assessment of acceptable risk of new substances to an expert panel in terms of Psychoactive Substances Regulatory Authority advised by a "Psychoactive Substances Expert Advisory Committee".
- (f) Removing much key decision-making from law enforcement to health authorities.
- (g) There is a real hope that New Zealand's innovation will influence Australia through New Zealand's participation in bodies like the standing committee of attorneys general and health ministers associated with the Council of Australian Governments.

Having said that, it must be acknowledged that New Zealand's new legislation is not the end of the matter: for all its novelty it represents a cautious approach. It does not affect the status of drugs, including cannabis, that are already banned under the NZ *Misuse of Drugs Act 1975*. Those who possess a psychoactive substance that is not approved in accordance with procedures under the new act still commits an offence but one to which a fine of \$500 applies, not imprisonment. An infringement notice applies to those caught in personal possession of an unapproved substance. The New Zealand legislation thus falls well short of legislation in Arizona (and possibly Washington state) legalising cannabis. Altogether all these jurisdictions highlight the extent that Australia has slipped behind other countries and jurisdictions in the adoption of innovative responses to drug problems.

Australian glory days as an innovator lie in the past. We continue to garner international credit as pioneers of harm minimisation but our commitment to that vital principle is wearing thin, particularly in the context of attempts to reframe drug issues in terms such as *prevention* and, more recently *recovery*, which can serve as a smokescreen for an intensification of failed law enforcement efforts to deter our way out of the drug problem.

What the New Zealand Associate Health Minister said about the Bill

Hon PETER DUNNE (Associate Minister of Health): I move, *That the Psychoactive Substances Bill be now read a first time.*

Over the last 20 years New Zealand and other countries have been facing an acceleration in the development of new recreational rugs. The *Misuse of Drugs Act 1975*—the legislation that protects the public from drugs that are known to pose a moderate, high, or very high risk of harm—was never designed for an environment in which dozens of new substances can be brought to the market in the space of just a few weeks. It has simply been unable to keep up. Scores of products with unknown effects and unknown risk profiles—indeed, some barely known to science at all—have slipped through this regulatory void and on to dairy shelves. The public has been rightly concerned as news reports have highlighted that young adults, adolescents, and even some children have been taking these so-called legal highs, and suffering as a result.

About 18 months ago this House passed an amendment to *the Misuse of Drugs Act*, which has allowed me to issue temporary class drug notices in the Gazette. These are time-limited bans, and the effect of a temporary class drug notice is to apply the same penalties as we do for cannabis, except that personal possession is not an offence. So far I have issued such notices for 33 of these substances, affecting more than 50 products. More are still available. But there is a game of regulatory cat and mouse afoot here, where an irresponsible industry seeks to elude authorities and circumvent the law by bringing new chemicals to the lucrative market of things that have not yet been banned.

Many people have asked me why we do not simply ban these substances altogether. Unfortunately, because the retail products are a combination of substances—some are harmful and some are not—it is simply not that simple. What the temporary class drug notice regime has done is make it possible to respond faster to new developments, but I freely concede—and did so at the time—that it does nothing to slow those developments in the first place. That can actually have the perverse effect of increasing the range of emerging drugs. This proliferation of poorly understood chemicals and their widespread use should concern all of us. We need an enduring solution, and that is what this bill is all about.

The Psychoactive Substances Bill ends this dangerous game of cat and mouse by banning the import, the manufacture, the sale, the supply, and the possession of psychoactive substances. It reverses the onus of proof by making all psychoactive

substances illegal, unless the industry can prove their products are low risk. Psychoactive substances are broadly defined in the bill as substances, mixtures, preparations, articles, devices, or things that are capable of inducing a psychoactive effect, by any means, in the people who choose to use them. Substances already governed by other legislation—foods, medicines, supplements, herbal remedies, alcohol, tobacco, controlled drugs, and precursors to controlled drugs—are excluded from that definition. To avoid situations where the law is circumvented by people labelling products such as bath salts, incense, or plant food, as has happened here and overseas, there is a power for a declaration by Order in Council that a substance is or is not a psychoactive substance for the purpose of this legislation.

