



Families and Friends for Drug Law Reform (ACT) Inc.

committed to preventing tragedy that arises from illicit drug use

PO Box 4736, HIGGINS ACT 2615

Telephone (02) 6254 2961

Email mccconnell@ffdlr.org.au

Web www.ffdlr.org.au

Submission on discussion paper on implementation of model schedules for Commonwealth serious drug offences.

Introduction

Families and Friends for Drug Law Reform is a non profit organisation which is concerned that the current drug laws are not achieving their stated goals and are in fact causing a great deal more harm than was ever intended. The discussion paper aims to regularise the prohibition of certain drugs and plants across Australian states and between certain Commonwealth pieces of legislation.

It is the case that the direction of this discussion paper follows the same path that has been trod many times before but with no appreciable difference to the state of drug control.

Past results have not been spectacular

Based on past experience, even though it may seem to make prosecutions easier and more uniform, it will probably make little difference in the long term. The possible prosecution or the strength of the penalties, according to many criminologists, has not been a deterrent to crime.¹ Other factors are usually at play but the discussion paper is narrow and it does not explore a wider range of options.

History tells us that, for example, at the turn of the last century opium was the major (if not the only) prohibited substance but since that time the list of substances has increased exponentially as new ones were developed or discovered. Some have, because of prohibition laws, morphed into stronger, more concentrated drugs. Prohibition and the threat of prosecution in relation to the new drugs with severe penalties has never stopped the drugs from entering the country nor from being used.

If past experience is any guide, new substances, of which society or elements of society disapprove, will continue to be discovered, developed, manufactured and used.

Given some basic ingredients, necessary equipment and the necessary knowledge it would seem that almost any drug can be produced. But in many cases plants produce the substance naturally. Some may not yet have been discovered but are highly likely to be added to the list in the future. In the long run, given the trajectory of the proposed legislation many naturally occurring chemicals and plants will be banned.

The banning of plants, or rather the criminalising of the cultivation of plants, so many of which are common in gardens and parks in Australia, verges on the ridiculous. It will be impossible to eliminate the plants and almost impossible to be successful in any prosecution. Will, for example, the police attempt to prosecute the Government for the wattles in their national parks? Clearly a ridiculous situation.

¹ See interview with Nicholas Cowdrey for example at abc.net.au/auststory – “Take no prisoners”.

Notwithstanding, all the attempts to eliminate some plants such as coca eradication in South America, elimination of opium poppy cultivation in Afghanistan or cannabis wherever it is grown should give very good indications of whether or not plant eradication is even remotely possible.

The discussion paper, in respect of the prohibited plants, proposes reversing the well accepted legal tenet of “innocent until proven guilty” to “guilty until proven innocent” with the onus of proof falling to those charged.² Such a proposal should never be acceptable.

The banning of plants is likely to have a number of unintended consequences that appear not to have been considered in the discussion paper; the effect on the plant nursery industry is one. But perhaps as important (if not more important) will be the denial of access to beneficial health or industrial application of the chemical compounds that are produced by those plants. And small time users could attract a criminal record which results in much more harm than the drugs themselves.

Users may be defined as traffickers

The tables in the discussion paper identify levels of drugs for which a person could be defined as a trafficker. MDMA is such an example. It is common practice that one member of a group of young people could be designated to collect ecstasy tablets (MDMA) before going to a party.

The (mixed) trafficable quantity for MDMA is 2 grams. That could be as little as four tablets, a quantity that might be normally used by two young people.

Thus the designated person would be defined as a trafficker and thus be criminalised. And hence it would have the effect of widening the net to catch more users when the intention is to catch genuine traffickers.

Drug laws need rethinking

Any proposed changes to the drug laws need to be considered from first principles. A practice that has not been undertaken in the past. But it is well beyond the time when that practice should be instituted.

Australian drug laws have their first principles embodied in the UN conventions and it is instructive to note their preambles:

1966 preamble:

The Parties,

Concerned with the health and welfare of mankind,

Recognizing that the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering and that adequate provision must be made to ensure the availability of narcotic drugs for such purposes,

1977 Preamble

The Parties,

Being concerned with the health and welfare of mankind, ...

² See for example Part VI Legitimate use defences of the discussion paper.

1988 Preamble

The Parties to this Convention,

Deeply concerned by the magnitude of and rising trend in the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances, which pose a serious threat to the health and welfare of human beings and adversely affect the economic, cultural and political foundations of society,

Thus the basic objective is *concerned with the health and welfare of mankind.*

Australia's drug policy which operates under the umbrella of the UN conventions (and for that matter under the prohibition laws enacted by Australian parliaments) consists of three pillars: supply reduction, demand reduction and harm reduction. Following the UN conventions then the third of the three pillars – harm reduction – is the end that is to be achieved. The other two pillars are simply means to that end.

Thus it is obvious that a logical criterion is needed that first identifies the relative harm of the substance to the community and to the individual. The discussion paper makes no reference to the relative harms. Until a definitive examination of the relative harms has been undertaken any further consideration of the discussion paper is meaningless. For reference a good starting point would be the paper by Nutt et al³.

Recommendations

Families and Friends for Drug Law Reform recommends that the following be adopted before any further consideration of the discussion paper is undertaken:

1. Develop a criteria

- The prime purpose for any drug law is to minimise harm and this should be the basis for any proposed changes.
- A risk management approach needs to be adopted.
- The relative harms caused by each of the drugs and plants being considered needs to be identified and ranked accordingly.
- Ensure that users are not caught up in a net widening process.

2. Propose and adopt legislation changes that do not reverse the onus of proof

3. Consider and outline the consequences of the proposed legislation changes including any unintended consequences

- The penalties should be kept in perspective and consistent with other crimes.
- The penalties need to correspond with the relative harms.

4. Consider alternate approaches

- Regulation or a licensing approach are two such examples.

³ Drug harms in the UK: a multicriteria decision analysis, David J Nutt, Leslie A King, Lawrence D Phillips, on behalf of the Independent Scientific Committee on Drugs

5. Consider the cost effectiveness of proposed approaches

- The cost of implementing proposed changes must be of concern to government and the people who would also like to ensure value and results for their investment. This implies that low risk/low effectiveness matters should not have a high resource investment.
- A process of monitoring the cost effectiveness of the changed legislation needs to be adopted.

B McConnell

President