



# The Politics of Implementing Drug Law Reform in Australia

By Roman Tomasic

## INTRODUCTION

Whilst the 1970s have seen considerable government sponsored activity and media coverage dealing with so-called drug problems, these have essentially been elite based phenomena. There has been little popular opposition or flow of alternative viewpoints to the dominant elite perspectives or stereotypes. This is partly a reflection of the irrelevance to behaviour of these elite positions. Rarely have drug users been treated sympathetically in the media or has the drug problem been approached in anything but a crude and simplistic way by government.

One illustration of the failure of government intervention, and hence of legal initiatives in this area, is to be found in the appointment of Commissions and Committees of inquiry into the drugs area as well as from a study of their impact and of the extent to which their recommendations have been implemented. These recommendations should be seen as part of integrated packages of responses to drug problems so that they are supposedly intended by their authors to be implemented as a package if they are to be effective. Yet, it is rare for such total implementation to be even attempted, let alone to be achieved. Instead, where an attempt has been made to implement recommendations at all, this has tended to occur most often in regard to those recommendations that call for harsher penalties.

The net effect of this has been to ignore those other recommendations which might have helped to make penalties more effective as well as to provide a more sensitive and positive response to drug abuse and drug trafficking. In part, this distorted approach to drug reform recommendations stems from a reluctance to deal with both the sociological nature of sanctions in terms of their social consequences, as well as the related failure to perceive what Herbert Packer referred to as the limits of the criminal sanction. In addition, this reflects a failure or unwillingness of policy makers in government to understand the nature of the drug problem.

Ironically, whilst commissions of inquiry are supposedly set up to cast light both on the nature of the drug problem and on ways of responding to this, any successes that they

have had in achieving these results have failed to achieve any effective impact upon the policy-making cycle. In view of this, it could be argued that policy-making regarding drugs has been seriously flawed in Australia and is unlikely to produce more than rather primitive responses to drugs, such as the use of harsher penalties. What is to explain this clear degeneration of the policy cycle and of the inability of successive governments effectively to respond to the drug problem that they have all too readily alerted us to?

One explanation might be that it has never been seriously envisaged by government that there should or can be change in this area so that commissions or committees of inquiry can be seen as cynical or pragmatic attempts to show that something is being done about "the problem". In a sense this can be seen as a technique of crises management or crisis prevention by putting the issue of drugs temporarily onto "the back burner". The frequency with which drug inquiries have been held in Australia during the 1970's illustrates that this problem will not be so readily dismissed or deflated as an issue. It could also be argued that Royal Commissions and the like serve to "bottle up" the critics within the inquiries by forcing them to prepare submissions and give evidence as well as to hold their fire for a little longer in anticipation of recommendations that are to be made. The authority and status of such commissions effectively achieves this mollificatory end. In addition, the lack of resources made available to these inquiries to sponsor basic empirical research in the drug problem ensures that their inquiries are bound to be quite superficial and hence have little impact. Where monies are made available to assist these inquiries this tends to be for such things as administration, travel, legal representation and the like. Consequently, these inquiries are shackled in their investigations virtually from the outset and depend heavily upon empirical evidence collected by outside agencies or individuals. Often this is collected by government agencies only for enforcement purposes rather than for a more wide ranging and deeper understanding of the place of drugs in our society. Private organisations and individuals rarely have the resources to undertake such research and, even if they had, the rapid succession of inquiries has meant that their resources have been fully strained simply by preparing submissions, with few resources left to really tackle the kinds of specific questions that the inquiries have been asked to investigate.

This suggests that inquiries into drugs in Australia have mainly served symbolic purposes rather than been genuine

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*Roman Tomasic, M.A., LL.B., Ph.D., is a Solicitor of the Supreme Court of New South Wales and Lecturer in Law in the Department of Legal Studies at the Kuring-gai College of Advanced Education.*

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attempts to provide comprehensive responses to drug trafficking and drug abuse. This is not the fault of the commissions but represents a fundamental failure or defect in the legislative policy cycle which has far reaching consequence for the nature of law reform and of the legal order in our society. This is partly to be explained by what Gusfield (1966) described as a symbolic crusade or by what Edelman (1977) has referred to as political language. The persistence of the so-called drug problem in Australia can, in the context of government pronouncements, be seen as a reflection of what Edelman (1977) has also described as "words that succeed and policies that fail". In essence, the establishment of commissions of inquiry may paradoxically be seen as serving to confuse rather than to clarify the issues in that they imply that answers can be found and that governments are anxious to find these answers. At the same time, they simply provide the opportunity for increases in penalties and an expansion in enforcement machinery, whilst facilitating the making of rather hollow sounding, although electorally useful, pontifications on the problem. For example, in his policy speech before the 1980 Australian general election the Australian Prime Minister, the Hon. Malcolm Fraser dealt with the drug issue in the following way:

*"One of the great issues confronting modern society is the drug problem. We are working actively with the States to combat the damage and danger of drugs, especially in relation to young people. These and many other initiatives represent a proud record of compassion and concern. They demonstrate our determination to see that all Australians receive the opportunity to share in the nations increasing resources."*

*(Sydney Morning Herald, Oct 1, 1980, p 11)*

What are we to make of all the assumptions built into statements such as these? Are they but empty rhetoric or are they based upon a comprehensive picture of the drug phenomenon? One way of answering questions such as these is to look at what has happened to the recommendations that have been made in recent Australian drug inquiries.

Whilst it could be argued that it is premature to assess the effects of these inquiries as the implementation process, or what Bardach (1977) has called "the implementation game" is a complex and prolonged one, it is nevertheless at least possible to seek to isolate key features of resistance to their implementation that are already apparent. These are by no means only political or electoral in nature, but also include institutional, bureaucratic, legal, symbolic and cultural barriers or obstacles to implementation. The inertia of the public and its susceptibility to distorted stereotypes as purveyed by the media adds a further hindrance to concerted action in this area.

Before going on to examine the nature and impact of drug inquiries in Australia in recent years, it is important to make a detour to discuss the nature of symbolic action as it relates to drug law reform.

