

## Drug Action Week

Distinguished guests, ladies and gentlemen, I was delighted to have the opportunity to join you today and would like to thank the organisers for bravely inviting me to launch Drug Action Week. As my loving wife occasionally observes, I am sometimes invited for a second time only in the hope that I will apologise for the first. I am also conscious of the fact that many of you will have been touched by tragedy due to drugs or alcohol and may strongly disagree with some of my views. Yet I have been to too many funerals to remain tactfully reticent about my own convictions concerning our legal policies about drugs and alcohol.

Whilst we are supposed to be waging a war on illegal drugs, the casualty rates inflicted by our pharmacological adversaries do not approach those inflicted tobacco or alcohol or, for that matter, other human activities unrelated to drugs. In 2000, the American Medical Association estimated that tobacco caused the death of 435,000 Americans per annum, poor diet and physical inactivity killed 365,000 and alcohol another 85,000. Illegal drugs were collectively responsible for 17,000 deaths, just under 4 per cent of those caused by tobacco. In further contrast, incidents involving firearms killed 29,000 people, and what were coyly described as 'sexual behaviours' killed another 20,000. Yet our American friends remain addicted to guns and even the religious right has not yet called for a war on sex. The latest Australian figures reveal a somewhat similar picture. In 2004-2005, 14,901 Australians were killed by tobacco but only 872 by illegal drugs. Nonetheless, I would like to focus on our legal policies concerning illegal drugs because I believe they are not only substantially ineffective but tragically counterproductive.

During the last four decades, western governments have waged what has been described as a war on drugs. New offences have been created, penalties have been massively increased, law-enforcement bodies have been given new powers, and hundreds of thousands of people have been arrested and sent to prison. Politicians and senior officials have constantly told us that they are winning the war, that the flow of drugs into our countries is being stemmed by the rigorous enforcement of the law, and that sooner or later the problem will be wholly overcome. I wish I could believe them. I wish I could believe that narcotics and other dangerous drugs will one day be driven out of our lands like St Patrick is said to have driven the snakes out of Ireland. I wish I could believe that there will be no more need for rehabilitation programs, that the courts will see no more drug dependent offenders and that I will never have to attend any more funerals for young people who were little more than children when their lives ended in misery and squalor.

Who knows? Perhaps such a utopian day will dawn in some future age when new technology provides new investigative tools or introduces such wonders that drugs lose their attraction. But in the world we currently inhabit, these claims are false. They can only be attributable to ignorance, blind faith, an obdurate refusal to acknowledge the truth, or political opportunism. The more strident proponents of these claims strive to support them by dramatic announcements about the seizures of drugs and occasional shortages. This is supposed to prove that the tide of drugs is being driven back. In reality, it is like a modern-day re-enactment of the legend of King Canute ordering the incoming tide to turn back. The backwash of waves from the surf may momentarily encourage optimistic children to believe that their sandcastles are safe, but they do not show that the tide is actually receding. Nor, overall, is the flow of drugs.

The truth is that we have not even managed to keep drugs out of prisons. I first became aware of this in 1974 when, as a young counsel, I represented some prison officers at an inquiry. My clients claimed that fully 20 per cent of prisoners were using

drugs in prison, and the authorities were prepared to concede that 10 per cent were doing so. The schemes for smuggling drugs were quite sophisticated even then. One involved LSD microdots impressed into the pages of library books in the lace of full stops. That was 36 years ago. Now drugs are so prevalent in many prisons that previously non-dependent prisoners may become addicts during their sentences.

All this is counter-intuitive to many of us. We expect the stringent enforcement of laws prohibiting the importation, sale, or even possession of drugs to lead to fewer people using them. If this is failing, we instinctively assume that this must be because the police have insufficient resources or because sentences are inadequate. It is shocking to imagine that the drug trade may defy all efforts to suppress it, even when billions of dollars are spent on drug-law enforcement, police now have unprecedented powers, and maximum penalties of life imprisonment may be imposed for some offences. It is difficult to credit that such measures could have failed.

