

NEWSLETTER

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NEXT MEETING

Welcome to the first meeting of FFDLR for 2015 and hope you have had a good break over the festive season.

You are urged to come to this first meeting where the important future events for FFDLR will be discussed.

Where and when:

Thursday 26 February, 7.30pm
St Ninian's Uniting Church hall,
cnr Mouat and Brigalow Sts, LYNEHAM

Meetings are followed by refreshments and time for a chat.

The Bali Nine

by FFDLR member Bill Bush

“should the same set of circumstances present themselves again we would do exactly the same thing” - AFP

One Saturday night in April 2005 four young Australians were arrested in the departure lounge of Den Pasar airport in Bali where they were found to have 10.9 kg of heroin strapped to their bodies. The group and their travelling companion, Andrew Chan, were bound for Australia. After these airport arrests, four more Australians including Myuran Sukumaran were detained in their Bali hotel where the Indonesian police had had them under surveillance. The public saga of the Bali nine had begun. The Indonesians released footage of them stripped with concealing tape being removed from their bodies. They faced death at the hands of the Indonesian justice system or revenge killing by the organised crime masterminds of the scheme. As young Renae Lawrence, put it: “if we do them in, they kill our family and we're dead anyway. Don't tell them, and they'll just kill us instead and leave our families alone (The Age, April 21, 2005).

The AFP and the government were immediately challenged for failing to ensure that the group returned to Australia before being arrested, thus avoiding exposure to the risk of the death penalty. On Channel Nine, Lawrence's father expressed himself to be “filthy” with the AFP: “apparently they have been tracking this syndicate or whatever you want to call it for 10 weeks, knew what was going on and as far as I am concerned they should have been let on the plane and arrested at Sydney airport.” (SMH, April 20, 2005).

The frustration of Lee Rush, the distressed father of Scott, was even more solidly grounded. He became suspicious that Scott

might have been travelling to Bali to be involved in illegal activity and, was “determined to help save him from committing any offence in Bali.” A barrister family friend contacted in the AFP was asked “that Rush be detained at Sydney airport and prevented from leaving Australia.” The AFP did not oblige. On Wednesday 6th April 2005 Rush and three others who had been under AFP surveillance were allowed to catch their flight to Bali.

Not only that: on the following Friday, 8th April, Paul Hunniford, the AFP Senior Liaison Officer in Bali, sent the first of two letters to the Indonesian National Police (INP) in Denpasar advising them of the travellers. As Scott's mother put it to the ABC, the AFP had put Australian lives at risk: “It is totally unacceptable. Australian Federal Police wrote two letters to the Indonesian Police listing names of various people, Scott included. And they also gave information about where they would be staying, their passport numbers, and provided black and white photographs. It was stated in the Indonesian court, by the police, that Scott and the others would not have been arrested but for the information provided to the Indonesian Police by our Australian Federal Police” (Australian Story, 13 Feb 2006).

One can have some sympathy for the AFP. As Michael Phelan, AFP National Manager, Border and International Network, said on the ABC Australian Story program in February 2006: to have stopped Rush and the others at the airport would have “disrupt[ed] the operational integrity of our investigation. Clearly, in this case, there was a risk that that would occur, therefore we wouldn't do it.” As described in the letter to the INP, they were intent upon breaking up a drug smuggling ring. They wanted to know who would supply the drugs to the Bali 9 and to whom the drugs would be distributed in Australia. In short, the AFP was keen to set up something of a controlled delivery. In spite of the clear implication in the AFP's letter of 8th April and a further letter of 12th April, the AFP wanted and expected that the INP would let the group return to Australia. After all, Australia was the intended destination of the drugs.