## SYMBOLIC POLITICS

There have been frequent attempt to interpret efforts by society to deal with deviant activity for basically symbolic purposes. Often responses to self-destructive activity, for example, can be seen as attempts to assert what are said to be dominant social values, although the latter are often as much minority values as are those being criticised. The difference between these two invariably can be traced to the level of social power and legitimacy that each group has. In other words, it is often a question of the values of the powerless being in conflict with those of the more powerful. Gusfield's (1963) study of Prohibition in the United States, Becker's (1966: 135-146) study of the Marijuana Tax Act and Duster's (1970) study of drugs provide good illustrations of this proposition.

In regard to drug policies generally, it seems that symbolic attempts to suppress perceptions of reality held by youthful drug users can be viewed as examples of this desire to assert the importance of middle class notions of respectability and proper life styles. These assertions, however, soon begin to sound hollow, if they do not always do so, when those being criticised are not socially distant from the middle class drug crusaders. For example, as soon as many of the children of the middle class began to be apprehended for drug offences, such as the use of marijuana, the dedication or consistency of reformers began to be shattered. Another more interesting example of the limits of symbolic strategies to the drug problem is provided by the widespread failure to control the area of drug trafficking. It would seem that, like many middle class drug reformers, drug traffickers are also often middle class businessmen and have powerful political connections. Therefore, as the criticism of traffickers is not an attack upon powerless sectors of society it seems unlikely that a great deal of success will be achieved in the suppression of drug trafficking. This fact becomes all the more convincing when we examine the entrenched position of traffickers in licit drugs such as alcohol, tobacco and pharmaceuticals. The difference between traffickers in licit and illicit drugs is not as great as is sometimes believed. These "legitimate" drugs are widely seen as being far more of a social problem than the illicit drugs and yet governments, reformers and critics have failed to apply any effective measures to the limitation of these drugs. Why is this? One answer that is easily reached stems from the close ties that exist between licit drug traffickers and other powerful interest groups and government. Where traffickers in licit drugs, such as tobacco, have been threatened, this has rarely been a direct result of government policy or due to the moral entrepreneurs who attack illicit drug users. Rather, it has been the result of the mobilisation of the relatively powerless, as has occurred in recent campaigns regarding the effects of cigarette advertising upon children.

One could argue that the moral entrepreneurs and the economic entrepreneurs, whether the latter are concerned with licit or illicit substances, actually share many common interests and perspectives. Ironically, it is only when illicit drug users themselves increasingly adopt an entrepreneurial approach to drug use that they become relatively immune from harassment or control. This situation would be reached when users were themselves forced to become major traffickers or else when drug users begin increasingly to come from the families of moral entrepreneurs. Thus, once contradictions begin to emerge within the sociological framework of moral entrepreneurs, drug policies will become increasingly ineffective, even though they may continue to be articulated, albeit in a rather distorted way. This distortion is accentuated by the contradiction that is allowed to continue regarding legitimate licit drugs and illegitimate illicit drugs, given the fact that licit substances are generally recognised to pose a far more serious problem to the health of society as a whole than do illicit substances.

## POLITICAL LANGUAGE

The problem of symbolic politics has been highlighted in a number of studies by Murray Edelman (1964, 1971 and 1977). His insights as reflected in these studies are of great importance in understanding the recent history of drug law reform in Australia. For this reason, a brief sketch of some of his key findings is useful.

Edelman has pointed to "the key function of remoteness as an influence upon symbolic meaning" (1964:6). Moreover, the potency of symbols is heightened as psychological distance from them increases (Edelman, 1964:11). Edelman adds that it is not the content of symbols that matters but rather their remoteness (1964:13). This can be well applied to the symbolic uses of the so-called "drug problem". So long as this

problem is kept remote, such as by stressing illicit drugs, youth and the drug trafficking underworld, this remains a credible symbol to serve as a focus for concerns. However, as soon as the drug problem is brought home and is seen as existing throughout all sectors of society, the potency of this symbol evaporates.

Turning to look at the regulatory or law enforcement side of symbolic action, Edelman points out that it is in the more poorly defined and emotionally laden situations that the loudest expressions of law enforcement strategies are to be found (1964:30). This is exactly what we can observe in approaches to the drug problem in Australia which have tended to stress heavy penalties and well publicised – if somewhat limited, law enforcement exercises, such as raids on marijuana farms. However, these law enforcement strategies can be seen as totally unrealistic approaches to the drug problem for as Edelman (1964:31) tells us, "reality can become irrelevant for persons very strongly committed to an emotion – satisfying symbol." This fact can help to explain why there has been so little real change in Australian drug policies over the last decade or so, with the continuing stress on law enforcement almost to the disregard of anything else. Drawing upon such studies as Adorno's *The Authoritarian Personality*, Edelman tells us that where there is emotional commitment to a symbolic policy, such as that in regard to illicit drugs, this tends to be "associated with contentment and quiescence regarding problems that would otherwise arouse concern" (1964:32). The limited approaches that have been taken to licit drugs in Australia tend to illustrate this.

The existence of symbolic action, such as periodic statements of concern about the drugs problem, also has the effect of reassuring the public that the problem is being dealt with. Edelman (1964:38), for example, points out that "... shrewder and more effective politicians probably appreciate intuitively that ... where public understanding is vague and information rare, interests in reassurance will be all the more potent and all the more susceptible to manipulation by political symbols." The fact that public awareness of the drug problem tends to be in stereotypes and superficial, ensures that this situation of manipulation will take place, as indeed it has so clearly in this respect. Inevitably, therefore "myth and symbolic reassurance become key elements in the governmental process" (Edelman, 1964:44) as drug strategies clearly illustrate. Moreover, as the masses are reassured that action is indeed taking place, greater freedom of manoeuvre is available to the organised, such as both illicit and licit traffickers, as well as law enforcement agencies. Nevertheless, there remains a continuing tension in our symbolic drug policies between threat and reassurance (cf Edelman 1964:188). At the same time the mass of people in the community are ambivalent and so are anxious to be reassured by symbolic action, even though both private (drug traffickers) and public (governments and law enforcement agencies) actors will continue to survive and even flourish (Edelman, 1964:189).

