

Contemporary Comment

Legislative Change in the Australian Capital Territory

In the Australian Capital Territory (ACT) the *Drugs of Dependence Act* 1989 was enacted only a month prior to self-government. That Act has already seen a series of amendments. One of the most notable being that which I introduced as a Bill to provide for expiation notices. That Bill was passed in September 1992 and gazetted in October of that year. In the 18 months following the introduction of the expiation notice scheme some 243 notices had been issued.

The legislation prior to that time still applies. A police officer can charge somebody with a simple cannabis offence. That offence of less than 25 grams or growing up to five plants carries a \$100 fine and a police record on conviction. The police have the option now of either charging or providing an expiation notice. When an expiation notice is issued the police have the right to confiscate any cannabis and then issue an on-the-spot fine. When the Bill was introduced the level of fine was \$40 but a government amendment provided that the fine be set at \$100. In the last sitting of the Assembly I introduced a further amendment to the expiation notice system in order to resolve some of the anomalies associated with that Bill. Three things are provided for: (1) removal of a police discretion, (2) lowering of the fine, and (3) applying the expiation notice system to "use".

First of all, in the current system the police have the discretion to turn a blind eye, to issue a notice or to charge. Under the new Bill the police have the discretion to either ignore the offence or issue an expiation notice which is known as a Simple Cannabis Offence Notice (or SCON).

The police will not have the discretion to charge someone. In my discussions with the Attorney-General, Terry Connolly MLA, he has responded by expressing concern that the discretion ought not apply to five plants although he is receptive to 25 grams. Clearly five plants can either be five small half-metre plants or they may well be five 2-3 metre plants. Under those circumstances traffickable quantities are involved. It seems to me that if the issue is trafficking or traffickable quantities then any charge should be for an offence under that part of the Act. A political compromise in the form of an amendment to the Bill can be expected.

The second part of the Bill lowers the fine from \$100 to \$40. At the time the original amendment was introduced to establish the Simple Cannabis Offence Notices I argued that we ought to have a \$40 fine. The legislation then provided for a \$100 fine and magistrates tended to give about a \$40 fine as the norm. The only amendment to the legislation at the time was a Labor amendment which moved the fine from \$40 to \$100. There have been a number of cases where young people, especially young couples, who are on unemployment who have both been given expiation notices have had difficulty making their payment. On one of those occasions where I was asked to intervene, the time for payment was able to be extended and so the problem was resolved. However, it does reflect the lack of social equity. The real message that is being conveyed by this SCON method is to emphasise that society does not approve of marijuana in the same way that we don't approve of speeding. However, I think it is important for us to keep in mind that no Australian

has died from cannabis and we could well argue that many have died from speeding or other drugs such as alcohol.

The most significant change, however, presented by this new Bill is a third change to apply the expiation notice system to "use". When the original Bill was introduced the Simple Cannabis Offence Notice did apply to using the drug. That section of the Bill is separated from Cannabis which explains how this anomaly occurred. The use section of the *Drugs of Dependence Act* applies not just to cannabis but to the full range of illicit substances. The penalties were \$5 000 or six months gaol and that is still the law as it applies to using cannabis. Interestingly enough this was drawn to my attention by a Year 10 student who had been caught with a tiny amount of cannabis. The police officer who was stationed in the school used his discretion and neither issued a CON nor charged but warned the young person that he could get a \$5 000 fine or a six month gaol sentence for using cannabis. I have introduced an amendment to the Bill, that the Simple Cannabis Offence Notice can apply to use or administration of cannabis. I look forward to the time when I can see the decriminalisation of those other drugs and apply this amendment to the full range of drugs. The personal possession or use for any drug ought not be a criminal offence, users of drugs do not need to be treated as criminals by the law, where dependence occurs they should be provided with treatment options.