The Indonesians were not prepared to oblige and why should they? Surveillance of the group that they carried out in Denpasar allowed them to make a big drug bust and the AFP had not put any conditions on the assistance they provided INP as the Australia/Indonesia Treaty on Mutual Assistance in Criminal Matters permits. The AFP did not make its provision of assistance conditional on Indonesia permitting the Bali 9 to return home nor that if charged for an offence carrying the death penalty that the death penalty would not be carried out. In fact, as came out in the subsequent hearing of the Senate Legal and Constitutional Affairs Committee in August 2005 and a Federal Court case in November, the AFP communicated with the INP on the basis of its internal procedures that did not require any precaution when and if an offence incurring the death penalty was involved. Ministerial directions existed requiring the AFP not to provide

assistance when “a charge has been laid under the law of that foreign country, for a crime attracting the death penalty” without reference to the Attorney-General’s Department and the Minister for Justice and the Attorney-General. Thus, almost certainly, Chan and Sukumaran would not be facing the death penalty now if they had been charged before the AFP doxed them in. But the Indonesians did not charge them until 13 October 2005 when they had completed their investigations.

The case of the Bali nine thus highlighted a serious loophole in the safeguards that otherwise surrounded the provision of assistance in criminal matters.

In August 2005 the president of the Law Council of Australia, Mr John North, brought this loophole to the attention of the Senate Legal and Constitutional Committee then considering the Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Bill 2005. He prophetically warned that: “In a few months [the decision in relation to the Bali 9] will probably make the Schapelle Corby case look like Mickey Mouse, because you are going to have nine young Australians possibly facing the death penalty in Bali.” In the course of the Senate committee hearing, Federal Agent Phelan was closely questioned on the police to police procedures he applied to provide assistance. In August 2005 this multi-party committee was worried enough to recommend unanimously “that the Australian Government, in conjunction with the Australian Federal Police and other stakeholders, review its policy and procedures on international police to police assistance.”

“In particular,” the committee added, “the Australian Government should ensure appropriate ministerial supervision of assistance provided to overseas jurisdictions by Australian law enforcement agencies, where that assistance may expose Australians overseas to cruel, harsh or inhumane treatment or punishment, including the death penalty.”

This step does not seem to have been taken. On Perth radio the then Justice Minister, Chris Ellison, promptly defended the AFP’s assertion that: “we cannot dictate to the Indonesian police what they should or should not do.” (The Age 21 April 2005). In October 2005 he dismissed the Senate recommendation when he announced on Channel 9’s Today show that he would not review police to police assistance (Senate Hansard, 12/10/05). In February 2006 Federal Agent Phelan, who took the rap for informing the Indonesians, was unapologetic on the ABC Australian Story program: “even with the aid of hindsight, should the same set of circumstances present themselves again with another syndicate or other people, we would do exactly the same thing.”

There is little sympathy for drug smugglers: a low and despicable form of life (CT letters Jan. 31) of whom the Indonesian Attorney-General said: “we need to wage war and of course we can’t compromise” (CT Jan 24, 2015). Clemency extended to seven of the 9 would not be extended to the ring leaders.

The sad truth is that in the war on drugs the individual is of little consequence. As the AFP saw it, much weightier considerations were at stake than the life of a few misguided young Australians. Finn J. dismissed a civil suit against the AFP for to do so would “elevate the interests of Scott Rush over the public interest that the AFP was serving under its legislation to the extent that the two collided, as it did in the making of the request to the INP.” The Age reported more chilling comments of Commissioner Mick Keelty: “Australia co-operated with its Asian neighbours

on issues such as tourism and terrorism and could not have ‘conditional co-operation’ when it comes to drugs.” But there is an overlooked domestic aspect. In the light of the experience of the Rush family, who will be prepared to trust the police with confidential information?

Australia’s stand against the death penalty has its limits. Any skerrick of justification for conniving with its imposition vanishes when one considers the futility of drug law enforcement generally.