Some years later Edelman (1971) went on to discuss the symbolic uses of what he called "mass arousal and quiescence". Edelman highlighted the ambivalence of public attitudes to many vital social problems and the critical roles that governments play in mobilising opinion. Yet, Edelman is profoundly sceptical about the responsiveness of government to the public will as well as the possibility "that governmental actions will effectively and rationally attack serious social problems" (1971:178). This was a theme that he took further in a later study. In this most recent study, Edelman (1977) takes further his stress on the symbolic nature of public policy and highlights the mechanisms by which elites continue to retain advantages over non-elites and thereby avoid ever having to solve complex social problems such as those of drug abuse. It could well be argued that Royal Commissions and Committees

of Inquiry into drugs are illustrations of such mechanisms. However, the mechanisms that Edelman directs our attention to are far more subtle. These are symbolic and linguistic. Thus he argues that: "Terms like 'mental illness', 'criminal', and 'drug abuse' focus attention on the alleged weakness and pathology of the individual, while diverting attention from their pathological social and economic environments – a belief about causation that is partially accurate at best and therefore a dubious premise on which to base public policies" (Edelman 1977:27). One reason why serious social problems like drug abuse are never solved is offered by Edelman when he explains that "Chronic social problems, recurring beliefs about them, and recurring language forms that justify their acceptance reinforce each other" (1977:3). He goes on to highlight what he sees as the banality of the acts and the language used by governments to respond to chronic social problems. In what could just as well be applied to attitudes to drugs, Edelman argues that: "Large numbers of people continue for long periods of time to cling to myth, to justify it in formulas that are repeated in their cultures and to reject falsifying information when prevailing myths justify their interests, roles and past actions, or assuage their fears" (1977:3). Furthermore, there is an eagerness to believe that man is not helpless in controlling his fate and that governments will be able to deal with all threats that may arise. In this context, political language can be seen as both exciting and neutralising public fears (Edelman, 1977:4).

Contradiction has characterised governmental approaches to the drug issue in Australia. For example, as Edelman (1977: 5-8) has shown in regard to government policies regarding the poor, governments tend to take an ambivalent approach to thorough-going action for, on the one hand, it is argued that individuals are responsible for their own fate, whilst on the other hand, it is acknowledged that individuals are "victims of exploitative economic, social, and political institutions". The existence of these two possible approaches to serious social problems facilitates "contradictions in political rhetoric and in public policy". Edelman adds that the "... coexistence of contradictory reactions to a 'problem' from which many benefit helps assure that it will be deplored but tolerated, rather than attacked in a resolute way" (Edelman, 1977:7). This pattern of response can be clearly discerned in the recent history of government policies to the drug problem in Australia.

## COMMISSIONS OF INQUIRY

During the last decade there have been at least half a dozen major inquiries into the regulation of illicit drug use and illicit drug distribution undertaken in Australia. These inquiries have produced almost six hundred recommendations and have absorbed many millions of dollars of public funds in reaching their conclusions. The Australian Royal Commission of Inquiry into Drugs (the Williams Commission) is reputed to have cost the taxpayer about two million dollars (Hansard, Senate 19 March 1980, p 825). This inquiry produced over two fifths of the recommendations that have been made by all these inquiries during the last decade. Other inquiries have been undertaken by the Senate Select Committee into Drug Trafficking and Drug Abuse (the Marriott Committee) which reported in May 1971, the Senate Standing Committee on Health and Welfare (the Brown Committee) which reported in February 1975, the Senate Standing Committee on Social Welfare (the Baume Committee) which reported in October 1977, the New South Wales Joint Committee of the Legislative Council and Legislative Assembly upon Drugs (the Viney Committee and later the Durick Committee) which first reported in March 1976 and finally reported in 1978, the South Australian Royal Commission into the Non-Medical Use of Drugs (the Sackville Commission) which repor-

ted in April 1979, and the New South Wales Royal Commission into Drug Trafficking (the Woodward Commission) which first reported in October 1979 and its second report was tabled in August 1980. The Williams Commission report was tabled in August 1980.

In this short paper it will not be possible to do any more than to point to the broad issues that have emerged from these inquiries in a rather selective manner. It will certainly not be feasible to seek to discuss the almost six hundred recommendations that have been made. Nor will it be possible to discuss all the inquiries. Ministerial statements on the subject of drugs have been made periodically over the last decade in Australia. They provide a useful indicator of changes in official attitudes and policies since the early 1970s. In addition, Parliamentary debates provide a most useful source of information on the course of drug policies in Australia. A view of these sources will provide the main bases for this paper, apart from the reports of the various drug inquiries.

One month before the Marriott Committee was set up by the Senate, the then Minister for Customs and Excise, Senator Scott, made a ministerial statement which was to contain attitudes and emphases that were to continue to surface in much the same form through the next decade in official utterances on the subject. Senator Scott referred to efforts that were being made to improve law enforcement strategies against the drug problem, both at the national and at the international level. He confidently predicted that "... the measures ... outlined will go a long way towards reducing the drug problem in Australia" (Hansard, Senate, 24 Sept. 1969, p 1262). Realistically, the problem was only to be reduced rather than being seen as being able to be solved, although even this proved to be difficult to accomplish. Four months earlier, Senator Scott had made another Ministerial Statement in which he pointed to "... mounting evidence ... that the (drug) problem is increasing in Australia" (Hansard, Senate, 28 May 1969, p 1631). The stress was once again placed upon improved law enforcement, as well as upon the need for co-operation between state and federal officials. As a result of a meeting between State and Federal Ministers in February of that year, the National Standing Control Committee on Drugs of Dependence (hereafter the NSCC) had been set up with the prime aim of combating trafficking in drugs. Despite its apparent successes in providing "a national forum for discussion" of the drug situation, even if this proved to be very much of an elite forum, as well as in encouraging uniformity in State and Federal approaches, the Williams Commission was to find a decade after the establishment of the NSCC, that the NSCC had very much "declined in effectiveness" and that it should be replaced by a new body more suited to the changed nature of the drug scene (Williams Commission, 1980: D22). Although the NSCC was merely an advisory body whose role was very much limited to making recommendations to the Ministerial Committee (see e.g. the answer given by the Minister for Business and Consumer Affairs, Mr. Fife, Hansard, H. of R. 7 June 1979, p 3157), it was frequently used by Ministers as a convenient means of avoiding having to deal with difficult political issues in this area (see e.g. the answer by Senator Margaret Guilfoyle, Hansard, Senate, 27 March 1980, p 1178).