This law will not be mocked by fine print “Not for human consumption” words being placed on packaging. But it is not the Government’s intention to ban absolutely everything for ever. The meat of the bill is a pathway to a regulated market for psychoactive substances, if they can be shown to pose no more than a low risk of harm. I emphasise here that to say that a product poses no more than a low risk of harm is not the same as saying that a product is safe. No one will be allowed to claim that a product is safe. The Government has no intention of acting in a way that might be interpreted as an endorsement of party drugs.

What the bill does is create a Psychoactive Substances Regulatory Authority and an expert advisory committee. The authority will be responsible for granting licences for the import and manufacture of psychoactive substances, and, on the advice of the expert committee, approving psychoactive products for sale if they have been shown to pose no more than that low risk of harm I spoke of.

To bring a product to market, a sponsor will therefore have to demonstrate to the expert committee that the product poses no more than a low risk of harm. Practically speaking, this will involve providing the committee with evidence from clinical safety trials, similar to those required to bring a new medicine to market. That process will be expensive, and I make no apology for that. There will be no room under this regime for fly-by-night operators wanting to sell substances on the cheap that they do not fully understand.

Approved products will be made subject to comprehensive regulatory control. So even if they come through the hoop, people under 18 will be unable to buy, sell, or be supplied these products. For retail outlets, the packaging, the labelling, and the promotion of approved products will be strictly limited. There will be requirements for health warnings on the packaging, since even products with no more than a low risk of harm cannot be called completely safe. Manufacturing standards, disposal, and record-keeping requirements will be set.

In the legislation itself there is a requirement for product sponsors or licence holders to report all adverse events involving their products to the authority, which will have the power to suspend or cancel trading in a product. And, finally, the bill contains a transitional provision that allows products lawfully sold throughout the 6 months prior to the commencement of the legislation to remain on the shelves if—and only if—an application for approval has been lodged with the authority no later than 30 days after this legislation is enacted. I expect that provision to receive a reasonable level of attention during the select committee process, and I therefore encourage the committee to consider it in the light of the bill’s intention to minimise health-related harm and to place the onus of proof on the sponsor.

The penalties for infringing against this regime are strong but commensurate with the need to protect the public from unknown drugs. This bill is a necessary measure to protect the health of the public by regulating novel psychoactive substances in a way that is proportionate to the risks they pose. It is a world first, and when I attended the recent United Nations Office on Drugs and Crime meeting in Vienna, our legislation was the subject of considerable attention and interest. New Zealand is being seen as an innovator. We are seen as a country that is promoting, through this bill, a viable solution to a problem that many countries are similarly grappling with. I am therefore very proud of this bill, and I am very proud now to commend it to the House for its first reading.

IAIN LEES-GALLOWAY (Labour—Palmerston North) : Let me say at the outset that Labour wholeheartedly supports this legislation. . . .

There are two aspects of it that I think are particularly worthy of praise. First—and this is the thing that many parents around New Zealand will be very pleased to see—it does provide a mechanism to get some of these substances that have been untested, that are unproven, off the shelf until such time as they are proven to be safe. I know that there will be people, particularly parents, around the country rejoicing at the knowledge that this legislation is finally being passed and that that will be the effect. The second aspect, though, that I think is particularly praiseworthy is the fact that for the first time in this Parliament we are expecting to pass legislation that proposes a mechanism by which some drugs can become legal and make it to market in a regulated—I hope a very tightly regulated—market. That, I believe, is a very positive step in our drug laws (House of Representatives, Sitting date: 09 April 2013. Volume:689; Page 9,132).

Mental Health and smoking bans: a warning about the dangers of prohibition

A subject in the news in the ACT has been the introduction of a smoking ban at the Canberra mental health facility opened just last year at the Canberra Hospital. Such a ban raises concerns about human rights, work safety and considerations of ethical medical practice as well as effectiveness. Such bans are motivated by the best of motives in terms of consideration of both staff and patients but, as we know with illicit drugs, steps taken with the best of intentions can be both counter-productive in preventing the targeted unhelpful activity and in adding new harms.

