

**FAMILIES AND FRIENDS FOR DRUG LAW REFORM
LAW JUSTICE AND DRUGS FORUM**

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Minister Bill Wood, Chair Kerrie Tucker, Leader of the Opposition, Gary Humphries fellow distinguished participants, ladies and gentleman

I am honoured to have been asked to speak to you at this public forum on Law, Justice and Drugs in Drug Action Week. As many of you know how to deal one way or another with the issues arising out of the use of drugs in our society is a matter about which I have spent a lot of time and energy thinking, speaking and in action through my involvement in various government and non-government agencies and committees. Having been so long and deeply involved I sometimes think that the arguments have all been heard and there is nothing more to say

Unfortunately I find that this has been far from true. The standard of public debate about important issues such as this one in particular is often very low, often reduced to trivialisation and effectively name calling, ignoring evidence and simplifying the issues to the point of absurdity.

I am delighted that Joost Dirkzwager, Counsellor from the Royal Netherlands Embassy, is speaking today. His country has taken the lead in evidence based policy in this area and has been prepared to take steps that it believes are right as determined by such policy despite considerable political pressure, especially internationally.

It is a welcome irony that just yesterday his Embassy and the Royal Netherlands Ambassador co-hosted with the Australian Red Cross a function to celebrate the establishment of the International Criminal Court, another issue on which public debate has been equally unsatisfactory. It is amazing when you think of globalisation and the World Trade Organisation and its effect on sovereignty and then we must ask how one can worry about the loss of an insignificant amount of sovereignty by the establishment of such an important international element of the International Criminal Court

Similarly with drugs. But these **are** complex issues which are involved in that debate and even amongst those who seek to understand and rely on the evidence we now have, there is disagreement. It would be much more fruitful to engage in **that** debate than the superficial sloganeering and abuse that we so often find

My concern professionally of course is the impact of drug use on the criminal law and I have spoken before on the way in which the prohibitionist approach that we have established in our legal system to drug use, often exacerbated by an emotional and alarmist attitude, has distorted some of the processes and values of the criminal law. Thus we accept incursions into such traditional values as the requirement of the prosecution to prove its case, the freedom from search, seizure and invasion of privacy without good cause and the correlation between harms to society and punishment in order to meet the prohibitionist goals on which the criminal law, so far as it relates to certain drugs, is based.

These are still issues with which we must grapple and I am pleased to say that we are identifying different approaches which ameliorate these concerns. There is, however, still a long way to go. Research is continuing and David McDonald will give you an excellent overview of that and some of the issues arising from research and poor research. John Murray will tell you of the challenges faced by police in his area.

I would like to reflect on some of the issues in the criminal justice system. The first issue is the interaction between the criminal justice system and the public health system. There is a tension between the two which comes to a head often over this very issue. The Criminal Justice system is a means for maintaining order and certain standards of behaviour in our society. Its tools are crude but often effective. It needs to focus on the individual but also on society so that equal treatment is an important value for the system as is the role of the criminal law in denouncing criminal behaviour and punishing the offenders.

On the other hand, the health system is fundamentally individualised providing treatment as appropriate to the illness and the sufferer's response to it, and which may differ significantly between sufferers and has no punitive element.

In the ACT we pioneered a method of integrating these two systems in our Drugs of Dependence Act treatment referral program. It was the model for what has been somewhat differently developed in the drug courts, institutions that have made significant inroads into developing an appropriate response to drug use which has the effect of preying on society especially through property crime. In doing so we put a high value on identifying the causes of crime and addressing those, rather than simplistically reacting to the crime in a punitive and denunciatory way. Of course these responses have their place, particularly where treatment fails or commitment to it is weak and needs particular encouragement. It is therefore a matter of great regret to me that this system is used so little. There were for example only six treatment orders issued in 2001 despite the large number of drug related crimes that were committed in that year.