In his Ministerial Statement in September 1969, Senator Scott had emphasised the importance of the Narcotics Bureau of the Federal Department of Customs. Earlier that year, he stressed that "... customs officials are very much on the ball in relation to the control of drugs entering Australia" (Hansard Senate, 14 May 1969, p 1186). However like the NSCC, both the Narcotics Bureau and the Customs Department were to be severely criticised by the Williams Commission, which went on to recommend that the Narcotics Bureau actually be disbanded. In regard to the surveillance activities of the Bureau of Customs, Mr. Justice Williams was equally savage in his criticisms

of its effectiveness. He pointed to the "... grim picture of resources not fully utilised and lost opportunities for co-ordination and co-operation", and then went on to argue that it "... is a waste of time and effort for the Bureau of Customs to attempt to mount its own surveillance effort in relation to such coastal intrusions" (1980: 146-B147). Another matter stressed since the early 1970s has concerned the establishment of intelligence data on drug related crime. As early as 1969, Federal and State ministers agreed that the Crime Intelligence Bureau of the Commonwealth Police would take up the task of acting as a centralised criminal intelligence agency for drug law enforcement agencies in Australia. As it turned out, this was also a matter that received a very critical response from the Williams Commission a decade later. Mr. Justice Williams argued that although "... intelligence is the most important single weapon in the armory of drug law enforcement ..." (1980:D35), there was a need for a major overhaul in the methods that had been used through the seventies.

It is clear from the above that some of the key features of national drug policies that had been followed for over a decade were to be found to have been seriously flawed by the end of the 1970s. In the years that followed the establishment of the NSCC in 1969, there have been some major successes in various areas of drug policy implementation. Often, however, these successes occurred in limited areas and at the expense of an overall or broad-ranging treatment of the drug problem. The obsession with issues of law enforcement over this period has meant that little more than token efforts have been made to deal with the more intractable social bases of drug abuse. This is despite the fact that these have long been well known to researchers, as all drug inquiries have soon come to realise, and have also frequently been pointed to in Parliamentary debates (see e.g. Senator Wheeldon, Hansard, Senate, 24 Sept 1969, p 1273). All this has been to no avail. Even with the change in the political complexion of the Federal government in 1972, Federal authorities have continued to stress the value of a law enforcement emphasis in approaching the drug problem. This will be discussed further in a later section.

The unchangeable nature of basic Federal approaches to the drug problem over the last decade deserves some illustration. For example, like previous Ministers for Customs and Excise, the new Minister, Senator Murphy, in 1973 stated that his department was "... extremely vigilant and is extremely successful in its efforts ... in trying to suppress this (drug) trade" (Hansard, Senate, 5 June 1973, p 2292). As was to become evident in later years, such confidence was hardly warranted. Ministerial confidence in the adequacy of law enforcement efforts has however, served to avoid the necessity for other approaches to be taken to the drug problem. For example, the federal Minister for Health, Senator Sir Kenneth Anderson, was reluctant to accept the call of the Marriott Committee for action against licit drugs such as tobacco. He saw such "anti-smoking propaganda" as "... not ... consistent with ... (his) views" (Hansard, Senate, 8 Sept 1971, p 517), although these views were never elaborated. What these reasons were we can only surmise. However, this reluctance by the Minister to act against the privileges enjoyed by tobacco companies was explained by Senator Cavanagh by reference to the vested interest of the Commonwealth in excise duties on imported tobacco companies (Hansard, Senate, 11 May 1972, p 1630). Senator Cavanagh made similar points explaining the inaction of government regarding the pharmaceutical manufacturers. As will be seen in the next section, similar criticisms can be made of the reluctance of the Federal government to accept the bulk of the recommendations of the Williams Commission report.

The next three sections of this essay will examine some key issues that have emerged from the various Australian drug inquiries. The first of these issues will concern the problem of

Federalism and its effects on the emergence of a national strategy to drugs. This will be followed by discussions of the implementation of the recommendations of drug inquiries and then finally by a discussion of what can be described as the law enforcement psychosis that has gripped government policies to drugs in Australia over the last decade.

## FEDERALISM AND A NATIONAL DRUGS STRATEGY

The Australian Federal system has for many years served as a convenient excuse for inaction by State and Federal authorities. There have been frequent calls for a national strategy to deal with the drug problem as well as related calls to deal with this problem in a comprehensive way, so as to, for example, deal with both licit and illicit drugs. Both of these pleas have been frustrated by the political and legal structure of Australian Federalism. If a drug problem is too difficult to deal with, it is easy to avoid action which might be electorally and economically unacceptable to governments by referring it to one of the many committees from the States and Federal Government, set up over the years. Thus we have seen committees of Attorney's General, of Police Commissioners, of Health Department officials and so on. It could well be argued that the drug problem is too serious to be left to such committees or to be left to wither on the Federal vine. Both State and Federal governments have more power to influence the nature of the drug problem than they care to admit or to use. Despite the existence of the notoriously inflexible interstate commerce clause of the Australian Constitution (s.92), there remains considerable room to move to regulate the drug industry. For example, it is remarkable that, if this problem of concurrent State and Federal powers was really a basis for government inactivity, there has never been a suggestion made that State powers to regulate drugs and to deal with drug law enforcement ought to be referred to the Commonwealth. Basically, the apparent reluctance to consider this proposal would seem to be due to economic factors such as the revenue that is derived from taxes on the liquor industry. There seems little hope that the Federal-State impasse in dealing with the drug problem will be readily solved, especially in view of the Federal Government's "New Federalism" doctrine which would require States to take up the burden of administering programs. The tensions, overlapping and other problems that arose in the work of recent State and Federal drug enquiries also reflect the continuing importance of this impasse. It therefore seems that one of the key obstacles to a satisfactory response to the drug problem in Australia is a political or governmental one. It is therefore quite absurd for politicians to pontificate upon the drug problem if they are not willing to take what is the first step, namely, the overcoming of the Federal-State impasse.