The most harmful aspect of a smoking ban from the patient's point of view is that it is likely to impede treatment of a more serious mental health condition which was the reason for a patient's admission. A smoking ban is tantamount to a government order overriding both the wishes of patients and the professional judgement of the patient's medical professionals. This is wrong.

Both patients and their desperate families and other carers are likely to suffer because:

- (1) Patients who are smokers are likely to be deterred from seeking treatment;
- (2) those smokers who are admitted either voluntarily or involuntarily are at risk of discharging themselves before completion of a recommended course of treatment for the mental health condition that led to their admission;
- (3) mental health conditions are a common risk factor for smoking. Indeed smoking can be seen as a form of self-medication. If by reason of coercion imposed to enforce the ban these underlying conditions are unaddressed or indeed aggravated, the patient is at very high risk of resuming smoking when able to do so after discharge.
- (4) Patients desperate for a smoke may well become difficult to handle. Reports of assaults within the mental health facility may suggest a net reduction in work place safety rather than the improvement that partly inspired the ban.

At issue is also a principle of public policy: that the least intrusive of measure necessary to achieve a policy objective should be adopted. Bans, whether or not underpinned by criminal sanctions, are almost always the most ineffective and costly means of addressing health and social problems. The success of non-coercive smoking measures provides lessons for the reform of illicit drug policy and the experience of illicit drug policy is replete with cautionary tales that the zealots who seek a general ban on tobacco would do well to note. In spite of stringent regulation

of tobacco, a scarcely believable level of chop chop tobacco is in circulation. This is evident from the enormous quantities of tobacco seized by the Australian Customs Service. Its latest annual report (for 2011 – 12 p. 110) lists 175 tonnes being seized (down from 258 tonnes the year before). There is reason to consider that the chop chop tobacco market is little different to that of illegal drugs. On that assumption it is likely that these seized quantities represent only a small proportion (say 10 to 20%) of chop chop tobacco in circulation. On this basis the scope for the imposition of additional restrictions on tobacco would seem to be limited.

“Why our drug cops need the dealers”

2013 DRUG ACTION WEEK FORUM

This year's drug action week forum on Wednesday 19th June with Dr John Jiggins received excellent publicity thanks to Jack Waterford, editor at large of the *Canberra Times*, who chaired it. The following are some points that Dr John Jiggins made. You can hear the full audio of his address on the Families and Friends website as well as read the text of his paper, “How many cones? How many pills? How many lines of coke?” that he spoke to:

In the period that I looked at which was the last nine months or so of the current financial year there were two monster seizures of over \$250 million. The first of these occurred on 30 July 2012 and it was 558 kg of drugs which consisted of 306 kg of methamphetamine, 206 kg heroin. The 306 kg of methamphetamine was the largest seizure of methamphetamine ever in Australia and the 252 kg of heroin was said in the newspaper reports to be the third largest seizure. It may have been the fifth largest, I am not sure. All up it came to a street value of \$500 million and at the time the police put out a statement commenting on this monster seizure. Australian Federal police Deputy Commissioner Andrew Colvin talked up the success of the AFP:

So if you look at these seizures that they claimed for this year alone and we haven't quite reached the end of this financial year they've claimed 2 billions of dollars worth of illicit drugs seized. And this gives you some idea of how big the industry is. I mean the police spin out a story of fantastic success. But think! The only reason they're seizing that many is because there are so many around. The story isn't so much a story of police success as it is the story of a country swimming in a sea of illicit drugs.

