

Families and Friends for Drug Law Reform (ACT) Inc

Committed to preventing tragedy that arises from illicit drug use

NEWSLETTER

April,
2014

PO Box 4736
HIGGINS ACT 2615
Tel: 02 62542961
Email: mcconnell@ffdlr.org.au
Web: www.ffdlr.org.au
ISSN 1444-200



Join us.

NO APRIL MEETING

NEXT MEETING

Thursday 29th May 2014
7.30pm

St Ninian's Uniting Church hall,
cnr Mouat and Brigalow Sts,
LYNEHAM

Meetings are followed by
refreshments and time for a chat.

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Editorial

Liberal voices in favour of Drug Law Reform

1. Garry Humphries

From time to time one wonders why the Liberal Party, the self proclaimed champion of individual liberty and choice has been so resistant to drug law reform. Well, there have been some recent indications that some within the Liberal camp are asking this very question. Recently Garry Humphries has got himself into trouble with his ACT Liberal colleagues for charging them with failure to connect with the ACT electorate. Garry Humphries was

supplanted by Zed Seselja in preselection for an ACT Senate seat. Before moving to the Senate he had been the ACT Chief Minister. He fears that unless the local party distinguishes itself from an unpopular Commonwealth government it will not stand a chance of ever forming government again in this territory. "I do not rejoice in the title Last Liberal Chief Minister of the ACT" Humphries wrote in *The Canberra Times* on 28th March. "They must," he added, "also be demonstrably a different product to their national cousins." Kate Carnell, he observed, "understood this" and reaped the reward. She was "the only Liberal leader ever to win elections here in the quarter century of self-government." Humphries recalls that "she fought often, and hard, with John Howard. It was right to stand up for the city when its interests were threatened, but it was also good politics."

Significantly, the one example that Humphries gives is drug law reform, an issue "that Liberal governments elsewhere ran a mile from, but which struck a chord with Canberra voters." Indeed it did. Kate Carnell, trained as a pharmacist, understood addiction and drugs. She almost brought off a heroin trial. Every time she took a forward position on drug policy polls showed that the approval rating of her government increased.

Unfortunately the Liberal party is a divided house. Its support for individual liberty particularly in economic matters is balanced by a conservative social strand. The political success of Kate Carnell owed much to her capacity to sell to that Conservative strand the real fiscal and social benefits that would flow to the whole community from enlightened, evidence-based drug policies. Unfortunately the present Liberal party leadership in the ACT rejects this. Families and Friends for Drug Law Reform have made an offer to Jeremy Hanson, the present ACT Liberal Leader, to speak at Liberal party branch meetings but this offer has never been taken up. This is a great pity.

The radical Liberal wing of the party is fond of condemning nanny state policies. The irony is that illicit drug policy is the most extreme form of nanny state regulation imaginable. People are to be prohibited by law from consuming substances on the grounds that these may do them harm. We know only too well those laws are ineffective and serve to promote rather than suppress the distribution and consumption of drugs. For families this is a tragedy. The State fails in its commitment to keep drugs from their children while at the same time making criminals

of their children and disempowering parents from taking steps to help them.

The inherent inconsistency of our current drug laws with liberal principles is well summed up in the observation attributed to President Eisenhower, the Republican President of the 1950s:

"if you want total security, go to prison. There you're fed, clothed, given medical care, and so on. The only thing lacking . . . is freedom."

And it is to our still new prison that we send our drug users who generally fall foul of the law for offences against property rather than drug offences. Overwhelmingly they are troubled young people who more often than not also suffer from a mental health problem or other disability. And the prison regime we send them to is stressful rather than secure and we tax payers fork out in the region of \$500 a day to keep them there and destroy their life chances. Madness if ever there was.

New Zealand provides a model for what Humphries is getting at. There a National Government negotiated across party lines with the labour opposition to introduce significant improvements to New Zealand's drug laws.