Some people may protest that the difficulty of driving drugs from our shores demands redoubled effort, not meek surrender. I have every sympathy for that view. Illegal drugs are a blight upon our societies, and whilst tobacco and alcohol cause many more deaths, that does not diminish the tragedy of lives destroyed by drugs like cocaine, heroin, or 'ice'. Yet great social problems require more than idealism and determination, as important as those qualities are; they also require a realistic appraisal both of their causes and of the likely effectiveness of any suggested responses.

In fact, the war on drugs has proven a spectacular failure. The number of drug users has simply exploded and, despite occasional seizures, drugs are so plentiful that the prices have plummeted. In real terms, cocaine now costs about one-sixth of what it did in 1980 and heroin costs about one-tenth. Does the solution lie in greater stringency? Well America now has 2.4 million people in prison, the vast majority for offences related to drugs. More live in American gaols than some states like West Virginia. How much more stringent could they be? Yet countries like America and Australia that have waged the war most fiercely tend to have the highest rates of drug usage. The disturbing truth is that we seem to have been making the problem worse rather than better. There is a critical need for new approaches and that should start with a fundamental shift in perception.

Drug usage needs to be seen for what it is; a public health problem. The goal should be to save as many lives as possible and that will not be achieved by a single minded reliance upon the criminal law. The proponents of our current approaches seem to share at least two fantasies.

The first is that the legal policies send important messages to potential drug users that this reduces the overall level of consumption. We are presumably asked to believe that teenagers constantly respond to the offer of joints by saying, "No. I am sure that our wise political leaders ban the bad drugs and permit the safe ones, like ...er ... tobacco and alcohol." In fact, of course, many teenagers regard our drug policies as the product of ignorance and hypocrisy.

The message actually conveyed is that drugs are 'forbidden fruit'. Whilst some young people use drugs as an anodyne for their emotional pain, most try them because it is "cool". Why? Because they are forbidden. Earlier generations of children showed how cool they were by smoking cigarettes behind the school toilets; today's children do so by taking drugs in defiance of the threatened criminal sanctions. Unlike public health

approaches that may lead young people to see drug users as people in need of help, our laws may make them seem daring rebels.

A further factor is that the structure of the illegal market exerts a seductive influence. Addicts have to pay for their drugs and few have high incomes. Some rely on property crimes or prostitution but many ultimately conclude that the best way to ensure a regular supply is to become involved in selling them. Their own dealers are unlikely to offer them a list of established clients; so they are forced to find clients of their own and set out to persuade others to sample their wares. And, since those selling drugs use them themselves, young people tend to assume that, unlike middle aged conservatives in suits, these people really know what they are talking about. This phenomenon and the perception that drug usage is cool together increase the dangers of young people being drawn into dependency.

The illegal market also creates added dangers of overdose due to variation in potency and additives intended to increase the apparent quantities for sale. Illegal drug dealers also target children. An American study found that by 2003, fully 14 per cent of those being admitted to drug-abuse treatment facilities had first used drugs when 12 years old or even younger.

Then there are the dangers generated by the vast flow of money that our present policies effectively divert into criminal coffers. The Americans made the same mistake in the prohibition era and it led to the rise of famous criminals like Al Capone and unprecedented levels of civil violence. The war on drugs has been even more catastrophic. The violence has erupted on a global scale with many thousands being murdered every year. And now we have the new threat of what has been described as narcoterrorism. Terrorist groups have increasingly become involved in drug trafficking, in some parts of the world training criminal gangs in how to fight police and soldiers and in other parts effectively licensing crops. The Taliban take US\$100 million from the annual opium crop in Afghanistan alone. Vast sums are spent on weapons. We may one day face even the chilling spectre of an organisation like Al Qaida acquiring weapons of mass destruction if the world does not act decisively to cut off the flow of drug money.

The benefits of prohibition are few. Imprisonment rarely has the therapeutic effect sometimes claimed by naive defenders of the status quo and more often leads to young people being brutalised or even sexually abused. I understand that some innovative measures have been taken at the Alexander McConachie Centre in Canberra and I will be interested to see an evaluation of the results, but few parents whose children had fallen into bad company and were using drugs would think that the solution lay in having them spend 24 hours a day with drug dealers and other criminals, even in the most enlightened prison.