The two biggest cannabis seizures in that period were in the enormous category. The biggest of all was the annual police helicopter raid in the north coast of New South Wales. Every year the police helicopter goes over the alternative communities of northern New South Wales After the North Coast drug operation the drug squad commander, Supt Nick Bingham stated: "it yielded almost 14,000

plants valued at \$25 million. Our intention is to disrupt the supply chain, to go and find and pull as many plants as we can and get that cannabis off the street or hopefully drive prices up or keep prices stable and that will discourage people, we hope.” Now that is interesting because that is an admission that you really do need massive police operations like that just to maintain the price of cannabis. One of the things you discover when you investigate the drug trade is that the things that creates the value of the drug trade is what we spend on drug law enforcement. Every dollar we spend on drug law enforcement is worth \$10 to the back market. Hippies used to joke that the drug squad was the price maintenance squad for organised crime. Now that is true. It's the effect of all those police and prisons and jails pressing down that creates the value of the market.

If you look at the number of arrests for cocaine versus other drugs – what I call the relative regime of prohibition, the regime of prohibition of cocaine is 2.1 arrests per thousand users now with cannabis there is 30.1 arrests per thousand users, in other words we press down 15 times as hard on cannabis as we do on cocaine and there is no rational explanation for that. If you say that we do this because cannabis is a more dangerous drug. Well no, cocaine is much more addictive. Cocaine is more dangerous because you can have fatal overdoses with cocaine which you can't with cannabis so you have to ask yourself why does this happen? Why is cocaine almost decriminalised in Australia? And the only explanation seems to be class. If you look at who uses cocaine versus who uses other drugs, cocaine is used by the top socio-economic bracket four times as much as by the lower economic bracket. Cocaine is used by wealthy and successful people, by lawyers, and people like that. Methamphetamine is used by bikies. So police crack down on methamphetamine. They don't crack down on cocaine.

Jack Waterford wrote a hard hitting piece in the paper on the following Saturday (22nd June). The following are a few extracts:

What police and the justice system are doing, in short, is futile - a waste of time, and, in terms of its impact on the lives of others, a destructive waste of time.

Put bluntly, it makes no difference to drug consumption.

This futility comes at an enormous cost. There's the direct one - the simple expense to the taxpayer of maintaining an army of men and women soldiers in the war. These are police, customs, criminal intelligence and other investigators, as well as prison warders, court staff, judges, parole officers and counsellors. One can make estimates of the total cost of this, based on figures such as the proportion of offenders in jail for drug-related offences,

proportions of court time and amount of police activity devoted to drugs. Right now that figure, Australia-wide, is pushing \$1.5 billion a year - long before one throws in secondary costs of wasted lives, health impacts, and systemic official corruption the illegal market invariably brings in its wake.

Later Waterford noted how the former Prime Minister, Mr Howard, toyed with a heroin trial only to be forced to retreat into a “prohibitionist mode by Major Brian Watters, of the Salvation Army. . . propped up by *Daily Telegraph*-style moral panic and hysteria”. Watters, Waterford noted, was “firmly given to a zero-tolerance perspective” who viewed “illegal (and even some legal) drugs as immoral and criminal behaviour, rather than a health issue”.

Waterford commented in the following terms about our present generation of politicians:

Howard has been out of the game for six years, but while many in the Rudd or Gillard governments completely understand - sometimes from experience - the futility of the tough approach, few have had the guts to say so, and policy has little changed. Most politicians, Labor or Liberal, are terrified of being accused of being "soft" on drugs, just as they are terrified of being accused of being soft on terrorism, or boat people.

Political inaction on drugs is as much the moral issue of our time as climate change. Under the Coalition, of course, there'll be no softness on hard drugs. Policy will be determined by faith, Alan Jones and focus groups.

The full text of Jack Waterford's article is well worth reading. It is available on the Canberra Times website at <http://www.canberratimes.com.au/comment/why-our-drug-cops-need-the-dealers-20130621-2oogc.html>.

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Families and Friends wishes to thank warmly John Jiggins who travelled from Brisbane to speak, Jack Waterford who chaired the forum and Brendan Smyth, Opposition Shadow Treasurer, Shadow Minister for Economic and Business Development and Shadow Minister for Emergency Services who sponsored the event in the Legislative Assembly reception room.

When anyone takes action to attempt to make something happen, that something becomes more likely