Even though the ACT legislation has been working for two years, and even though there has been a Bill presented to resolve some of the anomalies, it still is important for us to evaluate what we are doing. In fact the Australian Parliamentary Group for Drug Law Reform (APGDLR) in its Charter calls for the reform of drug laws in planned stages and with detailed evaluation of such laws at all stages. An evaluation is currently being carried out on the ACT laws by a student from Canberra University Health Studies Program. Whilst the evaluation will be limited in its range and scope, Julie Kitchener based her approach on the methods used by Paul Christie when he evaluated the South Australian laws. It will provide us with an indication of how the ACT laws are perceived. The methodology in such evaluations are particularly critical when we look at the range of questions asked by different evaluations. The Ministerial Council on Drugs Strategy was able to announce that less than 50 per cent of people favoured the decriminalisation of drugs and yet when Curtin University asked the same questions explaining what was meant by the "decriminalisation" of marijuana they found 70 per cent support — an extraordinary difference in result dependent on methodology.

In evaluating any new move we ought to evaluate against the original aims of that particular movement. Was it the aim of decriminalisation in the ACT to ensure a reduction in use? It was clearly stated at the time of the introduction of the Bill was that the goal was consistent with the approach of the Ministerial Council on Drugs Strategy to reduce the harm associated with the use of drugs. If the harm was reduced, even in spite of a small increase in usage, that indeed could be evaluated as a satisfactory result. Would a small increase in usage of a few young people experimenting once or twice with cannabis have been a greater danger, a greater harm than hundreds more young people being left with a police record in which they could no longer work in the Public Service? In Canberra, the Public Service provides over 50 per cent of our jobs and a criminal record would significantly increase somebody's chances of being unemployed on a long term basis. Surely the harm of one puff, or even a few more, of marijuana could not be compared to the harm created by long-term unemployment. For young people who wish to travel, a police record with a drug offence, provides for great restrictions to some places in Asia and the US. The saving in our court costs are also a factor in the reduction of harm. But probably the most important factor is a change in attitude. While society is clearly not ready to condone the

widespread, relaxed use of marijuana in the same way as we condone the widespread and relaxed use of alcohol, we also must have a tolerant and understanding attitude that people are prepared to make their own decisions on the information available to them. I believe it is reasonable to say that our society does not condone generally the use of tobacco as a drug but we certainly don't put people in gaol for it — even though tobacco kills more people than any other drug in Australia.

The Real Question for People in the ACT is: Where to Next?

The Australian Parliamentary Group for Drug Law Reform in a series of meetings have called for a medical use of cannabis to be made available for a range of people. We know that glaucoma sufferers can benefit greatly from the use of cannabis and indeed even in the United States, where prohibition is strongest, the State does permit use and provide cannabis for a range of people. We know from the work of Dr Lester Grinspoon and James B Bakalar, *Marihuana, the Forbidden Medicine*, that the medical use of cannabis can apply specifically to people who are undergoing chemotherapy treatment to assist in controlling nausea and to also assist in enhancing appetite. People with AIDS also often have difficulty with wasting and lack of appetite. Their ability to be able to control these symptoms with the use of cannabis is now widely documented and any new policy dealing with cannabis really must take into account that prohibition is a system that lacks compassion and any rational, reasonable person would allow people who are suffering in this way access to cannabis as a medicine. In a survey of American oncologists we find that “44 per cent of oncologists have at some stage either recommended the illegal use of marijuana to at least one patient, half would prescribe it to some patients if it were legal”.¹

The next step in changing drug laws in the ACT and across Australia really ought to be in the area of medicinal use of cannabis.

Another similar area which is the subject of a number of papers and a particular push by the HEMP organisations, that is, Help End Marijuana Prohibition, who are based in Nimbin, is the use of cannabis for industrial reasons. Any of us who have seen the American propaganda film from World War II, *Cannabis for Victory*, realise that the cannabis plant does have widespread application as a fibre, not only for the production of paper, but also in the production of material. There is some evidence to show that paper from hemp products can have an expected life span of over 1,000 years compared to an expected life span of 100 years for the paper we use today. The production of hemp for paper would get a three-fold yield from the same acreage as our forests or plantations. The work of Dr Andrew Kattellaris in Sydney will bring this issue further and further to the fore. It is the blinding impact of prohibition that closes our eyes to any of the benefits of this plant.