Some success has been achieved by courts using the "carrot and stick approach" whereby a drug dependent offender is given an opportunity to attend a full time residential course of rehabilitation whilst the threat of imprisonment hangs over his or her head like the sword of Damocles. I was required to sentence one man who had spent almost 18 of the last 20 years in prison. It emerged that he was a heroin addict who, whenever released, committed offences to fund his addiction. I foreshadowed adjourning the sentencing proceedings and sending him to a residential rehabilitation course in the interim. When the learned prosecutor had controlled his apparent apoplexy at this suggestion, I explained to the defendant that if he tried to leave the course or took any drugs, I would send him back to prison. A few weeks later, he was brought back to court,

and I was told that he had been excluded from the course for misconduct. I assumed that he had not really been committed to the program and that I would have to send him back to prison. However, the prosecutor rose, not to politely stress that it had been an idiotic decision to give him the opportunity, but rather to concede that he should have another chance. He explained that another prisoner had thrown a vat of boiling water over the defendant shortly before he was taken to the rehabilitation centre; but, though shockingly scalded, he had been so determined to comply with my order not to take any drugs that he had refused morphine and other analgesics. As a consequence, he had sat up, rocking back and forth in pain, for several nights in a row before finally exploding in rage when someone had needled him one morning over breakfast. While this had led to his exclusion, he had been invited to return later. He duly completed the next program, graduated to a more advanced one, and then to a halfway house where he could work during the day at the first real job he had ever had. The reports revealed that he had made exceptional progress. I eventually imposed a suspended sentence that would have brought him back before me had he committed any further offences, but I never saw him again. I have no doubt that if I had simply sent him back to prison, his pattern of re-emerging to commit further offences would have continued. Of course, not every offender takes the opportunity offered and, whilst there are notable successes, I do not believe that the casualties of the war on drugs can be justified even on this basis.

The second fantasy is that decriminalisation would unleash hordes of potential drug users who have remained abstinent but are champing at the bit waiting to legally experiment with drugs. No one claims to have actually met such a person and when Portugal decriminalised the use of all drugs in 2001 these mythical people did not emerge.

There is, I suggest, a desperate for fresh approaches. In the long run the best strategy would be licensing and control of currently illegal drugs and addressing usage rates with the much same strategies we use in dealing with tobacco usage. Our public health strategies have been reducing the sales of cigarettes whilst our reliance upon the criminal law has been substantially ineffective in containing, let alone reducing, the supply and use of illegal drugs. All of the dire predictions made in Australia whenever such a fundamental change is mooted were made in Europe prior to decriminalisation in Portugal, but a study of the first seven years of that approach revealed that none of the nightmare scenarios had occurred. On the contrary, the number of people receiving treatment for drug dependency increased dramatically, the number of new cases of drug-related HIV infection and AIDS declined, the incidence of hepatitis B and C infections was reduced, and there was a very substantial reduction in the number of drug-related deaths. The courage of the Portuguese authorities have saved many of their young people, though the drugs are still drawn from illegal dealing and large sums of money still flow into criminal coffers. Licensing and regulation could avoid that problem, ensure purity, restrict access to children and have users consulting health professionals rather than criminals.

Sadly, our main political parties in Australia remain in thrall to the disastrous policies of our American allies and we are unlikely to embrace even the Portuguese approach in the immediate future. Yet there have been at least some courageous moves.

In 1986, medical staff at the Drug and Alcohol Service at St Vincent's Hospital in Sydney decided to break the law by establishing Australia's first need-exchange program. This exercise in civil disobedience followed numerous attempts to obtain government approval. Despite the outcry from the critics, the state government, which had previously seemed too frightened to put its toe into the water, decided not to prosecute them, but to study the results. Within months, there were government-run programs in all Australian

states. A report commissioned by the Commonwealth Department of Health estimated that by the year 2000 these programs had prevented 25,000 HIV and 21,000 hepatitis C infections, and would, by 2010, have saved the lives of 4,500 people who would otherwise have died from AIDS, and a further 90 who would have died from hepatitis C. The programs proved to be a good investment in financial terms alone. These programs cost less than \$150 million but in the long run saved taxpayers more than \$7 billion.