A good illustration of the historical bottle-neck created by Federalism in this area is to be found in the nature of governmental reactions to the persistent recommendation that a national strategy to drugs be adopted in Australia. Debates regarding such a national strategy go back at least as far back as 1968. On the 12th of September of that year, the Federal Cabinet called for such a national approach with the Commonwealth assuming the role of co-ordinator and initiator. Following this call, the Prime Minister, Mr. Gorton, arranged a meeting of selected State and Federal Ministers which was held in Canberra on 14 February 1969. This meeting led to the establishment of the National Standing Control Committee on Drugs of Dependence. This Committee reports to State and Federal Ministers responsible for drug control. As part of this national strategy in the Governor General, in opening the Federal Parliament in March 1970, pointed out that it was the Government's policy to seek to co-ordinate state and federal law enforcement efforts (Hansard, HofR, 3 March 1970, p.13). This was an attempt to overcome problems of inadequate co-operation between State and Federal authorities that the Federal

Government had acknowledged to exist (see e.g. Senator Scott, Hansard, Senate, 20 March 1969, p.511). However, this was not to be so easily solved and continued to bedevil concerted action throughout the following decade.

In 1971, for example, Senator Cotton again raised this issue when he pointed to the existence of "... unnecessary duplication in investigation; wasteful use of resources; divided jurisdiction in some prosecutions; surrender of Commonwealth participation necessary to pursue investigations where international trafficking is involved; and denial to the Commonwealth of the right to appeal under State legislation" (Hansard, Senate, 7 Dec. 1971, p.2567). The Marriott Committee in the same year also made recommendations aimed at dealing with the problems of collaboration in law enforcement, the collection of statistics, treatment and rehabilitation programmes and in drug education. Similarly, the Baume Committee in 1977 called upon the Federal Government to provide "... national leadership in coping with drug abuse" and warned that "no national control programme will be effective unless all governments co-ordinate their activities" (1977:2). In its first recommendation, the Baume Committee called again for a "national strategy as the basis of the strategy for the ... approach (of all governments in Australia) to drug abuse." Likewise, the Woodward Royal Commission in New South Wales called for greater inter-agency co-operation in Australia between drug enforcement organizations. It noted that the enforcement efforts of both State and Federal governments "... are failing to contain" the import and trafficking in drugs (Woodward Commission, 1979:1975). Mr. Justice Woodward argued that the "... Narcotics Bureau should be more mindful of its responsibilities to attend to the requirements of co-operative investigations with State Police Forces" (1979:1976).

This concern with co-ordinated national strategies became a central issue in the report of the Williams Commission. This was perhaps not surprising given the attention that this issue had received over the previous years. We need to ask whether the continued call for a national strategy should be regarded as but a pious platitude that all drug reformers feel compelled to utter, or whether it is actually a realizable goal. The Williams Commission recognized that its call for a national strategy "... does not differ greatly from the main thrust of the conclusions of the Senate Select Committee on Drug Abuse chaired by Senator J.E. Marriott in 1971" (Williams Commission, 1980:D14). Therefore, we need also to ask whether this latest call for a national strategy will be any more successful in generating a positive policy initiative than those calls made by earlier inquiries. Obviously the Williams Commission thinks that it will be, but it needs to be pointed out that the Williams report begs the question of the success of a national strategy by arguing that this idea has not worked before because "... it has not really been tried" (1980:D14). The question that should, however, be asked is why, with all the Ministerial statements that have been made emphasizing the need for state and in any meaningful sense of this term. Also, we need to ask what it is about the present situation that leads the Williams Commission to believe that it would be easier to implement a national strategy now than it has been in the decade since the Marriott Committee reported. The history of drug policies has yet to be written. However, it would seem that this period gives us little cause to be optimistic regarding the emergence of a national strategy. The Williams Commission emphasises, for example, that a national strategy "will succeed only if Commonwealth and State Governments and agencies co-operate" (1980:D15). This hope has proved to be a very frail basis indeed for the national strategy that is so often outlined.

In view of these various calls for a national strategy to a problem that so clearly has important national dimensions, it is interesting to point out the existence of criticisms regarding the current level of co-operation between the recently comp-



leted State and Federal Royal Commissions into drugs (see e.g. Hansard, Senate, 20 Oct. 1977, p.1547; 6 March 1980, pp702-703; 16 April 1980 p. 1534; 19 March 1980, p. 833; and H. of R. 21 Aug. 1980 pp. 590-591). One of the problems with the idea of a national strategy is that, if fully pursued, a broad-ranging approach to drugs should also be taken and this would have to encompass the licit drugs such as tobacco and alcohol. This is an electorally or politically dangerous thing for governments to do, even though virtually all drug inquiries in Australia have more or less implied that such a broad approach should be part of a national strategy. This latter fact helps to explain why governments have given only lip service to a national strategy and have not dared to implement any other than the law enforcement recommendations made by these drug inquiries. This point is well illustrated by the reception given by the Federal Government to the report of the Williams Commission.

