

Tougher Drug Laws make Serious Criminals of Our kids

Until amended, please oppose enactment of the Serious Drug Offences chapter of the Model Criminal Code

Draft legislation is being presented to legislatures across Australia to implement uniform "model" drug laws.

The proposal is deceptive. It is labeled as a criminal code on "serious drug offences". In fact it extends to much of the ordinary conduct of drug users.

The Bill transforms minor players in the drug trade and users into "serious criminals".

The code should not be implemented in its present form. It should exclude from the regime of draconian penalties the small-scale activities that are commonly undertaken by users of illicit drugs – those suffering from addiction and risk-taking young people.

Parents will be horrified to learn that a teenager at a dance party who resells to a friend a single ecstasy tablets that he has bought for a night out together is a 'serious drug offender' and could face a maximum penalty of 10 years (clause 6.2.4).

Someone who grows a couple of cannabis plants could easily end up possessing 300 grams or more of dried cannabis. This amounts to a commercial quantity which under clause 6.2.5 it is presumed he or she has for trafficking. Under the code that person would face a maximum penalty of 20 years imprisonment.

Those motivated to deal in drugs for profit should face severe penalties but it is wrong that young people who the law should protect should also be subject to them.

As parents and grandparents we want our kids and grandkids to survive their experimenting years without the burden of a criminal record because of their risk taking.

The report that recommended Chapter 6 on Serious Drug Offences of the Model Criminal Code acknowledged that tougher laws cause great harm such as arrest and punishment, risks to health or life, delayed medical intervention, neglecting expenditure on necessities for high priced illegal drugs and increased property crime.

Despite acknowledging those risks, the report concluded that such tougher laws would be a greater deterrent and worth the risks. This conclusion was not based on evidence but was simply wishful thinking.

Families and Friends calls on parliaments to submit proposed legislation based on the code to the fundamental and rigorous appraisal of its efficacy, an appraisal that it did not receive in the course of its development under the auspices of the Standing Committee of Attorneys-General.

Don't let your State or Territory follow the ACT which has implemented the law.

The Criminal Code (Serious Drug Offences) Amendment Bill 2004 of the ACT

To its shame, on 17 August 2004 the Legislative Assembly of the Australian Capital Territory enacted the Criminal Code (Serious Drug Offences) Amendment Act 2004 to implement the code.

Neither the draft legislation nor supporting documentation made any reference to harm minimisation or other aspects of the ACT Government's own drug policy.

Read the [Bill](#) and its [explanatory memorandum](#) here.

Speeches of [Kerrie Tucker](#) (Greens) and [Roslyn Dundas](#) (Democrats) who opposed the legislation are attached.

Attached too are the [Media Release](#) issued by Families and Friends for Drug Law Reform in advance of the Assembly debate and (on this page) [letters published](#) since on the legislation.

Please feel free to use this material in making representations in your own State or Territory.

The preparation of the Uniform Criminal Code on Serious Drug Offences

In October 1997 Families and Friends for Drug Law Reform criticised the then draft code because, in spite of its title, it would impact severely on users including those at the bottom of the pyramid who were dealing to finance their own addiction.

Families and Friends summarised as follows its objections to the then discussion paper of the draft code. These objections are mostly still relevant to legislation that is now being enacted:

- * The then discussion paper on serious drug offences is not, as it suggests, confined to sharpening up the law to catch big time drug dealers. It will cover many of the drug users who, rather than engage in property crime or prostitution to support their habit, are small time dealers in drugs.
- * The paper does not give effect to the principle that it espouses that the primary objectives of drug legislation should include the minimisation or moderation of the harms suffered by users in consequence of their use of dangerous drugs.
- * The paper does not state how the model code will be any more effective than the existing law in reducing access to illicit drugs. The evidence is that it will fail.
- * The paper does not state how the model code will be any more successful than existing laws in encouraging users, including the many users that it embraces, to give up taking illicit drugs.

* The paper does not state how the model code will promote the life, health and well being of the community, including those taking addictive drugs. The evidence is that the code will not reduce the harm that the paper itself acknowledges is the consequence of the application of the existing criminal law to control illicit drugs.

* The 1980 Williams Royal Commission does not, as the paper claims, provide a legitimate rationale for the formulation of a code on serious drug offences.

* The assumption of parental fault that the Williams Royal Commission identified to be the root cause of illicit drug use is discredited.