One might have expected that their success would have encouraged governments to consider other public health initiatives to save lives, but they generally retreated into their defensive shells. Then in May 2001, a medically supervised injecting centre was established in Sydney on a trial basis, and the results were progressively evaluated. This followed another exercise in civil disobedience that had occurred in 1999, a year in which 1,116 young Australians died from heroin overdoses. 'The Tolerance Room', as it was called, was opened in the basement of the Wayside Chapel by people anxious to staunch the flow of deaths due to overdose. It attracted an avalanche of publicity, and was denounced by the prime minister and other government figures. The police arrested a clergyman, and charged him with aiding and abetting the use of illegal drugs, though the charge was later dropped. However, the publicity and the support that the Tolerance Room provoked seemed to force the state government's hand, and it agreed that the possibility of an injecting centre should be considered at a drug summit. The current centre is run by the Uniting Church in Australia under the authority of the New South Wales government.

The most-recent evaluation of this centre, carried out by the National Centre in HIV Epidemiology and Clinical Research for the NSW Department of Health in 2007, revealed that in the six years of its operation there had been 391,170 visits by intravenous-drug users for the purpose of injection. The centre had managed 2,106 overdose-related events, 93 per cent of which involved heroin or other opioids. All who overdosed survived. The report of the evaluation observed that there would have been 'significant morbidity' had a substantial proportion of the overdoses occurred elsewhere. The staff of the centre also provided vein-care and safer-injecting advice. They referred drug users to other services on no less than 6,243 occasions, and 45 per cent of these referrals were for treatment, most frequently opioid-substitution therapy. The authors of the report concluded that the centre continued to provide a gateway for the treatment and rehabilitation of the 'highly marginalised population of drug users' for which it cared.

These results do not appear to be aberrations. The report noted that at least 28 rigorous studies of drug-injecting centres had already been reported in leading peer-reviewed medical journals. There was a growing body of evidence that facilities of this kind had been associated with reductions in overdoses, and had produced other health benefits, including increased uptake of drug-detoxification and addiction-treatment programs. The evidence also revealed that they had not led to increases in drug-related crime or rates of relapse.

Yet there is still opposition to the centre in Sydney. Why? Some complain of reduced neighbourhood status but the most common response are silly platitudes such as 'it sends the wrong message to our young people.' We have heard such a response from one senator recently. I am sure that he sincerely expressed his belief, but, in reality, adolescents offered their first taste of forbidden narcotic fruit are not deterred by the absence of adequate public-health programs. And one must ask how many young people should be allowed to die for the sake of an imaginary message?

In any other area of human activity the deliberate withholding of potentially life saving measures would inevitably be condemned as callously irresponsible. Suppose we declared war on reckless driving. Would the public support a law requiring seat belts to be modified so that they would fail once the speed limit was exceeded? Human rights are often the first casualty in times of war, and the martial metaphors employed in the rhetoric about drugs also seems to have driven them out of the debate on these issues. It is time that they were restored. It is morally indefensible to withhold measures that may save the lives of young people, even when the danger is substantially attributable to their own actions.

Let me finish on a positive, if somewhat whimsical note. When i was writing my new book, *The Quest for Justice*, I found that I was still young enough to dream. My dream is of the leaders of different political parties coming together around a table, agreeing that in relation to this one issue of drug law reform they will refrain from trying to score points against each other and sit down with a view to answering a single question: what would the most lives?

There are no wholly satisfying answers. More young people will die and more families will be devastated. The ranks of the mourners are unlikely to approach the countless thousands who mourn those killed by tobacco and alcohol, but their pain will be no less acute. We cannot spare all of them their suffering, but we could take an unflinching look at what could be done to alleviate the dangers. The dream could become a reality. We could abandon the sterile rhetoric that has characterised the last four decades and try to minimise the harm that is being caused day by day in every corner of the world.

In launching this Drug Action Week I pray that it will provide real impetus towards a safer society for those who are amongst its most vulnerable members. Thank you.