This 1700 page report was tabled by the Federal Minister for Health, Mr. Mackellar, and was discussed by him in only about ten minutes even though the Government had received the report some months previously. The Minister stated that the Federal Government did however "in principle" support the idea of a "comprehensive national strategy on drugs" (Hansard, H. of R. 19 March 1980, p. 866). The Leader of the Opposition then pointed out that this could be seen as a "totally unsatisfactory" and "perfunctory" response by the Minister (Hansard, H. of R. 18 March 1980, p. 868). In the Senate, the Minister's comments made in tabling the Williams report were interpreted as illustrating a "... very limp response ..." by the government. The government's position regarding a national strategy was described by Senator Button as "... nondescript and ill-considered ..." (Hansard, Senate, 18 March 1980, pp 749-750). These comments accurately seem to illustrate the superficiality of the Government's response, especially as it had had Mr. Justice Williams' report for about six months before it was finally tabled. It took another six months after the tabling of the report before it was allowed to be discussed, as a matter of public importance. This was somewhat reminiscent of what had happened to the report of the Marriott Committee. After that report had been tabled on the 7th of May 1971, twelve months were to pass before a debate upon it was begun in the Senate on the 11th May 1972. One reason for these belated responses upon the part of government to Reports on drugs such as those of the Marriott Committee and the Williams Commission was the oft heard excuse: the implementation of most of the recommendations in these Reports depends upon the co-operation of the States (see e.g. Hansard, Senate, 27 Oct. 1971, p.1484 and H. of R. 15 April 1980, p. 1741). This is something of a Catch-22 situation, in that recommendations regarding co-operation can't be implemented until State and Federal officials can co-operate. In the debates that took place as a matter of importance in the House of Representatives in September 1980, it was revealed, by Mr. Lionel Bowen, by resort to a leaked document, that the Government was seeking to stall or slow down the implementation of recommendations made in the Williams Commission report (Hansard, H. of R. 9 Sept. 1980, p.1001). Mr. Bowen pointed to the Government's continued reliance upon the time-worn strategy for inaction in the face of drug law reform, namely the referral of politically difficult matters to the National Standing Control Committee, even though this very same body had been criticized in the Williams report, and the claim that the States would have to be consulted before any action could be taken. Moreover, as had been the case with respect to earlier drug inquiries, the Federal Government also set up an interdepartmental committee to determine how the Williams report might be dealt with. In the final analysis, there has been some progress in implementing some 59 of the law enforcement recommendations of the Williams Commission, although even here the original inten-

tions of the Williams Commission seem to have been distorted, as appears to have been the case both with the disbanding of the Narcotics Bureau and establishment of a National Criminal Intelligence Centre. In the light of the above, it seems that the proposed national strategy will once again fall by the way-side, at least until the next inquiry once again picks up this idea.

## THE POLITICS OF IMPLEMENTATION

Very few of the almost six hundred recommendations made by drug inquiries throughout the 1970's have been implemented. At best, the law enforcement recommendations have been implemented although often in a somewhat modified form from that envisaged by the bodies making them. Eugene Bardach in his study *The Implementation Game* (1977), points out that implementation involves a special kind of politics. He argues that in implementation efforts a "great deal of energy goes into manoeuvring to avoid responsibility, scrutiny and blame" (1977:37). Although Bardach was discussing the implementation of legislation, some of his observations are useful in regard to drug reform proposals. Thus, Bardach tells us that in the implementation process "politics appears primarily defensive. Actors seem more concerned with what they in particular might lose than with what all in general might gain" (1977:42). This well describes the attitudes that seem generally to be taken by governments to recommendations made by drug inquiries. In a further insight applicable to the drug area, Bardach adds that the "outcome of defensive politics of this sort is delay, a diversion of energies towards highly particularistic program goals (such as to drug law enforcement) and often a flight from administrative or political responsibility" (1977:42). The need for Federal State collaboration is one example in the drugs area of the seeming flight from responsibility. Bardach concludes that the implementation process is "shot through with gamesmanship" (1977:55). The game metaphor seems to be quite useful in interpreting governmental initiatives in setting up drug inquiries and then delaying any substantial implementation until yet another inquiry is set up to begin this cycle of inaction once more. This certainly seems to have been the pattern set in Australia during the 1970's, especially in the Federal sphere.

A good illustration of the above proposition is provided by the responses made by government to the recommendations in the 1971 report of the Marriott Committee. Virtually all later inquiries have pointed to the fact that many of the recommendations in the highly regarded report of the Marriott Committee were never implemented. The 1975 Brown Committee report made further recommendations on how to implement the 1971 recommendations of the Marriott Committee (1977:107, 123-124, 152, 175 and 181-182). Likewise, the Williams Commission reported that whilst governments failed fully to implement the recommendations of the Marriott Committee (1980:D14), the Williams Commission was forced to repeat nearly a decade later many of the same findings made in 1971 (1980:D88).

As Bardach has told us, delay is a key feature of the implementation process. In the case of the reports of the Marriott Committee, the Baume Committee and the Williams Commission up to a year passed in each case between the time that the reports were tabled (in the case of the Committee reports) or handed to the Government (in the case of the Williams report) and the time that a full debate was scheduled by the Government to discuss their recommendations in Parliament. The debates that eventually followed provide many caustic criticisms of governments for failing seriously to consider implementation. For example, fifteen months after the tabling of the Marriott Committee report, Senator Turnbull exclaimed "So very little of the contents and recommendations of the report has been implemented that one wonders whether the Government has any intention of implementing anything in it.

Even with a majority of Liberals (the ruling party) on the Committee, no weight at all has been given to its report" (Hansard, Senate, 17 August, 1972, p. 163). Senator Turnbull was not alone in expressing such concern. Senator Georges, for example, remarked that it "would be a great pity if this report and its recommendations were merely to pass into the records of this place" (Hansard, Senate, 18 May, p.1800). Senator Murphy also hoped that the report would "not gather dust" (Hansard, Senate, 17 Aug. 1972, p.163). Regretably, this is indeed what has largely happened.

Why has this been so? A number of explanations have come from politicians themselves. For example, Senator Georges pointed out that there was a tendency "... for many of the reports and recommendations coming from Senate committees to be submerged by a swamp of responsibility, that is, by the tremendous amount of legislation which must be passed though this place" (Hansard, Senate, 18 May 1972, p.1801). Another explanation was offered by Senator McManus. In discussing governmental inaction regarding the control of licit drugs, Senator McManus pointed out that although alcohol "... is undoubtedly the worst" problem drug facing society, due to the fact that it was seen as being socially acceptable "... governments will always be loath to take action. ..." so long as "... many people say that they take it for social purposes without ill effects. ..." (Hansard, Senate, 18 May 1972, p.1797). In the light of explanations such as these it is interesting to point to the Federal Government's expressed reasons of the Government, that even if it implemented all of the of the government, that even if it implemented all of the Marriott Committee recommendations, this would still not be enough to deal with the drug problem (Hansard, Senate, 17 Aug 1972, p.171). Whilst this was probably true, it is hardly a satisfactory or sufficient reason to justify inaction by government.