Changing Attitudes to Drug Laws

There is now a growing world-wide move against prohibition and if we are going to move against prohibition it is important that we understand the language. It was only a very short time ago that people who advocated prohibition were considered to be “legalisers” and the high moral ground was left with people like Nancy Reagan who could come out

1 Doblin, R and Kleiman, M A R, “Marihuana as an Antiemetic Medicine: A Survey of Oncologists' Attitudes and Experiences” (1991) 9 *J Clin Onc* 1275–80.

with such blithe statements as “just say no”. When I originally took on this issue politically, every politician and every political observer told me that it was political suicide. However, the drug issue is rapidly turning around. It is no longer the political bogey it was previously, which is why over sixty members of parliament have signed *The Charter for Drug Law Reform*. Their number is growing daily.

In dealing with “what next?” the critical issue is how do we go about changing community attitudes. How can we further develop drugs policy in order to come into a new century of controlled availability to replace the century of prohibition.²

Changing the way people think about illicit drugs requires an understanding of the language of how such issues are discussed. The transition in thinking has already started — rarely do we hear anyone advocating “legalisation” as the radical fringe did some years ago and we even hear “decriminalisation” less and less. Now we hear “drug law reform” in “sensible steps” with “evaluation”. More importantly, those who oppose change now oppose “reform” and are commonly referred to as the “prohibitionists”. A study of this change requires an analysis of the language and the context of the debate, or the discourse. Such a discussion may be referred to as “discourse analysis”.

The language of the debate has developed from “smoke marijuana and you are on the road to heroin, LSD and death” or “try heroin once and you will be addicted for life” and “legalisation or decriminalisation will send mixed messages to our kids” to “prohibition has failed”, “base drugs education on self-respect and truth based on sound scientific research”. The change in the discourse represents a change in thinking, a change which must be understood by anyone who hopes to influence or develop policy.

To track the change requires an understanding of the development of prohibitionist drugs policy. Clearly a web of factors has influenced prohibition, some base the analysis on racism,³ others on the influence of foreign powers, particularly the USA.⁴ Other approaches include centralisation of power, nation building and the need to find scapegoats in fulfilling such ambitions.⁵ Each of these different factors influenced each other leading to an inexorable decline down the path of prohibition. By the mid to late 60s both sides of politics were trying to outdo the fines and punishments they would levy on drug users and dealers to prove that, compared to themselves the other side was “soft on drugs”.

How the story of the change to prohibition has been told is as important as the change itself. It is basic to an understanding of the discourse, that is the way something has been said within its context. Thus, in the previous paragraph when I speak of “the inexorable decline down the path to prohibition”, I blatantly colour the language to assist in building the picture of the failure of prohibition. I use this as an example to remind you that there is someone telling this story, and even when, as authors, we bury ourselves in a disembodied scientific discourse, all we do is hide the fact that behind any particular paper is someone writing from a personal context, based on a series of premises and parameters which are rarely recognised by the reader or the audience.

2 Some of the following material is from a paper previously presented as a “Manual for the Drug Policy Activist”, at the Winter School in the Sun Conference in July 1994.

3 Manderson, D, *From Mr Sin to Mr Big* (1993).

4 Fox, R and Mathews, I, *Drugs Policy Fact Fiction and the Future* (1992) at 77ff.

5 Legge, D, *Introduction to the Study of Health Policy* (unpublished).

So what can be done to change the discourse, to change the language in the debate so that people begin to look rationally at drug policy? The Australian Parliamentary Group for Drug Law Reform has adopted a *Charter for Drug Law Reform* which is designed to give this process a step to the next level. The Charter is consistent with the policy developed and adopted by the Australian Public Health Association and by the Frankfurt Resolution adopted by the European Network of Cities.

I emphasise these networks to illustrate that discourse analysis is about context of policy change as well as the change in language.