Liberal voices in favour of Drug Law Reform

2. Tim Wilson

The views of Garry Humphries resonate with those of the new Australian Human Rights Commissioner, Tim Wilson appointed by the Abbott Government. Wilson had worked for the liberal think tank, the Institute of Public Affairs (IPA), and been a member of the Liberal Party from which he resigned on his appointment. In the past, the IPA has spoken out in favour of heroin prescription and drug law reform. In an interview that Wilson gave this year to the Fairfax press's Zone he described prohibition as a "failed policy" invading people's privacy. In particular, he had the following to say:

"I have always had a pretty negative view of illicit drugs. Like with prohibition, one of the most concerning consequences of current policy is how it drives criminal behaviour and provides a black market, and means there is limited quality control over products sold. The more I have learned about the prohibition movement the more I see the same failed policies being replicated on illicit drugs. I don't have a formal view on how we should approach illicit drugs, but there's clearly a difference between how we should be approaching recreational drugs and hard drugs. My preference is towards some decriminalisation but also to see how the US experience goes before drawing any hard conclusions, but the Portugal experience does help inform the debate.

"Of course illicit drugs should be treated as a health issue and education is clearly essential, but I think there's a difference in understanding of illicit drugs within the community. From my own experience I remember when the Howard government sent out a booklet to every household on drugs and how to talk to kids about it a lot of

people laughed at the idea of the booklet because people already knew all about drugs. I remember people scoffing at the idea that people would need to be educated about the different slang words for recreational drugs. But some of us aren't as exposed to drugs as others. I read that booklet and learned a lot. But there are a lot of people who might have smoked marijuana once or twice at a party, or had half an ecstasy tablet once at a dance party, who don't really know that much about drugs and their risks."

(<http://www.canberratimes.com.au/national/full-transcript-tim-wilson-20140131-31ry9.html>.)

Prohibition and the power of language

It was President Nixon who coined the term "war on drugs". In his American bestseller, *The Party is Over: how Republicans went crazy, Democrats became useless and the middle class got shafted*, Mike Lofgren, a long-standing Congressional staffer, reflects upon the power of words as "the vehicles that convey political ideas" (p. 57). As George Orwell spelt out 70 years ago in *1984*, the trick is to use "short, simple, easily understood words and phrases – positive words for what you are defending, negative words for what you are attacking" (p. 60).

Lofgren sees that the war on drugs is as meaningless as the war on terrorism and other appeals to belligerency against abstract nouns:

"The war on terrorism failed just as our domestic crusades symbolically styled as wars have failed: the war on poverty, the war on drugs. But in public relations terms, which is what the American system of governing is increasingly about – not solving problems, but shaping perceptions through the adroit use of rousing or soothing phrases – it was a smash hit. It induced courtier media personalities to swoon over the righteousness of it all . . ." (p. 59).

Those of us who have long been arguing for drug law reform in Australia can recognise this technique used against us. The term war on drugs may not have had quite the same impact here as in America but as Nicholas Cowdrey, the former New South Wales Director of Public Prosecutions, told a Families and Friends Forum in 2012, we should be under no illusion but that Australia has engaged in such a war:

"We have been waging war. We are waging war. We are doing our best with the resources that are available to try and stop illicit drug involvement. The problem to my mind is having given this problem to the criminal justice system in the first place."

All of us have experienced the power of the dismissive one-liner like "sends the wrong message" to cloak a blunt refusal to engage with evidence and persevere with cruel policies that intensify suffering and compound the very problems ostensibly targeted. In a battle between punchy simplicity and wordy complexity, dogmatic simplicity always wins.

Exclusion from treatment

Drug users and their families are long used to confronting barriers to treatment and other help. So often the system seems to be designed to maximise the obstacles people are expected to negotiate. This may take the form of a requirement to wait an indefinite time for a place; to ring every day to check whether there is a place because there is no waiting list; insistence that people at the end of their tether show gratitude and behave politely; attendance at clinics at hours inconvenient to work, family commitments and public transport; meeting judgemental attitudes, prejudice and lack of understanding or empathy with those struggling with an addiction; unrealistic evidence of stability before patients are accorded take-home doses of maintenance therapies. Very often these obstacles are compounded by the complexity of the condition of the drug user. He or she may well have complex needs derived from a seriously disadvantaged background.