The Bali 9 were planning the import into Australia of over 10 kg of heroin. This is nothing compared to Australia’s largest heroin seizure of 400 kilograms. On that occasion the then Australian Federal Police Commissioner, Mick Palmer, admitted that: “despite the size of the seizure, heroin prices had not risen and there did not appear to be shortage of the drug in Australia.” He added that “it would have been optimistic to have expected the seizure to have impacted in Australia” (Herald Sun, Wed, 25 Nov 1998, p. 22). The Indonesian executions are a display of futile realpolitik.

Drug Law Reform: A discussion paper by the NSW Bar Association

http://www.nswbar.asn.au/docs/webdocs/Drugs_DP_final1.pdf

Criminal lawyers, who see the human face of those caught up in the law concerning illegal drug use, have an obligation to bring what they see to the notice of their fellow citizens who may have more confidence than is warranted in the capacity of criminal law and punishment to deliver results.

Kirby, M. ‘The Future of Criminal Law’ (1999) 23 Criminal Law Journal 273.

Executive summary

- The current prohibitionist approach to illicit drugs has substantially failed in that it has had limited effectiveness in reducing drug availability or drug use, and that position is unlikely to change as the law struggles to adapt to synthetic drugs, the internet drug trade and the illicit use of pharmaceutical drugs.
- The harms resulting from the prohibitionist approach, for drug users and for the wider community, are considerable (these include: an unregulated black market; drug overdoses; resort by drug users to crime to pay for drugs; the growth of criminal networks; corruption of public servants and reduced respect for the law).

The Committee has concluded that the goals of drug policy should be to reduce levels of drug-related harm, increase the number of drug dependent users seeking treatment and implement effective demand reduction strategies.

The Committee has reached the preliminary conclusion, which is subject to further research and consultation, that the only way to achieve these goals is to replace the black market for drugs with a form of legal availability under a highly regulated system. This might involve:

- Licensing controls surrounding production and supply of drugs.
- Different levels of control depending on the drug and its potential to cause harm (for example, higher risk drugs would

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be subject to stringent controls and might only be supplied to registered dependent users who would be required to use the drug in controlled environments).

- The establishment of a specialist advisory committee (including health professionals) that would review all drugs and provide advice to regulators regarding potential harm and treatment options, as well as suitable forms of control.
- Prohibition on private production and trafficking.
- Prohibition of supply to children.
- The taxation of drugs in a way that ensures that the price is sufficiently high to discourage excessive use while being sufficiently low to prevent users from sourcing drugs on the black market.
- The promotion of a public health oriented approach to drug use (including: ensuring the quality and concentration of drugs; prohibition on advertising and the rampant commercialisation that has traditionally characterised the markets in tobacco and alcohol; availability of appropriate and comprehensive treatment services for drug dependence in the community and in prisons).

This regulatory model has many benefits, but the primary advantage is that drugs, users and suppliers will no longer be beyond legal control. While it may result in an increase in drug usage, at least in the short term, the extent of any increase would largely depend on the nature of the regulation applied to particular drugs. Furthermore, the risk of increased use needs to be weighed against the potential to:

- improve access to treatment
- reduce the risk of mortality
- reduce the costs to society
- encourage less harmful patterns of use
- reduce the incidence of drug-related crime
- address stigma and discrimination
- restrict the activities of criminal networks.

It is time to implement a public health oriented approach that is evidence-based and guided by expert advice. It is time for governments to take control of the problem, rather than allowing the black market to control drug use in this country.

Some conclusions

The preceding discussion leads the Committee to the following conclusions:

- Illicit drug use undoubtedly results in both primary and secondary harm, particularly for dependent users.
- While the primary harms of cannabis use are not trivial, they are modest compared to those associated with other illicit drugs, as well as alcohol and tobacco.
- Insofar as total social costs are concerned, the frequent use of tobacco substantially outweighs the costs resulting from the frequent use of alcohol or illicit drugs, while the total social costs resulting from the frequent use of alcohol and the frequent use of illicit drugs are comparable.
- The current prohibitionist approach to illicit drugs has substantially failed. It has had very limited effectiveness in reducing drug availability or drug use, particularly among

young people, and that is unlikely to change.