In its Charter the Australian Parliamentary Group for Drug Law Reform begins by setting out its primary principle — Drug policy is a health issue and ought to be dealt with in a compassionate way. This Charter is asking its readers to identify with the need for an understanding, tolerant approach rather than a punitive one. Already the parameters of the discussion have changed — who wants to see themselves as punitive and intolerant? The next step is to provide a set of reasons as to why a punitive approach won't work anyway. The failures of prohibition are listed in the Charter.

An intolerant approach, a punitive approach is now not only socially unacceptable — but it would only be supported by an idiot who cannot see the damage done by such ridiculous adherence to a very expensive policy which does not work. Such is the way that language can be used.

Furthermore, anyone who adheres to a prohibitionist policy is assisting organised crime and the drug traffickers with illicit drugs recently supplanting the petroleum industry to be the second most lucrative business in the world,⁶ encouraging corruption in the criminal justice system, eroding civil liberties, damaging community health and increasing the burden on taxpayers who are not only losing their video machines and jewellery but then being taxed to support increases in expenditure on prisons, courts and police. The common citizen loses every which way.

So how do the prohibitionists manage to so successfully argue a case based on economic disaster, corruption and damage to community health? Racism and marginalising assists them. However, a fear campaign is the most effective method. Recently, Professor Gabriel Nahas visited Australia in a whirlwind media tour. Professor Nahas was previously a scientific adviser to Presidents Reagan and Bush on American Drug Policy. His message was strident in describing the incredible harm marijuana can cause. His work is a mixture of scientific approach, testimonials and misrepresentations of other's work.⁷

The lack of concentration experienced by heavy marijuana users, the association of "dole bludgers" and cannabis as well as young people who are not "under control" is fortified by reiterating that marijuana is not just bad but it is physically disastrous. The debate moves from dealing with the question of social inequity to an examination of how reformers can advocate making available a drug which damages young people.

For a reformer the question is how can we find a policy that works when we know prohibition is a dismal failure.

6 Refer to Giorgio Giocommelli, Executive Director, International Narcotics Control Program, Press Conference, Parliament House, Canberra, December 1992.

7 Refer Letter of G Chesher, as a critique of Nahas, G, "The Human Toxicity of Marijuana" (1992) in *Med J Aust.*

The Australian Parliamentary Group for Drug Law Reform sets out a series of proposals as to the direction such reform should take “in planned stages with detailed evaluation at all stages”. Part of the attempt to set the agenda is to provide a future direction, a context in which the parameters of the debate are such that anyone having other than a reformist view are perceived to be emotive rather than logical, rational, tolerant and non-judgmental.

The most successful of the Australian Government, Parliamentary and Judicial Inquiries from a reformer’s point of view was the Sackville Royal Commission into *The Non-Medical Use of Drugs*. Ron Sackville⁸ reported in 1979 to a receptive Government, having published a series of discussion papers which allowed the public to see and understand the options for dealing with non-medical drugs. Had all of Sackville’s recommendations been adopted we may well have had a different Australia. It is interesting to note that Dr Neal Blewett made a submission to the Royal Commission as head of the South Australian Civil Liberties Council. His background, his involvement with Sackville, help set the context for his decision to approve needle exchange programs following the advent of AIDS when he was Federal Minister for Health.

Recognising the position of the narrator in setting the framework of debate as well as understanding the context and the role of language is critical if there is to be an attempt to change drugs policy and laws. The lobbying, the networking, the demonstrations, the letters to the editor are also important. In weaving the web the control strand must remain that *prohibition has failed*. The debate, centred around this precept can only go in one direction — the background is in place for ordinary people to ask the next critical question. Well what does work? A co-ordinated answer to the question either adopting or adapting the *Charter for Drug Law Reform* will provide the framework for a new policy direction.

The debate must move beyond to legalise or not. The discourse must work within the parameter “prohibition has failed” and be guided towards “what will work?”

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8 Chair of the South Australian Royal Commission into Non-Medical Use of Drugs.