Data on the impacts of obstacles to treatment are not currently captured. Exclusions from treatment are generally regarded as merely clinical issues internal to the management of the treatment agency and healthcare professionals but they are bellwethers of the capacity of the system to cope with the most needy and difficult of patients who, left untreated, entail huge personal and community costs. Families and Friends for Drug Law Reform would like to see more attention paid to this issue. A prerequisite of improvement is gathering information on where the system is failing. The case for data on exclusions is as valuable as information on suspension and expulsion of children from school. In particular we believe that information should be regularly collected to monitor:

- suspension from drug treatment;
- expulsion from drug treatment;
- the length of time of suspension or expulsion;
- other conditions that suspended or expelled drug users must comply with before being eligible for readmittance to treatment.

Changes to ACT drug regulations

During April the ACT Attorney General, Simon Corbell made to important changes to ACT drug laws. These were in the form of amendments to the Criminal Code (Controlled Drugs) Legislation Amendment Regulation 2014. These involved firstly the adjustment of quantities of drugs triggering presumptions of trafficable quantities and secondly adding 44 synthetic drugs to the schedule of prohibited substances. The first, Families and Friends welcomed. The second, we regretted.

Changing the trafficable quantities of the four most common drugs

The Attorney General altered the threshold quantities of heroin, methamphetamine, cocaine and ecstasy that engage the presumption that the possessor has them for

trafficking. These quantities are effectively used to distinguish those who possess drugs for their personal use and those who are engaged in trafficking. In addition, the regulations now specify quantities in terms of "mixed grams" based on the retail purity of drugs seized in the ACT during 2010 – 11. The conversion to mixed grams is for the convenience of police and prosecutors "as it is easier to determine the mixed weight of drugs a person has in their possession, rather than having to determine pure weight." The change also makes it easier for users to know where they stand.

Thus, the trafficable quantity of heroin was specified as 2 pure grams. This was the equivalent of 8.1 mixed grams. The quantity has now been reduced to 5 mixed grams. Methamphetamine has also been reduced from the equivalent of 20 mixed grams to 6 mixed grams. In contrast the quantity of cocaine has been increased from 3.3 mixed grams to 6 mixed grams and ecstasy from 3.3 mixed grams to 10 mixed grams. 10 mixed grams is the equivalent of 33 tablets thus providing a buffer for the practice of pill popping partygoers still to be regarded as possessing drugs for personal use when possessing some to supply to friends. Cannabis was also considered and the decision made not to reduce the threshold to 110 grams as the experts had recommended. The Department of Justice and Community Safety has explained that the threshold of 300 grams per "mixed grams" allows some variation in the weights, depending, for example, on whether the cannabis was wet or dry when weighed.

The heartening aspect of these changes is that they were informed by solid research of the Institute of Criminology, and advice of Nicolas Cowdrey and Prof Alison Ritter and Dr Caitlin Hughes of the Drug Policy Monitoring Program at the University of New South Wales. Moreover, they were guided by the sound principle that the specified thresholds should not be "placing Australian drug users at risk of unjustified criminal charges or sanction."

Bill Bush was interviewed about the changes by Genevieve Jacobs on 666 ABC. While welcoming them he lamented that the government had not taken the advice of Families and Friends in 2004 when unrealistically low thresholds were specified in the so-called "serious drug offences" chapter of the Model Criminal Code with the result that a juvenile indiscretion could result in conviction of young drug users for very serious drug crimes that could well blight their life chances. A young partygoer who happens to purchase pills for her mate to consume on a night out would have been guilty of trafficking.

Scheduling 44 synthetic drugs

In contrast to the evidence carefully gathered to support changing the trafficable quantities of the four most common drugs, the ACT simply played catch up to other jurisdictions in listing the 44 synthetic substances. The result is that a miscellany of "synthetic cannabinoids, stimulants and hallucinogens" are now subject to criminal offence under the *Drugs of Dependence Act* 1989. These are drugs marketed under such names as Kronik, Bath Salts and N-Bomb. In scheduling them the ACT has implemented in Canberra the draft national efforts to

address new psychoactive substances. Some of these substances have been implicated in deaths and should be subject to strict regulation. The irony, though, is that adding them to the prohibited list eliminates the capacity of government to control their use. They are transferred from the regulated distribution network of the legal economy to the black market economy controlled by criminals with little or no stake in the wellbeing of their customers.