Some years, later, the Fraser Government was to announce that in future, within six months of the tabling of any committee report, the Government would reveal what action, if any, it planned to take. Ironically, this became an impossible objective to fulfill in respect to the next drug inquiry report that came the Government's way, namely, the Baume Committee report. In that case, the Government was forced to seek an extension of time due to the fact that this was seen as "a very complex report" (Hansard, Senate, 1 March 1979, p.454). In view of this, one wonders how long it will take the Federal Government to deal with the implementation of the Williams Commission report which is eight times longer than the report of the Baume Committee and is also quite complex. As has already been pointed out in the previous section, there has in fact been a considerable reluctance upon the part of government to implement the recommendations of the Williams Commission, apart from those that deal with law enforcement. Responsibility for further implementation has frequently been avoided by both State and Federal Governments by reference to the professed need for Federal-State collaboration. Despite the fact that the Baume Committee urged that the Federal Government "provide definite leadership" (1977:23), Government spokesmen and speakers responding to the recommendations of the Williams Commission stressed that many of these could not be implemented without co-operation between State and Federal authorities as "... the Federal Government cannot act alone in our system. ..." (Hansard, H. of R. 15 April 1980, p. 1741). Similarly, at the state level, the New South Wales Minister for Police and Services, Mr. Crabtree, stressed that before the Williams report could be implemented, it would be necessary to hold "... numerous national conferences of Ministers and officials. ..." (NSWPD, H.ofA. 20 March 1980, p.5630). Where such conferences are held, they generally tend to have a predominantly law enforcement orientation. Mr. Crabtree, for example, went on to add that he was ready to attend a con-

ference of Police Ministers to discuss a national drug strategy. But, then, such conferences of law enforcement officials have been going on for at least a decade with little appreciable impact upon the drug problem. In view of this, there seems little hope that this kind of collaboration will prove to be successful regarding more controversial recommendations than those of a law enforcement nature. This once again highlights the real need for strong Federal leadership regarding the implementation of drug policies in Australia, although there is little evidence to suggest that this will in fact eventuate, despite the periodic Federal Ministerial press releases indicating that a drug crack-down is planned.

## THE LAW ENFORCEMENT PSYCHOSIS

Commissions and Committees of Inquiry into drugs have tended to reflect the obsessions of drug policy-makers with law enforcement, despite the fact that all of these inquiries have quickly recognized the fact that there are other more important features of the drug situation. However, there are powerful political and bureaucratic reasons which help to explain why governments prefer to deal mainly with law enforcement rather than, for example, the wider social dimensions of the drug problem.

Throughout the 1970s, the drug problem has in practice been mainly seen by policy-makers as a law enforcement problem. As has already been pointed out, governments have tended to mainly implement the law enforcement recommendations made by drug inquiries, if they implement anything at all. Even some of the inquiries, such as the Marriott Committee and the Williams Commission, have emphasised law enforcement rather than other recommendations that might have been made in view of the fact that these reports did recognise the existence of wider aspects of the drug problem. For example, whilst the Williams Commission recognised that "... any rational community action to limit the abuse of drugs must embrace all drugs, not merely those classified as illegal" (1980: D3), it went on to conclude that "... law enforcement initiatives should be given priority in tackling the drug problem" (1980: D13). This emphasis upon enforcement, led Dr. Neil Blewett, the Federal member for Bonython, to conclude that a "law enforcement strategy will not succeed alone" as it fails to deal with the social bases of demand for drugs (Hansard, H of R 15 April 1980, p 1750). Blewett argued that Mr. Justice Williams gave only lip service to the importance of this wider issue which would require a discussion of important philosophical and sociological questions.

The stress upon law enforcement by governments can be seen as a symbolic response which avoids the wider issues of drug law reform. This point was highlighted by Senator Button when the Williams report was debated in the Senate. He noted that the drug problem was only seen as being important by government when attempts were being made to introduce legislation expanding existing law enforcement machinery, such as occurred in the case of the Telecommunications (Interception) Bill and associated legislation (Hansard, Senate, 18 March 1980, p 750). Senator Button went on to describe the Government's emphasis on law enforcement as being "rhetoric" rather than a "genuine response", to what he described as "a real situation" (ibid pp 751-752). He also pointed to the Government's superficial response to the drug law enforcement issue by preferring to set up a National Crime Intelligence Centre rather than a National Criminal Drug Intelligence Centre, as the Williams report had recommended (ibid o 753). Whilst a general crime intelligence centre was set up as early as 1969, after criticisms of the drug problem, it is interesting to note that the drugs issue has been used as a convenient excuse for the expansion of law enforcement powers and capacities generally, rather than with a view to attacking the drug problem specifically.

This is also illustrated by the manner in which the Government handled the recommendation of the Williams Commission that the Narcotics Bureau be disbanded. In view of the corruption in drug law enforcement highlighted by Mr. Justice Williams, it is especially alarming that the old Narcotics Bureau was virtually transferred intact into the Federal Police. This approach to law enforcement also highlights a dilemma identified in the Senate debates by Senator Grimes. Whilst on the one hand the Williams Commission illustrated the existence of police corruption, violence, inefficiency and ineptitude, it is ironic that, on the other hand, it recommended a widening of police powers and the handling of complaints against police through internal police investigations rather than by an external non-police body (Hansard, Senate 19 March 1980, pp 835-836).

The experience of, and reactions to, the Williams report are by no means new. Allegations of police corruption and police involvement in drug trafficking have frequently been made but have led to little governmental response (see e.g., Hansard, H of R, 16 April 1969, p 856; and NSWPD, H of A, 12 October 1976, p 1611). The effect of the National Standing Control Committee through the seventies was an increase in penalties for drug abuse and trafficking as well as bringing about greater uniformity in penalties between states. The NSCC has served to keep law enforcement on the top of the policy agenda. Law enforcement was also seen by Senator Marriott as one of the few areas in which the recommendations of his committee were followed (Hansard, Senate, 17 August 1972, pp 177-183). This was confirmed by the government when Senator Cotton informed the Senate that "major steps had been taken to improve co-operation between enforcement authorities in Australia and overseas" (Hansard, Senate, 22 August 1972, p 283). Collaboration between enforcement authorities became a major priority from the early 1970s (see e.g., Hansard, Senate, 22 February 1972, p 43).