* In any case the Williams Royal Commission called for a comprehensive evaluation after 10 years of the continuation of the "medical/legal" response to drugs that it recommended. In the light of the mountain of evidence about the inefficacy of the existing law, a review should be undertaken before belatedly formulating a uniform code of serious drug offences.

* In short the paper does not even seek to establish a rational case for the code of serious drug offences that it proposes.

* Families and Friends for Drug Law Reform believes that the whole exercise is futile without a clear set of objectives and a rigorous assessment of how the code will achieve those objectives.

* As it stands the paper's frequent references to academic studies on illicit drug use and the illicit drug trade are no more than a set of learned adornments that are applied to the discussion of peripheral issues. The evidence of those studies is not applied to the placement of the code within a rational ensemble of measures designed to make a significant impression on the drug problem.

The submission of Families and Friends for Drugs Law Reform was virtually ignored. The final report of October 1998 of the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General shows that the development of the chapter of the code on serious drug offences did not consider fundamental questions about the purpose of the codification. The final report noted that:

"A number of submissions which addressed the issue of harm minimisation proposed more radical measures such as decriminalisation of use and the provision of licit supplies of controlled drugs to dependent users. It is possible that some alleviation of existing social problems associated with illicit drug use might be achieved by introducing regimes of controlled availability of heroin or other illicit recreational drugs. It is also possible that such measures would result in an unacceptable growth in the population of habitual or dependent users. The resolution of this debate is beyond the scope of the Committee's brief and expertise."

Families and Friends believes this is an admission of serious inadequacy in the development of the model legislation. In make the admission, the Committee made its only reference to the Families and Friends submission:

"The most ambitious of these submissions came from the Families and Friends for Drug Law Reform (ACT) submission 16 October 1997, which subjected the Discussion Paper to detailed analysis and frequently acute criticism."

Read the [report of the Officers' Committee](#) here.

Published Letters on ACT Serious Drug Crimes Legislation

Mr Stanhope says it is nonsense that drug users who sell small quantities would face maximum penalties (CT, 18 August, p2). I certainly hope that the "Serious Drug Crimes" Act that the Assembly passed on Tuesday will be administered that way.

Following Mr Stanhope's logic it would save a great deal of time and effort for the Assembly if it enacted one penalty for all crimes in the statute book - say life imprisonment, \$1million fine or both. After all, the Police, the DPP and the Courts will ensure that an appropriate penalty is actually applied.

I wonder how many kids who are convicted of "trafficking" that one ecstasy pill to a friend will still be able to aspire to Mr Stanhope's position of Chief Minister even though they are released on merely a good behaviour bond.

Bill Bush

[Published Canberra Times 19 August 2004, p. 16]

Poor decision on drug law

The punitive drug laws recently passed by the ACT Assembly show clearly that the ACT labor Party has lost its way.

If the ACT Government ignores scientific and medical evidence from overseas and the many drug summits in this country, which all recommended a harm minimisation approach, then it must take responsibility for the damage to come.

Under new laws, (which are now closely approaching the failed American drug laws) evidence indicates the majority of those jailed will be small-time users suffering depression or other mental illness.

The ACT Government should plan for a much larger prison and be honest with the Canberra people, because if they are going to copy American drug laws then they must tell the public that there will be costs - both human and monetary (ie costs to the ACT taxpayer).

Michael Gardiner, Ann Gardiner and Kerel Gardiner

[Published Canberra Times 23 August 2004]

Unfortunately it is not as simple as as T Jones says (letters CT 23/8/2004) "if you sell drugs, buy drugs or take drugs you are a dealer [and should suffer the full consequences of the law] no ifs or buts". Complex problems such as drug use do not respond well to simplistic approaches.

The 2002 Household Survey advises that 37.7 per cent of Australians had ever used an illicit drug. If you follow T Jones' logic, then almost 40 per cent of the population would have a criminal record for a victimless crime, resulting in severely limited work and social prospects. There are few who emerge from jail with better mental or physical health. The infection rate for HepC in jails (where drugs are also available), for example, is many times higher than in the general population.

No person with any understanding of the vulnerability of the young or with any compassion would want young people with their whole lives ahead of them to experience such a fate.

B McConnell

[Published Canberra Times 24 August 2004]

[The full text of the Families and Friends submission of 16 October 1997 is here.](#)