The criminal justice system is designed to protect the community. It does not do that if it fails to reduce crime and indeed if it makes people more anti-social as a result of their contact with it. We have learnt from our world wide, envied success in containing what could have been an epidemic of HIV AIDS that we do not address problems well by making people frightened or punishing them for acknowledging them. If people are addicted to drugs it does not help to penalise them for acknowledging this and it does not help by making them frightened to seek help

Thus it might be said that prohibition backed up by criminal sanctions not only increases the profits for major drug dealers and leads to significant property crime, unarguable propositions, but it inhibits those who want to and should seek help and treatment which in turn leads to healthy outcomes which are entirely unsatisfactory to citizens which of course drug users are, contrary to the views for some, as well as for society. Indeed it creates victims also in the users themselves, their families and those on whom they prey in other ways. Of course that is not to say that there is no role for the criminal law. There are cynical profiteers and pushers, especially those not themselves addicted, whose activities do need to be arrested. There are those who continue to use notwithstanding the offers of assistance that are provided and they need to be encouraged and denounced for their failure to address their anti-social behaviour. Nevertheless, in my view the partnership between an appropriate public health response and a criminal justice response is one that we must continue to press and we must continue to seek alternative, integrative models.

One issue that I think is overlooked in this area is the question of the victim. Our criminal law system has finally come to terms with the need to integrate into its system the role of the victim and we have in this jurisdiction a fine Victims of Crime Act which sets out in some detail the rights of victims in the Criminal Justice System. In relation to drug crime there is a slogan that we must tease apart which suggests drug crime is a victimless crime. In one sense that can be said to be true. The person who in the back alley shoots up and thereby possesses and uses each of these acts being a drug crime is committing a crime for which there is no observable victim except for himself or herself. Nevertheless, even these people are likely to come in contact with family and friends who will be affected adversely directly by their drug use and, of course, if they need to prey on members of society with access to their property in order to feed their habit they create victims there also.

While we have made significant strides in integrating the needs of victims into the criminal justice system, the area of drug use, which has, as I have indicated, properly identified the need for an individualised and public health response to the addiction (the fundamental cause of that crime) we have failed properly to integrate the needs of victims into that system and that is a challenge that I think we need to take up in the very near future.

Allied with that approach is a growing recognition that it is appropriate to divert from the criminal justice system either pre-court or pre-sentencing those people who commit crime by virtue of their drug addiction. That whole area of diversion is something which has increased since the passage of the *Drugs of Dependence Act 1989* in this jurisdiction and has, as I have indicated, been taken up in other jurisdictions. Diversion is now being developed more significantly in initiatives that are being taken pre-court, integrated with other strategies such as restorative justice; these are making substantial inroads in the way in which we deal with crime also.

What we have not come to terms with yet and another challenge which I think is very important in this area is the way in which we actually integrate diversion programs into our Criminal Justice System. In goal we have a clear response by the community to the Criminal Justice System. There is a need to improve our goals and there is a need to ensure that goal is in fact a rehabilitative and a deterrent process and not a school for crime. In our diversion processes however we have been much less rigorous in our assessment of whether they work and if they work whether it is appropriate for them to be the direction for those diverted from our system.

We need carefully to monitor what is happening in research, what is happening elsewhere in these strategies and ensure that when we do divert we divert appropriately and professionally and in accordance with the individualised need for treatment. That, in my view, is the second and important challenge to our processes.

The third challenge really is coming back to the first that I mentioned and that is that the arguments have been around, the evidence is there and now we need to actually take action.

The Criminal Justice System as I have indicated is a blunt mechanism for dealing with issues as complex as drug crime. Complex, because it relates not just to an action that is taken but a complex system of psychological imperatives, addictive personalities and action that follows. In dealing with those issues I have indicated that diversion is important and the process of diversion needs to be dealt with but what we also need are mechanisms for diversion.