Whilst governments and commissions of inquiry have therefore been reluctant to make the law in fact more effective, such as by decriminalising the use of marijuana, they have been very ready to see an increase in penalties and in the size of the law enforcement machinery. This applied both to State and Federal governments. For example, whilst most drug inquiries agreed that marijuana was one of the least dangerous drugs currently in use, the Williams Commission curiously deferred consideration of its legalisation for another ten years and the New South Wales Premier confirmed that there would be no legalisation of marijuana in New South Wales (NSWPD, H of A, 2 June 1977, p 6518). The Premier, somewhat pragmatically, preferred to see marijuana users dispatched to educational and treatment programmes and to increase penalties for trafficking (ibid p 6519). The New South Wales government encouraged collaboration between law enforcement bodies and the establishment of a crime intelligence body (NSWPD, H of A, 16 August 1977, p 7510; L.C., 29 March 1979, p 3391). Whilst the New South Wales Minister for Health did point to increases in expenditure on drug education and treatment efforts (NSWPD, H of A, 25 March 1980, pp 5811-5815), this was all a rather limited exercise. However, the major effort seems to have gone into law enforcement and this has influenced the nature of treatment and educational programmes.

In 1979 the New South Wales Premier was able to proudly declare that his "... Government has already significantly increased the size of the drug squad in this State ... The general apparatus in New South Wales for law enforcement and the detection and prevention of offences has increased measurably since Labor came to government." (NSWPD H of A, 25 October 1979, p 2292). Clearly emphasis on drug law enforcement is good politics. This is also illustrated by the response to the report of the Sackville Commission by the

South Australian government. Senator Chipp, who had been Minister for Customs and Excise during the early 1970s, has pointed out that whilst the Sackville report was "... one of the most responsible documents ever produced on cannabis in Australia", he observed that the South Australian Premier "... did not even look at the [Sackville] report on drugs ... because he was frightened that his political opponents would score political points off him. ..." (Hansard, Senate, 19 March 1980, p 829; see also, S.A.P.D., H of A, 21 August 1979, p 603). The South Australian Labor government's resistance to major non-law enforcement initiatives was mirrored in the attitude of the Liberal government that followed it in 1979. The Premier, Mr. Tonkin, well summarised the priorities of his, and of virtually all other governments over the last decade, when he asserted that "one of the first things that we will be doing is examining our own laws in relation to drug abuse and seeing whether or not the penalties set down, which are already very severe, are sufficient. I believe, too, that, when we have looked at [the Woodward and Williams] ... reports we need to examine very carefully the forces that are available to us through the Drug Squad and the enforcement bodies to see whether or not they are adequately equipped to do their job properly" (SAPD, H of A, 8 November 1979, p 869). It was thus assumed that law enforcement issues would be the only relevant ones to emerge from these inquiries.

Despite the obsessive attitude to improving law enforcement efforts regarding drugs by virtually all Australian governments over the last decade, there is little evidence to suggest that law enforcement agencies have had real successes, although it has been politically beneficial to governments for them to continue to stress the central importance of law enforcement. This heavy commitment to law enforcement must be seen largely to serve symbiotic purposes. The symbolic value of law enforcement as a catch cry has therefore allowed governments to avoid the issue of a head on attack upon the social bases of the drug problem. Whilst this has been good for government and enforcement agencies, it has not helped drug users or the community at large.

## CONCLUSIONS

The implementation of recommendations made by government appointed Drug Inquiries in Australia during the 1970s provides a sobering picture of the limits of government action in the face of a serious social problem, such as that of drug abuse. Both the successive inquiries and the limited initiatives that governments have dared to take regarding drugs, can be seen to have served largely symbolic purposes. Whilst the dimensions of the drug problem and possible means of dealing with this have long been well known, governments have continued to appoint high level inquiries to show to the electorate that they are indeed alive to the existence of a serious drug problem and only wish to determine the most appropriate response to this problem.

Due to the complex nature of the drug problem, as well as its extensiveness in society, it has rarely been politically acceptable for governments to pay more than lip service to the need to respond to the wider dimensions of this problem, even if this were possible. It has been possible to avoid such more extensive responses to the problem by resort to a multitude of delaying strategies, such as bureaucratic needs, Federal-State collaboration, obtaining further information on a critical point, and, probably most importantly, by emphasising law enforcement. However, the drug problem is only in small part a law enforcement concern. As one drug inquiry after another has shown us, there are other strategies that are probably far more important, even if these may be politically more dangerous paths for governments to take.



From the point of view of stable government, drug policies that have been followed during the last decade have probably been a success, in a sense. The media has been fed with a continuous diet of government reports. The bureaucracy has been kept busy with a multitude of committees. Lae enforcement agencies have been able to grow quite significantly. Police corruption has not been seriously questioned whilst drug traffickers have continued to flourish. At the same time, the profits of licit drug manufacturers, distributors and advertisers have not been much, if at all, affected by any government

action. By the same token, coffers continue to swell by way of taxes and excise, and party coffers benefit from donations by grateful licit drug traffickers.

The only sign of instability on the political horizon arises from the increase in social deterioration through the spread of drug abuse in our society, both licit and illicit. But, then, this has proved to be easily handled by government for, as the Baume Committee has suggested, there is little to fear politically after all from an "intoxicated society".

## THE AUSTRALIAN CRIME PREVENTION COUNCIL FORUM



This is the first of a special double edition of the ACPC FORUM entitled, DRUGS AND THE LAW: A NATIONAL PERSPECTIVE FOR AUSTRALIA, edited by Dr. John Walsh of Brannagh. The complete index and list of footnotes and references will appear in the second issue. Articles yet to be published are as follows: *Organizational Crime and the Difficulties of Law Enforcement*, by Judge Woodward. *Sentencing for Major Marijuana Offences*, by Fiori Rinaldi. *The Relation to Drug Offences*, by Robert Richter. *Drugs and Drug Abuse*, *New Approaches to the Punishment of Federal Offenders* by Judge Kirby.

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