The Alcohol Tobacco and Other Drugs Association ACT (ATODA) has observed in its April newsletter that :

“Unfortunately, banning individual chemicals does not appear to meaningfully change the availability of emerging drugs as the manufacturers can evade the ban by modifying a banned chemical, and thereby create a new one. This means that, each time a chemical is banned, a new drug, which we know even less about, potentially replaces it.”

The apparently mindless imitation of other State Australian jurisdictions in banning these synthetic substances is a disappointment and contrary to the approach adopted by New Zealand. In June last year Brian McConnell remonstrated to the Commonwealth Health Minister for her thoughtless support of these bans. Across the Tasman the national government recognised that this perpetual banning of the plethora of new drugs is participation in an endless game of cat and mouse which, as the Associate Health Minister remarked "can actually have the perverse effect of increasing the range of emerging drugs." The rational ground-breaking approach adopted by the New Zealand Government with bipartisan support is discussed in the Families and Friends newsletter of July last year.

It was heartening to read in *The Canberra Times* on 11 April that Shane Rattenbury, the Green Member of the ACT Assembly, criticized the Attorney General's approach as "out dated." He added that "when it comes to synthetic drugs, I am keen to see a new approach here in Australia where we try and stay one step ahead of the drug manufacturers. . . . I am keen for the ACT to explore the model that has been adopted in New Zealand where the government has banned all products, but then those that go through a pharmaceutical testing process and are shown to be low risk for human consumption can be sold legally."

Australian illicit drug time line for 2013

The Drug Policy Modelling Program (DPMP) has compiled a chronology of noteworthy developments since 1985 in the evolution of Australian (illicit) drug policy. This is available at <http://www.dpmp.unsw.edu.au/resource/drug-policy-timeline>. At the beginning of the month it released the following supplement to this of key events in the past 12 months till 31 March 2014.

Over the last 12 months key events of note include:

- The Federal Minister for Justice Michael Keenan announced that the Government will amend regulations to add four NBOME substances, also known as “synthetic LSD”, to the Criminal Code.

This will increase the penalties for importation of these products from a fine to between two years prison and life imprisonment.

- First systematic analysis of Australian cannabis THC and CBD potency published by Dr Swift et al. Showed most Australian cannabis had high THC and low CBD potency.
- Tasmanian Minister for Health released the first specific prevention strategy: *Everybody's Business: A Strategic Framework for Implementing Promotion, Prevention and Early Intervention (PPEI) Approaches in Averting Alcohol, Tobacco and Other Drugs Use*.
- New Tasmanian drug strategy released: *Tasmanian Drug Strategy 2013-2018*.
- The QLD Government adopted *Criminal Law and Other Legislation Amendment Act 2013*. Introduced new requirement that drug traffickers serve at least 80% of their term of imprisonment before being eligible for parole.
- The NT Government passed the *Misuse of Drugs Amendment Act 2014*. This allowed police to charge a person with an aggravated circumstance of “supplying to a place that was at the time of the offending an ‘indigenous community’” when it involves a schedule 2 drug e.g. cannabis or amphetamine.
- WA Government announced the Drug and Alcohol Office (DAO) and the Mental Health Commission (MHC) would be joined.
- 17-year old Henry Kwan, from NSW, died after taking NBOME (a synthetic LSD-like drug) and jumping off a third floor balcony.
- NSW cannabis clinic expanded to include synthetic cannabinoid users.
- Interim evaluation of the ACT's naloxone program showed that the program had been a success.
- ACT Attorney-General Simon Corbell announced first evidence-informed law reforms to the ACT drug trafficking thresholds; including modifying the trafficable quantities that amount to ‘deemed supply’ to better ensure the thresholds target drug traffickers, rather than drug users.

Many of these developments are not in the direction that Families and Friends for Drug Law Reform would like to see. Indeed they show that the prohibition mindset continues to be alive, well and dominant in Australia.