We have plenty of evidence (and no doubt David will speak about that) of successful mechanisms that we in this jurisdiction have not yet seen, but which have delivered outcomes and which we are still waiting for. Bill Wood in opening mentioned two significant ones. The Safe Injecting Place, which even now we know from the evidence coming from Sydney, is having significant effects on the health outcomes and on the treatment outcomes of those who are accessing that institution. We have known now for years that heroin prescription brings also health outcomes, criminal outcomes, social outcomes that are beneficial and yet while that evidence is here, while that evidence is known, while that evidence is understood, we still await action to provide an appropriate array of assistance and options for those who in our community are drug affected.

The final challenge is the need to be able to be subtle. One of our great public health success stories is the way in which we have actually improved very substantially the health outcomes of our community by reducing tobacco smoking in it. We have done that by a range of subtle and intelligent public policy mechanisms including and directed in part towards creating a culture and recognition of the problems that smoking brings with it. In my view we need to be as subtle and as multi faceted in our approach to the use of so-called illicit drugs as in that area.

There is of course an easy answer to some of the suggestions that I have made and that is that safe injecting rooms, heroin trials and the like, send the wrong message. We have been able to send very much the right message with our approach and our attitude to tobacco. I believe that if we intelligently and appropriately address the need for a range of diversion options within our criminal justice system we can at the same time maintain and recognise the difficulties that drug use inevitably brings to users and their families. We cannot walk away from the need for a better society populated by people who are autonomous, who stand on their own and who are unassisted by stimulants and by other illicit drugs and in doing so we can lead to a healthier, a just and better society where the criminal law, the public law and the values that we rely on are recognised and properly expressed. Thank you very much. (Applause)

Questions

Question inaudible

Answer: I think both. I think the range of options is important because there are criminal activities which are associated with drug use and clearly property crime is a good example. It seems to me that profiteering and dealing are also issues although that may need to be defined better and criminal sanctions are not inappropriate in those areas because they are directed at either a particular harm that is done to society that a just and civilised society could not accept or because it is an activity that encourages or leads to the difficulty that drug users face the creation of an addiction the maintenance of an addiction the encouragement of an addiction. At that level, then, it is important to me that we have criminal sanction. It is important also that we widen our range of response to those who are affected and that could be at all levels. Someone who becomes a dealer because they are themselves addicted should have the option, the availability of managing their addiction and therefore avoiding their participation in crime so it is a balance of both.

Question: inaudible

|Answer: Thanks Geoff. That's true and one does not need just to go to gambling one can look alcohol, tobacco indeed coffee and let's face it now what is becoming more and more important in the public health area - fat and fast food. There are a huge range of substances and behaviours that do impact on the individual and upon society and the fact is we treat them differently. Why do we treat them differently? I

am a criminal lawyer not a sociologist. Historically there are issues. There are also issues of social acceptability. We have been gambling for a long time and there are levels of acceptable gambling. We have made illicit drugs a category of its own and you will find that there is still huge resistance. I mean even in our major organisations we talk about alcohol and other drugs. If we actually recognised heroin, amphetamines, cocaine and so on simply as drugs like alcohol and tobacco caffeine and fat we would deal with it probably differently and probably the same way as we do gambling.

Question: inaudible illicit drugs are a black market

Answer: John could probably answer something more about that. There is no doubt that drug fights, drug rip offs, drug disputes do come into our society, do cause violence and do cause significant problems. We prosecute from time to time. John and his fine force do have to deal with those from time to time. I suppose we do have a court system to deal with them. The vision of my society is not one where there would be the occasion for those disputes. The reality of life is perhaps a little bit like what I said to Geoff earlier that drugs like heroin and cocaine with their addictive compulsive value are such that they are probably not susceptible and they need a higher degree of regulation so that that kind of dispute would not arise. Such dispute can be extremely serious leading, not in this jurisdiction but in many other jurisdictions, to deaths that are associated with drug use. This is certainly a very serious problem and one of those we must address.