- The distinction between licit and illicit drugs is becoming increasingly arbitrary.
- The harms resulting from the current prohibitionist approach to illicit drugs for drug users, and for the wider community, are significant.
- Alternative strategies to deal with illicit drugs are available, and have been adopted in other countries with some success.

We have concluded that the goal of Australian drug policy should be to reduce levels of drug-related harm, increase the number of drug dependent users seeking treatment and implement effective demand reduction strategies.

The focus should be on the alleviation of the secondary harms associated with drug use, as opposed to dubious assessments of prevalence of use.

Extracts from the AIHW Household Survey

<http://www.aihw.gov.au/alcohol-and-other-drugs/ndshs-2013/>

Key findings: Overall illicit use of drugs

The proportion of people in Australia having used any illicit drug in the last 12 months has remained relatively stable over the past decade at around 1 in 7.

About 8 million people aged 14 and over in Australia (42%) have ever used an illicit drug, and 2.9 million (15.0%) had used an illicit drug in the 12 months before the survey, increasing from 2.7 million (14.7%) in 2010.

There was no change in recent use of most illicit drugs in 2013, and use of any illicit drug remained stable between 2010 and 2013; however, there was a significant change for a number of specific drugs. The proportion who had misused a pharmaceutical rose from 4.2% in 2010 to 4.7% in 2013, while the use of ecstasy, GHB and heroin declined.

Across Australia, people aged 20–29 were most likely to have used an illicit drug in the previous 12 months (27% of all people in that age group).

Use of specific illicit drugs

The most common drug used both recently and over the lifetime was cannabis, used by 10.2% and 35% respectively of people aged 14 and over.

Among people aged 14–24, the age of initiation into illicit drug use rose from 16.0 in 2010 to 16.3 in 2013. More specifically, the age at which people first used cannabis and meth/amphetamines increased with both these drugs showing an older age of first use in 2013.

People aged 50 and over generally have the lowest rates of illicit drug use; however, in recent years this age group has shown the largest rise in illicit use of drugs and were the only age groups to show a statistically significant increase in use in 2013 (from 8.8% to 11.1% for those aged 50–59 and from 5.2 to 6.4% for those aged 60 or older); this was mainly due to an increase in use of cannabis.

In 2013, 1.2% of the population (or about 230,000 people) had used synthetic cannabinoids in the last 12 months, and 0.4% (or about 80,000 people) had used other emerging psychoactive substances such as mephedrone.

Cannabis and meth/amphetamine users were more likely to use these drugs on a regular basis with most people using them

at least every few months (64% and 52% respectively) while ecstasy and cocaine use was more likely to be infrequent, with many users only using the drug once or twice a year (54% and 71% respectively).

While there was no rise in meth/amphetamine use in 2013, there was a change in the main form of meth/amphetamines used. Among meth/amphetamine users, use of powder fell from 51% in 2010 to 29% in 2013 while the use of ice (also known as crystal) more than doubled, from 22% to 50% over the same period. More frequent use of the drug was also reported among meth/amphetamine users in 2013 with an increase in daily or weekly use (from 9.3% to 15.5%). Among ice users there was a doubling from 12.4% to 25%.

Motivations

Among people who had used an illicit drug in their lifetime, most people aged 14 or older reported trying illicit drugs because they were curious to see what it was like (66%) or because they wanted to do something exciting (19.2%). Illicit drug users continued to use illicit drugs because they wanted to enhance experiences (30%) or because it was exciting (17.5%).

Illicit use of any drug

Trends in lifetime use

In 2013 about 4 in 10 (42%) people in Australia had illicitly used a drug at some point in their lifetime (Online Table 5.1). This was a higher proportion than in 2010 (40%) but lower than the peak of 46% in 1998. Most of this rise in lifetime use was attributable to increases in the non-medical use of pharmaceuticals; lifetime illicit use of pharmaceuticals rose from 7.4% to 11.4% (Online Table 5.2). More specifically:

- misuse of pain-killers/analgesics showed the largest increase of all the drug types surveyed, with 7.7% of people in 2013 having ever used them for non-medical purposes compared to 4.8% in 2010

- there were small but significant rises in the proportion of people who had ever used tranquilisers/sleeping pills and other opiates/opioids (excluding heroin).

Ketamine was the only non-pharmaceutical illicit drug to show an increase in lifetime use and there was a small but significant decrease in the proportion of people having ever injected any drug.

Trends in recent use

Around 1 in 7 (15.0%) people aged 14 or older reported having used an illicit drug in the last 12 months and this level of use remained relatively stable between 2004 and 2013. Monthly or weekly use of illicit drugs was reported by fewer than 1 in 10 people—8.1% of the population had used an illicit drug in the last month, and a further 5.2% had done so in the last week (Figure 5.1). There was no change in recent use of most illicit drugs, but there was a change for the following drugs (Online Table 5.3):

- the proportion who had misused a pharmaceutical rose from 4.2% in 2010 to 4.7% in 2013

- ecstasy use has been declining since 2007 and declined from 3.0% in 2010 to 2.5% in 2013

- there were small but significant falls in recent use of heroin and people who had injected drugs.

Meth/amphetamines

Between 2004 and 2010, questions relating to meth/

amphetamines use were refined to more accurately reflect substances used in Australia. More specifically in 2007 the term 'meth' was introduced and in 2010 clarification about non-medical use was added. Before 2004 the term 'meth' was not included.

Current use

In 2013, about 1.3 million (7.0%) people had used meth/amphetamines in their lifetime and 400,000 (2.1%) had done so in the last 12 months (Online Table 5.5). Males were more likely than females to have used meth/amphetamines in their lifetime (8.6% and 5.3%, respectively) or in the last 12 months (2.7% and 1.5%, respectively). In addition:

- people aged 30–39 were slightly more likely than those in other age groups to have ever used meth/amphetamines (14.7%), while people aged 20–29 were more likely to have recently used meth/amphetamines (5.8%) (Online Table 5.7)

- meth/amphetamine users are getting older; the average age of users was 24 in 2001, compared with 28 in 2013 (Online Table 5.16) and age of first use was also older, increasing from 17.9 in 2010 to 18.6 in 2013 among young people aged 14–24 (Online Table 5.10)

- most people who were offered, or had the opportunity to use, meth/amphetamines didn't use it—5.8% of people aged 14 or older were offered meth/amphetamines and 2.1% had used it (Online tables 5.4 and 5.12)

- among people aged 20–29, 14.1% had been offered or had the opportunity to use the drug, and 5.8% had used it (Online tables 5.18 and S5.28).

Age and sex comparisons over time

Meth/amphetamine use had been declining since it peaked at 3.7% in 1998 (Online Table 5.3) but remained stable at 2.1% between 2010 and 2013. There were no significant changes in the proportion of people using meth/amphetamines in last 12 months among different age groups or sexes (Figure 5.8). Patterns of meth/amphetamine use over time are:

- recent use among females has declined since 2001 (Online Table 5.18), but it remained relatively stable in 2013 (1.7% in 2010 compared with 1.5% in 2013)

- recent use among males has declined since 2001 but remained stable between 2010 and 2013 at around 2.5%

- there was a noticeable drop in recent use among people aged 14–19 and 20–29 between 2004 and 2007 but little change in use since 20

About two-thirds (69%) of people would support a change to the legislation permitting the use of cannabis for medicinal purposes but only one-quarter (26%) believed that the personal use of cannabis should be legal.

When asked about appropriate action for people found in possession of small quantities of drugs, for all drugs except cannabis, most support was for referral to treatment or an education program, while for cannabis the most popular action was a caution, warning or no action and this increased in 2013 (from 38% to 42%).